# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

# FORM 10-Q

☒ **Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**For the quarterly period ended October 3, 2009**

**or**

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Commission File No. 0-19621**

# APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
(Exact name of registrant as specified in its charter)

| | |
|---|---|
| **Minnesota**<br>(State or other jurisdiction of incorporation or organization) | **41-1454591**<br>(I.R.S. Employer Identification No.) |
| **7400 Excelsior Boulevard, Minneapolis, Minnesota**<br>(Address of principal executive offices) | **55426-4517**<br>(Zip Code) |

**952-930-9000**
(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☐ |
| Non-accelerated filer ☐<br>(Do not check if a smaller reporting company) | Smaller reporting company ☒ |

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

As of November 9, 2009, there were 4,577,777 outstanding shares of the registrant's Common Stock, without par value.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**APPLIANCE RECYCLING CENTERS OF AMERICA, INC.**
**CONSOLIDATED BALANCE SHEETS**
**(In Thousands)**

| | October 3, 2009 (unaudited) | January 3, 2009 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 2,707 | $ 3,498 |
| Accounts receivable, net of allowance of $39 and $292, respectively | 5,589 | 6,056 |
| Inventories, net of reserves of $360 and $115, respectively | 17,979 | 18,834 |
| Other current assets | 687 | 950 |
| Deferred income taxes | 448 | 448 |
| Total current assets | 27,410 | 29,786 |
| Property and equipment, net | 4,321 | 6,967 |
| Deferred income taxes | 199 | 177 |
| Restricted cash | 700 | — |
| Other assets | 753 | 485 |
| Total assets | $ 33,383 | $ 37,415 |
| | | |
| **Liabilities and Shareholders' Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 4,933 | $ 4,473 |
| Checks issued in excess of bank balance | 516 | — |
| Accrued expenses | 4,602 | 4,073 |
| Line of credit | 11,539 | 14,527 |
| Current maturities of long-term obligations | 532 | 579 |
| Income taxes payable | 149 | 362 |
| Total current liabilities | 22,271 | 24,014 |
| | | |
| Long-term obligations, less current maturities | 2,067 | 4,892 |
| Deferred gain, net of current portion | 1,953 | — |
| Deferred income tax liabilities | 529 | 520 |
| Total liabilities | 26,820 | 29,426 |
| | | |
| Commitments and contingencies | — | — |
| | | |
| Shareholders' equity: | | |
| Common Stock, no par value; 10,000 shares authorized; issued and outstanding: 4,578 shares | 16,666 | 16,221 |
| Accumulated deficit | (9,886) | (7,929) |
| Accumulated other comprehensive loss | (217) | (303) |
| Total shareholders' equity | 6,563 | 7,989 |
| Total liabilities and shareholders' equity | $ 33,383 | $ 37,415 |

See Notes to Consolidated Financial Statements.



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**APPLIANCE RECYCLING CENTERS OF AMERICA, INC.**
**UNAUDITED CONSOLIDATED STATEMENTS OF OPERATIONS**
**(In Thousands, Except Per Share Amounts)**

| | Three Months Ended | Nine Months Ended |
|---|---|---|

| | October 3, 2009 | September 27, 2008 | October 3, 2009 | September 27, 2008 |
|---|---|---|---|---|
| Revenues: | | | | |
| Retail | $ 17,962 | $ 18,724 | $ 58,229 | $ 58,558 |
| Recycling | 7,006 | 8,759 | 16,942 | 21,991 |
| Byproduct | 1,037 | 1,931 | 2,384 | 4,229 |
| Total revenues | 26,005 | 29,414 | 77,555 | 84,778 |
| Cost of revenues | 17,512 | 19,252 | 55,148 | 56,909 |
| Gross profit | 8,493 | 10,162 | 22,407 | 27,869 |
| Selling, general and administrative expenses | 7,638 | 8,017 | 23,378 | 23,577 |
| Operating income (loss) | 855 | 2,145 | (971) | 4,292 |
| Other income (expense): | | | | |
| Interest expense, net | (325) | (316) | (900) | (1,040) |
| Other expense, net | 36 | 8 | (35) | 8 |
| Income (loss) from continuing operations before income taxes | 566 | 1,837 | (1,906) | 3,260 |
| Provision for income taxes | 150 | 560 | 51 | 736 |
| Income (loss) from continuing operations | 416 | 1,277 | (1,957) | 2,524 |
| Loss from discontinued operations, net of tax | — | (136) | — | (429) |
| Net income (loss) | $ 416 | $ 1,141 | $ (1,957) | $ 2,095 |
| Basic income (loss) per share: | | | | |
| Continuing operations | $ 0.09 | $ 0.28 | $ (0.43) | $ 0.55 |
| Discontinued operations | — | (0.03) | — | (0.09) |
| Net income (loss) | $ 0.09 | $ 0.25 | $ (0.43) | $ 0.46 |
| Diluted income (loss) per share: | | | | |
| Continuing operations | $ 0.09 | $ 0.28 | $ (0.43) | $ 0.54 |
| Discontinued operations | — | (0.03) | — | (0.09) |
| Net income (loss) | $ 0.09 | $ 0.25 | $ (0.43) | $ 0.45 |
| Weighted average number of shares outstanding: | | | | |
| Basic | 4,578 | 4,578 | 4,578 | 4,568 |
| Diluted | 4,578 | 4,608 | 4,578 | 4,622 |

See Notes to Consolidated Financial Statements.



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**APPLIANCE RECYCLING CENTERS OF AMERICA, INC.**
**UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(In Thousands)**

| | Nine Months Ended | |
|---|---|---|
| | October 3, 2009 | September 27, 2008 |
| **Operating activities** | | |
| Net income (loss) | $ (1,957) | $ 2,095 |
| Adjustments to reconcile net income (loss) to net cash and cash equivalents provided by operating activities: | | |
| Depreciation and amortization | 985 | 816 |
| Provision for bad debts | 69 | 263 |
| Share-based compensation | 445 | 419 |
| Loss on disposal of assets | 56 | — |
| Write-off of deferred financing fees | 24 | — |
| Changes in assets and liabilities: | | |
| Accounts receivable | 398 | 719 |
| Inventories | 900 | (2,743) |
| Other current assets | 263 | (167) |
| Other assets | (29) | (21) |
| Accounts payable and accrued expenses | 501 | (520) |
| Income taxes payable | (194) | 242 |
| Net cash flows provided by operating activities | 1,461 | 1,103 |
| **Investing activities** | | |
| Increase in restricted cash | (700) | — |
| Purchases of property and equipment | (421) | (508) |
| Proceeds from sale of building and other equipment | 4,638 | — |
| Investment in joint venture | (263) | — |
| Net cash flows provided by (used in) investing activities | 3,254 | (508) |
| **Financing activities** | | |
| Checks issued in excess of cash in bank | 516 | 299 |
| Net payments under line of credit | (2,988) | (224) |
| Payments on long-term obligations | (3,086) | (345) |
| Proceeds from stock option exercises | — | 217 |
| Excess tax benefits from share-based compensation | — | 160 |
| Net cash flows (used in) provided by financing activities | (5,558) | 107 |

| | | |
|---|---|---|
| Effect of changes in exchange rate on cash and cash equivalents | 52 | (47) |
| Increase (decrease) in cash and cash equivalents | (791) | 655 |
| Cash and cash equivalents at beginning of period | 3,498 | 2,777 |
| Cash and cash equivalents at end of period | $ 2,707 | $ 3,432 |
| **Supplemental disclosures of cash flow information** | | |
| Cash payments for interest | $ 902 | $ 1,042 |
| Cash payments for income taxes, net | $ 384 | $ 334 |
| **Non-cash investing and financing activities** | | |
| Equipment and displays acquired under capital lease | $ 220 | $ 252 |
| Deferred gain on sale-leaseback of building | $ 2,441 | $ — |

See Notes to Consolidated Financial Statements.



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**APPLIANCE RECYCLING CENTERS OF AMERICA, INC.**
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**
**(In Thousands, Except Per Share Amounts)**

## 1. Nature of Business and Basis of Presentation

Appliance Recycling Centers of America, Inc. and Subsidiaries ("we," the "Company" or "ARCA") are in the business of selling new major household appliances through a chain of Company-owned factory outlet stores under the name ApplianceSmart®. We also provide turnkey appliance recycling and replacement services for electric utilities and other sponsors of energy efficiency programs.

The accompanying unaudited consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and Article 8 of Regulation S-X promulgated by the United States Securities and Exchange Commission (the "SEC"). Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, normal and recurring adjustments and accruals considered necessary for a fair presentation for the periods indicated have been included. Operating results for the three-month and nine-month periods ended October 3, 2009 and September 27, 2008 are presented using 13-week and 39-week periods, respectively. The results of operations for any interim period are not necessarily indicative of the results for the year.

These financial statements should be read in conjunction with the Company's audited consolidated financial statements and related notes thereto for the year ended January 3, 2009 included in the Company's Form 10-K filed with the SEC on March 20, 2009.

*Principles of consolidation:* The consolidated financial statements include the accounts of Appliance Recycling Centers of America, Inc. and our subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

ARCA Canada Inc., a Canadian corporation, is a wholly-owned subsidiary. ARCA Canada was formed in September 2006 to provide turnkey recycling services for electric utility energy efficiency programs. The operating results of ARCA Canada are consolidated in our financial statements.

We were a sixty percent owner in North America Appliance Company, LLC ("NAACO"). NAACO was formed and commenced operations in June 2003 and was a retailer of special-buy appliances in Texas. The operating results of NAACO are consolidated in our financial statements.

We were a sixty percent owner in Productos Duraderos de Norte America ("PDN"), a Mexican corporation. PDN was acquired in September 2006 and refurbished room air conditioners for sale through our NAACO operation in McAllen, Texas, and through our ApplianceSmart Factory Outlet stores. The operating results of PDN are consolidated in our financial statements.

*Discontinued operations*: During the fourth quarter of 2008, we planned and executed the shutdown of our NAACO and PDN businesses. NAACO and PDN were not operating as planned and were no longer economically viable.

*Reclassifications:* Certain prior year items have been reclassified to conform to current year presentation. We reclassified the results of our discontinued operations below income (loss) from continuing operations in the consolidated statements of operations. In Note 12 to "Notes to Consolidated Financial Statements," we reclassified certain assets, revenue and operating income items between our retail, recycling and unallocated corporate segments.

## 2. Recent Accounting Pronouncements

*Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*

On October 3, 2009, we adopted new accounting guidance related to accounting standards codification and the hierarchy of generally accepted accounting principles. The new guidance will become the source of authoritative non-SEC authoritative GAAP. The guidance establishes a two-level GAAP hierarchy for nongovernmental entities:



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authoritative guidance and nonauthoritative guidance. Authoritative guidance consists of the Codification and, for SEC registrants, rules and interpretative releases of the Commission. Nonauthoritative guidance consists of non-SEC accounting literature that is not included in the Codification and has not been grandfathered. The new guidance, including the Codification, is effective for financial statements of interim and annual periods ending after September 15, 2009. As the Codification was not intended to change or alter existing GAAP it did not have any impact on our consolidated financial statements.

*Consolidation of Variable Interest Entities*

On January 3, 2010, we plan to adopt new accounting guidance related to consolidation of variable interest entities. The new guidance addresses the effects of eliminating the qualified special purpose entity concept and responds to concerns about the application of accounting guidance related to the consolidation of variable interest entities,

including concerns over the transparency of enterprises' involvement with Variable Interest Entities. The new guidance is effective for fiscal years beginning after November 15, 2009. We do not expect the new guidance to have a material impact on the preparation of our consolidated financial statements.

*Accounting for Transfers of Financial Assets*

On January 3, 2010, we plan to adopt new accounting guidance related to accounting for transfers of financial assets. The new guidance eliminates the concept of a "qualified special-purpose entity," changes the requirements for derecognizing financial assets and requires additional disclosures in order to enhance information reported to users of financial statements by providing greater transparency about transfers of financial assets, including securitization transactions, and an entity's continuing involvement in and exposure to the risks related to transferred financial assets. The new guidance is effective for fiscal years beginning after November 15, 2009. We do not expect the new guidance to have a material impact on the preparation of our consolidated financial statements.

*Subsequent Events*

On July 4, 2009, we adopted new guidance related to subsequent events. The new guidance requires all public entities to evaluate subsequent events through the date that the financial statements are available to be issued and disclose in the notes the date through which the Company has evaluated subsequent events and whether the financial statements were issued or were available to be issued on the disclosed date. The new guidance defines two types of subsequent events, as follows: the first type consists of events or transactions that provide additional evidence about conditions that existed at the date of the balance sheet and the second type consists of events that provide evidence about conditions that did not exist at the date of the balance sheet but arose after that date. The new guidance is effective for interim and annual periods ending after June 15, 2009 and must be applied prospectively. The adoption of the new guidance did not have a material effect on our results of operations or financial position.

*Disclosures about Derivative Instruments and Hedging Activities*

On January 4, 2009, we adopted new accounting guidance related to disclosures about derivative instruments and hedging activities. The new guidance is intended to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance and cash flows. The new guidance also improves transparency about the location and amounts of derivative instruments in an entity's financial statements; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect its financial position, financial performance and cash flows. The new guidance is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. The adoption of the new guidance did not have a material effect on our results of operations or financial position.

*Noncontrolling Interests in Consolidated Financial Statements*

On January 4, 2009, we adopted new accounting guidance related to noncontrolling interests on consolidated financial statements. The new guidance establishes accounting and reporting standards for noncontrolling interests in subsidiaries and for the deconsolidation of subsidiaries and clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. The new guidance also requires expanded disclosures that clearly identify and distinguish between the interests of the parent owners and the interests of the noncontrolling owners of a subsidiary. The new guidance is effective for fiscal years beginning on or after December 15, 2008. The adoption of the new guidance did not have a material effect on our results of operations or financial position.



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*Business Combinations*

On January 4, 2009, we adopted new accounting guidance related to business combinations. The new accounting guidance establishes the principles and requirements for how an acquirer in a business combination: recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interests in the acquiree; recognizes and measures the goodwill acquired in the business combination or the gain from a bargain purchase; and determines what information should be disclosed in the financial statements to enable users of the financial statements to evaluate the nature and financial effects of the business combination. The new guidance is effective for fiscal years beginning on or after December 15, 2008. The adoption of the new guidance did not have a material effect on our results of operations or financial position.

**3. Significant Accounting Policies**

*Trade receivables:* We carry unsecured trade receivables at the original invoice amount less an estimate made for doubtful accounts based on a monthly review of all outstanding amounts. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history and current economic conditions. We write off trade receivables when we deem them uncollectible. We record recoveries of trade receivables previously written off when we receive them. We consider a trade receivable to be past due if any portion of the receivable balance is outstanding for more than ninety days. We do not charge interest on past due receivables. Our management considers the allowance for doubtful accounts of $39 and $292 to be adequate to cover any exposure to loss as of October 3, 2009 and January 3, 2009, respectively.

*Inventories:* Inventories, consisting principally of appliances, are stated at the lower of cost, determined on a specific identification basis, or market and consist of:

| | October 3, 2009 | January 3, 2009 |
|---|---|---|
| Finished goods | $ 18,339 | $ 18,949 |
| Less provision for inventory obsolescence | (360) | (115) |
| | $ 17,979 | $ 18,834 |

We provide estimated provisions for the obsolescence of our appliance inventories, including adjustments to market, based on various factors, including the age of such inventory and our management's assessment of the need for such provisions. We look at historical inventory agings and margin analysis in determining our provision estimate.

*Property and equipment:* Property and equipment consists of the following:

| | October 3, 2009 | January 3, 2009 |
|---|---|---|
| Land | $ 1,140 | $ 2,050 |
| Buildings and improvements | 3,007 | 5,249 |
| Equipment (including computer software) | 9,008 | 9,161 |
| | 13,155 | 16,460 |
| Less accumulated depreciation and amortization | (8,834) | (9,493) |
| | $ 4,321 | $ 6,967 |

In September 2009, we wrote-off $528 of fully depreciated assets that were no longer in use. In September 2009, we also reduced land, building and improvements and accumulated depreciation by $910, $2,317 and $1,036, respectively, as a result of the sale-leaseback transaction described in Note 4 to "Notes to Consolidated Financial Statements."

*Software development costs:* We capitalize software developed for internal use and are amortizing such costs over their estimated useful lives of three to five years. Costs capitalized were $171 and $184 for the nine months ended October 3, 2009 and September 27, 2008, respectively.

*Impairment of long-lived assets:* We evaluate long-lived assets such as property and equipment for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. We assess impairment based on the estimated future net undiscounted cash flows expected to result from the use of the assets,



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including cash flows from disposition. Should the sum of the expected future net cash flows be less than the carrying value, we recognize an impairment loss at that time. We measure an impairment loss by comparing the amount by which the carrying value exceeds the fair value (estimated discounted future cash flows or appraisal of assets) of the long-lived assets. We recognized no impairment charges during the three and nine months ended October 3, 2009 and September 27, 2008, respectively.

*Restricted cash:* Restricted cash consists of a reserve account required by our bankcard processor to cover charge backs, adjustments, fees and other charges that may be due from us.

*Deferred financing fees:* Deferred financing fees are presented in the consolidated balance sheets as a component of other assets and are reported net of accumulated amortization. We record amortization expense on a straight-line basis over the term of the underlying debt. Deferred financing fees, net of accumulated amortization, were $5 and $38 as of October 3, 2009 and January 3, 2009, respectively. In September 2009, we wrote off $24 as a result of the sale-leaseback transaction described in Note 4 to "Notes to Consolidated Financial Statements."

*Product warranty:* We provide a warranty for the replacement or repair of certain defective units, which varies based on the product sold. Our standard warranty policy requires us to repair or replace certain defective units at no cost to our customers. We estimate the costs that may be incurred under our warranty and record an accrual in the amount of such costs at the time we recognize product revenue. Factors that affect our warranty accrual for covered units include the number of units sold, historical and anticipated rates of warranty claims on these units, and the cost of such claims. We periodically assess the adequacy of our recorded warranty accrual and adjust the amounts as necessary.

Changes in our warranty accrual are as follows:

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | October 3, 2009 | September 27, 2008 | October 3, 2009 | September 27, 2008 |
| Beginning Balance | $ 82 | $ 87 | $ 91 | $ 80 |
| Standard accrual based on units sold | 19 | 19 | 60 | 64 |
| Actual costs incurred | (4) | (1) | (12) | (3) |
| Periodic accrual adjustments (change in estimate) | (23) | (14) | (65) | (50) |
| Ending Balance | $ 74 | $ 91 | $ 74 | $ 91 |

*Share-based compensation:* We account for share-based compensation using the modified prospective method. Under this method, we recognize compensation expense on a straight-line basis over the vesting period for all share-based awards granted. We use the Black-Scholes option pricing model to determine the fair value of awards at the grant date. We calculate the expected volatility for stock option awards using historical volatility. We estimate a 0%-5% forfeiture rate for stock options issued to all employees and Board of Directors members, but will continue to review these estimates in future periods. The risk-free rates for the expected terms of the stock options are based on the U.S. Treasury yield curve in effect at the time of the grant. The expected life represents the period that the stock option awards are expected to be outstanding. The expected dividend yield is zero as we have not paid or declared any cash dividends on our Common Stock. Based on these valuations, we recognized share-based compensation expense of $162 and $181 for the three months ended October 3, 2009 and September 27, 2008, respectively. For the nine months ended October 3, 2009 and September 27, 2008, we recognized share-based compensation expense of $445 and $419, respectively. We estimate that the remaining expense for fiscal 2009 and beyond will be approximately $142 and $122, respectively, based on the value of options outstanding as of October 3, 2009. This estimate does not include any expense for additional options that may be granted after October 3, 2009.

*Comprehensive income (loss):* Other comprehensive income (loss) refers to revenues, expenses, gains and losses that under GAAP are included in comprehensive income (loss) but are excluded from net income (loss) as these amounts are recorded directly as an adjustment to shareholders' equity. Our other comprehensive income (loss) is comprised of foreign currency translation adjustments. The effect of foreign currency translation adjustments, net of tax, was income of $112 and not material for the three months ended October 3, 2009 and September 27, 2008, respectively. The effect of foreign currency translation adjustments, net of tax, was income of $86 and a loss of $47 for the nine months ended October 3, 2009 and September 27, 2008, respectively.



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*Basic and diluted income (loss) per share:* Basic income (loss) per share is computed based on the weighted average number of common shares outstanding. Diluted income (loss) per share is computed based on the weighted average number of common shares outstanding adjusted by the number of additional shares that would have been outstanding had the potentially dilutive common shares been issued. Potentially dilutive shares of Common Stock include unexercised stock options. Diluted per share amounts assume the conversion, exercise or issuance of all potential Common Stock instruments unless their effect is anti-dilutive, thereby reducing the loss or increasing the income per common share. In calculating diluted weighted average shares and per share amounts, we included stock options with exercise prices below average market prices, for the respective reporting periods in which they were dilutive, using the treasury stock method. We calculated the number of additional shares by assuming the outstanding stock options were exercised and that the proceeds from such exercises were used to acquire Common Stock at the average market price during the year. For the three and nine months ended October 3, 2009, we excluded all options from the diluted weighted average share outstanding calculation as the effect of these options are anti-dilutive because the options were granted at a price higher than the average market price for the quarter and because of our net loss, respectively. As of September 27, 2008, we excluded 223 options from the diluted weighted-average share outstanding calculation because the stock options were granted at a price higher than the average market price.

A reconciliation of the denominator in the basic and diluted income or loss per share is as follows:

| | Three Months Ended | Nine Months Ended |
|---|---|---|

| | October 3, 2009 | September 27, 2008 | October 3, 2009 | September 27, 2008 |
|---|---|---|---|---|
| Numerator: | | | | |
| Income (loss) from continuing operations | $ 416 | $ 1,277 | $ (1,957) | $ 2,524 |
| Loss from discontinued operations, net of income taxes | — | (136) | — | (429) |
| Net income (loss) | $ 416 | $ 1,141 | $ (1,957) | $ 2,095 |
| | | | | |
| Denominator: | | | | |
| Weighted average shares outstanding - basic | 4,578 | 4,578 | 4,578 | 4,568 |
| Employee stock options | — | 30 | — | 54 |
| Weighted average shares outstanding – diluted | 4,578 | 4,608 | 4,578 | 4,622 |
| | | | | |
| Basic income (loss) per share: | | | | |
| Continuing operations | $ 0.09 | $ 0.28 | $ (0.43) | $ 0.55 |
| Discontinued operations | — | (0.03) | — | (0.09) |
| Net income (loss) | $ 0.09 | $ 0.25 | $ (0.43) | $ 0.46 |
| | | | | |
| Diluted income (loss) per share: | | | | |
| Continuing operations | $ 0.09 | $ 0.28 | $ (0.43) | $ 0.54 |
| Discontinued operations | — | (0.03) | — | (0.09) |
| Net income (loss) | $ 0.09 | $ 0.25 | $ (0.43) | $ 0.45 |

**4. Sale-Leaseback Transaction**

On September 25, 2009, we completed the sale-leaseback of our St. Louis Park building. The building is a 126,458-square-foot facility that includes our corporate office, a processing and recycling center, and an ApplianceSmart Factory Outlet store. Pursuant to the agreement entered into on August 11, 2009, we sold the St. Louis Park building for $4,632, net of fees, and leased the building back over an initial lease term of five years. The sale of the building provided the Company with $2,037 in cash after repayment of the $2,595 mortgage. The sale-leaseback transaction resulted in an adjustment of $2,191 to the net book value related to the land and building and we recorded a deferred gain of $2,441. Under the terms of the lease agreement, we are classifying the lease as an operating lease and amortizing the gain on a straight-line basis over the initial term of five years.



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**5. Investment**

On June 1, 2009, we completed a $263 investment in Diagnostico y Administracion de Logistica Inversa, S.A. de C.V. (“DALI”), a Mexican company. DALI is a joint venture that operates a refrigerator recycling program sponsored by the Mexican government. Our investment represents a 46.3% ownership in the joint venture. The DALI joint venture is accounted for under the equity method and is presented in the consolidated balance sheets as a component of other assets. The recycling program is a four-year program that is funded annually, with plans to recycle a total of 1.6 million refrigerators. The results of the joint venture were immaterial for the three and nine months ended October 3, 2009.

**6. Line of Credit**

We have an $18,000 line of credit with a lender. The line was increased from $16,000 to $18,000 on February 5, 2008. The interest rate on the line as of October 3, 2009 and January 3, 2009 was 6.25% (the greater of prime plus 3.00 percentage points or 6.25%). The amount of borrowings available under the line of credit is based on a formula using receivables and inventories. Our unused borrowing capacity under this line was $2,551 and $384 as of October 3, 2009 and January 3, 2009, respectively. We may not have access to the full $18.0 million line of credit due to the formula using our receivables and inventories. The line of credit has a stated maturity date of December 31, 2010, if not renewed, and provides that the lender may demand payment in full of the entire outstanding balance of the loan at any time. The line of credit is collateralized by substantially all our assets and requires minimum monthly interest payments of $58, regardless of the outstanding principal balance. The lender is also secured by an inventory repurchase agreement with Whirlpool Corporation for purchases from Whirlpool only. The loan requires that we meet certain financial covenants, provides payment penalties for noncompliance and prepayment, limits the amount of other debt we can incur, limits the amount of spending on fixed assets and prohibits payments of dividends. As of January 3, 2009, we were not in compliance with certain financial covenants of the loan agreement and received a waiver from the lender. As of October 3, 2009, we were in compliance with the financial covenants of the loan agreement.

**7. Long-Term Obligations**

Long-term debt and capital lease obligations consisted of the following:

| | October 3, 2009 | January 3, 2009 |
|---|---|---|
| Adjustable rate mortgage, due in monthly installments, adjusted weekly based on 30-day LIBOR plus 2.70 percentage points (3.38% as of January 3, 2009) on a 20-year amortization due October 2012, collateralized by land and building | $ — | $ 2,747 |
| 6.85% mortgage, due in monthly installments of $15, including interest, due January 2012, collateralized by land and building | 1,605 | 1,659 |
| Capital leases and other financing obligations (see below) | 994 | 1,065 |
| | 2,599 | 5,471 |
| Less current maturities | 532 | 579 |
| | $ 2,067 | $ 4,892 |

In September 2009, we paid off our adjustable rate mortgage as a result of the sale-leaseback transaction described in Note 4 to “Notes to Consolidated Financial Statements.”

*Capital leases and other financing obligations*: We acquire certain equipment under capital leases and other financing obligations. The cost of the equipment was approximately $1,580 and $1,396 at October 3, 2009 and January 3, 2009, respectively. Accumulated amortization at October 3, 2009 and January 3, 2009 was approximately $693 and $387, respectively. Depreciation and amortization expense is included in cost of revenues and selling, general and administrative expenses.

In September 2008, we entered into a master equipment lease with a lender providing up to $250 in available funds. We utilized the entire lease line to fund equipment for the new retail outlets opened in December 2008 and January 2009.

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In March 2009, we entered into a master equipment lease with a lender providing up to $100 in available funds. We utilized the entire lease line in March 2009 to fund equipment for our retail outlet stores.

In June 2009, we entered into a master equipment lease with a lender providing up to $88 in available funds. We utilized the entire lease line in June 2009 to fund equipment and displays for our retail outlet stores.

**8. Accrued Expenses**

Accrued expenses were as follows:

| | October 3, 2009 | January 3, 2009 |
|---|---|---|
| Compensation and benefits | $ 1,309 | $ 1,565 |
| Accrued recycling incentive checks | 1,232 | 1,110 |
| Accrued rent | 661 | 461 |
| Warranty expense | 74 | 91 |
| Accrued payables | 353 | 509 |
| Current portion of deferred gain on sale-leaseback of building | 488 | — |
| Other | 485 | 337 |
| | $ 4,602 | $ 4,073 |

**9. Commitments and Contingencies**

*Contracts:* We have entered into contracts with five appliance manufacturers. Under the agreements there are no minimum purchase commitments; however, we have agreed to indemnify the manufacturers for certain claims, allegations or losses with respect to appliances we sell.

*Litigation:* In December 2004, we filed suit in the U.S. District Court for the Central District of California alleging that JACO Environmental, Inc. ("JACO") and one of our former consultants fraudulently obtained U.S. Patent No. 6,732,416 in May 2004 covering appliance recycling methods and systems that were originally developed by us beginning in 1987 and used in serving more than forty-five electric utility appliance recycling programs up to the time the suit was filed. We sought an injunction to prevent JACO from claiming that it obtained a valid patent on appliance recycling processes that we believe is based on methods and processes we invented. In addition, we asked the Court to find that the patent obtained by JACO is unenforceable due to inequitable conduct before the United States Patent Office. We also asked the court for unspecified damages related to charges that JACO, in using the patent to promote its services, engaged in unfair competition and false and misleading advertising under federal and California statutes.

In September 2005, we received a legally binding document in which JACO stated it would not sue us or any of our customers for violating the JACO patent. Further, the defendants in the case did not assert any counterclaims against ARCA.

In January 2009, the Court granted JACO a summary judgment in ARCA's lawsuit against the parties. The ruling was made by the same judge who had earlier denied summary judgment to the defendants. Even though the Court's ruling will have no impact on our method of recycling or ability to conduct existing or future business, we filed an appeal with the Ninth Circuit Court of Appeals in California in February 2009 seeking to have the court set aside the summary judgment. We believe the decision by the trial judge was in error and contrary to the law relating to unfair competition and false advertising. We believe we are entitled to our day in court against JACO for damages caused by their actions, but we do not yet have a timeline on a decision of the appeal.

**10. Income Taxes**

We recorded a provision for income taxes of $150 and $560 for the three months ended October 3, 2009 and September 27, 2008, respectively. For the nine months ended October 3, 2009 and September 27, 2008, we recorded a provision for income taxes of $51 and $736, respectively. In the second quarter of 2009, we recorded a discrete item related to additional Canadian tax deductions determined by completing a detailed transfer pricing study. We recognized a tax benefit of approximately $183 related solely to our Canadian operations compared to the original tax provision estimate



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for fiscal 2008. We also recorded a provision for taxes for the nine months ended October 3, 2009 of $195 related to our Canadian operations, which offsets the impact of the discrete item recognized in the second quarter of 2009. We did not record a provision for or benefit from income taxes for our U.S. subsidiaries because we have available net operating losses to offset future taxable income and we have recorded full valuation allowances against our U.S. net deferred tax assets due to the uncertainty of their realization. The realization of deferred tax assets is dependent upon sufficient future taxable income during the periods when deductible temporary differences and carryforwards are expected to be available to reduce taxable income.

We account for uncertain tax positions and recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority. As of October 3, 2009, we did not have any material uncertain tax positions.

It is our practice to recognize interest related to income tax matters as a component of interest expense and penalties as a component of selling, general and administrative expense. As of October 3, 2009, we had an immaterial amount of accrued interest and penalties.

We are subject to income taxes in the U.S. federal jurisdiction, foreign jurisdictions and various state jurisdictions. Tax regulations from each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. With few exceptions, we are no longer subject to U.S. federal, foreign, state or local income tax examinations by tax authorities for the years before 2006. We are not currently under examination by any taxing jurisdiction.

We had no significant unrecognized tax benefits as of October 3, 2009 that would reasonably be expected to affect our effective tax rate during the next twelve months.

**11. Shareholders' Equity**

*Stock options*: Our 2006 Stock Option Plan (the "2006 Plan") permits the granting of incentive stock options meeting the requirements of Section 422 of the Internal Revenue

Code of 1986, as amended, and nonqualified options that do not meet the requirements of Section 422. The 2006 Plan has 600 shares available for grant. As of October 3, 2009, 352 options were outstanding to employees and non-employee directors and 15 options have been exercised under the 2006 Plan. Our Restated 1997 Stock Option Plan (the "1997 Plan") has expired, but the options outstanding under the expired 1997 Plan continue to be exercisable in accordance with their terms. As of October 3, 2009, options to purchase an aggregate of 34 shares were outstanding under the 1997 Plan. Options granted to employees typically vest over two years while grants to non-employee directors vest in six months.

During the second quarter of 2009, we granted 52 stock options with an exercise price of $1.87, vesting periods ranging from six months to two years and a fair value of $1.59.

The following table summarizes the assumptions used to estimate the fair value of options granted during the second quarter of 2009 using the Black-Scholes Model:

| | |
|---|---|
| Expected dividend yield | 0.0% |
| Expected stock price volatility | 104.8% |
| Risk-free interest rate | 2.6% |
| Expected life of options | 7 years |

*Preferred Stock:* Our amended Articles of Incorporation authorize two million shares of Preferred Stock that may be issued from time to time in one or more series having such rights, powers, preferences and designations as the Board of Directors may determine. To date no such preferred shares have been issued.



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**12. Segment Information**

We operate within targeted markets through two reportable segments: retail and recycling. The retail operation is comprised of income generated through our ApplianceSmart Factory Outlet stores, which includes appliance sales and byproduct revenues from collected appliances. The recycling operation includes all fees charged and costs incurred for collecting, recycling and installing appliances for utilities and other customers and includes byproduct revenue, which is primarily generated through the recycling of appliances. The nature of products, services and customers for both segments varies significantly. As such, the segments are managed separately. Our Chief Executive Officer has been identified as the Chief Operating Decision Maker ("CODM"). The CODM evaluates performance and allocates resources based on sales and income from operations of each segment. Income from operations represents revenues less cost of revenues and operating expenses, including certain allocated selling, general and administrative costs. There are no inter-segment sales or transfers. During 2009, we modified the way we report byproduct revenues, recycling revenues and recycling costs in order to more accurately report the activity within our two reportable segments. Although not material, comparable period revenue and operating income items have been reclassified between our retail and recycling segments to conform to our current year presentation.

The following table presents our segment information for periods indicated:

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | October 3, 2009 | September 27, 2008 | October 3, 2009 | September 27, 2008 |
| Revenues: | | | | |
| Retail | $ 18,123 | $ 18,987 | $ 58,561 | $ 59,109 |
| Recycling | 7,882 | 10,427 | 18,994 | 25,669 |
| Total revenues | $ 26,005 | $ 29,414 | $ 77,555 | $ 84,778 |
| Operating income (loss): | | | | |
| Retail | $ (161) | $ (87) | $ (2,126) | $ 1,782 |
| Recycling | 1,064 | 2,648 | 1,207 | 3,800 |
| Unallocated corporate costs | (48) | (416) | (52) | (1,290) |
| Total operating income (loss) | $ 855 | $ 2,145 | $ (971) | $ 4,292 |
| Assets: | | | | |
| Retail | $ 19,693 | $ 19,792 | $ 19,693 | $ 19,792 |
| Recycling | 7,810 | 10,653 | 7,810 | 10,653 |
| Corporate assets not allocable | 5,880 | 7,635 | 5,880 | 7,635 |
| Total assets | $ 33,383 | $ 38,080 | $ 33,383 | $ 38,080 |
| Cash capital expenditures: | | | | |
| Retail | $ 41 | $ 107 | $ 170 | $ 286 |
| Recycling | 5 | 19 | 9 | 93 |
| Corporate assets not allocable | 18 | 12 | 242 | 129 |
| Total cash capital expenditures | $ 64 | $ 138 | $ 421 | $ 508 |
| Depreciation: | | | | |
| Retail | $ 108 | $ 75 | $ 315 | $ 203 |
| Recycling | 87 | 74 | 241 | 216 |
| Corporate assets not allocable | 142 | 127 | 429 | 397 |
| Total depreciation | $ 337 | $ 276 | $ 985 | $ 816 |
| Interest expense: | | | | |
| Retail | $ 201 | $ 198 | $ 592 | $ 636 |
| Recycling | 55 | 56 | 165 | 183 |
| Corporate assets not allocable | 69 | 64 | 145 | 223 |
| Total interest expense | $ 325 | $ 318 | $ 902 | $ 1,042 |



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**13. Subsequent Events**

The Company has evaluated subsequent events occurring through November 12, 2009, the date on which this Quarterly Report on Form 10-Q was issued.

On October 21, 2009, we entered into an Appliance Sales and Recycling Agreement (the "Agreement"). Under the Agreement, our client will sell all of its recyclable appliances generated in the northeastern United States to us, and we will collect, process and recycle such recyclable appliances. The Agreement requires that we will only recycle, and will not sell for re-use or resale, the recyclable appliances purchased from our client. We will establish a regional processing center ("RPC") located in the northeastern United States at which the recyclable appliances will be processed.

The term of the Agreement is for a period of six years from the first date of collection of recyclable appliances. We expect that the first date of collection will be in late January 2010.

In conjunction with the Agreement, on October 21, 2009, we issued a warrant to purchase 248,189 shares of Common Stock at a price of $0.75 per share. The fair market value of the warrant issued was $479 and will be recorded as an intangible asset and amortized over the initial term of the Agreement. The warrant is exercisable in full at any time during a term of ten years. The exercise price may be reduced and the number of shares of Common Stock that may be purchased under the warrant may be increased if the Company issues or sells additional shares of Common Stock at a price lower than the then-current warrant exercise price or the then-current market price of the Common Stock.

In connection with the Agreement described above, we entered into a Joint Venture Agreement with 4301 Operations, LLC, to establish and operate the northeastern RPC. 4301 Operations has substantial experience in the recycling of major household appliances and will contribute their existing business to the joint venture. Under the Joint Venture Agreement, the parties will form a new entity to be known as ARCA Advanced Processing, LLC ("AAP"), which will be owned 50% by us and 50% by 4301 Operations. Each party will be entitled to 50% of the net profits of AAP. If additional RPCs are established, AAP will establish the next two RPCs and will have a right of first refusal to establish subsequent RPCs. We plan to raise debt and/or equity financing to fund our share of the capital required to form the joint venture. We plan to contribute $2,000 cash and the Appliance Sales and Recycling Agreement to the joint venture and 4301 Operations plans to contribute the equipment and existing business to the joint venture. We anticipate that the RPC will commence operations in late 2009, however, there is no assurance that operations will commence or that financing will be available on terms satisfactory to us or permitted by our current debt agreement.

The joint venture expects to purchase and install UNTHA Recycling Technology ("URT") Equipment by the end of 2010, enhancing the capabilities of the RPC. We are the exclusive distributor of URT Equipment for North America**.** The joint venture plans to raise additional debt financing to purchase the URT equipment but there is no assurance that the financing will be available or on terms acceptable to the joint venture.



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

**Forward-Looking and Cautionary Statements**

This quarterly report contains forward-looking statements that involve risks and uncertainties. The statements contained in this quarterly report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Act of 1934, as amended.

Any statements contained in this quarterly report regarding our future operations, performance and results, and anticipated liquidity discussed herein are forward-looking and, therefore, are subject to certain risks and uncertainties, including, but not limited to, those discussed herein. Any forward-looking information regarding our operations will be affected primarily by the speed at which individual retail outlets reach profitability, the volume of appliance retail sales and the strength of energy conservation recycling programs. Any forward-looking information will also be affected by our continued ability to purchase product from our suppliers at acceptable prices, the ability of individual retail stores to meet planned revenue levels, the rate of growth in the number of retail stores, costs and expenses being realized at higher than expected levels, our ability to secure an adequate supply of special-buy appliances for resale, the ability to secure appliance recycling contracts with sponsors of energy efficiency programs, the ability of customers to supply units under their recycling contracts with us, the continued availability of our current line of credit, and the ability to obtain additional debt and equity financing as necessary to fund our growth objectives.

All of these forward-looking statements are based on information available to us on the date of this quarterly report. Our actual results could differ materially from those discussed in this quarterly report. The forward-looking statements contained in this quarterly report, and other written and oral forward-looking statements made by us from time to time, are subject to risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in Item 1A "Risk Factors" in our annual report on Form 10-K for the year ended January 3, 2009.

The following discussion and analysis provides information that we believe is relevant to an assessment and understanding of our operations and financial condition. This discussion should be read with the consolidated financial statements appearing in Item 1.

**Overview**

We are in the business of selling new major household appliances through a chain of Company-owned factory outlet stores under the name ApplianceSmart®. We also provide turnkey appliance recycling and replacement services for electric utilities and other sponsors of energy efficiency programs.

***Subsidiaries*.** ARCA Canada Inc., a Canadian corporation, is a wholly-owned subsidiary. ARCA Canada was formed in September 2006 to provide turnkey recycling services for electric utility energy efficiency programs. The operating results of ARCA Canada have been consolidated in our financial statements. We were a sixty percent owner in North America Appliance Company, LLC ("NAACO"). NAACO was formed and commenced operations in June 2003 and was a retailer of special-buy appliances in Texas. The operating results of NAACO have been consolidated in our financial statements. We were a sixty percent owner in Productos Duraderos de Norte America ("PDN"), a Mexican corporation. PDN was acquired in September 2006 and refurbished room air conditioners for sale through our NAACO operation in McAllen, Texas, and through our ApplianceSmart Factory Outlet stores. The operating results of PDN have been consolidated in our financial statements.

***Discontinued Operations.*** During the fourth quarter of 2008, we planned and executed the shutdown of our NAACO and PDN operations. NAACO and PDN were not operating as planned and were no longer economically viable. In 2008, our supply of room air conditioners from a major manufacturer was depleted, no longer providing refurbishment opportunities for PDN and revenues for NAACO, which was the basis for our investment in these businesses. We will not have any continuing involvement or significant continuing cash flows in these businesses. The results of operations for NAACO and PDN were included in our retail segment. All results of operations for periods presented prior to the abandonment date have been reclassified as discontinued operations.



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***Reporting Period.*** Operating results for the three-month and nine-month periods ended October 3, 2009 and September 27, 2008 are presented using 13-week and 39-week

periods, respectively. The results of operations for any interim period are not necessarily indicative of the results for the year.

**Key Components of Results of Operations**

***Revenues.*** We generate revenues from three sources: retail, recycling and byproduct. Retail revenues are generated through the sale of new appliances at our ApplianceSmart Factory Outlet stores. Recycling revenues are generated by charging fees for collecting, recycling and installing appliances for utilities and other sponsors of energy efficiency programs. Byproduct revenues are generated by selling recovered materials, such as metals, plastics, and reclaimed chlorofluorocarbon ("CFC") refrigerants, from appliances we collect and recycle, including appliances from our ApplianceSmart Factory Outlet stores.

***Cost of Revenues.*** Cost of revenues includes all costs related to the purchase of inventory, including freight, costs related to receiving and distribution of inventory, and costs related to delivery and service of inventory after it is sold to the consumer. Also, the costs related to recycling appliances, such as customer service, transportation and processing, and the cost of refrigerators used in our replacement programs, are included in the cost of revenues. Depreciation expense related to buildings and equipment from our recycling centers is presented in cost of revenues.

***Selling, General and Administrative Expenses.*** Selling, general and administrative expenses are comprised primarily of employee compensation and benefits (including share-based compensation), occupancy costs, advertising, bank processing charges, professional services and depreciation.

***Interest Expense.*** Interest expense is comprised of interest charges related to borrowings under our line of credit, mortgages on our Minnesota and California buildings, and other long-term obligations, primarily capital leases. As a result of the sale-leaseback transaction on September 25, 2009, interest related to the mortgage on our Minnesota building is no longer reflected in interest expense.

***Segments.*** We operate two reportable segments: retail and recycling. The retail segment is comprised of income generated through our ApplianceSmart Factory Outlet stores, which includes appliance sales and byproduct revenues from collected appliances. Our recycling segment includes all fees charged and costs incurred for collecting, recycling and installing appliances for utilities and other customers and includes byproduct revenue, which is primarily generated through the recycling of appliances. Retail revenues typically have lower profit margins than recycling revenues.

*Retail Segment.* We operated eighteen and seventeen factory outlet stores at the end of the third quarters of 2009 and 2008, respectively. Our eighteen factory outlet stores are located in convenient, high-traffic locations in Georgia, Minnesota, Ohio and Texas. In 2008, we opened four new factory outlet stores: two in Minnesota, one in Texas and one in Georgia. In January 2009, we opened one factory outlet store in Georgia. During the third quarter of 2009, we closed one underperforming ApplianceSmart Factory Outlet in the Georgia and one store in Texas when the facility lease expired.

*Recycling Segment.* We operate six processing and recycling centers, which are located in Minnesota, California, Texas, Illinois, Colorado and Ontario, Canada. We are actively pursuing opportunities to support energy efficiency programs run by electric utility companies. We handle appliance recycling programs for and in the service territories of Southern California Edison; San Diego Gas & Electric; Southern California Public Power Authority; Austin Energy, AEP Texas and Oncor Electric Delivery in Texas; Ameren and City Water Light & Power in Illinois; Wisconsin Public Power; Ontario Power Authority; Minnesota Power, Great River Energy and Otter Tail Power in Minnesota; Xcel Energy in Colorado and New Mexico; Baltimore Gas and Electric in Maryland; Santee Cooper in South Carolina; and several Southern California municipal electric utilities.

**Recent Developments**

On June 1, 2009, we completed a $0.3 million investment in Diagnostico y Administracion de Logistica Inversa, S.A. de C.V. ("DALI"), a Mexican company. DALI is a joint venture that operates a refrigerator recycling program sponsored by the Mexican government. Our investment represents a 46.3% ownership in the joint venture. The DALI joint venture is accounted for under the equity method and is presented in the consolidated balance sheets as a component of other assets. The recycling program is a four-year program that is funded annually, with plans to recycle a total of 1.6 million





refrigerators. The results of the joint venture were immaterial for the three and nine months ended October 3, 2009.

On September 25, 2009, we completed the sale-leaseback of our St. Louis Park building. The building is a 126,458-square-foot facility that includes our corporate office, a processing and recycling center, and an ApplianceSmart Factory Outlet store. Pursuant to the agreement entered into on August 11, 2009, we sold the St. Louis Park building for $4.6 million, net of fees, and leased the building back over an initial lease term of five years. The sale of the building provided the Company with $2.0 million in cash after repayment of the $2.6 million mortgage. The sale-leaseback transaction resulted in an adjustment of $2.2 million to the net book value related to the land and building and we recorded a deferred gain of $2.4 million. Under the terms of the lease agreement, we are classifying the lease as an operating lease and amortizing the gain on a straight-line basis over the initial term of five years.

On October 21, 2009, we entered into an Appliance Sales and Recycling Agreement (the "Agreement"). Under the Agreement, our client will sell all of its recyclable appliances generated in the northeastern United States to us, and we will collect, process and recycle such recyclable appliances. The Agreement requires that we will only recycle, and will not sell for re-use or resale, the recyclable appliances purchased from our client. We will establish a regional processing center ("RPC") located in the northeastern United States at which the recyclable appliances will be processed. The term of the Agreement is for a period of six years from the first date of collection of recyclable appliances. We expect that the first date of collection will be in late January 2010.

In conjunction with the Agreement, on October 21, 2009, we issued a warrant to purchase 248,189 shares of Common Stock at a price of $0.75 per share. The fair market value of the warrant issued was $0.5 million and will be recorded as an intangible asset and amortized over the initial term of the Agreement. The warrant is exercisable in full at any time during a term of ten years. The exercise price may be reduced and the number of shares of Common Stock that may be purchased under the warrant may be increased if the Company issues or sells additional shares of Common Stock at a price lower than the then-current warrant exercise price or the then-current market price of the Common Stock.

In connection with the Agreement described above, we entered into a Joint Venture Agreement with 4301 Operations, LLC, to establish and operate the northeastern RPC. 4301 Operations has substantial experience in the recycling of major household appliances and will contribute their existing business to the joint venture. Under the Joint Venture Agreement, the parties will form a new entity to be known as ARCA Advanced Processing, LLC ("AAP"), which will be owned 50% by us and 50% by 4301 Operations. Each party will be entitled to 50% of the net profits of AAP. If additional RPCs are established, AAP will establish the next two RPCs and will have a right of first refusal to establish subsequent RPCs. We plan to raise debt and/or equity financing to fund our share of the capital required to form the joint venture. We plan to contribute $2.0 million cash and the Appliance Sales and Recycling Agreement to the joint venture and 4301 Operations plans to contribute the equipment and existing business to the joint venture. We anticipate that the RPC will commence operations in late 2009, however, there is no assurance that operations will commence or that financing will be available on terms satisfactory to us or permitted by our current debt agreement.

The joint venture expects to purchase and install UNTHA Recycling Technology ("URT") Equipment by the end of 2010, enhancing the capabilities of the RPC. We are the exclusive distributor of URT Equipment for North America**.** The joint venture plans to raise additional debt financing to purchase the URT equipment but there is no assurance that the financing will be available or on terms acceptable to the joint venture.

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**Results of Operations**

The following table sets forth our consolidated operating results for the periods indicated as a percentage of total revenues:

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | October 3, 2009 | September 27, 2008 | October 3, 2009 | September 27, 2008 |
| Revenues | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of revenues | 67.3 | 65.5 | 71.1 | 67.1 |
| Gross profit | 32.7 | 34.5 | 28.9 | 32.9 |
| Selling, general and administrative expenses | 29.4 | 27.3 | 30.1 | 27.8 |
| Operating income (loss) | 3.3 | 7.2 | (1.2) | 5.1 |
| Other income (expense): | | | | |
| Interest expense, net | (1.2) | (1.1) | (1.2) | (1.2) |
| Other expenses, net | 0.1 | 0.0 | 0.0 | 0.0 |
| Income (loss) from continuing operations before income taxes | 2.2 | 6.1 | (2.4) | 3.9 |
| Provision for income taxes | 0.6 | 1.9 | 0.1 | 0.9 |
| Income (loss) from continuing operations | 1.6 | 4.2 | (2.5) | 3.0 |
| Loss from discontinued operations, net of income taxes | 0.0 | (0.5) | 0.0 | (0.5) |
| Net income (loss) | 1.6% | 3.7% | (2.5)% | 2.5% |

**For the Three Months Ended October 3, 2009 and September 27, 2008**

The following table sets forth the key results of operations by segment for the three months ended October 3, 2009 and September 27, 2008 (dollars in millions):

| | 2009 | 2008 | % Change |
|---|---|---|---|
| Revenues: | | | |
| Retail | $ 18.1 | $ 19.0 | (4.6)% |
| Recycling | 7.9 | 10.4 | (24.4)% |
| Total revenues | $ 26.0 | $ 29.4 | (11.6)% |
| | | | |
| Operating income (loss): | | | |
| Retail | $ (0.2) | $ (0.1) | (85.1)% |
| Recycling | 1.1 | 2.6 | (59.8)% |
| Unallocated corporate costs | — | (0.4) | 100.0% |
| Total operating income (loss) | $ 0.9 | $ 2.1 | (60.1)% |

***Revenues.*** Revenues for the three months ended October 3, 2009 and September 27, 2008 are as follows (dollars in millions):

| | 2009 | 2008 | % Change |
|---|---|---|---|
| Retail | $ 18.0 | $ 18.7 | (4.1)% |
| Recycling | 7.0 | 8.8 | (20.0)% |
| Byproduct | 1.0 | 1.9 | (46.3)% |
| | $ 26.0 | $ 29.4 | (11.6)% |

Our total revenues of $26.0 million for the third quarter of 2009 decreased $3.4 million or 11.6% from $29.4 million in the third quarter of 2008. Retail revenues accounted for 69% of total revenues for the third quarter of 2009 compared to 64% in the third quarter of 2008.



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*Retail Revenues.* Our retail revenues of $18.0 million for the third quarter of 2009 decreased $0.7 million or 4.1% from $18.7 million in the third quarter of 2008. The decrease in retail revenues was due primarily to price compression on product to remain competitive with retailers in the current economic environment and lower customer traffic in our stores. Our third quarter comparable store revenues from the ApplianceSmart Factory Outlets open for the past twelve months decreased 12.3% or $2.2 million. We opened five new factory outlet stores throughout 2008 and early in 2009. These new stores contributed $1.9 million of additional revenues in the third quarter of 2009 compared to the third quarter of 2008. At the end of August 2009, we closed one underperforming ApplianceSmart Factory Outlet in Georgia and one store in Texas when the facility lease expired. During the third quarter of 2009, these two stores combined generated $0.6 million in retail revenues. We expect the economic slowdown and cutback in consumer spending to continue through 2009, negatively impacting our sales. In November 2009, we plan to open an ApplianceSmart Factory Outlet in Cumming, Georgia, to serve the northeast suburbs of the Atlanta metropolitan area. We are also evaluating several underperforming stores and determining the best course of action, including negotiating lease concessions and closing underperforming stores during the fourth quarter of 2009.

*Recycling Revenues.* Our recycling revenues of $7.0 million for the third quarter of 2009 decreased $1.8 million or 20.0% from $8.8 million in the third quarter of 2008. The decrease was due primarily to recycling fewer appliances under our California contracts in 2009 compared to 2008. Our contract with Southern California Edison was reduced by 25% in 2009. During the third quarter, we signed new appliance recycling contracts to support programs sponsored by Xcel Energy and Baltimore Gas and Electric. These programs commenced operations in the third quarter of 2009 and generated an immaterial amount of revenues. During October 2009, we signed a new appliance recycling contract with Santee Cooper in South Carolina and have begun operation there. We are aggressively pursuing new appliance recycling programs but cannot predict if we will be successful in signing new contracts or renewing existing contracts.

*Byproduct Revenues.* Our byproduct revenues of $1.0 million for the third quarter of 2009 decreased $0.9 million or 46.3% from $1.9 million in the third quarter of 2008. The decrease was due primarily to lower recycling volumes and lower scrap metal prices compared to the third quarter of 2008. We expect that scrap material prices will stay depressed throughout 2009 compared to 2008.

***Gross Profit.*** Our overall gross profit of $8.5 million for the third quarter decreased $1.7 million or 16.4% from $10.2 million in the third quarter of 2008. Our gross profit as a percentage of total revenues for the third quarter of 2009 was 32.7% compared to 34.5% in the third quarter of 2008. The decrease in gross profit was related primarily to our retail segment and attributed to price compression on product, lower comparable store sales and a sales shift from out-of-the-box product to in-the-box product. Our retail segment gross profit as a percentage of related revenues for the third quarter of 2009 was 28.4% compared to 30.1% for the third quarter of 2008. Our retail margins on out-

of-the box product are typically higher than in-the-box product. Our recycling segment gross profit as a percentage of related revenues for the third quarter of 2009 was 42.5% compared to 42.6% for the third quarter of 2008. Recycling gross profit percentages are typically higher than retail gross profit percentages.

***Selling, General and Administrative Expenses.*** Our selling, general and administrative ("SG&A") expenses of $7.6 million for the third quarter of 2009 decreased $0.4 million or 4.7% from $8.0 million in the third quarter of 2008. Our SG&A expenses as a percentage of total revenues for the third quarter of 2009 were 29.4% compared to 27.3% for the third quarter of 2008. Selling expenses increased $0.1 million to $5.1 million in the third quarter of 2009 from $5.0 million in the third quarter of 2008. The increase in selling expenses was due primarily to new factory outlet stores open during the third quarter of 2009 compared to the third quarter of 2008. The increase in selling expenses was partially offset by closing two factory outlet locations and cost containment initiatives. General and administrative expenses decreased $0.5 million to $2.6 million in the third quarter of 2009 from $3.1 million in the third quarter of 2008. The decrease was due primarily to cost-saving initiatives implemented in the third quarter of 2009. We expect general and administrative expenses to continue to be lower compared to 2008 as a result of cumulative cost-saving initiatives implemented throughout 2009.

***Interest Expense.*** Interest expense of $0.3 million in the third quarter of 2009 was comparable to the third quarter of 2008. We cannot predict what will happen with interest rates throughout the remainder of 2009, however, we expect that interest expense will decrease as a result of paying off the mortgage on our Minnesota building and paying down our line of credit balance by approximately $2.0 million.



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***Provision for (Benefit from) Income Taxes.*** We recorded a provision for income taxes of $0.2 million for the third quarter of 2009 compared to $0.6 million for the third quarter of 2008. The provision for income taxes in the third quarter 2009 related primarily to taxable income from our Canadian operation. We did not record a provision for or benefit from income taxes for our U.S. subsidiaries because we have available net operating losses to offset future taxable income and we have recorded full valuation allowances against our U.S. net deferred tax assets due to the uncertainty of their realization. The realization of deferred tax assets is dependent upon sufficient future taxable income during the periods when deductible temporary differences and carryforwards are expected to be available to reduce taxable income.

**For the Nine Months Ended October 3, 2009 and September 27, 2008**

The following table sets forth the key results of operations by segment for the nine months ended October 3, 2009 and September 27, 2008 (dollars in millions):

| | 2009 | 2008 | % Change |
|---|---|---|---|
| Revenues: | | | |
| Retail | $ 58.6 | $ 59.1 | (0.9)% |
| Recycling | 19.0 | 25.7 | (26.0)% |
| Total revenues | $ 77.6 | $ 84.8 | (8.5)% |
| | | | |
| Operating income (loss): | | | |
| Retail | $ (2.1) | $ 1.8 | (219.3)% |
| Recycling | 1.2 | 3.8 | (68.2)% |
| Unallocated corporate costs | (0.1) | (1.3) | 96.0% |
| Total operating income (loss) | $ (1.0) | $ 4.3 | (122.6)% |

***Revenues.*** Revenues for the three months ended October 3, 2009 and September 27, 2008 are as follows (dollars in millions):

| | 2009 | 2008 | % Change |
|---|---|---|---|
| Retail | $ 58.2 | $ 58.6 | (0.6)% |
| Recycling | 16.9 | 22.0 | (23.0)% |
| Byproduct | 2.4 | 4.2 | (43.6)% |
| | $ 77.6 | $ 84.8 | (8.5)% |

Our total revenues of $77.6 million for the nine months ended October 3, 2009 decreased $7.2 million or 8.5% from $84.8 million for the nine months ended September 27, 2008. Retail revenues accounted for 75% and 69% of total revenues for the nine months ended October 3, 2009 and September 27, 2008, respectively.

*Retail Revenues.* Our retail revenues of $58.2 million for the nine months ended October 3, 2009 decreased $0.4 million or 0.6% from $58.6 million for the nine months ended September 27, 2008. The decrease in retail revenues was due primarily to lower comparable store sales and closing two ApplianceSmart Factory Outlets and was partially offset by opening new factory outlet stores throughout 2008 and early in 2009. New factory outlet stores contributed $8.0 million of additional revenues in 2009 compared to 2008. Our comparable store revenues of the ApplianceSmart Factory Outlets open during the last twelve months were down 13.9% or $7.7 million. The decrease in comparable store revenues was due primarily to price compression on product to remain competitive with other retailers in the current economic environment and to lower customer traffic in our stores. At the end of August 2009, we closed one underperforming ApplianceSmart Factory Outlet in Georgia and one store in Texas when the facility lease expired. Through eight months of operation in 2009, these two stores combined generated $3.2 million in retail revenues. We expect the economic slowdown and cutback in consumer spending to continue through 2009, negatively impacting our sales. In November 2009, we plan to open an ApplianceSmart Factory Outlet in Cumming, Georgia, to serve the northeast suburbs of the Atlanta metropolitan area. We are also evaluating several underperforming stores and determining the best course of action, including negotiating lease concessions and closing underperforming stores during the fourth quarter of 2009.



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Our factory outlets carry a wide range of new in-the-box and special-buy appliances, which include manufacturer closeouts, factory overruns, floor samples, returned or exchanged items, open-carton items, and scratch-and-dent appliances. All these appliances are new. Some are in the carton while others are out of the carton.

We continue to purchase the majority of both new in-the-box and special-buy appliances from five major manufacturers. We have no minimum purchase requirements with any of these manufacturers. We believe purchases from these five manufacturers will provide an adequate supply of high-quality appliances for our retail factory outlets; however, there is a risk that one or more of these sources could be curtailed or lost.

*Recycling Revenues.* Our recycling revenues of $16.9 million for the nine months ended October 3, 2009 decreased $5.1 million or 23.0% from $22.0 million for the nine months ended September 27, 2008. The decrease was due primarily to recycling fewer appliances under our California contracts in 2009 compared to 2008. Our contract with Southern California Edison was reduced by 25% in 2009. Additionally, the revenues from our refrigerator replacement program with Los Angeles Department of Water and Power were down due to lower volumes and the contract not being renewed until the fourth week of January 2009. We expect recycling revenues to continue to lag behind 2008 for the remainder of 2009. However, we are aggressively pursuing new appliance recycling programs but cannot predict if we will be successful in signing new contracts or renewing existing contracts.

*Byproduct Revenues.* Our byproduct revenues of $2.4 million for the nine months ended October 3, 2009 decreased $1.8 million or 43.6% from $4.2 million for the nine months ended September 27, 2008. The decrease was due primarily to lower volumes and lower scrap metal prices compared to 2008. We expect that scrap material prices will stay depressed and byproduct revenues will lag behind 2008 throughout the remainder of 2009.

***Gross Profit.*** Our overall gross profit of $22.4 million for the nine months ended October 3, 2009 decreased $5.5 million or 19.6% from $27.9 million for the nine months ended September 27, 2008. Our gross profit as a percentage of total revenues for the nine months ended October 3, 2009 was 28.9% compared to 32.9% for the nine months ended September 27, 2008. The decrease in gross profit was related primarily to our retail segment and attributed to price compression on product, lower comparable store sales and a sales shift from out-of-the-box product to in-the-box product. Our retail segment gross profit as a percentage of related revenues for the nine months ended October 3, 2009 was 26.8% compared to 32.7% for the nine months ended September 27, 2008. Our retail margins on out-of-the box product are typically higher than in-the-box product. Our recycling segment gross profit as a percentage of related revenues for the nine months ended October 3, 2009 was 35.4% compared to 33.3% for the nine months ended September 27, 2008. The increase in the recycling gross profit percentage was due primarily to cost-saving initiatives in several areas. Recycling gross profit percentages are typically higher than retail gross profit percentages. Our gross profit as a percentage of total revenues for future periods can be affected favorably or unfavorably by numerous factors, including:

1. The mix of retail products we sell.
2. The prices at which we purchase product from the major manufacturers who supply product to us.
3. The volume of appliances we receive through our recycling contracts.
4. The volume and price of scrap metals, plastics and reclaimed CFCs.

Unless we can significantly increase our appliance purchasing volume, resulting in a higher level rebates, or sign substantial recycling contracts utilizing our current recycling facilities, overall gross profit percentages are expected to remain flat or slightly lower in 2009 compared to 2008.

***Selling, General and Administrative Expenses.*** Our selling, general and administrative ("SG&A") expenses of $23.4 million for the nine months ended October 3, 2009 decreased $0.2 million or 0.8% from $23.6 million for the nine months ended September 27, 2008. Our SG&A expenses as a percentage of total revenues for the nine months ended October 3, 2009 were 30.1% compared to 27.8% for the nine months ended September 27, 2008. Selling expenses increased $1.2 million to $16.0 million for the nine months ended October 3, 2009 from $14.8 million for the nine months ended September 27, 2008. The increase in selling expenses was due primarily to the new factory outlet stores opened over the last twelve months. General and administrative expenses decreased $1.4 million to $7.3 million for the nine months ended October 3, 2009 from $8.7 million for the nine months ended September 27, 2008. The decrease was due primarily to cost containment initiatives implemented throughout 2009. We expect these cost containment initiatives to generate annualized savings of approximately $2.6 million. Additionally, we have engaged the services of a consultant with retail lease expertise to negotiate lease concessions related to underperforming stores.



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***Interest Expense.*** Interest expense decreased $0.1 million to $0.9 million for the nine months ended October 3, 2009 compared to $1.0 million for the nine months ended September 27, 2008. The decrease was due primarily to the decline in the weighted average interest rate on our line of credit. We cannot predict what will happen with interest rates throughout the remainder of 2009, however, we expect that interest expense will decrease as a result of paying off the mortgage on our Minnesota building and paying down our line of credit balance by approximately $2.0 million.

***Provision for Income Taxes.*** We recorded a provision for income taxes of $0.1 million for the nine months ended October 3, 2009 compared to a provision for income taxes of $0.7 million for the nine months ended September 27, 2008. In the second quarter of 2009, we recorded a discrete item related to additional Canadian tax deductions determined by completing a detailed transfer pricing study. We recognized a tax benefit of approximately $0.2 million related solely to our Canadian operations compared to the original tax provision estimate for fiscal 2008. We also recorded a provision for income taxes of $0.2 million related to the 2009 taxable income from our Canadian operation, which offsets the discrete item recognized in the second quarter of 2009. We did not record a provision for or benefit from income taxes for our U.S. subsidiaries because we have available net operating losses to offset future taxable income and we have recorded full valuation allowances against our U.S. net deferred tax assets due to the uncertainty of their realization. The realization of deferred tax assets is dependent upon sufficient future taxable income during the periods when deductible temporary differences and carryforwards are expected to be available to reduce taxable income.

**Liquidity and Capital Resources**

***Principal Sources and Uses of Liquidity.*** Our principal sources of liquidity are cash from operations and borrowings under our line of credit. Our principal liquidity requirements consist of long-term debt and capital lease obligations, capital expenditures and working capital. Our cash and cash equivalents as of October 3, 2009 were $2.7 million compared to $3.5 million as of January 3, 2009. Our working capital decreased to $5.1 million as of October 3, 2009 compared to $5.8 million as of January 3, 2009.

***Net Cash Provided by Operating Activities.*** Our net cash provided by operating activities was $1.5 million for the nine months ended October 3, 2009 compared to $1.1 million for the nine months ended September 27, 2008. The increase in cash provided by operating activities was due primarily to reducing inventories and receivables offset by lower revenue and retail gross profit percentages.

***Net Cash Provided by (Used in) Investing Activities.*** Our net cash provided by investing activities was $3.3 million for the nine months ended October 3, 2009 compared to net cash used in investing activities of $0.5 million for the nine months ended September 27, 2008. The increase in net cash provided by investing activities was due primarily to selling our St. Louis Park building for $4.6 million. The cash provided by selling the St. Louis Park building was partially offset by $0.7 million related to a reserve account required by our bankcard processor, a $0.3 million investment in DALI that was completed on June 1, 2009 and $0.4 million related to purchases of property and equipment. We did not have any material purchase commitments for assets as of October 3, 2009.

***Net Cash (Used in) Provided by Financing Activities.*** Our net cash used in financing activities was $5.6 million for the nine months ended October 3, 2009 compared to net cash provided by financing activities of $0.1 million for the nine months ended September 27, 2008. The net cash used in financing activities in 2009 was due primarily to net payments on our line of credit, paying off our adjustable rate mortgage in conjunction with the sale of the St. Louis Park building and payments on our long-term obligations.

***Outstanding Indebtedness.*** We have an $18.0 million line of credit with a lender. The line was increased from $16.0 million to $18.0 million on February 5, 2008. The interest rate on the line as of October 3, 2009 and January 3, 2009 was 6.25% (the greater of prime plus 3.00 percentage points or 6.25%). The amount of borrowings available under the line of credit is based on a formula using receivables and inventories. Our unused borrowing capacity under this line was $2.6 million and $0.4 million as of October 3, 2009 and January 3, 2009, respectively. We may not have access to the full $18.0 million line of credit due to the formula using our receivables and inventories. The line of credit has a stated maturity date of December 31, 2010, if not renewed, and provides that the lender may demand payment in full of the entire outstanding balance of the loan at any time. The line of credit is collateralized by substantially all our assets and requires minimum monthly interest payments of $58,000, regardless of the outstanding principal balance. The lender is also secured by an inventory repurchase agreement with Whirlpool Corporation for purchases from Whirlpool only. The loan requires



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that we meet certain financial covenants, provides payment penalties for noncompliance and prepayment, limits the amount of other debt we can incur, limits the amount of spending on fixed assets and prohibits payments of dividends. As of January 3, 2009, we were not in compliance with certain financial covenants of the loan agreement and received a waiver from the lender. As of October 3, 2009, we were in compliance with the financial covenants of the loan agreement.

In September 2008, we entered into a master equipment lease with a lender providing up to $0.3 million in available funds. We utilized the entire lease line to fund equipment for the new retail outlets opened in December 2008 and January 2009.

In March 2009, we entered into a master equipment lease with a lender providing up to $0.1 million in available funds. We utilized the entire lease line in March 2009 to fund equipment for our retail outlet stores.

In June 2009, we entered into a master equipment lease with a lender providing up to $0.1 million in available funds. We utilized the entire lease line in June 2009 to fund equipment and displays for our retail outlet stores.

As of October 3, 2009, we had long-term obligations of $2.6 million consisting of a mortgage on our California building along with various financings, primarily consisting of capital leases.

We believe that based on our cost containment initiatives; the sale-leaseback of our St. Louis Park building; close evaluation of our underperforming stores and obtaining lease concessions or closing underperforming stores; the anticipated sales per retail store; the anticipated revenues from our recycling contracts; our anticipated gross profit; our cash balance; our anticipated funds generated from operations; and our current line of credit will be sufficient to finance our operations, long-term obligations and capital expenditures for at least the next twelve months. Our total capital requirements for 2009 will depend upon, among other things as discussed below, the number and size of retail stores operating during the fiscal year and the recycling volumes generated from recycling contracts in 2009. Currently, we have eighteen retail stores and six recycling centers in operation. We may need additional capital to finance our operations if our profits are lower than anticipated or if we pursue new opportunities. Sources of additional financing, if needed in the future, may include further debt financing or the sale of equity (Common or Preferred Stock) or other financing opportunities. There can be no assurance that such additional sources of financing will be available on terms satisfactory to us or permitted by our current debt agreement.

As discussed in the “Recent Developments”, we entered into a Joint Venture Agreement with 4301 Operations, LLC, to establish and operate the northeastern RPC for our Sales and Recycling Agreement with General Electric. We plan to raise $2.0 million debt and/or equity financing to fund our share of the capital required to form the joint venture. There is no assurance that such financing will be available on terms satisfactory to us or permitted by our current debt agreement.

The joint venture expects to purchase and install UNTHA Recycling Technology (“URT”) Equipment by the end of 2010, enhancing the capabilities of the RPC. We are the exclusive distributor of URT Equipment for North America**.** The joint venture plans to raise additional debt financing to purchase the URT equipment but there is no assurance that the financing will be available or on terms acceptable to the joint venture.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

**Market Risk and Impact of Inflation**

***Interest Rate Risk*.** We do not believe there is any significant risk related to interest rate fluctuations on our long-term fixed-rate debt. There is interest rate risk on the line of credit, since our interest rate floats with prime. The outstanding balance on our line of credit as of October 3, 2009 was $11.5 million. Although the $11.5 million line of credit is subject to a minimum interest rate of 6.25%, based on average floating rate borrowings of $11.5 million, a hypothetical 100 basis point change in the applicable interest rate would have caused our interest expense to change by immaterial amounts for the three- and nine-month periods ended October 3, 2009.

***Foreign Currency Exchange Rate Risk.*** We currently generate revenues in Canada. The reporting currency for our consolidated financial statements is U.S. dollars. It is not possible to determine the exact impact of foreign currency exchange rate changes; however, the effect on reported revenue and net earnings can be estimated. We estimate that the overall strength of the U.S. dollar against the Canadian dollar had an unfavorable impact on revenues in the amounts of



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approximately $0.3 million and $0.9 million for the three and nine months ended October 3, 2009, respectively. In addition, we estimate that such strength had an unfavorable impact of approximately $0.1 million and $0.3 million on our net income for the three and nine months ended October 3, 2009, respectively. We do not currently hedge foreign currency fluctuations and do not intend to do so for the foreseeable future.

We do not hold any derivative financial instruments nor do we hold any securities for trading or speculative purposes.

Also, we believe the decline in the housing and credit markets could adversely affect buying habits of our customers throughout at least the remainder of 2009.

**Item 4. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

We have established disclosure controls and procedures to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934 (the “Exchange Act”), as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms and that such information is accumulated and communicated to our Board of Directors and senior management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on their evaluation, of our disclosure controls and procedures conducted as of October 3, 2009, the principal executive officer and principal financial officer of the Company have concluded, pursuant to the Exchange Act Rule 13a-15(b), that as of that date our disclosure controls and procedures were effective at the reasonable assurance level.

***Changes in Internal Control Over Financial Reporting***

During the third quarter of fiscal 2009, there was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

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**PART II. Other Information**

**Item 1. Legal Proceedings**

In December 2004, we filed suit in the U.S. District Court for the Central District of California alleging that JACO Environmental, Inc. ("JACO") and one of our former consultants fraudulently obtained U.S. Patent No. 6,732,416 in May 2004 covering appliance recycling methods and systems that were originally developed by us beginning in 1987 and used in serving more than forty-five electric utility appliance recycling programs up to the time the suit was filed. We sought an injunction to prevent JACO from claiming that it obtained a valid patent on appliance recycling processes that we believe is based on methods and processes we invented. In addition, we asked the Court to find that the patent obtained by JACO is unenforceable due to inequitable conduct before the United States Patent Office. We also asked the court for unspecified damages related to charges that JACO, in using the patent to promote its services, engaged in unfair competition and false and misleading advertising under federal and California statutes.

In September 2005, we received a legally binding document in which JACO stated it would not sue us or any of our customers for violating the JACO patent. Further, the defendants in the case did not assert any counterclaims against ARCA.

In January 2009, the Court granted JACO a summary judgment in ARCA's lawsuit against the parties. The ruling was made by the same judge who had earlier denied summary judgment to the defendants. Even though the Court's ruling will have no impact on our method of recycling or ability to conduct existing or future business, we filed an appeal with the Ninth Circuit Court of Appeals in California in February 2009 seeking to have the court set aside the summary judgment. We believe the decision by the trial judge was in error and contrary to the law relating to unfair competition and false advertising. We believe we are entitled to our day in court against JACO for damages caused by their actions, but we do not yet have a timeline on a decision of the appeal.

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

On October 21, 2009, we issued a warrant to purchase 248,189 shares of Common Stock at a price of $0.75 per share. The warrant is exercisable in full at any time during a term of ten years. The exercise price may be reduced and the number of shares of Common Stock that may be purchased under the warrant may be increased if the Company issues or sells additional shares of Common Stock at a price lower than the then-current warrant exercise price or the then-current market price of the Common Stock. The warrant was issued pursuant to exemption from registration under Section 4(2) of the Securities Act.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Submission of Matters to a Vote of Security Holders**

None.

**Item 5. Other Information**

None.



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**Item 6. Exhibits**

| Exhibit Number | Description |
|---|---|
| 10.36* | Purchase agreement for sale of St. Louis Park building. |
| 10.37* | Lease agreement for leaseback of St. Louis Park building. |
| 31.1* | Certification by Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2* | Certification by Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1† | Certification by Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2† | Certification by Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

* Filed herewith.

† Furnished herewith.



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**SIGNATURES**

Pursuant to the requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on our behalf by the undersigned, thereunto duly authorized.

Dated: November 12, 2009

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
(Registrant)

By /s/ Edward R. Cameron
Edward R. Cameron

President and Chief Executive Officer

By /s/ Peter P. Hausback
Peter P. Hausback
Executive Vice President, Chief Financial Officer and Principal Financial and Accounting Officer

**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT (this "**Agreement**") is made as of the 11th day of August, 2009 (the "**Effective Date**," being the date this Agreement has been fully executed as evidenced by the signature page attached hereto) by and between Appliance Recycling Centers of America, Inc. a Minnesota corporation ("**Seller**") and Japs-Olson Company, a Delaware corporation ("**Purchaser**").

RECITALS

A. Seller is the fee owner of the real property with a street address of 7400 Excelsior Boulevard, St. Louis Park, Minnesota, consisting of the parcels of land that are identified on Exhibit A attached hereto and incorporated herein containing approximately 10.18 acres, together with all the appurtenant rights, mineral rights, privileges, and easements belonging thereto (the "**Land**"), and the approximately 126,458 square foot building and other improvements located thereon (the "**Improvements**"). The Land and the Improvements are herein sometimes collectively referred to as the as the "**Real Property**".

B. Seller desires to sell the Real Property to Purchaser and Purchaser desires to purchase the Real Property from Seller on the terms and conditions herein set forth.

C. Upon Closing (as defined herein) Seller intends to continue to occupy the Real Property in accordance with the terms of the Lease attached hereto as Exhibit B (the "**Lease**") by and between the parties hereto, which Lease is a condition of Seller's agreeing to sell the Real Property hereunder.

AGREEMENT

ACCORDINGLY, in consideration of the RECITALS, the mutual covenants and undertakings contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Sale and Purchase of Property. Seller agrees to sell the Real Property to Purchaser and Purchaser agrees to purchase the Real Property from Seller on the terms and conditions contained in this Agreement.

2. Purchase Price. Purchaser agrees to pay to Seller the sum of Four Million Six Hundred Fifty Thousand Dollars ($4,650,000), subject to Closing prorations and adjustments as set forth herein (the "**Purchase Price**") for the Real Property.

The Purchase Price shall be payable as follows:

a. Within three (3) business days after the Effective Date of this Agreement, Purchaser shall deposit with the Title Company (as defined herein) One Hundred Thousand Dollars ($100,000) (together with any interest earned thereon and additions

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thereto the "**Earnest Money**"). Title Company shall hold the Earnest Money in escrow and shall disburse the Earnest Money according to the terms of this Agreement. The Earnest Money shall be applicable to the Purchase Price or otherwise disbursed to the party entitled to it under the terms of this Agreement.

b. The balance of the Purchase Price shall be payable by wire transfer at Closing of immediately available funds to a bank account designated by Seller.

3. Title. Seller has provided to Purchaser an owner's commitment for title insurance issued by Commonwealth Land Title Insurance Company with an Effective Date of March 17, 2006. Purchaser shall have such commitment updated by a nationally recognized title company of its choosing ("**Title Company**"), at Seller's expense, naming Purchaser as the proposed owner-insured of the Real Property in the full amount of the Purchase Price (the "**Commitment**"), together with copies of all documents referred to in the Commitment. Purchaser shall also promptly order and review UCC searches made of the Uniform Commercial Code records of the Secretary of State in which Seller is incorporated (the "**UCC Report**").

Within ten (10) days after receiving the last of the "**Title Evidence**" (being the Commitment, the Survey [as defined in paragraph 4 below] and the UCC Report), Purchaser will make written objections ("**Objections**") to matters disclosed by the Title Evidence to which it objects; provided, Purchaser need not object to mortgages or other monetary liens; which if not sooner satisfied, Seller shall be obligated to satisfy any such mortgages or other monetary liens at Closing at its sole cost and expense. If any Objections are made to matters disclosed by the Title Evidence, Seller shall be allowed thirty (30) days after such Objections are made to cure such Objections. Seller shall use commercially reasonable efforts to correct any Objections. Pending the curing of any Objections, the Closing Date (as defined in Paragraph 8 hereof) shall be postponed if necessary, but upon curing of the objections and within five (5) days after written notice of the curing given by Seller to Purchaser, Seller and Purchaser shall perform this Agreement in accordance with its terms. To the extent an Objection is made to a monetary judgment or lien securing a promissory note or other amount due (e.g., an unpaid mechanic's lien) and can be satisfied by the payment of money in a liquidated amount, Purchaser shall have the right to apply a portion of the cash payable to Seller at the Closing to the satisfaction of such Objection and the amount so applied shall reduce the amount of cash payable to Seller at the Closing. If the Objections are not cured or adequately addressed within such thirty (30) day period, Purchaser will have the option to do any of the following:

a. Purchaser may terminate this Agreement by giving written notice to Seller in which event all Earnest Money shall be returned immediately to Purchaser;

b. Withhold from the Purchase Price an amount which, in the reasonable judgment of Title, is sufficient to assure cure of the Objections, in an amount up to, but not to exceed Twenty Thousand Dollars ($20,000); provided, the $20,000 limitation shall not apply to Seller's right to offset the purchase price for liquidated amounts as set forth above, nor shall any such offset reduce the applicable $20,000 limit set forth above. Any amount so withheld will be placed in escrow with Title, pending such cure. If Seller does not cure such Objections within ninety (90) days after such escrow is established,



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Purchaser may then cure such Objections and charge the costs of such cure (including reasonable attorney's fees) against the escrowed amount. If such escrow is established, the parties agree to execute and deliver such documents as may be reasonably required by Title, and Seller agrees to pay the charges of Title to create and administer the escrow; or

c. Purchaser may elect to waive the Objection and proceed to Close.

4. Survey. Seller has provided to Purchaser an ALTA survey dated September 25, 2002. Purchaser shall update such survey (as so updated, the "**Survey**"), at Seller's expense, not to exceed One Thousand Five Hundred Dollars ($1,500), with any excess payable by Purchaser.

5. Documents to be Delivered by Seller. Within ten (10) days after the date hereof Seller shall deliver to Purchaser true and complete copies of the following to the extent the same are in Seller's possession or control:

a. A copy of all soil reports, engineering reports, plans, specifications, structural reports and inspections and other information pertaining to the Real Property, including without limitation any additional information regarding Seller's Disclosures set forth in Paragraph 7.

b. Copies of any environmental audits and reports concerning the Real Property and all other documents relating to the discharge and/or remediation of Hazardous Substances (as defined in Paragraph 7 hereof) in, on, about or from the Real Property.

c. Copies of any certificate of occupancy, conditional use permit or other permits or authorizations issued by any governmental body having jurisdiction in connection with any state of facts or activity presently existing or being carried on with respect to the Real Property.

d. Copies of any guaranties or warranties that are in effect with respect to the Real Property.

6. Inspection. Purchaser, its agents and designees, are hereby granted the right, at times reasonably acceptable to Seller and Purchaser, to enter upon and survey, inspect, analyze, and test the Real Property, including, without limitation, the Improvements and groundwater, for all reasonable purposes, including, without limitation, the presence of Hazardous Substances. No subsurface testing of the Real Property by Purchaser or its agents and contractors shall occur without the prior written consent of Seller, which consent shall not be unreasonably withheld. Purchaser shall pay for the cost of all investigations, analyses and tests which are ordered by Purchaser. Purchaser shall be responsible, at Purchaser's sole expense, to repair any damage resulting from Purchaser's performance of such tests or inspections. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any liens, claims, damages, costs, and liability (including, without limitation, reasonable attorney's fees) resulting from the entering upon the Real Property or the performing of any of the analyses, tests or inspections referred to in this Paragraph; however, nothing contained herein shall be deemed to require Purchaser to hold



Seller harmless from any liability for discovered conditions. Purchaser's obligations under this Paragraph shall survive the closing or termination of this Agreement.

7. Representations of Seller. Seller represents to Purchaser as follows:

a. Seller is and on the Closing Date will be the owner of fee title to the Real Property. Seller will cause the Real Property to be released from any mortgages or other monetary liens at or prior to closing.

b. Except as to Seller leaseback of the Real Property pursuant to the Lease and the Seller's lease with the City of St. Louis Park for a portion of the Land used for material and equipment storage pursuant to a Lease Agreement dated April 29, 2009 (attached hereto as Exhibit C), there are no leases or other occupancy agreements or purchase agreements, purchase options or rights of first refusal affecting the Real Property. Prior to Closing, Seller will not enter into any leases or occupancy agreements or purchase agreements, purchase options or rights of first refusal affecting the Real Property.

c. At Closing, no management or service contracts or agreements will be in effect with respect to the Real Property by which Purchaser shall be bound.

d. Neither Seller nor, to Seller's knowledge, any other owner or occupant of the Real Property has received any notice from a governmental body having jurisdiction to the effect that the Real Property, or any system or component serving the Real Property is not currently in compliance with any applicable law, code, ordinance or regulation, including, without limitation, those relating to environmental protection ("**Applicable Laws**"). Seller has not received any notice, order or other communication from any governmental body having jurisdiction requiring any work to be performed with respect to the Real Property that has not been performed.

e. There is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to Seller's knowledge, threatened against Seller or the Real Property, or any interest therein, which could affect the Real Property, any portion thereof or title thereto, except as identified in the Disclosure Schedule attached hereto as Exhibit D and incorporated herein.

f. Seller has received no notices with respect to improvements planned which may result in special assessments being levied against the Real Property in the future and, to Seller's knowledge, there are no such improvements planned which may result in special assessments being levied against the Real Property in the future.

g. To Seller's knowledge, there are no wells, whether in use, not in use, or sealed, located on the Real Property.

h. To Seller's knowledge, there are no underground tanks or septic systems located on the Real Property and there were no above ground or underground tanks or septic systems located on the Real Property that have been removed.



i. Neither Seller nor, to Seller's knowledge, any other owner or occupant of the Real Property has generated, treated, released or disposed of, or otherwise placed, deposited in or located on the Real Property any Hazardous Substances in violation of any Applicable Law relating to the protection of human health or the environment. Except as disclosed in a Phase I Environmental Site Assessment Report dated August 22, 2002 issued by SECOR International Incorporated, to Seller's knowledge, there are no substances or conditions in or on the Real Property that may support a claim or cause of action under CERCLA, Minnesota Statutes Chapter 115B, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

The term Hazardous Substances includes any toxic or hazardous substances or hazardous wastes, pollutants or contaminants, including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, radio active materials and any hazardous substances or wastes, pollutants or contaminants as defined in or regulated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601-9657, as amended and reauthorized, Minnesota Statutes Chapter 115B, or any other federal, state or local laws relating to any such substances, wastes, pollutants or contaminants or human health or the environment.

Seller shall promptly notify Purchaser in writing if it acquires any knowledge which change in any of the foregoing representations, including without limitation, any additional developments with respect to those matters set forth on Exhibit D. The notice shall describe in detail the nature of the change and the basis therefor. If there is a material adverse change in any of the foregoing representations prior to Closing, Purchaser will have the right to terminate this Agreement by giving written notice to Seller within ten (10) days after it receives written notice of such material change. If Purchaser so terminates this Agreement, the Earnest Money shall be returned to it and neither party shall have further rights or obligations hereunder except for any obligations contained in this Agreement which expressly survive termination.

8. Closing/Payment of Closing Costs. Subject to postponement as provided elsewhere in this Agreement, the closing hereunder ("**Closing**") shall take place as soon as reasonably practical after the final contingency set forth in Paragraph 24 below has been satisfied or waived as provided for therein and all necessary loan

documentation related to the acquisition financing has been fully negotiated and agreed to and Purchaser's Lender is in a position to fund, but in no event later than October 15, 2009. (Such date or such other date as this transaction actually closes as determined in accordance with the provisions of this Agreement is herein sometimes called the "**Closing Date**"). The Closing shall take place at the offices of Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, Minnesota 55402 or such other place which is mutually acceptable to the parties.

At the Closing, Seller shall execute, where appropriate, and deliver to Purchaser:

a. A limited warranty deed ("**Deed**") properly executed and acknowledged on behalf of Seller in recordable form, conveying the Real Property to Purchaser subject



only to matters accepted by Purchaser pursuant to Paragraph 3 hereof. Unless Seller provides a well disclosure certificate pursuant to Minn. Stat. § 103I.235., the Deed shall contain a certification by Seller that Seller does not know of any wells on the Real Property.

b. The Lease.

c. Any certificates, instruments, and other documents necessary to permit the recording of the deed.

d. A Standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions, and related matters, properly executed on behalf of Seller.

e. A certificate to the effect that the warranties of Seller contained in this Agreement, as modified by any notices provided by Seller as provided in Paragraph 7 hereof, are true, correct and complete in all material respects as of the Closing Date.

f. An affidavit in form and content satisfactory to Purchaser stating that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

g. An assignment to Purchaser, without any representations or warranties, of any assignable permits, guaranties or warranties pertaining to the Real Property that Purchaser desires to have assigned to it.

h. Such other instruments and documents as are reasonably necessary complete the transaction contemplated hereby.

At the Closing, Purchaser shall execute, where appropriate, and deliver to Seller:

a. The balance of the Purchase Price to Seller in accordance with Paragraph 2 hereof.

b. The Lease.

c. Such other instruments and documents as are reasonably necessary complete the transaction contemplated hereby.

Seller shall pay the deed tax payable on the Deed, the cost of updating the Commitment, and the cost of updating the 2002 survey (in an amount not to exceed $1,500). Seller and Purchaser each shall pay one-half of any fee charged by Title Company for serving as the agent for the Closing. Purchaser shall be responsible for the payment of the premium for any policy of title insurance it elects to purchase and all requested endorsements. Except as otherwise provided herein, each party shall pay its own legal fees.



9. Real Estate Taxes and Special Assessments. Real estate taxes due and payable in the year prior to the year of Closing and all prior years, including any real estate taxes otherwise payable during any such year which may have been deferred, shall be paid by Seller. Real estate taxes due and payable in the year of Closing, shall be prorated as of the Closing Date based upon the parties' respective period of ownership of the Real Property in the calendar year of Closing; provided Seller shall be responsible for the same pursuant to the terms of the Lease.

On or prior to the Closing Date, Seller shall pay all special assessments, whether or not then due, levied or pending against the Real Property as of the date of this Agreement; or, at Purchaser's option, Purchaser shall receive a credit for the amount thereof against the Purchase Price at closing. If the actual amount of any pending assessments is not known at the Closing Date, the Title Company shall withhold in escrow from Seller's proceeds at closing an amount equal to 125% of the estimated amount thereof. When the amount of said assessments becomes fixed and payable, the Title Company shall apply said escrow in payment of the assessments, returning any surplus to Seller; provided that if the amount withheld in escrow is insufficient to pay the assessments, Seller shall immediately pay, and shall be liable for the immediate payment of, any such deficiency.

10. Possession; Expenses. Seller will deliver possession of the Real Property to Purchaser on the Closing Date, subject to the rights of the Seller under the Lease. All utilities and other expenses shall be pro rated and adjusted as of the Closing Date, with Seller responsible for any such expenses as of the Closing Date in accordance with the terms of the Lease.

11. Risk of Loss. Risk of loss to the Real Property prior to Closing shall remain in Seller.

If, prior to the Closing Date, proceedings for the condemnation of the Real Property, or any interest therein, or any portion thereof, are commenced by any governmental authority having jurisdiction to do so, or the Improvements are materially damaged, Purchaser may, at its option, terminate this Agreement by written notice to Seller given within fifteen (15) days after Seller advises Purchaser in writing of the occurrence of such an event. If Purchaser so terminates this Agreement, the Earnest Money shall be immediately refunded to Purchaser and neither party shall have any further rights, obligations or liability under this Agreement. If the Closing is otherwise scheduled to occur prior to expiration of the fifteen (15) day period, it shall be extended, at Purchaser's option, to the first business day following expiration of the fifteen (15) day period. In the event of any such condemnation, destruction or any damage to the Real Property, or any interest therein, or any portion thereof, Seller agrees to fully inform Purchaser regarding any insurance providing coverage with respect thereto and the Seller's good faith estimate of the probable amount of any condemnation award or insurance proceeds recoverable on account thereof, and if this Agreement is not terminated on account thereof, Seller shall assign to Purchaser at Closing its rights to any such condemnation award or insurance proceeds and Purchaser shall receive a credit against the Purchase Price for (i) any condemnation or insurance proceeds paid to Seller and (ii) any portion of any such casualty loss which is deductible under, deemed to be coinsured by Seller or is otherwise not covered under Seller's insurance coverage. For purposes of this Paragraph, the words "materially damaged" mean damage that is reasonably estimated will cost $30,000.00 or more to repair.

12. Notices. Any notice required or permitted hereunder shall be given by personal delivery upon an authorized representative of a party hereto; or if mailed by United States registered or certified mail return receipt requested, postage prepaid; or if transmitted by e-mail (in "pdf" format), with a copy sent by U.S. Mail as provided above; or if deposited cost paid with a nationally recognized, reputable, overnight courier, properly addressed as follows:

| | |
|---|---|
| If to Purchaser: | Japs-Olson Company<br>7500 Excelsior Boulevard<br>St. Louis Park, Minnesota 55426<br>Attention: Gary Petrangelo<br>e-mail address: gpetrang@japsolson.com |
| With a copy to: | Leonard, Street and Deinard<br>Professional Association<br>150 South Fifth Street; Suite 2300<br>Minneapolis, MN 55402<br>Attention: Morris Sherman<br>e-mail address: morris.sherman@leonard.com |
| If to Seller: | Appliance Recycling Centers of America, Inc.<br>7400 Excelsior Boulevard<br>St. Louis Park, Minnesota 55426<br>Attention: Jack Cameron<br>e-mail address: jcameron@arcainc.com |
| With a copy to: | Mackall Crounse & Moore, PLC<br>1400 AT&T Tower<br>901 Marquette Avenue<br>Minneapolis, Minnesota 55402<br>Attention: William J. O'Brien<br>e-mail address: wjo@mcmlaw.com |

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit, as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.

13. Default. If Seller defaults in the performance of its obligations hereunder or breaches any representation or warranty contained herein, and such default shall not be cured within five (5) days after notice from Purchaser, Purchaser shall have and may pursue all rights and remedies available to it hereunder, at law or in equity, or otherwise, including, but not limited to, an action for damages or specific performance. Any action for specific performance shall be commenced not later than six (6) months following the date of the alleged breach or default.



If Purchaser defaults in its obligation to close under this Agreement, Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement in accordance with Minn. Stat. Section 559.21 and retain the Earnest Money as liquidated damages.

14. Complete Agreement. This is a final Agreement between the parties and contains their entire agreement and supersedes all previous understandings and agreements, oral or written, relative to the subject matter of this Agreement. This Agreement may be amended only in a writing duly executed by all parties.

15. Time of the Essence; Business Days. Time is of the essence in the performance of this Agreement. If any date which constitutes a deadline for performance or notice under this Agreement falls on a weekend, a nationally recognized holiday or a day which the federal wire system is not in operation, such deadline shall be deemed to be the next business day which does not fall on such a date.

16. Controlling Law. This Agreement shall be governed by the laws of the State of Minnesota.

17. Assignment; Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. An assigning party shall give notice to the other of any assignment promptly thereafter. Upon receipt of any assignment by Purchaser, Seller will recognize the assignee identified in the notice as the "Purchaser" hereunder with the right to purchase the Purchaser pursuant to this Agreement. No assignment shall relieve Seller or Purchaser, as applicable, from liability for the performance of its obligations under this Agreement.

18. Incorporation of Recitals; Survive Closing. The Recitals are incorporated into and made a part of this Agreement. All of the covenants, warranties and provisions contained in this Agreement shall survive and be enforceable after Closing.

19. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

20. Brokerage Commission. Seller and Purchaser each warrants to the other that, in connection with this Agreement, they have dealt with no broker, finder, or similar person. Seller will indemnify, defend and hold harmless Purchaser against any claim made by Broker and any other agent or broker for a commission or fee based on acts or agreements of Seller. Purchaser will indemnify, defend and hold harmless Seller against any claim made by any agent or broker for a commission or fee based on acts or agreements of Purchaser.

21. Counterparts; Delivery by E-mail. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one Agreement. Delivery of an executed copy of this Agreement by e-mail (in "pdf" format) shall be deemed delivery of the executed original.



22. Severability of Provisions. If any term or provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity or enforceability of the remainder of this Agreement.

23. Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all other costs and expenses of litigation from the other party, which amounts may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose, and which amounts shall be in addition to any other relief which may be awarded.

24. Purchaser's Contingencies; Seller's Cooperation. Purchaser's obligation to close under this Agreement is expressly conditioned upon Purchaser determining in its sole and absolute discretion on or before the date that is thirty (30) days after the Effective Date of this Agreement (the "**Contingency Date**") that all aspects of the contemplated transaction are acceptable; provided the contingency date for the financing contingency (as set forth below) shall be October 12, 2009 (the "**Final Contingency Date**"). The various aspects of such contingencies include without limitation those set forth below:

a. Purchaser having determined that the physical and environmental condition of the Real Property, including, without limitation, the Improvements, are acceptable to Purchaser.

b. Purchaser having obtained or determined that it will be able to obtain all authorizations, approvals, licenses, variances, permits and other governmental approvals (but no rezoning of the Real Property) (collectively "**Approvals**") that it deems necessary or desirable to utilize the Real Property for Purchaser's intended use.

c. Purchaser having determined that the terms of the Lease and Seller's ability to fulfill its financial obligations thereunder are acceptable to Purchaser.

d. Purchaser shall have obtained mortgage financing from a commercial lender ("**Purchaser's Lender**") for the contemplated transaction on terms and conditions acceptable to it.

The foregoing contingencies are for Purchaser's sole benefit. Whether or not any contingency has been satisfied shall be determined by Purchaser in the exercise of its sole and absolute discretion. If any contingency is not satisfied on or before the applicable contingency date, Purchaser, at its option, may terminate this Agreement by giving written notice to Seller within two (2) business days of the applicable contingency date. If Purchaser so terminates this Agreement, the Earnest Money shall be refunded to Purchaser promptly and neither party shall have any further rights, obligations or liability hereunder. If no such notice is provided by Purchaser to Seller by such dates, the contingencies shall be deemed waived and the Purchaser and Seller shall proceed to close.



Seller will cooperate with Purchaser's efforts to obtain Approvals to the extent Purchaser reasonably requests; cooperation to include, but not be limited to, promptly executing applications and related documentation required to be signed by the owner of the Real Property to obtain Approvals. Seller shall not be obligated to incur any out of pocket expenses in connection with Purchaser's pursuit of any Approvals.

25. No Strict Construction. The parties and their respective counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

26. Agreements Concerning Escrow of Earnest Money. Title Company agrees to hold the Earnest Money in accordance with the terms of this Agreement and disburse the same strictly in accordance with such terms. Title Company shall invest the Earnest Money in the name of Purchaser in a federally insured interest bearing account or a money market mutual fund which invests only in securities of the United States Government and/or its agencies or such other investments as shall be approved by both Purchaser and Seller in writing. Seller and Purchaser shall provide the Title Company with their respective Federal Taxpayer I.D. Numbers, if necessary.

Title Company shall have no responsibility for any decision concerning performance or effectiveness of this Agreement or to resolve any disputes concerning this Agreement or with regard to the Earnest Money. Title Company shall be responsible only to act in accordance with the joint and mutual direction of both Seller and Purchaser, or in lieu thereof, the direction of a court of competent jurisdiction. Seller and Purchaser agree to hold Title Company harmless from all claims for damages arising out of this Agreement and do hereby agree to indemnify Title Company for all costs and expenses in connection with the escrow, including court costs and attorneys' fees, except for Title Company's failure to account for the funds held hereunder or acting in conflict with the terms hereof.

Title Company is joining this Agreement for the purposes set forth in this Paragraph 26 and its failure to execute this Agreement shall in no way limit or affect the binding effect of this Agreement on Seller and Purchaser upon their respective execution of the same.

27. Indemnification. Seller agrees to indemnify, defend and hold harmless Purchaser against any claim made by any third party, including but not limited to those listed on Exhibit D, related to the Real Property or Seller's right or ability to enter into or consummate the transaction contemplated hereby, which accrued or are claim to have accrued during the period of time the Real Property was owned by Seller. Provided further, Seller agrees to provide Title Company with all relevant background information with respect to any potential third party claims, including but not limited to those listed on Exhibit D, in order for Purchaser to obtain appropriate affirmative title insurance coverage with respect to such issues.

[Signature page follows.]



**SIGNATURE PAGE**
**TO**
**PURCHASE AGREEMENT**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year set forth below.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC., a Minnesota corporation

By: /s/ Edward R. Cameron
Name: Edward R. Cameron
Its: President & CEO

Date of Signature:
August 11, 2009

JAPS-OLSON COMPANY, a Delaware corporation

By: /s/ Robert E. Murphy
Name: Robert E. Murphy
Its: Chairman

Date of Signature:
August 11, 2009



**JOINDER OF TITLE COMPANY**

Chicago Title Insurance Company joins in this Agreement for the sole purpose of agreeing to act as escrow agent for the Earnest Money as provided in Paragraph 26 hereof and it hereby acknowledges receipt of Purchaser's check in the amount of $100,000 which represents the Earnest Money.

Chicago Title Insurance Company

By: /s/ Tamora Hartman
Name: Tamora Hartman
Its: Commercial Atty.



**EXHIBIT A**

**IDENTIFICATION OF REAL PROPERTY**

Hennepin County Property Tax ID Nos. 20-117-21-31-0010 and 20-117-21-24-0017.

Tract D, Registered Land Survey No. 1674, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

Being registered land as is evidenced by Certificate of No. 830574.



**EXHIBIT B**

**FORM OF LEASE**

**[See attached; includes Exhibit A and Exhibit B to Lease.]**



**LEASE**

THIS LEASE (this "**Lease**") is made and entered into this day of , 2009, by and between Japs-Olson Company, a Delaware corporation ("**Landlord**"), and Appliance Recycling Centers of America, Inc., a Minnesota corporation ("**Tenant**").

**RECITALS**

A. Landlord and Tenant are parties to that certain Purchase Agreement dated August 11, 2009 (the "**Purchase Agreement**") with respect to certain real property located at 7400 Excelsior Boulevard in the City of St. Louis Park, Hennepin County, Minnesota and consisting of the parcels of land that are identified on Exhibit A attached hereto and incorporated herein containing approximately 10.18 acres, together with all the appurtenant rights, mineral rights, privileges, and easements belonging thereto (the "**Land**"), and the approximately 126,458 square foot building (according to the survey provided by Tenant pursuant to the Purchase Agreement referenced below) and other improvements located thereon (the "**Improvements**"). The Land and the Improvements are herein sometimes collectively referred to as the as the "**Real Property**".

B. Upon Closing (as defined in the Purchase Agreement), Tenant desires to lease from Landlord the Real Property (subject to the provisions of Section 1.4 below, the "**Premises**") in order to conduct its business operations as set forth in Section 4.1 below).

C. Landlord is willing to enter into this Lease and allow Tenant to conduct such business, on the terms, conditions and covenants hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties agree as follows:

**ARTICLE 1**
**PREMISES; AS IS; NET LEASE**

1.1 **Grant; Premises**. In consideration of the full and timely performance by Tenant of all the terms, conditions and covenants of this Lease, including timely payment of all Rent (as defined herein, including Base Rent and additional rent due hereunder), Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Premises.

1.2 **Site Leased "As Is"**. Tenant takes the Premises in their present state and condition, "as is" and without any obligation on the part of Landlord to make any alterations, changes, improvements, repairs or replacements of any kind whatsoever. Prior to the date hereof, Tenant has occupied the Premises as fee owner of the Real Property; accordingly, Tenant shall take possession of the Premises under the terms of this Lease with an acknowledgment that the Premises, including all fixtures, equipment and personal property thereon, are in good repair and working order, and in clean and tenantable condition, as of the Effective Date. Landlord makes no covenants, representations or warranties as to the age, quantity or condition of the Premises, their value, their fitness for any specific purpose, or the title thereto, and no such covenants, representations or warranties shall be implied.



1.3 **Premises**. Landlord may utilize that portion of the Premises shown on Exhibit B attached hereto (the "**Joint Use Area**") for parking, storage or other purposes (including without limitation, leasing to third parties), provided the same does not materially and adversely affect Tenant's business operations. Provided such joint use shall not impose any costs, expenses, obligations or liabilities on Landlord (except as expressly set forth in Sections 4.5 and 6.2 below).

1.4 **Covenant for Quiet Enjoyment**. Landlord warrants that it has full right to make this Lease, and that during the full term of this Lease, or any extension thereof, so long as Tenant shall not be in default of any of its obligations hereunder, and so long as Tenant shall fully keep and perform the covenants and obligations of this Lease, and pay promptly when due the rentals and other payments herein covenanted to be made, Tenant shall have and enjoy quiet and peaceable possession of the Property. Tenant's right of quiet enjoyment shall be subject to Landlord's right to construct wetlands and/or drainage ponds upon the Property required by any applicable governmental unit as part of Landlord's development of its adjoining property, provided that such construction does not interfere with or restrict Tenant's occupancy during the term of the Lease. Tenant agrees to subordinate its lease rights to any such wetland or drainage ponds construction consistent with the foregoing.

1.5 **Net Lease**. It is the intention and purpose of the parties that this Lease shall be an entirely "net lease" to the Landlord, with no exceptions and with no maintenance obligations of Landlord. Accordingly, all costs or expenses of whatever character, nature or kind, general and special, ordinary and extraordinary, foreseen or unforeseen, that may be necessary with respect to operation of the said Premises, and Tenant's authorized use thereof during the entire term of this Lease, shall be paid by Tenant. All provisions of this Lease relating to costs and expenses are to be construed in light of such intention and purpose to construe this Lease as a "net lease."

## ARTICLE 2
## TERM

2.1 **Term; Lease Year**. Tenant shall have and hold the Premises for a term (as the same may be extended or terminated prior to the expiration thereof, the "**Term**") of approximately five (5) years commencing on the day of , 2009 (the "**Commencement Date**") and extending until and including the last day of the month in which the fifth anniversary of the Commencement Date occurs (the "**Expiration Date**"). Each twelve (12) month period commencing on January 1 and concluding on December 31 is called a "**Lease Year**." The initial calendar year of the term, 2009, shall be a partial Lease Year, as will the final calendar year of the Lease. Tenant shall have the right to extend the initial Term pursuant to Section 2.2 below.

2.2 **Renewal Option**. Subject to the terms and conditions set forth herein, Tenant shall have the option (the "**Renewal Option**") to extend the Term of this Lease for an additional one (1) year period (the "**Renewal Term**"), which Renewal Term shall commence as of the Expiration Date and end on the anniversary of the Expiration Date (the "**Renewal Expiration Date**"), provided that this Lease shall not have been previously terminated and that Tenant shall not be in default in the observance or performance of any of the terms, covenants or conditions of this Lease and shall not have cured during any applicable notice period (i) on the date Tenant



gives Landlord written notice (the "**Renewal Notice**") of Tenant's election to exercise the Renewal Option, and (ii) on the Expiration Date. The Renewal Option shall be exercised with respect to the entire Premises only and shall be exercisable by Tenant's delivery of the Renewal Notice to Landlord at least one (1) year prior to the Expiration Date.

2.3 **Renewal Option Terms**. If Tenant exercises the Renewal Option in accordance with the terms set forth above, the Renewal Term shall be upon the same terms, covenants and conditions as those contained in this Lease, except that (i) the monthly Base Rent (as defined in Section 3.1 below) shall be increased to Forty-Seven Thousand Four Hundred Twenty-Two and No/ 100 Dollars ($47,422.00); (ii) the provisions of Section 2.2 above relative to Tenant's right to extend the Term of this Lease shall not be applicable during the Renewal Term; and (iii) the Expiration Date shall, for the purposes of the Lease, be defined as the Renewal Expiration Date.

## ARTICLE 3

## BASE RENT; ADDITIONAL RENT; SURRENDER; GUARANTY

3.1 **Base Rent**. The base rent payable during the term of this Lease shall be payable in monthly installments of Forty-Two Thousand One Hundred Fifty-Three and No/100 Dollars ($42,153.00) per month ("**Base Rent**") for each month of the Term. Base Rent for any partial Rent shall be prorated.

3.2 **Holding Over**. Should Tenant continue to occupy the Premises after the expiration or termination of this Lease, whether with or without the consent of Landlord, such tenancy shall be on a month-to-month basis, and Base Rent shall be increased to 150% of the Base Rent.

3.3 **Additional Rent**. In addition to Base Rent, Tenant shall pay additional rent (as set forth in Article 5 below). Base Rent, additional rent and any other amounts due Landlord hereunder are sometimes collectively referred to as "**Rent**".

3.4 **Payment of Rent; Late Charge**. Tenant shall pay Base Rent, together with any monthly additional rent payments due hereunder, to Landlord, without the necessity for demand, and without setoff or deduction, in advance on the first business day of each and every month during the term hereof at Landlord's address set forth in Article 13 of this Lease, or such other place as Landlord may from time to time designate in writing. If any Rent is not received within five (5) days of the date which it is due, a "**Late Charge**" equal to five percent (5%) of the amount due shall be assessed and be immediately due and payable; provided once a Late Charge has been assessed, during the next twelve months, any subsequent Rent payments which are not made on or before the due date shall incur a Late Charge as of the day immediately following the due date (that is, the five (5) day grace period shall be available only once in any twelve month period). The Late Charge shall be in addition to, and not in lieu of, "**Default Interest**". Default Interest shall begin to accrue at the rate of 12% per annum on all outstanding and delinquent Rent as of the date such Rent becomes delinquent, and shall continue to accrue until paid in full. Late Charges and Default Interest shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner, but shall instead be additional remedies available to Landlord together with all of Landlord's other rights and remedies hereunder, at law or in equity.



3.5 **Tenant to Surrender Premises in Good Condition**. Upon the expiration or termination of the term of this Lease, Tenant shall at its own expense:

(a) remove from the Premises all moveable furnishings and other items of personal property and equipment, (b) repair any damage or injury, and make any necessary replacements, caused or necessitated by such removal; (c) remove, in compliance with law, any "hazardous substances" as defined in Section 14.1, that may be present in, on or under the Premises; (d) remove all alterations made by Tenant and not consented to by Landlord; and (e) quit and deliver up the Premises (including all parking areas located on the Land) to Landlord, peaceably and quietly, in as good order, condition and repair as the same were on the date this Lease commenced (that is, in their "AS-IS" condition as of the Effective Date), reasonable wear and tear and casualty excepted; provided Tenant shall have no obligation to repair or restore any portion of the Real Estate associated with Landlord's wetland and drainage ponds construction or improvements associated therewith.

## ARTICLE 4
## USE; COMPLIANCE WITH LAWS

4.1 **Permitted Use**. Subject to all the terms and conditions of this Lease, Tenant shall use and occupy the Premises only as a shall be used and occupied by Tenant for the sole business purpose of continuing to conduct its business operations in the same general manner it is as of the Effective date (i.e., as a retail and recycling facility for home appliances, warehousing of inventory and related general office use). Tenant shall not use the Property for any other purposes without the prior written consent of the Landlord, and only if such use at all times is in material compliance with all applicable laws, ordinances and government regulations. Tenant shall not in any manner deface or injure the Premises or any part thereof. Tenant shall not do anything or permit anything to be done upon the Premises which would constitute a public or private nuisance or waste, or would tend unreasonably to disturb occupants of neighboring properties, or would cause structural injury to the Improvements or cause the value or usefulness of the Premises or any part thereof to diminish in any material respect. Tenant shall conduct its business in a reputable manner as a quality establishment.

4.2 **Compliance with Laws**. Tenant shall not use or occupy the Premises or permit the Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto (including, but not limited to, "environmental laws" described in Article 14 below) or in a manner which would violate any certificate of occupancy affecting the same, or for illegal or immoral purposes. Tenant shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exemptions and nonconforming uses), privileges, franchises and concessions which are now applicable to the Premises, or which have been granted to or contracted for by Tenant or Landlord in connection with any existing or presently contemplated use of the Premises.

4.3 **Permits and Approvals**. Tenant shall, at its sole cost and expense, procure any and all necessary permits, certificates, licenses or other authorizations required for its use of the Premises as set forth in Section 4.1 above. If the owner of the Premises is required by law to join in any such application, Landlord shall reasonably cooperate with Tenant in connection with such application, but at Tenant's cost.



4.4 **Rules and Regulations**. Tenant shall comply with, and shall cause Tenant's employees, contractors to comply with, any reasonable rules and regulations as may reasonably be adopted by Landlord from time to time and of which Landlord shall notify Tenant in writing; none of which shall materially interfere with Tenant's business operations or cause Tenant to incur material and unnecessary additional expenses.

4.5 **Parking Areas**. Landlord and Tenant agree that Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the parking areas of the Premises and Tenant agrees to so advise its employees, visitors or invitees who may use such parking areas. Parking areas shall be utilized in a reasonable manner to allow for the efficient joint use of the Joint Use Area as contemplated by Section 1.4 above. All responsibility for damage and theft to vehicles and their contents is assumed by Tenant or Tenant's partners, trustees, officers, directors, shareholders, members, beneficiaries, licensees, invitees, or any assignees, subtenants or assignees' or subtenants' agents, employees, contractors, servants, guests, or independent contractors (collectively, "**Tenant Parties"**). Tenant shall repair or cause to be repaired, at Tenant's sole cost and expense, any and all damage to any portion of the Property caused by the use by Tenant Parties of the driveway or parking areas within the Property. Landlord shall not be liable to Tenant by reason of any moratorium, initiative, referendum, statute, regulation or other governmental action which could in any manner prevent or limit the parking rights of Tenant hereunder. Any governmental charges or surcharges or other monetary obligations imposed relative to parking rights with respect to the Building shall be considered assessments and shall be payable by Tenant as set forth in Section 5.1. Notwithstanding the foregoing, Landlord shall be liable for any damage caused by its negligent use of the Joint Use Area.

## ARTICLE 5
## ADDITIONAL RENT; TAXES; UTILITIES

5.1 **Tenant to Pay Taxes and Assessments**. As further consideration for this Lease, Tenant shall pay all real estate taxes, charges and assessments of every kind and nature which shall be due and payable during the Term, including all installments of special assessments now or hereafter levied and interest thereon. Provided, however, that regardless of the payment dates for real estate taxes due and payable in 2009 and in the final Lease Year, and any installments of special assessments and interest thereon payable therewith, such taxes and assessments shall be prorated between Landlord and Tenant on a daily basis to reflect the term of this Lease and any extension or renewal thereof, and any holdover tenancy. The parties agree that any special assessments assessed against the Premises after the Commencement Date shall be paid in installments spread over the longest period of time permitted under law. Notwithstanding anything to the contrary, in the event that the Premises are assessed for an improvement requested by Tenant or required solely because of Tenant's use of the Property, Tenant shall be solely liable for such assessment and shall pay such assessment in full prior to the Expiration Date (or, if Tenant has exercised the Renewal Option, the Renewal Expiration Date).

Without limiting the provisions of Section 5.5 below, or being limited thereby, Tenant shall pay to Landlord, as additional rent, on a monthly basis along with each payment of Base Rent, a sum equal to one-twelfth (1/12th) of the total amount of real estate taxes and installments of special assessments and other assessment charges and interest ("**Taxes**") due and payable during the



Lease Year or partial Lease Year in lieu of Tenant's direct payment of taxes (provided, if a catch up payment is needed to ensure that the full amount of funds necessary to pay the Taxes for the current Lease Year is available to Landlord prior to the due date for such tax payment, Tenant shall promptly make such payment to Landlord within thirty (30) days of such request). In the event such amount is not known, Tenant shall pay one-twelfth (1/12th) of the product of the most recently issued tax bill multiplied by 1.03, and when the current tax amount becomes known, Tenant shall immediately pay to Landlord any shortfall between monthly installments that would have been due were the tax bill known, and those actually paid. In the event Tenant's monthly installments towards the tax bill are greater than that actually owed based on the tax bill, Landlord shall credit the total amount of the overpayment to the next installment or installments of Rent coming due. Provided that Tenant has paid all monthly tax installments to Landlord on a timely basis, Landlord will cause the appropriate payment of Taxes to be made before penalties or interest are assessed or accrue.

5.2 **Time of Payment of Taxes and Receipts**. Subject to the provisions of Section 5.1, Tenant shall be responsible for all Taxes.

5.3 **Tenant to Pay for Utilities**. Tenant shall fully and promptly pay when due all utility charges for all services furnished to or upon the Premises during the full term of this Lease and any holdover tenancy, including, without limitation, water, gas, electricity, sewage disposal, and telephone tolls. Under no circumstances shall an interruption of any or all of said utilities constitute a constructive eviction or be deemed a default by Landlord under this Lease.

5.4 **Definition of Rent**. All payments to be made by Tenant under the Lease, however denominated, shall be considered, and are payable, as Rent.

5.5 **Compliance with Mortgage**. Notwithstanding anything in this Lease to the contrary, Tenant agrees to make monthly escrow payments to, or for the benefit of, any mortgagee or the servicer of such mortgagee (collectively, "**Lenders**") for the insurance, real estate taxes (including any installments of special assessments and other assessment charges and interest), or other expenses, to the extent that such payments are required pursuant to any mortgage of record.

5.6 **Escrow for Insurance**. Without limiting the foregoing, or being limited thereby, Tenant shall pay to Landlord, as additional rent, on a monthly basis along with each payment of Base Rent, a sum equal to one-twelfth (1/12th) of the total amount of insurance premiums for the insurance policy referenced in Section 6.4 below for coverage applicable during the Term (provided, if a catch up payment is needed to ensure that the full amount of funds necessary to pay the insurance policy premium for the current Lease Year is available to Landlord prior to the due date for such policy premium payment, Tenant shall promptly make such payment to Landlord upon request).

## ARTICLE 6
## MAINTENANCE; INDEMNITY; INSURANCE

6.1 **Maintenance**. During the Term, Tenant shall at all times keep the entire Premises, including all Improvements and components thereof, in good and safe condition at its



sole cost and expense. Such obligations shall include without limitation, the maintenance of the structural integrity of the exterior walls, roof and foundation of the Improvements and all other components of the Premises (whether structural or non-structural), and all fixtures and equipment thereon or therein, including without limitation, the HVAC system, all interior and exterior windows, boilers, and other equipment and fixtures, and each and every walkway, passageway and parking areas appurtenant to the Premises, in good repair and safe and working condition, and in full compliance with all laws, ordinances and regulations then in force, making whatever replacement may be necessary under the circumstances. Tenant's obligations under this Section includes, but is not limited to, all routine maintenance for all portions of the Premises, including the painting of all surfaces, clearance of snow, landscaping, etc., as well as repairing (but not resurfacing; provided that while Tenant shall have no affirmative obligation to resurface the parking areas, nor shall Landlord) of the parking areas (including without limitation the Joint Use Area); all such maintenance (including maintenance of the Joint Use Area) shall be without contribution from Landlord.

6.2 **Waiver of Liability**. Landlord shall not be liable to Tenant, or Tenant's agents, employees, customers, or invitees, for injury, death or property damage occurring in, on or about the Premises. Except for Landlord's negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and any Lender, Landlord's partners, trustees, officers, directors, shareholders, members, employees, beneficiaries, heirs and assigns (collectively, the "**Landlord Parties**") from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities arising out of, directly or indirectly, in whole or in part involving, or in connection with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, Tenant Parties, and out of any default or breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord or any Landlord Party) litigated and/or reduced to judgment. In case any action or proceeding be brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. Tenant's indemnity obligations under this Section shall survive the expiration or earlier termination of the Lease. Landlord shall not be liable for, and Tenant hereby waives and releases Landlord from, injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defect of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom.



6.3 **General Liability and Related Insurance**. During the entire term of this Lease and any extensions or renewals thereof, and any holdover tenancy Tenant shall obtain and keep in full force and effect, at its sole cost and expense, a policy of comprehensive public liability insurance with respect to the Premises and the business of Tenant thereon, written on an "occurrence", and not a "claims made" basis, by a responsible casualty or indemnity company authorized to do business in the Property Jurisdiction, under which policy Landlord and Lenders, if any, shall be named as additional insureds, and with not less than $2,000,000 single coverage limits for each occurrence of injury or property damage. Prior to the Commencement Date, Tenant shall furnish Landlord with said policy or with a certificate that said insurance is in effect, which shall state that Landlord will be notified in writing thirty (30) days prior to any cancellation, material change or renewal of said insurance. If the Premises has a boiler or steam vessel, Tenant shall also place and carry boiler insurance with such a casualty or indemnity company in an amount of coverage not less than $1,000,000 per accident, and Tenant shall comply fully with all applicable laws, ordinances, and regulations with reference to the operation and inspection of such boiler and steam vessel. Tenant shall also maintain such other insurance coverage as Tenant may reasonably conclude are prudent or advisable based on the use to which Tenant is putting the Premises. Tenant shall also maintain such other insurance coverages, in form and amounts acceptable to Lenders, as such Lenders may reasonably require under any mortgage encumbering the Premises, now or in the future.

6.4 **Casualty Insurance**. At Tenant's sole cost and expense as provided for in Section 5.7, Landlord will maintain property insurance on the Improvements (exclusive of Tenant's personal property interests that may be located therein) on an "occurrence" basis and not a "claims made" basis, under an "all risk" form of fire insurance policy, with full extended coverage endorsements added, and in accordance with the requirements of any mortgage encumbering the Real Property from time to time.

6.5 **Worker's Compensation Insurance**. Tenant shall maintain at all times any worker's compensation insurance coverage as may be required by law and, upon request, shall present a certificate of such insurance to Landlord.

6.6 **Loss of Income Insurance; Business Interruption Insurance**. Tenant shall maintain loss-of-income and extra-expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to or use of the Premises as a result of such perils.

6.7 **Form of Policies**. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (a) (except Workers' Compensation) name Landlord, and any other party it reasonably so specifies, as an additional insured; (b) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations to indemnify Landlord under this Lease; (c) be issued by an insurance company having a rating of not less than A-1X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the Property Jurisdiction; (d) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (e) provide that said insurance shall not be canceled, expire or

coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any Lender and any landlord of an underlying ground or master lease; and (f) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease commencement date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord as additional rent ten (10) days after delivery to Tenant of bills therefor.

6.8 **Subrogation of Claims**. Landlord and Tenant hereby waive any and all claims and causes of action against each other based on the destruction of or damage to the Premises or the contents thereof as a result of any cause that is to be insured pursuant to this Article 5, and agree that their respective insurers shall be bound by this waiver, even if such loss or damage was caused by the fault or negligence of the other party or anyone for whom the other party may be responsible.

6.9 **Damage Not to Terminate Lease**. Except as set forth below, should any building, structure or other improvement upon the Premises be damaged or destroyed by any cause, such damage or destruction shall not effect a cancellation of this Lease, effect any reduction or abatement of rent, or release Tenant from liability for the full performance of all of the covenants of this Lease, past, present or future, except as expressly provided for herein.

6.10 **Rebuilding after Damage**. In case the Improvements shall be materially damaged or destroyed by fire or other casualty such that Tenant is unable to make reasonable use of the Premises, Landlord may elect to repair, restore or rebuild the Improvements by notice to Tenant given with twenty (20) days of the casualty event, and shall complete the same as rapidly as possible, but in any event not later than ninety (90) days after such damage or destruction. In connection with such repair, Landlord shall not be required to expend any sums in excess of insurance proceeds actually received by Landlord. In the event the Improvements are so materially damaged and destroyed and Landlord elects not to repair, restore or rebuild the Improvements and as a result Tenant is not able to make reasonable use of the Premises, Tenant may terminate this Lease as of the later of the date of the casualty or the date Tenant no longer makes productive use of the Premises.

## ARTICLE 7
## ALTERATIONS; CONSTRUCTION STANDARDS

7.1 **Alterations**. Tenant may, at its sole cost and expense, expand, alter, remodel or enlarge any now or hereafter existing improvement, provided that it has first secured the written consent of Landlord to the plans and specifications therefor and further provided that any such work shall be in accordance with the provisions of Section 7.2. Any leasehold improvements made by Tenant, and any fixtures (except trade fixtures) installed on the Premises by Tenant, shall be the property of Landlord from and after the time of their construction or installation; provided, however, that Landlord may require that any or all leasehold improvements be removed by the expiration or earlier termination of this Lease, notwithstanding that the installation of such leasehold improvements may have been consented to by Landlord. Every alteration shall comply with all building codes and other applicable regulations. In no event shall



Landlord's approval of any alteration serve as a representation or warranty by Landlord regarding the fitness or adequacy of such leasehold improvement, including, without limitation, any warranty that such improvement complies with any code or regulation.

7.2 **Construction Standards**. Any such work, and any rebuilding and restoration under Article 5 or 9 with a cost in excess of $25,000 for any single improvement, or $50,000 annually, shall be constructed and installed according to plans and specifications prepared by Tenant's architect or agent, and approved in writing by Landlord. In all of the foregoing construction and installation described in the preceding sentence whether or not approved by Landlord, Tenant shall be bound by and do all of the following:

(a) Complete said construction and installation as rapidly as practical and pay for all labor performed and materials furnished, when due and payable;

(b) Keep the Premises free and clear of all liens for labor performed and materials furnished, and defend, at its sole cost and expense, each and every lien asserted or filed against the Premises or any part thereof, and pay each and every judgment made or given against said Premises, or any part thereof, on account of any such lien;

(c) Indemnify and save Landlord harmless from and against any and every claim, demand, action, cause of action, or charge, including reasonable attorneys' fees incurred by Landlord, arising out of or connected with or alleged to arise out of or to be connected with any act or omission of Tenant, or any agent, employee, contractor or sub-contractor in or about the Premises, or connected with the assertion or filing of any lien against said Premises;

(d) Procure, or cause its general contractor to procure, before entering onto the Premises, and maintain in full force until all work is fully completed, a policy of builder's risk insurance covering the completed value of any work to be performed, and a policy of indemnity insurance written by a casualty or indemnity company authorized to do business in the Property Jurisdiction, indemnifying Landlord against all liability for injury arising out of, or in any way connected with, or alleged to arise out of or in any way be connected with any said work, with not less than $1,000,000 single coverage limits for each occurrence of injury or property damage. In connection with all said work on the Premises, Tenant or its contractors shall procure and maintain in force such workers' compensation or other insurance as may be required by the laws of the Property Jurisdiction, fully protecting Landlord. Landlord and Landlord's mortgagee shall be named as an additional insured under said policies, and said policies, or certificates evidencing that such insurance is in effect, shall be delivered by Tenant to Landlord prior to any contractor's commencement of work on the Premises. Said policies or certificates shall state that Landlord will be notified in writing thirty (30) days prior to any cancellation, material change or renewal of any such insurance;

7.3 **Landlord's Consent**. Landlord shall not unreasonably withhold or delay its consent to a proposed alteration, or the plans and specifications therefor, if no substantial change in use of the Premises is contemplated and the value of the Premises is likely to be enhanced thereby.



7.4 **Landlord's Oversight of Improvements**. Landlord shall have the right to inspect any leasehold improvements as they are being constructed or once completed. In no event shall Landlord's inspection or oversight of a leasehold improvement serve as a representation or warranty by Landlord regarding the fitness or adequacy of such leasehold improvement, including, without limitation, any warranty that such improvement complies with any code or regulation.

## ARTICLE 8
## ASSIGNMENT AND SUBLETTING; ENCUMBRANCES

8.1 **No Assignment of Tenant's Interest**. Tenant shall not mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, this Lease or any interest hereunder. Without the prior written consent of Landlord, Tenant may not assign, sublet, or otherwise transfer its interest in the Premises or this Lease by operation of law or otherwise, or permit the use of the Premises by any persons other than Tenant and its employees (any of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**").

Any Transfer made without Landlord's prior written consent shall (which may be conditioned or withheld in its sole but reasonable business judgment and without limiting the foregoing, subject to its Lender's approval and consent), at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a Default by Tenant under this Lease. Notwithstanding anything to the contrary, no Transfer, whether or not consented to by Landlord shall release the named Tenant from its obligations hereunder. Landlord reserves the right to direct the Tenant to terminate the Lease Agreement dated April 29, 2009 between it and the City of St. Louis Park with respect to the Joint Use Area (the "**Joint Use Area Lease**") in accordance with the termination provisions set forth therein. Until such termination Tenant shall be entitled to the rent due thereunder and such Joint Use Area Lease shall be considered a valid sublease, subject to the terms of this Lease. After such termination, Landlord may choose to enter into a generally similar agreement with the City of St. Louis Park or any other third party, or otherwise utilize or lease the Joint Use Area as provided for in Section 1.3 above, in its sole and absolute discretion and Landlord shall be entitled to any and all rents resulting therefrom.

8.2 **Landlord May Assign**. Landlord's right to assign this Lease or sell or convey the Premises, subject to this Lease, are and shall remain unqualified. Upon any said assignment, sale or conveyance and provided the Landlord's purchaser assumes all obligations hereunder, Landlord shall thereupon be entirely freed of all obligations of the Landlord hereunder accruing thereafter and shall not be subject to any liability resulting from any act or omission or event occurring after said assignment, sale or conveyance.

8.3 **Tenant to Place No Mortgage**. Tenant shall not at any time during the term of this Lease place, suffer or allow any mortgage or similar security instrument upon its leasehold interest created hereby, even though Landlord's title is superior to said mortgage or instrument.

8.4 **Landlord May Place Mortgage**. Landlord shall have the unrestricted right at any time during the full term of this Lease to place any mortgage or similar security instrument upon the Landlord's interest in the Premises.



8.5 **Other Liens Prohibited**. Tenant shall not cause, suffer or acquiesce in the attachment of any other liens or encumbrances, including without limitation, any mechanic's or materialmen's liens, judgment liens, tax liens or liens for the cost of environmental remediation, to the Premises or the Landlord's or Tenant's interest therein.

## ARTICLE 9
## LANDLORD'S CURATIVE RIGHTS

9.1 **Landlord May Pay Taxes, Liens, etc**. In the event Tenant shall fail or neglect at the times and as herein provided to pay any tax, charge or assessment against the Premises, or to pay any lien or judgment against or affecting the Premises, or to provide and pay for any insurance, or to make any other payment which it is the obligation of Tenant to pay under the terms of this Lease, when due and payable, then in addition to all other remedies provided by this Lease or as now or hereafter provided by law, Landlord may, at its option, upon fifteen (15) days notice, pay any such judgment, tax, charge or assessment, or procure such insurance or pay the premiums therefor, and pay any other amount herein required to be paid by Tenant. The amount or amounts so paid and interest thereon as hereinafter provided shall thereupon be immediately due and payable by Tenant to Landlord, as additional Rent hereunder.

9.2 **Tenant May Contest Taxes, etc**. Tenant, however, shall not be required to pay, remove or discharge any tax, assessments, tax lien, or any materialmen's or mechanics' lien or judgment against the Premises so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings, and so long as Landlord's title and rights are not in any manner impaired or jeopardized thereby, provided Tenant deposits with Landlord sufficient funds or other security acceptable to Landlord to protect Landlord and the Premises. Pending any such legal proceedings, Landlord shall not pay, remove or discharge the tax, assessment, tax lien, materialmen's or mechanics' lien or judgment thereby contested unless its title or rights are being impaired or jeopardized by such delay or by such contest, in which event Landlord may use any such deposits to pay and discharge the same.

9.3 **Tenant to Furnish Receipts**. Upon demand by Landlord, Tenant shall promptly furnish to Landlord receipts or other satisfactory evidence showing that Tenant has fully and promptly paid and discharged all charges, premiums, or any other payments required to be made by Tenant under the terms of this Lease.

9.4 **Landlord's Right to Enter Premises**. Landlord, and its authorized agents or attorney, shall have the right, but not be obligated to enter the Premises: (a) at any time in an emergency, and (b) upon prior notice to Tenant at other reasonable times during normal business hours to inspect, and to make such repairs, improvements and/or alterations in and to the Premises as Landlord may reasonably deem necessary under the circumstances, and there shall be no abatement of rents or any liability on the part of Landlord for any inconvenience, annoyance, or injury to business resulting therefrom, provided that Landlord shall use its best efforts to minimize interference with Tenant's business and occupancy of the Premises.



## ARTICLE 10
## CONDEMNATION

10.1 **Condemnation**. In the event the Premises or any part thereof shall at any time during the term of this Lease be condemned and taken by right of eminent domain, the damages allowed therefor (whether or not the same be specifically apportioned by the Court or the Commissioner, or by any other body making or supervising such condemnation, and regardless of such apportionment, if any) shall be the sole property of Landlord, except that Tenant shall be entitled to any separate award for Tenant's relocation expenses as defined by applicable law; provided in no event shall any award made to Tenant have the effect of diminishing the award made to Landlord.

10.2 **Rent after Condemnation; Termination**. If the whole of the Premises be condemned and taken, Rent hereunder shall cease from the time Tenant shall be deprived of possession of the Premises, and this Lease shall thereupon terminate and Landlord shall refund to Tenant any prepaid and unearned rent. If a part, but not the whole, of the Premises be so taken or condemned, then this Lease and all of its provisions shall continue in full force and effect as to the remainder of the Premises not so taken until the expiration of the full Term of this Lease, except that the Base Rent to be paid by Tenant may be adjusted as provided in Section 10.3, if the provisions of said paragraph are applicable; provided, nonetheless, that in the event of a partial condemnation and taking which materially and substantially interferes with the operation of Tenant's business, Tenant shall have the right, by notice given to Landlord not later than sixty (60) days following the date Tenant shall be deprived of possession of a portion of the Premises, to terminate this Lease, and upon the giving of such notice, this Lease shall terminate as of the date specified in the notice. Any Rents and other amounts and obligations due hereunder shall be apportioned as of said date.

10.3 **Abatement after Material Taking**. In the event of a partial condemnation and taking which materially and substantially interferes with the operation of Tenant's business, and Tenant does not terminate this Lease as herein provided, Base Rent for the Premises shall (in the absence of agreement by the parties) be equitably abated based on application to the appropriate District Court.

## ARTICLE 11
## DEFAULT; REMEDIES

11.1 **Non payment of Rent; Defaults**. The occurrence of any one or more of the following matters constitutes a default ("**Default**") by Tenant under this

Lease:

(i) Any failure by Tenant to pay any Rent, including without limitation, base rent, and additional costs within five (5) days of when due under this Lease, or any part thereof.

(ii) Any violation or default by Tenant of any of the other covenants, agreements, stipulations or conditions herein, or in any other agreements between Landlord and Tenant relating to the Premises, and such violation or default shall continue for a period of thirty (30) days after written notice from Landlord of such violation or default.



(iii) Any commencement by, or against Tenant of any proceedings under a bankruptcy, receivership, insolvency or similar type of action.

(iv) Any commencement by, or against Tenant of any proceedings under a bankruptcy, receivership, insolvency or similar type of action provided that Tenant shall have sixty (60) days to cause the dismissal of any such involuntary proceeding.

(v) Abandonment or vacation of any substantial portion of the Premises by Tenant for a period of more than thirty (30) days.

(vi) Any Default otherwise defined hereunder.

11.2 **Landlord's Remedies Upon Default; Survival** Upon the occurrence of a Default, Landlord shall have the remedies set forth herein, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies set forth in the Lease or that are now or hereafter allowed by law. The terms of this Article 14 shall survive the termination of this Lease.

(i) If Tenant shall have vacated the Premises, Landlord may, to the extent permitted by law, without terminating this Lease, change the locks on the doors to the Premises and exclude Tenant therefrom.

(ii) Landlord may, upon notice to Tenant, terminate this Lease, or without notice to Tenant re-enter the Premises without terminating this Lease. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention is given to Tenant (all other demands and notices of forfeiture or other similar notices being hereby expressly waived by Tenant). Upon the service of any such notice of termination, the term of this Lease shall automatically terminate. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorneys' fees, and the value at the time of such termination of any rent reserved in this Lease for the remainder of the term over the then reasonable rental value of the Premises for the remainder of such term, discounted to present value at an assumed interest rate of five percent (5%), all of which amount shall be immediately due and payable from Tenant to Landlord.

(iii) Landlord may require that, upon any termination of the Lease or Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord, vacate the same and remove all effects therefrom except those that may not be removed under other provisions of this Lease. If Tenant fails to surrender possession and vacate as aforesaid, Landlord may forthwith re-enter the Premises and expel and remove Tenant and any other persons and property therefrom, without being deemed guilty of trespass, eviction, conversion or forcible entry and without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity. If Tenant does not remove its property from the Premises as required by this Lease, Landlord may either declare such property abandoned and dispose of the same in any reasonable manner without liability to



Tenant or any other party, or remove any or all of such effects in any manner it shall choose and store the same without liability to Tenant. Tenant shall pay Landlord on demand any expenses incurred in such removal and storage for any length of time during which the same shall be in Landlord's possession or in storage.

(iv) Landlord can continue this Lease in full force and effect, and the Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect all Rent when due. After Tenant's right to possession is terminated Landlord may enter the Premises and may make such improvements, alterations and repairs as it shall determine may be reasonably necessary to relet the Premises and Landlord may (but shall not be required to) relet the same or any part thereof upon such terms and conditions as Landlord in its sole discretion may deem advisable. Upon any reletting, all rentals received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, reasonable attorneys' fees and costs of such improvements, alterations and repairs; and third, to the payment of Rent. In no event shall Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rental and other charges payable hereunder. If such rentals and other charges received from such reletting during any month are less than those to be paid during that month by Tenant, Tenant shall pay any such deficiency to Landlord upon demand. No act by Landlord allowed by this Section shall terminate this Lease unless Landlord has notified Tenant that Landlord elects to terminate this Lease.

11.3 **Landlord's Right to Cure**. In the event of any Default by Tenant beyond any applicable cure period by Tenant (provide no cure period shall apply in the event an emergency necessitates immediate action by Landlord), Landlord may immediately or at any time thereafter, without notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time by reason of such breach, is compelled to pay, or elects to pay, any sum of money or do any act which requires the payment of any sum of money or is compelled to incur any expense, including reasonable attorneys fees, in instituting or prosecuting any action or proceeding to enforce Landlord's rights hereunder, the sum or sums so paid by Landlord together all with interest thereon at the Default Rate, or the maximum permitted by law, from the date of payment thereof, shall be deemed to be Rent hereunder and shall be due from Tenant to Landlord on the first day of the month following the payment of such respective sums or expenses.

## ARTICLE 12
## SUBORDINATION; ESTOPPEL

12.1 **Subordination**. This Lease is subject and subordinate to the lien of any mortgage which may now or hereafter encumber the Premises. In confirmation of such subordination, Tenant shall, at Landlord's request from time to time, promptly execute any certificate or other document reasonably requested by the holder of the mortgage. Tenant agrees that in the event that any proceedings are brought for the foreclosure of any mortgage, Tenant shall immediately and automatically attorn to the purchaser at such foreclosure sale, as the landlord under this Lease, and Tenant waives the provisions of any statute or rule of law, now or hereafter in effect,



which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure proceeding is prosecuted or completed. Notwithstanding anything to the contrary in this Article, so long as Tenant is not in default under this Lease, this Lease

shall remain in full force and effect and the holder of the Mortgage and any purchaser at foreclosure sale thereof shall not disturb Tenant's rights and/or possession hereunder.

12.2 **Estoppel Certificates**. Tenant agrees at any time and from time to time, upon not less than ten (10) days prior written notice by Landlord, to execute, acknowledge and deliver to Landlord or a party designated by Landlord an estoppel statement in the form reasonably requested by Landlord, and including such other matters relating to this Lease as may reasonably be requested. Any such statement delivered pursuant thereto may be relied upon by Landlord, any prospective purchaser of the Premises, any mortgagee or prospective mortgagee of the Premises or of Landlord's interest, or any prospective assignee of any such mortgagee.

## ARTICLE 13
## NOTICES

Any notice required or permitted hereunder shall be given by personal delivery upon an authorized representative of a party hereto; or if mailed by United States registered or certified mail return receipt requested, postage prepaid; or if transmitted by e-mail (in "pdf" format), with a copy sent by U.S. Mail as provided above; or if deposited cost paid with a nationally recognized, reputable, overnight courier, properly addressed as follows:

If to Landlord:
Japs-Olson Company
7500 Excelsior Boulevard
St. Louis Park, Minnesota 55426
Attention: Gary Petrangelo
e-mail address: gpetrang@japsolson.com

With a copy to:
Leonard, Street and Deinard
Professional Association
150 South Fifth Street; Suite 2300
Minneapolis, MN 55402
Attention: Morris Sherman
e-mail address: morris.sherman@leonard.com

If to Tenant:
Appliance Recycling Centers of America, Inc.
7400 Excelsior Boulevard
St. Louis Park, Minnesota 55426
Attention: Jack Cameron
e-mail address: jcameron@arcainc.com



With a copy to:
Mackall Crounse & Moore, PLC
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
Attention: William J. O'Brien
e-mail address: wjo@mcmlaw.com

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit, as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.

## ARTICLE 14
## ENVIRONMENTAL PROVISIONS

14.1 **Definitions**. For the purposes of this Lease, the term "**environmental laws**" means, collectively, all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. §9601, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §6901, et seq., and any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, all as amended and modified from time to time. For purposes of this Lease, the term "**hazardous material**" means: (a) "hazardous substances" or "toxic substances" as those terms are defined by CERCLA, or any other environmental law, (b) "hazardous wastes," as that term is defined by RCRA; (c) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any environmental law; (d) crude oil or any fraction of it that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (e) any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. §2011, et seq., as amended to and after this date; (f) asbestos in any form or condition; and (g) polychlorinated biphenyls (PCBs) or substances or compounds containing PCBs.

14.2 **Tenant's Compliance With Law and Environmental Matters**. To the best of Tenant's actual knowledge, and except as disclosed in a Phase I Environmental Site Assessment Report dated August 22, 2002 issued by SECOR International Incorporated, the Premises contain no hazardous material, except in compliance with all environmental laws. Tenant represents, warrants and covenants to Landlord that during the term of this Lease Tenant will cause the Premises at all times to be and remain in compliance with all environmental laws except any portion of the Joint Use Area where Landlord or its employees, agents, contractors or invitees has caused any environmental issues. Tenant agrees to obtain and keep in effect all governmental permits and approvals relating to the use or operation of the Premises required by applicable environmental laws, and Tenant agrees to comply with the terms of the same.



14.3 **Tenant's Use of Hazardous Materials**. Tenant represents, warrants and covenants to Landlord that Tenant will not cause or permit to occur any generation, manufacture, storage, treatment, transportation, release, or disposal of hazardous material on, in, under, about or from the Premises except in quantities required for the conduct of Tenant's business and pursuant to handling practices permitted by applicable law (including, but not limited to, all environmental laws). If Tenant or any one of its employees, agents, contractors, suppliers or invitees causes, contributes to or aggravates any release or disposal of any hazardous material on, in, under or about the Premises, Tenant, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material to the reasonable satisfaction of Landlord and the appropriate governmental authorities.

14.4 **Notification and Cure**. Tenant represents, warrants and covenants to Landlord that Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance with environmental laws. Tenant will, at its sole cost, promptly cure and have dismissed with prejudice any such actions. Tenant will keep the Premises free of any lien imposed pursuant to any environmental laws.

14.5 **Investigation by Landlord**. Landlord shall have the right at all reasonable times during normal business hours and from time to time to conduct environmental audits of the Premises, and Tenant will cooperate in the conduct of those audits. The audits will be conducted by a consultant of Landlord's choosing, and if any hazardous material (other than quantities handled as permitted by law) is detected or if a violation of any of Tenant's warranties, representations, or covenants contained in this Article is discovered, the fees and expenses of such consultant will be borne by Tenant and will be paid as additional rent under this Lease on demand by Landlord.

14.6 **Breach by Tenant**. If Tenant breaches or fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any hazardous material released or exacerbated by Tenant from the Premises. The costs of such hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court or administrative agency has ordered the cleanup, due and payable on Landlord's demand. Tenant hereby grants Landlord, its employees, agents and contractors, access to the Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, from the Premises, and nothing in this Lease will be construed as creating any such obligation.

14.7 **Indemnification**. Tenant represents, warrants and covenants to Landlord that Tenant shall indemnify, defend, and hold the Premises, Landlord, and all Landlord Parties free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against Landlord or any of them in connection with or arising from or out of: (a) any hazardous material on, in, under, or affecting all or any portion of the Premises that was caused



by Tenant's occupancy of the Premises; (b) any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Article; (c) any violation or claim of violation by Tenant, its employees, agents, contractors, suppliers or invitees of any environmental law during the Term of this Lease; or (d) the imposition of any lien against the Premises for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material used and released by Tenant.

This indemnification is the continuing obligation of Tenant and shall survive termination of this Lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Landlord or any Landlord Party under CERCLA or any state equivalent or any similar law now existing or enacted after this date.

## ARTICLE 15
## MISCELLANEOUS

15.1 **Time is of Essence**. Whenever any payment is to be made under this Lease by Tenant at or within a specified time, or whenever any act is to be done under this Lease by either party at or within a stated time, time is of the essence.

15.2 **No Recording**. Neither party shall record this Lease without the prior written consent of the other.

15.3 **Captions**. The captions and headings herein are for convenience and reference only and do not limit or construe the provisions hereof.

15.4 **Severability**. If any term, condition, covenant, agreement or provision of this Lease, or the application thereof to any circumstance shall, to any extent, be held by a court of competent jurisdiction or by any authorized governmental authority to be invalid, void or unenforceable, the remainder of this Lease shall not be affected by such holding, and the remaining terms, conditions, covenants, agreements and provisions hereof shall continue in and be accorded full force and effect.

15.5 **Entire Agreement**. This Lease represents the entire agreement between the parties hereto with respect to the Premises, and there are no agreements, understandings or undertakings relating to said subject matter except as set forth herein, and all prior negotiations and writings between the parties and their representatives, attorneys, brokers and agents are superseded hereby and thereby.

15.6 **Modifications**. This Lease may not be amended, modified or supplemented except by a writing, executed by the party against whom such amendment, modification or supplement is sought to be enforced.

15.7 **No Continuing Waiver**. No waiver of any term, condition, covenant or remedy hereunder or delay in the enforcement of any remedy hereunder in any one instance shall be deemed to be a waiver of any other term, condition, covenant or remedy in such instance or of such waived or delayed term, condition, covenant or remedy in any other instance.



15.8 **Binding**. All of the terms, conditions, covenants, agreements and provisions of this Lease shall be construed as covenants running with the land and shall inure to the benefit of and be binding upon the parties hereto and upon their respective personal representatives, heirs, successors and permitted assigns.

15.9 **Collection; Attorney's Fees**. In the event Tenant defaults in its obligations to pay Rent or any other sum due and payable hereunder, Landlord shall be entitled to reimbursement from Tenant for all of Landlord's costs of collection (including reasonable attorney's fees), regardless of whether or not a suit has been commenced. In the event any action is brought by Landlord or Tenant to enforce any other provision of this Lease, the prevailing party shall be entitled to an award of its costs and reasonable attorney's fees. Notwithstanding anything to the contrary, Tenant agrees to look solely to Landlord's interest in the Premises for the recovery of any judgment from Landlord, it being agreed that Landlord or its directors, officers or shareholders (if Landlord is a corporation), shall never be personally liable for any such judgment.

15.10 **Governing Law**. This Lease shall be governed by the laws of the State of Minnesota.

15.11 **Brokerage Commission**. Landlord and Tenant each warrants to the other that, in connection with this Lease, they have dealt with no broker, finder, or similar person. Landlord will indemnify, defend and hold harmless Tenant against any claim made by any broker or other agent or for a commission or fee based on acts or agreements of Seller. Tenant will indemnify, defend and hold harmless Landlord against any claim made by any agent or broker for a commission or fee based on acts or agreements of Tenant.

15.12 **Counterparts; Delivery by E-mail**. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one Lease. Delivery of an executed copy of this Lease by e-mail (in "pdf" format) shall be deemed delivery of the executed original.

15.13 **Severability of Provisions**. If any term or provision of this Lease is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity or enforceability of the remainder of this Lease.

15.14 **Required Insurance: Business Interruption; and Personal Property**. Tenant acknowledges and agrees that this Lease does not provide Tenant any relief from its obligations to pay Rent in the event of an interruption of utilities, services and various other circumstances (regardless of cause), accordingly, Tenant covenants and agrees to procure and maintain, at its sole cost and expense, adequate and appropriate "business interruption" insurance with respect to its business risks and obligations related thereto. Tenant acknowledges and agrees that under the terms of Lease, it is responsible for any damage or destruction of its personal property, trade fixtures or other assets which it owns and accordingly, covenants and agrees to procure and maintain, at its sole cost and expense, adequate and appropriate property insurance.

[Signature page follows.]



IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: _____
Name: _____
Its: _____

JAPS-OLSON COMPANY

By: _____
Name: _____
Its: _____



**EXHIBIT A**

**REAL PROPERTY**

Tract D, Registered Land Survey No. 1674, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

Being registered land as is evidenced by Certificate of No. 830574.

**EXHIBIT B**

**DEPICTION OF JOINT USE AREA**

[See attached.]



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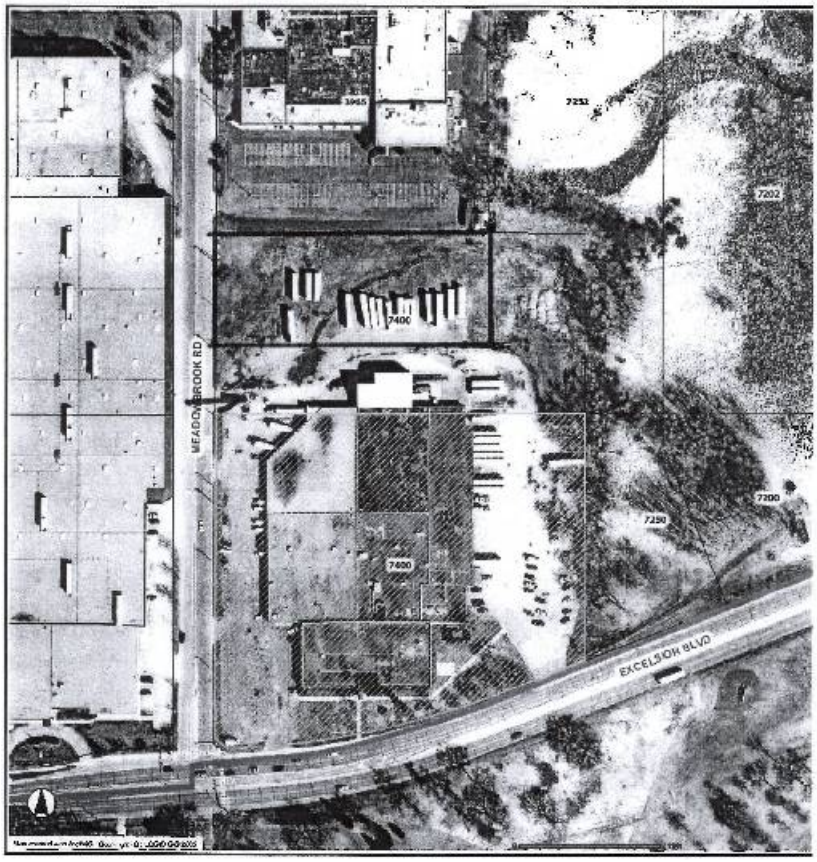


**EXHIBIT A**



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**EXHIBIT C**

**LEASE WITH THE CITY OF ST. LOUIS PARK**

**[See attached.]**



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CONTRACT NO.
32-09

**LEASE AGREEMENT**

CITY OF ST. LOUIS PARK

THIS LEASE (the "Lease"), made as of this 29h day of April, 2009, by and between APPLIANCE RECYCLING CENTERS OF AMERICA INC., a Minnesota corporation, ("ARCA") as Lesser, and the CITY OF ST. LOUIS PARK, a Minnesota municipal corporation (the "City", as Lessee.

WHEREAS, ARCA is the owner of the real property located at 7400 Excelsior Boulevard, St. Louis Park, Hennepin County, Minnesota; and

WHEREAS, the City desires to lease from ARCA approximately 175' x 400' on the northwest corner of 7400 Excelsior Boulevard as shown on Exhibit "A" ("Subject Property") for the purpose of material and equipment storage, and ARCA desires to lease the Subject Property to the City, under the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Demise of Subject Property. Subject to and upon the terms, conditions, covenants and undertakings hereinafter set forth, ARCA hereby leases to the City, and the City hereby leases from ARCA, the Subject Property.

2. Lease Term. The term of this Lease shall commence on May 1, 2009 and continue thereafter on a month to month basis until the City terminates the Lease by giving ARCA thirty (30) days' advance written notice. In the event ARCA wants to terminate the lease for whatever reason, ARCA will provide (30) days' advance written notice and will require the lessee to vacate the premises within 30 days after receipt of the notice. Lessee needs to provide ARCA proof of insurance for the materials being stored.

3. Rent. The rent for the term at this Lease shall be One Thousand and No/100 ($1,000.00) Dollars per month, payable on the first day of each month commencing May 1, 2009 and continuing on the first day of each month thereafter. If the City determines that it will need to use the Subject Property during the winter of 2009—2010, the monthly rent will be negotiated at that time.

4. Site Improvements. Prior to the Lease commencement date, City will, at its expense, grade the Subject Property to meet its needs to store material and

equipment and, if necessary, place temporary structures on the Subject Property. When the Lease terminates, the City shall remove all material, equipment or temporary structures and leave the property in a clean and sanitary condition.

5. Use. The City may use the Subject Property to store material and equipment and access the site from existing driveways. No other use will be permitted without the written consent of ARCA.



6. Maintenance and Upkeep. The City is responsible, at its expense, for maintenance and upkeep of the Subject Property.

7. Quiet Enjoyment. ARCA covenants that upon the City paying the rent reserved herein, and performing all conditions and covenants set forth in this Lease, the City shall and may peaceably have, hold, and enjoy the Subject Property for the term of this Lease. The City covenants that upon expiration of this Lease, it shall give ARCA peaceable possession of the Subject Property.

8. Indemnification. The City will indemnify and hold ARCA harmless from any and all claims arising out of the City's use of the Subject Property, except to the extent caused by the negligence or misconduct of ARCA or its employees, contractors or invitees.

9. Default. In the event that the City shall fail, neglect or refuse to comply with any term set forth herein, ARCA may, at ARCA's option, at any time after such default, terminate this Lease and take possession of the Subject Property.

10. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the City and ARCA and their respective successors and assigns.

11. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written amendment authorized and executed by the City and ARCA.

13. Notices and Demands. All notices and requests which may be given or which are required to be hereunder shall be sent by United States Mail, postage prepaid, certified with return receipt requested as follows:

To ARCA:
Marlin Hunt
7400 Excelsior Boulevard
St. Louis Park, Minnesota 55416
952-715-0298

To City:
John Altepeter
City of St. Louis Park
5005 Minnetonka Boulevard
St. Louis Park, Minnesota 55416
952-924-2176



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

**CITY OF ST. LOUIS PARK**

By: /s/ Thomas K. Harmening
Thomas K. Harmening, City Manager

**APPLIANCE RECYCLING CENTERS OF AMERICA INC.**

By: /s/ Marilin Hurt
Its: Center Mgr (ARCA)

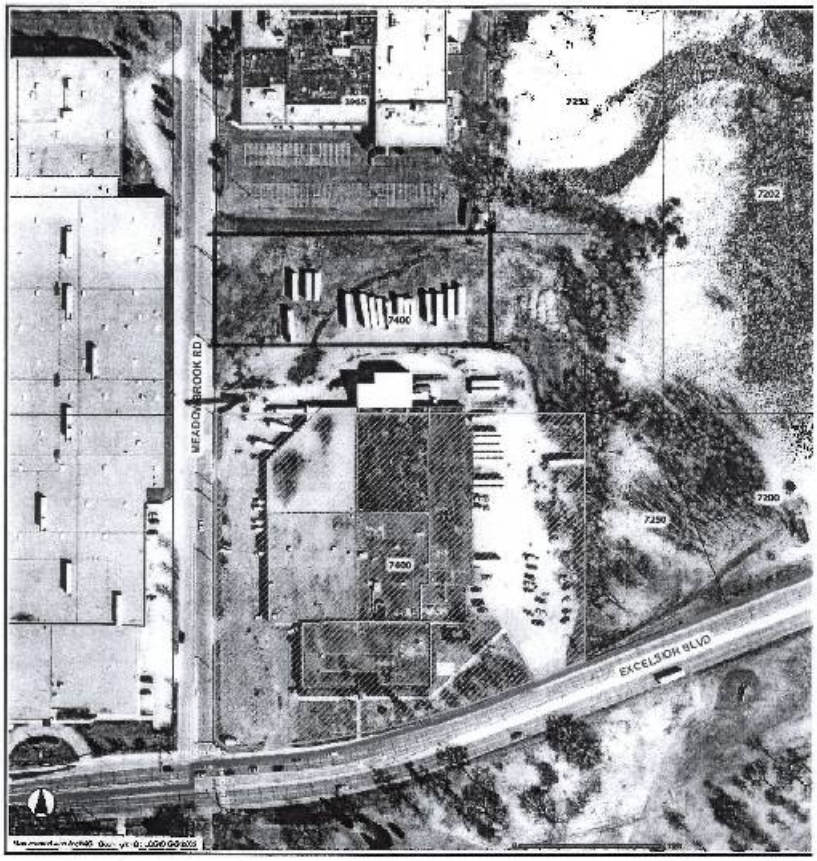


**EXHIBIT A**



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**EXHIBIT D**

**SELLER'S DISCLOSURE SCHEDULE**

Potential claims with respect to the Real Property which have been threatened or alleged by RKL Landholding, LLC or Emad V. Abed relating to Purchase Agreements executed (or negotiated) and subsequently canceled between either of them and the Seller (with reference dates of March 14, 2006 and December 29, 2006); provided as of the Effective Date, no action has been commenced and to the best of Seller's knowledge, none are contemplated or imminent. Provided further, Seller believes that any such claim would have no merit and that the referenced Purchase Agreements have been terminated in accordance with their terms and applicable law and are of no further force and effect.

**LEASE**

THIS LEASE (this "**Lease**") is made and entered into this 25th day of September, 2009, by and between Japs-Olson Company, a Delaware corporation ("**Landlord**"), and Appliance Recycling Centers of America, Inc., a Minnesota corporation ("**Tenant**").

**RECITALS**

A. Landlord and Tenant are parties to that certain Purchase Agreement dated August 11, 2009 (the "**Purchase Agreement**") with respect to certain real property located at 7400 Excelsior Boulevard in the City of St. Louis Park, Hennepin County, Minnesota and consisting of the parcels of land that are identified on Exhibit A attached hereto and incorporated herein containing approximately 10.18 acres, together with all the appurtenant rights, mineral rights, privileges, and easements belonging thereto (the "**Land**"), and the approximately 126,458 square foot building (according to the survey provided by Tenant pursuant to the Purchase Agreement referenced below) and other improvements located thereon (the "**Improvements**"). The Land and the Improvements are herein sometimes collectively referred to as the as the "**Real Property**".

B. Upon Closing (as defined in the Purchase Agreement), Tenant desires to lease from Landlord the Real Property (subject to the provisions of Section 1.4 below, the "**Premises**") in order to conduct its business operations as set forth in Section 4.1 below).

C. Landlord is willing to enter into this Lease and allow Tenant to conduct such business, on the terms, conditions and covenants hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties agree as follows:

**ARTICLE 1**
**PREMISES; AS IS; NET LEASE**

1.1 **Grant; Premises**. In consideration of the full and timely performance by Tenant of all the terms, conditions and covenants of this Lease, including timely payment of all Rent (as defined herein, including Base Rent and additional rent due hereunder), Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Premises.

1.2 **Site Leased "As Is"**. Tenant takes the Premises in their present state and condition, "as is" and without any obligation on the part of Landlord to make any alterations, changes, improvements, repairs or replacements of any kind whatsoever. Prior to the date hereof, Tenant has occupied the Premises as fee owner of the Real Property; accordingly, Tenant shall take possession of the Premises under the terms of this Lease with an acknowledgment that the Premises, including all fixtures, equipment and personal property thereon, are in good repair and working order, and in clean and tenantable condition, as of the Effective Date. Landlord makes no covenants, representations or warranties as to the age, quantity or condition of the Premises, their value, their fitness for any specific purpose, or the title thereto, and no such covenants, representations or warranties shall be implied.



1.3 **Premises**. Landlord may utilize that portion of the Premises shown on Exhibit B attached hereto (the "**Joint Use Area**") for parking, storage or other purposes (including without limitation, leasing to third parties), provided the same does not materially and adversely affect Tenant's business operations. Provided such joint use shall not impose any costs, expenses, obligations or liabilities on Landlord (except as expressly set forth in Sections 4.5 and 6.2 below).

1.4 **Covenant for Quiet Enjoyment**. Landlord warrants that it has full right to make this Lease, and that during the full term of this Lease, or any extension thereof, so long as Tenant shall not be in default of any of its obligations hereunder, and so long as Tenant shall fully keep and perform the covenants and obligations of this Lease, and pay promptly when due the rentals and other payments herein covenanted to be made, Tenant shall have and enjoy quiet and peaceable possession of the Property. Tenant's right of quiet enjoyment shall be subject to Landlord's right to construct wetlands and/or drainage ponds upon the Property required by any applicable governmental unit as part of Landlord's development of its adjoining property, provided that such construction does not interfere with or restrict Tenant's occupancy during the term of the Lease. Tenant agrees to subordinate its lease rights to any such wetland or drainage ponds construction consistent with the foregoing.

1.5 **Net Lease**. It is the intention and purpose of the parties that this Lease shall be an entirely "net lease" to the Landlord, with no exceptions and with no maintenance obligations of Landlord. Accordingly, all costs or expenses of whatever character, nature or kind, general and special, ordinary and extraordinary, foreseen or unforeseen, that may be necessary with respect to operation of the said Premises, and Tenant's authorized use thereof during the entire term of this Lease, shall be paid by Tenant. All provisions of this Lease relating to costs and expenses are to be construed in light of such intention and purpose to construe this Lease as a "net lease."

**ARTICLE 2**
**TERM**

2.1 **Term; Lease Year**. Tenant shall have and hold the Premises for a term (as the same may be extended or terminated prior to the expiration thereof, the "**Term**") of approximately five (5) years commencing on the 25th day of September, 2009 (the "**Commencement Date**") and extending until and including the last day of the month in which the fifth anniversary of the Commencement Date occurs (the "**Expiration Date**"). Each twelve (12) month period commencing on January 1 and concluding on December 31 is called a "**Lease Year**." The initial calendar year of the term, 2009, shall be a partial Lease Year, as will the final calendar year of the Lease. Tenant shall have the right to extend the initial Term pursuant to Section 2.2 below.

2.2 **Renewal Option**. Subject to the terms and conditions set forth herein, Tenant shall have the option (the "**Renewal Option**") to extend the Term of this Lease for an additional one (1) year period (the "**Renewal Term**"), which Renewal Term shall commence as of the Expiration Date and end on the anniversary of the Expiration Date (the "**Renewal Expiration Date**"), provided that this Lease shall not have been previously terminated and that Tenant shall not be in default in the observance or performance of any of the terms, covenants or conditions of this Lease and shall not have cured during any applicable notice period (i) on the date Tenant



gives Landlord written notice (the "**Renewal Notice**") of Tenant's election to exercise the Renewal Option, and (ii) on the Expiration Date. The Renewal Option shall be exercised with respect to the entire Premises only and shall be exercisable by Tenant's delivery of the Renewal Notice to Landlord at least one (1) year prior to the Expiration Date.

2.3 **Renewal Option Terms**. If Tenant exercises the Renewal Option in accordance with the terms set forth above, the Renewal Term shall be upon the same terms, covenants and conditions as those contained in this Lease, except that (i) the monthly Base Rent (as defined in Section 3.1 below) shall be increased to Forty-Seven Thousand Four Hundred Twenty-Two and No/ 100 Dollars ($47,422.00); (ii) the provisions of Section 2.2 above relative to Tenant's right to extend the Term of this Lease shall not be applicable during the Renewal Term; and (iii) the Expiration Date shall, for the purposes of the Lease, be defined as the Renewal Expiration Date.

**ARTICLE 3**

**BASE RENT; ADDITIONAL RENT; SURRENDER; GUARANTY**

3.1 **Base Rent**. The base rent payable during the term of this Lease shall be payable in monthly installments of Forty-Two Thousand One Hundred Fifty-Three and No/100 Dollars ($42,153.00) per month ("**Base Rent**") for each month of the Term. Base Rent for any partial Rent shall be prorated.

3.2 **Holding Over**. Should Tenant continue to occupy the Premises after the expiration or termination of this Lease, whether with or without the consent of Landlord, such tenancy shall be on a month-to-month basis, and Base Rent shall be increased to 150% of the Base Rent.

3.3 **Additional Rent**. In addition to Base Rent, Tenant shall pay additional rent (as set forth in Article 5 below). Base Rent, additional rent and any other amounts due Landlord hereunder are sometimes collectively referred to as "**Rent**".

3.4 **Payment of Rent; Late Charge**. Tenant shall pay Base Rent, together with any monthly additional rent payments due hereunder, to Landlord, without the necessity for demand, and without setoff or deduction, in advance on the first business day of each and every month during the term hereof at Landlord's address set forth in Article 13 of this Lease, or such other place as Landlord may from time to time designate in writing. If any Rent is not received within five (5) days of the date which it is due, a "**Late Charge**" equal to five percent (5%) of the amount due shall be assessed and be immediately due and payable; provided once a Late Charge has been assessed, during the next twelve months, any subsequent Rent payments which are not made on or before the due date shall incur a Late Charge as of the day immediately following the due date (that is, the five (5) day grace period shall be available only once in any twelve month period). The Late Charge shall be in addition to, and not in lieu of, '**Default Interest**". Default Interest shall begin to accrue at the rate of 12% per annum on all outstanding and delinquent Rent as of the date such Rent becomes delinquent, and shall continue to accrue until paid in full. Late Charges and Default Interest shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner, but shall instead be additional remedies available to Landlord together with all of Landlord's other rights and remedies hereunder, at law or in equity.



3.5 **Tenant to Surrender Premises in Good Condition**. Upon the expiration or termination of the term of this Lease, Tenant shall at its own expense: (a) remove from the Premises all moveable furnishings and other items of personal property and equipment, (b) repair any damage or injury, and make any necessary replacements, caused or necessitated by such removal; (c) remove, in compliance with law, any "hazardous substances" as defined in Section 14.1, that may be present in, on or under the Premises; (d) remove all alterations made by Tenant and not consented to by Landlord; and (e) quit and deliver up the Premises (including all parking areas located on the Land) to Landlord, peaceably and quietly, in as good order, condition and repair as the same were on the date this Lease commenced (that is, in their "AS-IS" condition as of the Effective Date), reasonable wear and tear and casualty excepted; provided Tenant shall have no obligation to repair or restore any portion of the Real Estate associated with Landlord's wetland and drainage ponds construction or improvements associated therewith.

**ARTICLE 4**
**USE; COMPLIANCE WITH LAWS**

4.1 **Permitted Use**. Subject to all the terms and conditions of this Lease, Tenant shall use and occupy the Premises only as a shall be used and occupied by Tenant for the sole business purpose of continuing to conduct its business operations in the same general manner it is as of the Effective date (i.e., as a retail and recycling facility for home appliances, warehousing of inventory and related general office use). Tenant shall not use the Property for any other purposes without the prior written consent of the Landlord, and only if such use at all times is in material compliance with all applicable laws, ordinances and government regulations. Tenant shall not in any manner deface or injure the Premises or any part thereof. Tenant shall not do anything or permit anything to be done upon the Premises which would constitute a public or private nuisance or waste, or would tend unreasonably to disturb occupants of neighboring properties, or would cause structural injury to the Improvements or cause the value or usefulness of the Premises or any part thereof to diminish in any material respect. Tenant shall conduct its business in a reputable manner as a quality establishment.

4.2 **Compliance with Laws**. Tenant shall not use or occupy the Premises or permit the Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto (including, but not limited to, "environmental laws" described in Article 14 below) or in a manner which would violate any certificate of occupancy affecting the same, or for illegal or immoral purposes. Tenant shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exemptions and nonconforming uses), privileges, franchises and concessions which are now applicable to the Premises, or which have been granted to or contracted for by Tenant or Landlord in connection with any existing or presently contemplated use of the Premises.

4.3 **Permits and Approvals**. Tenant shall, at its sole cost and expense, procure any and all necessary permits, certificates, licenses or other authorizations required for its use of the Premises as set forth in Section 4.1 above. If the owner of the Premises is required by law to join in any such application, Landlord shall reasonably cooperate with Tenant in connection with such application, but at Tenant's cost.



4.4 **Rules and Regulations**. Tenant shall comply with, and shall cause Tenant's employees, contractors to comply with, any reasonable rules and regulations as may reasonably be adopted by Landlord from time to time and of which Landlord shall notify Tenant in writing; none of which shall materially interfere with Tenant's business operations or cause Tenant to incur material and unnecessary additional expenses.

4.5 **Parking Areas**. Landlord and Tenant agree that Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the parking areas of the Premises and Tenant agrees to so advise its employees, visitors or invitees who may use such parking areas. Parking areas shall be utilized in a reasonable manner to allow for the efficient joint use of the Joint Use Area as contemplated by Section 1.4 above. All responsibility for damage and theft to vehicles and their contents is assumed by Tenant or Tenant's partners, trustees, officers, directors, shareholders, members, beneficiaries, licensees, invitees, or any assignees, subtenants or assignees' or subtenants' agents, employees, contractors, servants, guests, or independent contractors (collectively, "**Tenant Parties"**). Tenant shall repair or cause to be repaired, at Tenant's sole cost and expense, any and all damage to any portion of the Property caused by the use by Tenant Parties of the driveway or parking areas within the Property. Landlord shall not be liable to Tenant by reason of any moratorium, initiative, referendum, statute, regulation or other governmental action which could in any manner prevent or limit the parking rights of Tenant hereunder. Any governmental charges or surcharges or other monetary obligations imposed relative to parking rights with respect to the Building shall be considered assessments and shall be payable by Tenant as set forth in Section 5.1. Notwithstanding the foregoing, Landlord shall be liable for any damage caused by its negligent use of the Joint Use Area.

**ARTICLE 5**
**ADDITIONAL RENT; TAXES; UTILITIES**

5.1 **Tenant to Pay Taxes and Assessments**. As further consideration for this Lease, Tenant shall pay all real estate taxes, charges and assessments of every kind and nature which shall be due and payable during the Term, including all installments of special assessments now or hereafter levied and interest thereon. Provided, however, that regardless of the payment dates for real estate taxes due and payable in 2009 and in the final Lease Year, and any installments of special assessments and interest thereon payable therewith, such taxes and assessments shall be prorated between Landlord and Tenant on a daily basis to reflect the term of this Lease and any extension or renewal thereof, and any holdover tenancy. The parties agree that any special assessments assessed against the Premises after the Commencement Date shall be paid in installments spread over the longest period of time permitted under law. Notwithstanding anything to the contrary, in the event that the Premises are assessed for an

improvement requested by Tenant or required solely because of Tenant's use of the Property, Tenant shall be solely liable for such assessment and shall pay such assessment in full prior to the Expiration Date (or, if Tenant has exercised the Renewal Option, the Renewal Expiration Date).

Without limiting the provisions of Section 5.5 below, or being limited thereby, Tenant shall pay to Landlord, as additional rent, on a monthly basis along with each payment of Base Rent, a sum equal to one-twelfth (1/12th) of the total amount of real estate taxes and installments of special assessments and other assessment charges and interest ("**Taxes**") due and payable during the



Lease Year or partial Lease Year in lieu of Tenant's direct payment of taxes (provided, if a catch up payment is needed to ensure that the full amount of funds necessary to pay the Taxes for the current Lease Year is available to Landlord prior to the due date for such tax payment, Tenant shall promptly make such payment to Landlord within thirty (30) days of such request). In the event such amount is not known, Tenant shall pay one-twelfth (1/12th) of the product of the most recently issued tax bill multiplied by 1.03, and when the current tax amount becomes known, Tenant shall immediately pay to Landlord any shortfall between monthly installments that would have been due were the tax bill known, and those actually paid. In the event Tenant's monthly installments towards the tax bill are greater than that actually owed based on the tax bill, Landlord shall credit the total amount of the overpayment to the next installment or installments of Rent coming due. Provided that Tenant has paid all monthly tax installments to Landlord on a timely basis, Landlord will cause the appropriate payment of Taxes to be made before penalties or interest are assessed or accrue.

5.2 **Time of Payment of Taxes and Receipts**. Subject to the provisions of Section 5.1, Tenant shall be responsible for all Taxes.

5.3 **Tenant to Pay for Utilities**. Tenant shall fully and promptly pay when due all utility charges for all services furnished to or upon the Premises during the full term of this Lease and any holdover tenancy, including, without limitation, water, gas, electricity, sewage disposal, and telephone tolls. Under no circumstances shall an interruption of any or all of said utilities constitute a constructive eviction or be deemed a default by Landlord under this Lease.

5.4 **Definition of Rent**. All payments to be made by Tenant under the Lease, however denominated, shall be considered, and are payable, as Rent.

5.5 **Compliance with Mortgage**. Notwithstanding anything in this Lease to the contrary, Tenant agrees to make monthly escrow payments to, or for the benefit of, any mortgagee or the servicer of such mortgagee (collectively, "**Lenders**") for the insurance, real estate taxes (including any installments of special assessments and other assessment charges and interest), or other expenses, to the extent that such payments are required pursuant to any mortgage of record.

5.6 **Escrow for Insurance**. Without limiting the foregoing, or being limited thereby, Tenant shall pay to Landlord, as additional rent, on a monthly basis along with each payment of Base Rent, a sum equal to one-twelfth (1/12th) of the total amount of insurance premiums for the insurance policy referenced in Section 6.4 below for coverage applicable during the Term (provided, if a catch up payment is needed to ensure that the full amount of funds necessary to pay the insurance policy premium for the current Lease Year is available to Landlord prior to the due date for such policy premium payment, Tenant shall promptly make such payment to Landlord upon request).

## ARTICLE 6
## MAINTENANCE; INDEMNITY; INSURANCE

6.1 **Maintenance**. During the Term, Tenant shall at all times keep the entire Premises, including all Improvements and components thereof, in good and safe condition at its sole cost and expense. Such obligations shall include without limitation, the maintenance of the



structural integrity of the exterior walls, roof and foundation of the Improvements and all other components of the Premises (whether structural or non-structural), and all fixtures and equipment thereon or therein, including without limitation, the HVAC system, all interior and exterior windows, boilers, and other equipment and fixtures, and each and every walkway, passageway and parking areas appurtenant to the Premises, in good repair and safe and working condition, and in full compliance with all laws, ordinances and regulations then in force, making whatever replacement may be necessary under the circumstances. Tenant's obligations under this Section includes, but is not limited to, all routine maintenance for all portions of the Premises, including the painting of all surfaces, clearance of snow, landscaping, etc., as well as repairing (but not resurfacing; provided that while Tenant shall have no affirmative obligation to resurface the parking areas, nor shall Landlord) of the parking areas (including without limitation the Joint Use Area); all such maintenance (including maintenance of the Joint Use Area) shall be without contribution from Landlord.

6.2 **Waiver of Liability**. Landlord shall not be liable to Tenant, or Tenant's agents, employees, customers, or invitees, for injury, death or property damage occurring in, on or about the Premises. Except for Landlord's negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and any Lender, Landlord's partners, trustees, officers, directors, shareholders, members, employees, beneficiaries, heirs and assigns (collectively, the "**Landlord Parties**") from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities arising out of, directly or indirectly, in whole or in part involving, or in connection with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, Tenant Parties, and out of any default or breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord or any Landlord Party) litigated and/or reduced to judgment. In case any action or proceeding be brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. Tenant's indemnity obligations under this Section shall survive the expiration or earlier termination of the Lease. Landlord shall not be liable for, and Tenant hereby waives and releases Landlord from, injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defect of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom.

6.3 **General Liability and Related Insurance**. During the entire term of this Lease and any extensions or renewals thereof, and any holdover tenancy Tenant shall obtain and keep in full force and effect, at its sole cost and expense, a policy of comprehensive public liability



insurance with respect to the Premises and the business of Tenant thereon, written on an "occurrence", and not a "claims made" basis, by a responsible casualty or indemnity company authorized to do business in the Property Jurisdiction, under which policy Landlord and Lenders, if any, shall be named as additional insureds, and with not less than $2,000,000 single coverage limits for each occurrence of injury or property damage. Prior to the Commencement Date, Tenant shall furnish Landlord with said policy or with a certificate that said insurance is in effect, which shall state that Landlord will be notified in writing thirty (30) days prior to any cancellation, material change or renewal of

said insurance. If the Premises has a boiler or steam vessel, Tenant shall also place and carry boiler insurance with such a casualty or indemnity company in an amount of coverage not less than $1,000,000 per accident, and Tenant shall comply fully with all applicable laws, ordinances, and regulations with reference to the operation and inspection of such boiler and steam vessel. Tenant shall also maintain such other insurance coverage as Tenant may reasonably conclude are prudent or advisable based on the use to which Tenant is putting the Premises. Tenant shall also maintain such other insurance coverages, in form and amounts acceptable to Lenders, as such Lenders may reasonably require under any mortgage encumbering the Premises, now or in the future.

6.4 **Casualty Insurance**. At Tenant's sole cost and expense as provided for in Section 5.7, Landlord will maintain property insurance on the Improvements (exclusive of Tenant's personal property interests that may be located therein) on an "occurrence" basis and not a "claims made" basis, under an "all risk" form of fire insurance policy, with full extended coverage endorsements added, and in accordance with the requirements of any mortgage encumbering the Real Property from time to time.

6.5 **Worker's Compensation Insurance**. Tenant shall maintain at all times any worker's compensation insurance coverage as may be required by law and, upon request, shall present a certificate of such insurance to Landlord.

6.6 **Loss of Income Insurance; Business Interruption Insurance**. Tenant shall maintain loss-of-income and extra-expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to or use of the Premises as a result of such perils.

6.7 **Form of Policies**. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (a) (except Workers' Compensation) name Landlord, and any other party it reasonably so specifies, as an additional insured; (b) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations to indemnify Landlord under this Lease; (c) be issued by an insurance company having a rating of not less than A-1X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the Property Jurisdiction; (d) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (e) provide that said insurance shall not be canceled, expire or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any Lender and any landlord of an underlying ground or master lease; and (f) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease



commencement date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord as additional rent ten (10) days after delivery to Tenant of bills therefor.

6.8 **Subrogation of Claims**. Landlord and Tenant hereby waive any and all claims and causes of action against each other based on the destruction of or damage to the Premises or the contents thereof as a result of any cause that is to be insured pursuant to this Article 5, and agree that their respective insurers shall be bound by this waiver, even if such loss or damage was caused by the fault or negligence of the other party or anyone for whom the other party may be responsible.

6.9 **Damage Not to Terminate Lease**. Except as set forth below, should any building, structure or other improvement upon the Premises be damaged or destroyed by any cause, such damage or destruction shall not effect a cancellation of this Lease, effect any reduction or abatement of rent, or release Tenant from liability for the full performance of all of the covenants of this Lease, past, present or future, except as expressly provided for herein.

6.10 **Rebuilding after Damage**. In case the Improvements shall be materially damaged or destroyed by fire or other casualty such that Tenant is unable to make reasonable use of the Premises, Landlord may elect to repair, restore or rebuild the Improvements by notice to Tenant given with twenty (20) days of the casualty event, and shall complete the same as rapidly as possible, but in any event not later than ninety (90) days after such damage or destruction. In connection with such repair, Landlord shall not be required to expend any sums in excess of insurance proceeds actually received by Landlord. In the event the Improvements are so materially damaged and destroyed and Landlord elects not to repair, restore or rebuild the Improvements and as a result Tenant is not able to make reasonable use of the Premises, Tenant may terminate this Lease as of the later of the date of the casualty or the date Tenant no longer makes productive use of the Premises.

## ARTICLE 7
## ALTERATIONS; CONSTRUCTION STANDARDS

7.1 **Alterations**. Tenant may, at its sole cost and expense, expand, alter, remodel or enlarge any now or hereafter existing improvement, provided that it has first secured the written consent of Landlord to the plans and specifications therefor and further provided that any such work shall be in accordance with the provisions of Section 7.2. Any leasehold improvements made by Tenant, and any fixtures (except trade fixtures) installed on the Premises by Tenant, shall be the property of Landlord from and after the time of their construction or installation; provided, however, that Landlord may require that any or all leasehold improvements be removed by the expiration or earlier termination of this Lease, notwithstanding that the installation of such leasehold improvements may have been consented to by Landlord. Every alteration shall comply with all building codes and other applicable regulations. In no event shall Landlord's approval of any alteration serve as a representation or warranty by Landlord regarding the fitness or adequacy of such leasehold improvement, including, without limitation, any warranty that such improvement complies with any code or regulation.



7.2 **Construction Standards**. Any such work, and any rebuilding and restoration under Article 5 or 9 with a cost in excess of $25,000 for any single improvement, or $50,000 annually, shall be constructed and installed according to plans and specifications prepared by Tenant's architect or agent, and approved in writing by Landlord. In all of the foregoing construction and installation described in the preceding sentence whether or not approved by Landlord, Tenant shall be bound by and do all of the following:

(a) Complete said construction and installation as rapidly as practical and pay for all labor performed and materials furnished, when due and payable;

(b) Keep the Premises free and clear of all liens for labor performed and materials furnished, and defend, at its sole cost and expense, each and every lien asserted or filed against the Premises or any part thereof, and pay each and every judgment made or given against said Premises, or any part thereof, on account of any such lien;

(c) Indemnify and save Landlord harmless from and against any and every claim, demand, action, cause of action, or charge, including reasonable attorneys' fees incurred by Landlord, arising out of or connected with or alleged to arise out of or to be connected with any act or omission of Tenant, or any agent, employee, contractor or sub-contractor in or about the Premises, or connected with the assertion or filing of any lien against said Premises;

(d) Procure, or cause its general contractor to procure, before entering onto the Premises, and maintain in full force until all work is fully completed, a policy of builder's risk insurance covering the completed value of any work to be performed, and a policy of indemnity insurance written by a casualty or indemnity company authorized to do business in the Property Jurisdiction, indemnifying Landlord against all liability for injury arising out of, or in any way connected with, or

alleged to arise out of or in any way be connected with any said work, with not less than $1,000,000 single coverage limits for each occurrence of injury or property damage. In connection with all said work on the Premises, Tenant or its contractors shall procure and maintain in force such workers' compensation or other insurance as may be required by the laws of the Property Jurisdiction, fully protecting Landlord. Landlord and Landlord's mortgagee shall be named as an additional insured under said policies, and said policies, or certificates evidencing that such insurance is in effect, shall be delivered by Tenant to Landlord prior to any contractor's commencement of work on the Premises. Said policies or certificates shall state that Landlord will be notified in writing thirty (30) days prior to any cancellation, material change or renewal of any such insurance;

7.3 **Landlord's Consent**. Landlord shall not unreasonably withhold or delay its consent to a proposed alteration, or the plans and specifications therefor, if no substantial change in use of the Premises is contemplated and the value of the Premises is likely to be enhanced thereby.

7.4 **Landlord's Oversight of Improvements**. Landlord shall have the right to inspect any leasehold improvements as they are being constructed or once completed. In no event shall Landlord's inspection or oversight of a leasehold improvement serve as a representation or warranty by Landlord regarding the fitness or adequacy of such leasehold



improvement, including, without limitation, any warranty that such improvement complies with any code or regulation.

## ARTICLE 8
## ASSIGNMENT AND SUBLETTING; ENCUMBRANCES

8.1 **No Assignment of Tenant's Interest.** Tenant shall not mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, this Lease or any interest hereunder. Without the prior written consent of Landlord, Tenant may not assign, sublet, or otherwise transfer its interest in the Premises or this Lease by operation of law or otherwise, or permit the use of the Premises by any persons other than Tenant and its employees (any of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**").

Any Transfer made without Landlord's prior written consent shall (which may be conditioned or withheld in its sole but reasonable business judgment and without limiting the foregoing, subject to its Lender's approval and consent), at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a Default by Tenant under this Lease. Notwithstanding anything to the contrary, no Transfer, whether or not consented to by Landlord shall release the named Tenant from its obligations hereunder. Landlord reserves the right to direct the Tenant to terminate the Lease Agreement dated April 29, 2009 between it and the City of St. Louis Park with respect to the Joint Use Area (the "**Joint Use Area Lease**") in accordance with the termination provisions set forth therein. Until such termination Tenant shall be entitled to the rent due thereunder and such Joint Use Area Lease shall be considered a valid sublease, subject to the terms of this Lease. After such termination, Landlord may choose to enter into a generally similar agreement with the City of St. Louis Park or any other third party, or otherwise utilize or lease the Joint Use Area as provided for in Section 1.3 above, in its sole and absolute discretion and Landlord shall be entitled to any and all rents resulting therefrom.

8.2 **Landlord May Assign**. Landlord's right to assign this Lease or sell or convey the Premises, subject to this Lease, are and shall remain unqualified. Upon any said assignment, sale or conveyance and provided the Landlord's purchaser assumes all obligations hereunder, Landlord shall thereupon be entirely freed of all obligations of the Landlord hereunder accruing thereafter and shall not be subject to any liability resulting from any act or omission or event occurring after said assignment, sale or conveyance.

8.3 **Tenant to Place No Mortgage**. Tenant shall not at any time during the term of this Lease place, suffer or allow any mortgage or similar security instrument upon its leasehold interest created hereby, even though Landlord's title is superior to said mortgage or instrument.

8.4 **Landlord May Place Mortgage**. Landlord shall have the unrestricted right at any time during the full term of this Lease to place any mortgage or similar security instrument upon the Landlord's interest in the Premises.

8.5 **Other Liens Prohibited**. Tenant shall not cause, suffer or acquiesce in the attachment of any other liens or encumbrances, including without limitation, any mechanic's or materialmen's liens, judgment liens, tax liens or liens for the cost of environmental remediation, to the Premises or the Landlord's or Tenant's interest therein.



## ARTICLE 9
## LANDLORD'S CURATIVE RIGHTS

9.1 **Landlord May Pay Taxes, Liens, etc**. In the event Tenant shall fail or neglect at the times and as herein provided to pay any tax, charge or assessment against the Premises, or to pay any lien or judgment against or affecting the Premises, or to provide and pay for any insurance, or to make any other payment which it is the obligation of Tenant to pay under the terms of this Lease, when due and payable, then in addition to all other remedies provided by this Lease or as now or hereafter provided by law, Landlord may, at its option, upon fifteen (15) days notice, pay any such judgment, tax, charge or assessment, or procure such insurance or pay the premiums therefor, and pay any other amount herein required to be paid by Tenant. The amount or amounts so paid and interest thereon as hereinafter provided shall thereupon be immediately due and payable by Tenant to Landlord, as additional Rent hereunder.

9.2 **Tenant May Contest Taxes, etc**. Tenant, however, shall not be required to pay, remove or discharge any tax, assessments, tax lien, or any materialmen's or mechanics' lien or judgment against the Premises so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings, and so long as Landlord's title and rights are not in any manner impaired or jeopardized thereby, provided Tenant deposits with Landlord sufficient funds or other security acceptable to Landlord to protect Landlord and the Premises. Pending any such legal proceedings, Landlord shall not pay, remove or discharge the tax, assessment, tax lien, materialmen's or mechanics' lien or judgment thereby contested unless its title or rights are being impaired or jeopardized by such delay or by such contest, in which event Landlord may use any such deposits to pay and discharge the same.

9.3 **Tenant to Furnish Receipts**. Upon demand by Landlord, Tenant shall promptly furnish to Landlord receipts or other satisfactory evidence showing that Tenant has fully and promptly paid and discharged all charges, premiums, or any other payments required to be made by Tenant under the terms of this Lease.

9.4 **Landlord's Right to Enter Premises**. Landlord, and its authorized agents or attorney, shall have the right, but not be obligated to enter the Premises: (a) at any time in an emergency, and (b) upon prior notice to Tenant at other reasonable times during normal business hours to inspect, and to make such repairs, improvements and/or alterations in and to the Premises as Landlord may reasonably deem necessary under the circumstances, and there shall be no abatement of rents or any liability on the part of Landlord for any inconvenience, annoyance, or injury to business resulting therefrom, provided that Landlord shall use its best efforts to minimize interference with Tenant's business and occupancy of the Premises.

## ARTICLE 10
## CONDEMNATION

10.1 **Condemnation**. In the event the Premises or any part thereof shall at any time during the term of this Lease be condemned and taken by right of eminent domain, the damages allowed therefor (whether or not the same be specifically apportioned by the Court or the Commissioner, or by any other body making or supervising such condemnation, and regardless of such apportionment, if any) shall be the sole property of Landlord, except that Tenant shall be entitled to any separate award for Tenant's relocation expenses as defined by applicable law;



provided in no event shall any award made to Tenant have the effect of diminishing the award made to Landlord.

10.2 **Rent after Condemnation; Termination**. If the whole of the Premises be condemned and taken, Rent hereunder shall cease from the time Tenant shall be deprived of possession of the Premises, and this Lease shall thereupon terminate and Landlord shall refund to Tenant any prepaid and unearned rent. If a part, but not the whole, of the Premises be so taken or condemned, then this Lease and all of its provisions shall continue in full force and effect as to the remainder of the Premises not so taken until the expiration of the full Term of this Lease, except that the Base Rent to be paid by Tenant may be adjusted as provided in Section 10.3, if the provisions of said paragraph are applicable; provided, nonetheless, that in the event of a partial condemnation and taking which materially and substantially interferes with the operation of Tenant's business, Tenant shall have the right, by notice given to Landlord not later than sixty (60) days following the date Tenant shall be deprived of possession of a portion of the Premises, to terminate this Lease, and upon the giving of such notice, this Lease shall terminate as of the date specified in the notice. Any Rents and other amounts and obligations due hereunder shall be apportioned as of said date.

10.3 **Abatement after Material Taking**. In the event of a partial condemnation and taking which materially and substantially interferes with the operation of Tenant's business, and Tenant does not terminate this Lease as herein provided, Base Rent for the Premises shall (in the absence of agreement by the parties) be equitably abated based on application to the appropriate District Court.

## ARTICLE 11
## DEFAULT; REMEDIES

11.1 **Non payment of Rent; Defaults**. The occurrence of any one or more of the following matters constitutes a default ("**Default**") by Tenant under this Lease:

(i) Any failure by Tenant to pay any Rent, including without limitation, base rent, and additional costs within five (5) days of when due under this Lease, or any part thereof.

(ii) Any violation or default by Tenant of any of the other covenants, agreements, stipulations or conditions herein, or in any other agreements between Landlord and Tenant relating to the Premises, and such violation or default shall continue for a period of thirty (30) days after written notice from Landlord of such violation or default.

(iii) Any commencement by, or against Tenant of any proceedings under a bankruptcy, receivership, insolvency or similar type of action.

(iv) Any commencement by, or against Tenant of any proceedings under a bankruptcy, receivership, insolvency or similar type of action provided that Tenant shall have sixty (60) days to cause the dismissal of any such involuntary proceeding.

(v) Abandonment or vacation of any substantial portion of the Premises by Tenant for a period of more than thirty (30) days.



(vi) Any Default otherwise defined hereunder.

11.2 **Landlord's Remedies Upon Default; Survival** Upon the occurrence of a Default, Landlord shall have the remedies set forth herein, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies set forth in the Lease or that are now or hereafter allowed by law. The terms of this Article 14 shall survive the termination of this Lease.

(i) If Tenant shall have vacated the Premises, Landlord may, to the extent permitted by law, without terminating this Lease, change the locks on the doors to the Premises and exclude Tenant therefrom.

(ii) Landlord may, upon notice to Tenant, terminate this Lease, or without notice to Tenant re-enter the Premises without terminating this Lease. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention is given to Tenant (all other demands and notices of forfeiture or other similar notices being hereby expressly waived by Tenant). Upon the service of any such notice of termination, the term of this Lease shall automatically terminate. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorneys' fees, and the value at the time of such termination of any rent reserved in this Lease for the remainder of the term over the then reasonable rental value of the Premises for the remainder of such term, discounted to present value at an assumed interest rate of five percent (5%), all of which amount shall be immediately due and payable from Tenant to Landlord.

(iii) Landlord may require that, upon any termination of the Lease or Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord, vacate the same and remove all effects therefrom except those that may not be removed under other provisions of this Lease. If Tenant fails to surrender possession and vacate as aforesaid, Landlord may forthwith re-enter the Premises and expel and remove Tenant and any other persons and property therefrom, without being deemed guilty of trespass, eviction, conversion or forcible entry and without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity. If Tenant does not remove its property from the Premises as required by this Lease, Landlord may either declare such property abandoned and dispose of the same in any reasonable manner without liability to Tenant or any other party, or remove any or all of such effects in any manner it shall choose and store the same without liability to Tenant. Tenant shall pay Landlord on demand any expenses incurred in such removal and storage for any length of time during which the same shall be in Landlord's possession or in storage.

(iv) Landlord can continue this Lease in full force and effect, and the Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect all Rent when due. After Tenant's right to possession is terminated Landlord may enter the Premises and may make such improvements, alterations and



repairs as it shall determine may be reasonably necessary to relet the Premises and Landlord may (but shall not be required to) relet the same or any part thereof upon such terms and conditions as Landlord in its sole discretion may deem advisable. Upon any reletting, all rentals received by Landlord from such reletting shall be applied as

follows: first, to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, reasonable attorneys' fees and costs of such improvements, alterations and repairs; and third, to the payment of Rent. In no event shall Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rental and other charges payable hereunder. If such rentals and other charges received from such reletting during any month are less than those to be paid during that month by Tenant, Tenant shall pay any such deficiency to Landlord upon demand. No act by Landlord allowed by this Section shall terminate this Lease unless Landlord has notified Tenant that Landlord elects to terminate this Lease.

11.3 **Landlord's Right to Cure**. In the event of any Default by Tenant beyond any applicable cure period by Tenant (provide no cure period shall apply in the event an emergency necessitates immediate action by Landlord), Landlord may immediately or at any time thereafter, without notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time by reason of such breach, is compelled to pay, or elects to pay, any sum of money or do any act which requires the payment of any sum of money or is compelled to incur any expense, including reasonable attorneys fees, in instituting or prosecuting any action or proceeding to enforce Landlord's rights hereunder, the sum or sums so paid by Landlord together all with interest thereon at the Default Rate, or the maximum permitted by law, from the date of payment thereof, shall be deemed to be Rent hereunder and shall be due from Tenant to Landlord on the first day of the month following the payment of such respective sums or expenses.

## ARTICLE 12
## SUBORDINATION; ESTOPPEL

12.1 **Subordination**. This Lease is subject and subordinate to the lien of any mortgage which may now or hereafter encumber the Premises. In confirmation of such subordination, Tenant shall, at Landlord's request from time to time, promptly execute any certificate or other document reasonably requested by the holder of the mortgage. Tenant agrees that in the event that any proceedings are brought for the foreclosure of any mortgage, Tenant shall immediately and automatically attorn to the purchaser at such foreclosure sale, as the landlord under this Lease, and Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure proceeding is prosecuted or completed. Notwithstanding anything to the contrary in this Article, so long as Tenant is not in default under this Lease, this Lease shall remain in full force and effect and the holder of the Mortgage and any purchaser at foreclosure sale thereof shall not disturb Tenant's rights and/or possession hereunder.

12.2 **Estoppel Certificates**. Tenant agrees at any time and from time to time, upon not less than ten (10) days prior written notice by Landlord, to execute, acknowledge and deliver to Landlord or a party designated by Landlord an estoppel statement in the form reasonably



requested by Landlord, and including such other matters relating to this Lease as may reasonably be requested. Any such statement delivered pursuant thereto may be relied upon by Landlord, any prospective purchaser of the Premises, any mortgagee or prospective mortgagee of the Premises or of Landlord's interest, or any prospective assignee of any such mortgagee.

## ARTICLE 13
## NOTICES

Any notice required or permitted hereunder shall be given by personal delivery upon an authorized representative of a party hereto; or if mailed by United States registered or certified mail return receipt requested, postage prepaid; or if transmitted by e-mail (in "pdf" format), with a copy sent by U.S. Mail as provided above; or if deposited cost paid with a nationally recognized, reputable, overnight courier, properly addressed as follows:

If to Landlord:
Japs-Olson Company
7500 Excelsior Boulevard
St. Louis Park, Minnesota 55426
Attention: Gary Petrangelo
e-mail address: gpetrang@japsolson.com

With a copy to:
Leonard, Street and Deinard
Professional Association
150 South Fifth Street; Suite 2300
Minneapolis, MN 55402
Attention: Morris Sherman
e-mail address: morris.sherman@leonard.com

If to Tenant:
Appliance Recycling Centers of America, Inc.
7400 Excelsior Boulevard
St. Louis Park, Minnesota 55426
Attention: Jack Cameron
e-mail address: jcameron@arcainc.com

With a copy to:
Mackall Crounse & Moore, PLC
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
Attention: William J. O'Brien
e-mail address: wjo@mcmlaw.com

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit, as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.



## ARTICLE 14
## ENVIRONMENTAL PROVISIONS

14.1 **Definitions**. For the purposes of this Lease, the term "**environmental laws**" means, collectively, all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. §9601, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §6901, et seq., and any other applicable federal, state or local law, regulation, ordinance or requirement

(including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, all as amended and modified from time to time. For purposes of this Lease, the term "**hazardous material**" means: (a) "hazardous substances" or "toxic substances" as those terms are defined by CERCLA, or any other environmental law, (b) "hazardous wastes," as that term is defined by RCRA; (c) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any environmental law; (d) crude oil or any fraction of it that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (e) any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. §2011, et seq., as amended to and after this date; (f) asbestos in any form or condition; and (g) polychlorinated biphenyls (PCBs) or substances or compounds containing PCBs.

14.2 **Tenant's Compliance With Law and Environmental Matters**. To the best of Tenant's actual knowledge, and except as disclosed in a Phase I Environmental Site Assessment Report dated August 22, 2002 issued by SECOR International Incorporated, the Premises contain no hazardous material, except in compliance with all environmental laws. Tenant represents, warrants and covenants to Landlord that during the term of this Lease Tenant will cause the Premises at all times to be and remain in compliance with all environmental laws except any portion of the Joint Use Area where Landlord or its employees, agents, contractors or invitees has caused any environmental issues. Tenant agrees to obtain and keep in effect all governmental permits and approvals relating to the use or operation of the Premises required by applicable environmental laws, and Tenant agrees to comply with the terms of the same.

14.3 **Tenant's Use of Hazardous Materials**. Tenant represents, warrants and covenants to Landlord that Tenant will not cause or permit to occur any generation, manufacture, storage, treatment, transportation, release, or disposal of hazardous material on, in, under, about or from the Premises except in quantities required for the conduct of Tenant's business and pursuant to handling practices permitted by applicable law (including, but not limited to, all environmental laws). If Tenant or any one of its employees, agents, contractors, suppliers or invitees causes, contributes to or aggravates any release or disposal of any hazardous material on, in, under or about the Premises, Tenant, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material to the reasonable satisfaction of Landlord and the appropriate governmental authorities.

14.4 **Notification and Cure**. Tenant represents, warrants and covenants to Landlord that Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance with



environmental laws. Tenant will, at its sole cost, promptly cure and have dismissed with prejudice any such actions. Tenant will keep the Premises free of any lien imposed pursuant to any environmental laws.

14.5 **Investigation by Landlord**. Landlord shall have the right at all reasonable times during normal business hours and from time to time to conduct environmental audits of the Premises, and Tenant will cooperate in the conduct of those audits. The audits will be conducted by a consultant of Landlord's choosing, and if any hazardous material (other than quantities handled as permitted by law) is detected or if a violation of any of Tenant's warranties, representations, or covenants contained in this Article is discovered, the fees and expenses of such consultant will be borne by Tenant and will be paid as additional rent under this Lease on demand by Landlord.

14.6 **Breach by Tenant**. If Tenant breaches or fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any hazardous material released or exacerbated by Tenant from the Premises. The costs of such hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court or administrative agency has ordered the cleanup, due and payable on Landlord's demand. Tenant hereby grants Landlord, its employees, agents and contractors, access to the Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, from the Premises, and nothing in this Lease will be construed as creating any such obligation.

14.7 **Indemnification**. Tenant represents, warrants and covenants to Landlord that Tenant shall indemnify, defend, and hold the Premises, Landlord, and all Landlord Parties free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against Landlord or any of them in connection with or arising from or out of: (a) any hazardous material on, in, under, or affecting all or any portion of the Premises that was caused by Tenant's occupancy of the Premises; (b) any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Article; (c) any violation or claim of violation by Tenant, its employees, agents, contractors, suppliers or invitees of any environmental law during the Term of this Lease; or (d) the imposition of any lien against the Premises for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material used and released by Tenant.

This indemnification is the continuing obligation of Tenant and shall survive termination of this Lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Landlord or any Landlord Party under CERCLA or any state equivalent or any similar law now existing or enacted after this date.



## ARTICLE 15
## MISCELLANEOUS

15.1 **Time is of Essence**. Whenever any payment is to be made under this Lease by Tenant at or within a specified time, or whenever any act is to be done under this Lease by either party at or within a stated time, time is of the essence.

15.2 **No Recording**. Neither party shall record this Lease without the prior written consent of the other.

15.3 **Captions**. The captions and headings herein are for convenience and reference only and do not limit or construe the provisions hereof.

15.4 **Severability**. If any term, condition, covenant, agreement or provision of this Lease, or the application thereof to any circumstance shall, to any extent, be held by a court of competent jurisdiction or by any authorized governmental authority to be invalid, void or unenforceable, the remainder of this Lease shall not be affected by such holding, and the remaining terms, conditions, covenants, agreements and provisions hereof shall continue in and be accorded full force and effect.

15.5 **Entire Agreement**. This Lease represents the entire agreement between the parties hereto with respect to the Premises, and there are no agreements, understandings or undertakings relating to said subject matter except as set forth herein, and all prior negotiations and writings between the parties and their representatives, attorneys, brokers and agents are superseded hereby and thereby.

15.6 **Modifications**. This Lease may not be amended, modified or supplemented except by a writing, executed by the party against whom such amendment, modification or supplement is sought to be enforced.

15.7 **No Continuing Waiver**. No waiver of any term, condition, covenant or remedy hereunder or delay in the enforcement of any remedy hereunder in any one

instance shall be deemed to be a waiver of any other term, condition, covenant or remedy in such instance or of such waived or delayed term, condition, covenant or remedy in any other instance.

15.8 **Binding**. All of the terms, conditions, covenants, agreements and provisions of this Lease shall be construed as covenants running with the land and shall inure to the benefit of and be binding upon the parties hereto and upon their respective personal representatives, heirs, successors and permitted assigns.

15.9 **Collection; Attorney's Fees**. In the event Tenant defaults in its obligations to pay Rent or any other sum due and payable hereunder, Landlord shall be entitled to reimbursement from Tenant for all of Landlord's costs of collection (including reasonable attorney's fees), regardless of whether or not a suit has been commenced. In the event any action is brought by Landlord or Tenant to enforce any other provision of this Lease, the prevailing party shall be entitled to an award of its costs and reasonable attorney's fees. Notwithstanding anything to the contrary, Tenant agrees to look solely to Landlord's interest in the Premises for the recovery of any judgment from Landlord, it being agreed that Landlord or its directors,



officers or shareholders (if Landlord is a corporation), shall never be personally liable for any such judgment.

15.10 **Governing Law**. This Lease shall be governed by the laws of the State of Minnesota.

15.11 **Brokerage Commission**. Landlord and Tenant each warrants to the other that, in connection with this Lease, they have dealt with no broker, finder, or similar person. Landlord will indemnify, defend and hold harmless Tenant against any claim made by any broker or other agent or for a commission or fee based on acts or agreements of Seller. Tenant will indemnify, defend and hold harmless Landlord against any claim made by any agent or broker for a commission or fee based on acts or agreements of Tenant.

15.12 **Counterparts; Delivery by E-mail**. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one Lease. Delivery of an executed copy of this Lease by e-mail (in "pdf" format) shall be deemed delivery of the executed original.

15.13 **Severability of Provisions**. If any term or provision of this Lease is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity or enforceability of the remainder of this Lease.

15.14 **Required Insurance: Business Interruption; and Personal Property**. Tenant acknowledges and agrees that this Lease does not provide Tenant any relief from its obligations to pay Rent in the event of an interruption of utilities, services and various other circumstances (regardless of cause), accordingly, Tenant covenants and agrees to procure and maintain, at its sole cost and expense, adequate and appropriate "business interruption" insurance with respect to its business risks and obligations related thereto. Tenant acknowledges and agrees that under the terms of Lease, it is responsible for any damage or destruction of its personal property, trade fixtures or other assets which it owns and accordingly, covenants and agrees to procure and maintain, at its sole cost and expense, adequate and appropriate property insurance.

[Signature page follows.]



IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: /s/ Peter Hausback
Name: Peter Hausback
Its: EVP

JAPS-OLSON COMPANY

By: /s/ Michael W Beddor
Name: Michael W Beddor
Its: CEO



**EXHIBIT A**

**REAL PROPERTY**

Tract D, Registered Land Survey No. 1674, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

Being registered land as is evidenced by Certificate of No. 830574.

**EXHIBIT B**

**DEPICTION OF JOINT USE AREA**

[See attached.]

**Exhibit 31.1**

CERTIFICATIONS:

I, Edward R. Cameron, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Appliance Recycling Centers of America, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements are made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and we have:

    a. designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2009

/s/Edward R. Cameron
Edward R. Cameron
President and Chief Executive Officer

**Exhibit 31.2**

CERTIFICATIONS:

I, Peter P. Hausback, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Appliance Recycling Centers of America, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements are made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and we have:

    a. designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2009

/s/Peter P. Hausback
Peter P. Hausback
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

**Exhibit 32.1**

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350 (as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002), the undersigned Chief Executive Officer of Appliance Recycling Centers of America, Inc. (the "Company") hereby certifies that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended October 3, 2009 (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Very truly yours,

/s/Edward R. Cameron
Edward R. Cameron
President and Chief Executive Officer

Date: November 12, 2009

* A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**Exhibit 32.2**

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350 (as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002), the undersigned Chief Financial Officer of Appliance Recycling Centers of America, Inc. (the "Company") hereby certifies that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended October 3, 2009 (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Very truly yours,

/s/Peter P. Hausback

Peter P. Hausback
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: November 12, 2009

* A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.