

ADDENDUM TO COMMERCIAL LEASE AGREEMENT

THIS ADDENDUM TO COMMERCIAL LEASE AGREEMENT ("Addendum"), made and entered into as of the 28th day of February, 2017 (the "Effective Date") by and between City of Peoria, Peoria, Illinois ("Lessor"), and Southwind RAS, LLC, Bartlett, Illinois ("Lessee").

WHEREAS, Lessor and Lessee previously entered into that certain Commercial Lease Agreement (the "Lease") effective February 28, 2011 and attached hereto as Exhibit "A"; and,

WHEREAS, Landlord and Tenant both desire to amend the Lease consistent with this Addendum.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings described in the Lease, including good and valuable consideration under this Addendum, the receipt and sufficiency of which is hereby expressly acknowledged, the Lessor and Lessee agree as follows:

1. Additional Renewal Terms. Pursuant to the terms and conditions of the Lease, Lessor hereby grants Lessee the right and option to renew the Lease on the same terms and conditions and the same rent in effect during the initial Lease term for one (1) additional two (2) year term with three (3) one (1) year renewals, which renewal term shall expire on February 28, 2022.

2. Expansion of Leased Premises.

- (a) Pursuant to the terms and conditions of the Lease, Lessor hereby agrees to expand the leased premises to include the 4.4 acre "Addition Area" depicted and described on Exhibit "B" attached hereto.
- (b) Lessee shall be responsible for any site cleanup work necessary, in Lessee's sole discretion, to prepare the Addition Area for Lessee's occupancy, and shall be responsible for all costs associated therewith.
- (c) Lessee shall pay Lessor at 419 Fulton St, Peoria, Illinois, 61602 or at such other place as the Lessor shall designate from time to time in writing, as rent for the "Additional Area", the minimum annual sum of \$6,000.00, payable without prior demand and without any setoff or deductions whatsoever, except as expressly provide herein, in equal monthly installments of \$500.00 each in advance on the 15th day of each calendar month, commencing on March 15, 2017 continuing thereafter until said minimum rents shall be paid. Lessee agrees that all rents are to be made so as to be received by Lessor on or before the 20th day of each month.

All other terms and conditions of the Lease are restated and affirmed by Lessor and Lessee as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Commercial Lease Agreement effective as of the date first written above.

LESSOR:

LESSEE:

City of Peoria, a Municipality

Southwind RAS, LLC

By: Patrick Ulrich
Signature

By: [Signature]
Manager

Patrick Ulrich
Printed Name

City Manager
Title

ATTEST:

By: Beth Ball
Signature

Beth Ball
Printed Name

City Clerk
Title

REVIEWED AND APPROVED:

By: Donald B. Leist
Signature

Donald B. Leist
Printed Name

Corp. Counsel
Title

EXHIBIT B

COMMERCIAL LEASE AGREEMENT

This Lease made in Peoria, Illinois, on this 27th day of February, 2011, between City of Peoria, Peoria, Illinois, ("Lessor"), and Southwind RAS, LLC, Bartlett, Illinois, ("Lessee").

Lessor hereby leases to Lessee, the premises located at _____ S. Darst St, Peoria, Illinois, 61602 consisting of premises more clearly shown on the drawing included in Exhibit "A," rights of ingress and egress thereto and to the parking facilities thereat.

This Lease is for the term of two years (2), beginning on the 1st day of March, 2011 ending on the 28th day of February, 2013, unless extended or sooner terminated as hereinafter provided. Provided Lessee is not in default under this Lease beyond any applicable period of notice and grace, Lessor grants to Lessee the right and option to renew this Lease on the same terms and conditions and the same rent in effect during the initial Lease term for two consecutive two year terms following the expiration of the Initial Term, which renewal terms shall expire on February 28, 2015 and February 28, 2017. If Lessee chooses to exercise its option to renew, it shall do so by giving Lessor written notice of its election to exercise its right to renew. Such notice shall be given at least 30 days prior to the expiration of the initial Term for the first renewal term and at least 30 days prior to the expiration of the first renewal Term for the second renewal Term.

I. AGREEMENTS OF LESSEE

1. Rent Lessee shall pay Lessor at 419 Fulton St, Peoria, Illinois, 61602 or at such other place as the Lessor shall designate from time to time in writing, as rent for the leased premises, the minimum annual sum of \$6,000.00, payable without prior demand and without any setoff or deduction whatsoever, except as expressly provided herein, in equal monthly installments of \$500.00 each in advance on the 15th day of each calendar month, commencing on March 15, 2011 continuing thereafter until said minimum rent shall be paid. Lessee agrees that all rents are to be made so as to be received by Lessor on or before the 20th day of each month.
2. Additional Rent: Lessee agrees to pay as rent, without demand, setoff, or deduction, in addition to the minimum rental hereinbefore provided, the sum of \$2.00 per ton of all sales of recycled asphalt shingles (RAS). Owner shall provide to the City quarterly reports and a yearly audited statement of the gross tons of sales of RAS material. The payment shall be made by the 15th day after the end of any given quarter. Other than as specifically provided in this Paragraph, no other fee, charge, royalty, tax or other assessment shall be charged or assessed with respect to the recycling operations.
3. Insurance: Lessee agrees to insure from a good and responsible company authorized to do business in Illinois.
 - (I) Fire and extended coverage insurance in an amount not less than 80 (80%) percent of the value of the leased property and other improvements on the leased premises.
 - (II) Public Liability Insurance in amounts not less than ONE MILLION DOLLARS

(\$1,000,000.00) for any single claim, including property damage. Lessor shall be named as an additional insured.

- (III) Fire and extended coverage insurance on Lessee's fixtures, goods, wears and merchandise in or on the leased premises, with coverage in an amount of not less than \$100,000.00.
 - (IV) Lessor and Lessee agree that, in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look solely to its insurance for recover. Lessor and Lessee hereby grant to each other, on behalf of any insurer providing insurance to either of them with respect to the demised premises, a waiver of any right of subrogation which any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance. Each party will furnish to the other a copy of the endorsement to its insurance policy setting out the waiver of subrogation.
 - (V) Proof must also be given by Lessee to Lessor that each of the policies provided for in this paragraph expressly provides that the policy shall not be canceled or altered without 30 days' prior written notice to the other party.
 - (VI) If the Lessee at any time during the term hereof should fail to secure or maintain the foregoing insurance, the lessor shall be permitted to obtain such insurance in Lessee's name or as the agent of Lessee and shall be compensated by Lessee for the cost of insurance premiums. Lessee shall pay Lessor interest on paid insurance premiums at the rate of fifteen percent (15%) per annum computed from the date written notice is received that the premiums have been paid.
4. Utilities: Lessee agrees to all reasonable charges for light, fuel, and power, furnished or supplied to all or any part of premises, unless otherwise specified herein.
 5. Real Estate Taxes: Lessee shall be responsible for all Federal, State and Local Real Estate Taxes.
 6. Use of Premises: Lessee agrees to use and occupy the premises for recycling and related uses, and for no other object or purpose without consent of the Lessor. In addition, Lessee may use the premises for purposes authorized under the relevant municipal or county ordinances upon approval by Lessor. The Lessee's use of the leased premises shall at all times be conducted in a manner that is protective of the public health, safety, welfare; and the environment as determined by statutes, rules and regulations set by the IEPA. The Lessee shall comply at all times with all laws, ordinances, rules and regulations of any Federal or State governmental agency with jurisdiction, as such may now exist or exist in the future, relating to the operations on the property. The Lessee shall not allow, at any time, any material or substance containing asbestos to be on the leased premises.
 7. Alterations: Lessee will not make alterations or additions without the consent in writing of the Lessor. All alterations and additions, except trade fixtures, shall remain as a part of the premises unless the Lessor shall otherwise elect. This includes, but is not limited to, locks, bolts, and all fixtures.

8. Mechanic's Liens Prohibited: Lessee will not make any contract for the construction, repair, or improvement, on, in, of, or to premises, or any part thereof, or for any work to be done or materials to be furnished on or to premises, or any part thereof, without providing in such contract or agreement that no lien of mechanics or materialmen shall be created or shall rise against above described land and/or the building or improvements at any time located thereon.
9. Assignment or Sublease: No assignment or sub-letting of me premises or any portion thereof shall be valid without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessee will be responsible for any expenses arising out of any assignment or sublease.
10. Lessor's Right of Entry: The Lessor shall have the right to access the demised premises during reasonable hours upon one day advance notice to the Lessee for the purpose of examining or exhibiting the same or making any needed improvements or repairs to the premises. The Lessor has the right to make emergency repairs at any time with or without notification.
11. Rules, Regulations and Laws: Lessee also agrees to observe and comply with all rules, regulations and laws now in effect or which may be enacted during the continuance of this lease by any municipal, county, state or federal authorities having jurisdiction over the premises, and to indemnify Lessor for any damage caused by the violation thereof.
12. Repairs: Lessee shall, at its own expense, make all necessary repairs and replacements to Lessor's property and systems, window/glass fixtures, and all appliances and their appurtenances, including the correction of any environmental condition created during or before the term of this Lease. Such repairs and replacements, interior and exterior, ordinary, as well as extraordinary, structural, as well as non-structural, shall be made promptly as and when necessary. All repairs and replacements shall be in quality and class at least equal to the present condition. Lessor agrees to maintain the curbs and pavements in and about the leased premises, together with facilities appurtenant thereto, including entryways. Lessor also agrees to provide snow removal for all pavements in and about the leased premises and entryways.

II. AGREEMENTS OF LESSOR

13. Zoning: Lessor shall, at its own expense, maintain a zoning of 1-3, or equivalent, for leased premises, or issue special use permits for the business nature of Lessee.
14. Quiet Environment: Lessor warrants that he has the full right to execute and perform this lease and to grant the demised premises and the Lessee upon payment of the rent and performance of the terms, conditions, covenants and agreements required to be performed by them, shall peacefully and quietly have, hold and enjoy the demised premises during the full term of this lease and any extensions or renewals.
15. Covenant Regarding Encumbrances:
 - (A) Lessor covenants that the leased premises are not subject to any lien, claim, or encumbrance, except as hereinafter set forth, and that it is not in default or arrears in the making of any payment or the performance of any obligation relating to the leased premises.

- (B) This lease and any extensions of the term hereof shall be subordinate, at the option of Lessor, to any and all encumbrances given by Lessor on the leased premises or to secure funds for any construction by Lessor on the leased premises.
16. Non-Compete: Lessor, as principal, its agents, or employees shall not engage in any contract or activity performed by the Lessee for the term of the lease or renewed term.

III. MUTUAL AGREEMENTS AND REMEDIES

17. Lessor's Liability: Lessor is not an insurer of Lessee's person or possessions. Lessee agrees that all of Lessee's person and property in the premises shall be at the risk of the Lessee only, and that Lessee will carry such insurance as Lessee deems necessary therefore. Lessee further agrees that except for instances of negligence or willful misconduct of Lessor, its agents or employees, Lessor, its agents and employees shall not be liable for any damages to the person or property of Lessee or any other person occupying or visiting the premises.

18. Extension of the Term of the Lease: If the Lessee shall hold over, after expiration of the term hereby created, with the consent of the Lessor, it shall be deemed a renewal of this lease, and of all the conditions and agreements therein contained for the term of one month and so on from month to month until the lease is terminated by either of the parties giving the other not less than thirty (30) days' notice of termination prior to the end of any term. Lessor will notify the Lessee two (2) months prior to the expiration of this term hereby created if this Lease can be renewed. If the Lessee hold over, the Lessee shall pay 100% of the current rent payment as rent for the premises.

18. Notice: Notices and demands by either the Lessor or the Lessee may be given by register mail with prepaid postage addressed to Lessor at 419 Fulton St, Peoria, Illinois, 61602 or to Lessee at 2550 Southwind Blvd, Bartlett, Illinois 60103, subject to the right of either the Lessor or Lessee to designate by notice in writing a new address to which said notices or demands must be sent.

19. Conditions of Premises: Lessee has examined and knows the condition of premises, and has received the same in good order and repair, except as herein otherwise specified, and that no representations or warranties, express or implies, as to the condition or repair thereof, have been made by the Lessor or his or her agents, prior to, or at the execution of this lease other than as herein expressed or endorsed hereon.

20. Lessor's Remedies:

- (A) If the Lessee fails to pay any installment of rent promptly on the fifteenth day of each month and continues in default for a period of twenty-one (21) days, the Lessor may declare the lease term ended and take any legal action necessary to return the demised premises to the Lessor within five (5) days.
- (B) If the Lessee fails to promptly keep and perform any other affirmative covenant of this lease strictly in accordance with the terms of this lease, then in any event,

as often as any such event shall occur, the Lessor may serve the Lessee written notice of default and intent to terminate, and if such default is not corrected within ten (10) days (unless the default involves a hazardous condition which shall be cured forthwith), the Lessor may terminate the lease and take action to regain possession of the premises.

21. Lessee's Remedies:

- (A) If the Lessor fails to promptly keep and perform any covenant of this lease strictly in accordance with the terms of the lease, then in any event, as often as any such event shall occur, Lessee may serve the Lessor written notice of default and intent to terminate, and if such default is not corrected within ten (10) days, the Lessee may terminate the lease, vacating premises with rent paid to date of vacation. Prepaid rent and Security Deposit, if any, shall be promptly refunded to Lessee.
- (B) In the event of Lessor's breach, Lessee shall retain all other rights and remedies provided at law or in equity.

22. Condemnation:

- (A) All of Premises: If during the term of this lease or any extension or renewal thereof, all of the leased premises should be taken for an public or quasi-public use under any law, ordinance, or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the taking of said premises by the condemning authority.
- (B) Partial Condemnation: If less than all of the leased premises shall be taken for any public or quasi-public use under by law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall not terminate but Lessor shall forthwith at its sole expense, restore and reconstruct the building and other improvements, situated on the leased premises, provided such restoration and reconstruction shall make the same reasonably tenantable and suitable for the uses for which the premises are leased. The rent payable hereunder during the unexpired portion of this lease shall be adjusted equitably.
- (C) Allocation of Award: Lessor and Lessee shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interest in any condemnation proceedings. The termination of this lease shall not affect the rights of the respective parties of such awards.

23. Fire and Casualty Damage: If the building or other improvements on the leased premises should be damaged or destroyed by fire, flood, or other casualty, Lessee shall give immediate written notice thereof to Lessor.

- (A) If the building on the leased premises should be totally destroyed by fire, flood, or other casualty, or if it should be so damaged that rebuilding or repairs cannot reasonably be completed within 120 working days from the date of written notification by Lessee or Lessor of the occurrence of the damage, this lease shall terminate and rent shall be abated for the unexpired portion of this lease, effective as of the date of said written notification.
- (B) If the building or other improvements on the leased premises should be damaged by fire, flood, or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 120 working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this lease shall terminate, but Lessor shall, if the casualty has occurred prior to the final 6 months of the lease term, at its sole cost and risk proceed forthwith to rebuild or repair such building and other improvements to substantially the same condition in which they existed prior to such damage. If the casualty occurs during the final 6 months of the lease term, Lessor shall not be required to but may rebuild or repair such damage. If the building and other improvements are to be rebuilt or repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted equitably. In the event that Lessor shall fail to complete such rebuilding or repairs within 120 working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may at its option terminate this lease by written notification at such time to Lessor, whereupon all rights and obligations hereunder shall cease.
24. Cumulative Rights: All rights and remedies under this lease shall be cumulative, and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.
25. Binding on Successors: All the agreements, conditions and undertakings herein contained shall extend to and be binding on the representatives, successors and assigns of the respective parties hereto as if they were in all cases named.
26. Construction: The singular shall include the plural and the masculine include the feminine and neuter. Caption headings are included merely as a convenience and shall be in no way construed as a limitation on the subject matter of any paragraph.
27. Severability: If any clause, phrase, provision or portion of this lease Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.
28. No Waiver: Failure of either party to insist on the strict performance of the terms, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the party's right thereafter to enforce any such terms, agreement or condition, but the same shall continue in full force and effect. No waivers, alterations, or

modifications of this contract or any agreements in connection with it shall be valid unless in writing and duly executed by both the Lessor and the Lessee.

29. Further Agreements: No oral agreements between the Lessor and the Lessee are binding on either party. This agreement is the only contract between these parties. Time is of the essence of this agreement and of every act to be performed by either party hereunder.

Executed in triplicate on February 28th, 2011.

LESSOR:

LESSEE:

City of Peoria,
a Municipality

Southwind RAS, LLC

By: *Henry Holling*
Signature

By: *W. J. Hannon*
Manager

Henry Holling
Printed Name

City Manager
Title

ATTEST:

By: *Mary L. Haynes*
Signature

Mary L. Haynes
Printed Name

City Clerk
Title

REVIEWED AND APPROVED:

By: *Randall Ray*
Signature

Randall Ray
Printed Name

Corporation Counsel
Title

