

SUN BUILDING MAINTENANCE LLC,

Petitioner,

v.

ILLINOIS DEPARTMENT
OF REVENUE,

Respondent.

RECEIVED
FEB 20 2014
BY: _____

14/11/21

Petitioner: Sun Building Maintenance LLC
c/o Seacrest Services, Inc.
2400 Centrepark W. Drive, Suite 175
West Palm Beach, FL 33409
Phone (561) 656-6360

NOW COMES, SUN BUILDING MAINTENANCE LLC (“Petitioner”), by and through its attorneys, Burke, Warren, MacKay & Serritella, P.C., in support of this Petition Protesting Imposition of Tax Liability, states as follows:

- 1

4. Under the Customer Transition Agreement, Petitioner purchased rights to certain customer building maintenance contracts of National, as well as National's assistance in Petitioner acquiring one or more of National's customers for Petitioner's own account. [Exhibit A at ¶1.] The Customer Transition Agreement also included a Restrictive Covenant Addendum whereby National and Mr. Karkazis became subject to certain non-competition and non-solicitation provisions. [*Id.* at ¶5.]

5. No other assets were purchased by Petitioner or transferred to Petitioner from National.

6. On January 13, 2014, the Illinois Department of Revenue (the "Department") issued a "Transfer of Assets - Assessment and Notice of Intent" to Petitioner, a copy of which is attached hereto as **Exhibit B** (the "Notice").

7. The Notice states that Petitioner is personally liable in the amount of \$28,579.73 (the "Assessment"). The Notice alleges that Petitioner is liable for the Assessment because there was no notification for the transfer of assets from National to the Department's Bulk Sales Unit and National had outstanding debt with the Department at the time. [*See* Exhibit B.]

8. Petitioner protests the imposition of the Assessment against Petitioner because Petitioner did not purchase the type of assets that require notice under 35 ILCS 5/902 or 35 ILCS 120/5j.

9. The Illinois bulk sales notice laws state that notice is required to the Department "[i]f any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, (C) the machinery and equipment, or (D) the real property, of any business

that is subject to the provisions of this Act..." 35 ILCS 5/902; 35 ILCS 120/5j; 86 Il. Admin. Code 130.1701.

10. Petitioner here purchased only intangible contract rights and did not purchase any tangible assets for which notice to the Department is required under the above-mentioned bulk sale laws (*i.e.* Petitioner did not purchase any goods, furniture, fixtures, machinery, equipment, or real property). *See also Continental Casualty Co. v. Burlington Truck Lines, Inc.*, 70 Ill.App.2d 405 (1st Dist. 1966) (noting that sale of intangible assets, such as operating rights and covenant not to compete, are not covered by similar, but repealed, predecessor Bulk Sales Act).

11. Accordingly, Petitioner is not in violation of the bulk sale notice laws and Petitioner should not be liable for the Assessment nor any other debt incurred by National.

WHEREFORE, Petitioner requests that this Tribunal enter an order (a) making a determination that Petitioner is not liable for the Assessment, (b) determining that the Notice was issued in error, and (c) requiring that the Department dismiss the Notice and take no further collections action in connection therewith.

Respectfully submitted,

SUN BUILDING MAINTENANCE LLC

By:  _____
One of its attorneys

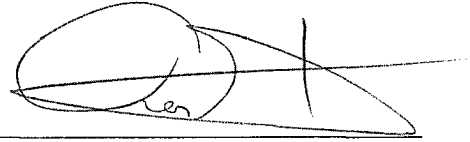
Aaron H. Stanton
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., Suite 2100
Chicago, IL 60611
(312) 840-7000 (telephone)
(312) 840-7900 (facsimile)
astanton@burkelaw.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has sent a copy of this Petition Protesting Imposition of Tax Liability to the parties on the service list below, by placing the same in the United States mail, first class, postage pre-paid, on February 20, 2014, before the hour of 5:00 p.m.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

Illinois Department of Revenue
P.O. Box 19035
Springfield, IL 62794-9035

A handwritten signature in black ink, appearing to read 'A. Stanton', is written over a horizontal line.

Aaron H. Stanton

Aaron H. Stanton
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., Suite 2100
Chicago, Illinois 60611
(312) 840-7000 (telephone)
(312) 840-7900 (facsimile)
astanton@burkelaw.com
Attorney for Sun Building Maintenance LLC

EXHIBIT A

CUSTOMER TRANSITION AGREEMENT

THIS CUSTOMER TRANSITION AGREEMENT is made and entered into this 31st day of October, 2011, by and among National Building Resource Group, LLC, an Illinois limited liability company corporation ("*NBRG*"), Sun Building Maintenance LLC, a Delaware limited liability company ("*Sun*"), and Frank Karkazis, a resident of Illinois ("*Karkazis*").

WITNESSETH:

WHEREAS, Karkazis is a member and sole manager of NBRG;

WHEREAS, NBRG is in the business of providing building maintenance services and goods in the Chicago metropolitan area to the customers listed on Exhibit A attached hereto (the "*Customers*");

WHEREAS, NBRG has determined to wind down and liquidate NBRG's business and other affairs;

WHEREAS, Sun is willing to pay NBRG certain amounts as hereinafter provided in consideration of NBRG's assistance in Sun acquiring one or more of the Customers for Sun's own account;

NOW, THEREFORE, the parties agree as follows:

1. Customer Transition.

(a) **Assistance.** During the Customer Transition Period as hereinafter defined, NBRG shall assist Sun as Sun may reasonably request in Sun obtaining written agreements with such of the Customers as Sun may elect providing for Sun's provision of building maintenance services and goods to the Customer on terms that are satisfactory to Sun and the Customer (a "*Customer Building Maintenance Agreement*"). To the extent requested by Sun, such assistance shall include, but not be limited to, NBRG agreeing to early termination of its building maintenance agreement with the Customer in order to allow the Customer to enter into a Customer Building Maintenance Agreement with Sun. Provided, however, that the parties acknowledge and agree (i) that such assistance by NBRG shall in no event include any use by Sun of NBRG's good will, trade marks, service marks, or other intangible or tangible property, (ii) that NBRG makes no guaranty that any Customer will enter into a Customer Building Maintenance Agreement with Sun, and (iii) that NBRG shall have no responsibility for Sun's performance of Sun's Customer Building Maintenance Agreement with any Customer.

(b) **Payments.** In consideration of the assistance provided by NBRG pursuant to Section 1(a), with respect to each Customer, if any, with whom Sun enters into a Customer Building Maintenance Agreement prior to the expiration or termination of the

Customer Transition Period, Sun shall pay NBRG amounts as follows (collectively, the "*Customer Transition Payments*");

(i) Initial Payment: On the date Sun enters into a Customer Building Maintenance Agreement with a Customer, Sun shall pay NBRG in cash an amount equal to 6% of the Projected Annual Revenue for the first twelve months of building maintenance services to be provided by Sun under such Customer Building Maintenance Agreement (the "*Initial Payment*").

(ii) Renewal Payment: Not later than the twentieth (20th) day following the Renewal, if any, of such Customer Building Maintenance Agreement, Sun shall pay NBRG in cash an amount equal to 6% of the Projected Annual Revenue for the second twelve months of building maintenance services to be provided by Sun under such Customer Building Maintenance Agreement (the "*Renewal Payment*").

For purposes of this Agreement, a "*Renewal*" of a Customer Building Maintenance Agreement shall be deemed to occur if (and only if) Sun in fact continues to provide building maintenance services to such Customer through the thirteenth month commencing with the month in which Sun began providing building maintenance services under such Customer Building Maintenance Agreement, regardless of whether the term of such Customer Building Maintenance Service Agreement has terminated prior to such thirteenth month or whether Sun and the Customer enter into a new Customer Building Maintenance Agreement. If Sun so continues to provide building maintenance services to such Customer through the end of such thirteenth month, Sun shall be presumed to continue to provide such services to such Customer during the following eleven months following such thirteenth month, for purposes of determining Projected Annual Revenue for such twelve months, under the terms between Sun and the Customer that are in effect as of the last day of such thirteenth month except to the extent otherwise provided in a written agreement between Sun and such Customer entered into before such thirteenth month expires, in which case the provisions of such written agreement shall govern and control for purposes of determining for how much of such eleven month period Sun will continue to provide building maintenance services, the terms of such services, and the resulting Projected Annual Revenue for such twelve month period. Sun may choose whether or not to effect a Renewal in its absolute discretion, and may condition effecting a Renewal with a Customer upon such increases in compensation or other changes in terms as Sun may determine in its absolute discretion.

For purposes of this Agreement, the "*Projected Annual Revenue*" for a Customer Building Maintenance Agreement for a twelve month period shall mean the sum of the base compensation which Sun would receive from the Customer in exchange for providing building maintenance services for such twelve months under the terms between Sun and the Customer that are in effect as of the last day of the first month of such twelve month period. For this purpose, base compensation shall mean the compensation for the standard services which Sun is required to provide such Customer and does not include compensation for any additional services that the Customer, at its option, may request.

Base compensation shall also include any amounts paid by tenants of the Customer's building to Sun for maintenance services provided to such tenants in addition to the services provided to such Customer as reflected on Exhibit A, even though such amounts are not paid by the Customer.

For purposes of this Section 1(b), a "month" means a period of thirty days regardless of on what day in a calendar month such period commences.

(c) Customer Transition Period. For purposes of this Agreement, the "*Customer Transition Period*" shall mean the period commencing on the Commencement Date as defined in Section 7 of this Agreement and ending on the first anniversary of the Commencement Date, subject (x) to earlier termination as hereinafter provided in this Section 1(c) and (y) to such extension(s) as may be agreed to in writing from time to time by NBRG and Sun. If Sun breaches any provision of this Agreement and fails to materially cure such breach not later than the twentieth (20th) day after the date that NBRG delivers written notice of such breach to Sun demanding its cure, NBRG thereafter may terminate the Customer Transition Period by delivering written notice of termination to Sun prior to Sun's material cure of such breach. If NBRG breaches any provision of this Agreement and fails to materially cure such breach not later than the twentieth (20th) day after the date that Sun delivers written notice of such breach to NBRG demanding its cure, Sun thereafter may terminate the Customer Transition Period by delivering written notice of termination to NBRG prior to NBRG's material cure of such breach. Any such termination of the Customer Transition Period shall only relieve the parties from thereafter complying with provisions of this Agreement that are limited to the Customer Transition Period, and shall not relieve any party from any liability for failure to comply with any such provision during the Customer Transition Agreement or from complying with any other provision of this Agreement.

(d) Employees. NBRG hereby grants Sun the right to solicit the employment of, and employ, or engage as an independent contractor, any or all of the NBRG employees on such compensation and other terms as Sun may determine, whether such solicitation, employment, or engagement occurs before, during or after the Customer Transition Period. NBRG hereby waives all claims that NBRG may otherwise have against Sun or any NBRG employee arising from such solicitation, employment, or engagement. NBRG acknowledges and agrees that Sun is not obligated to employ or otherwise engage any of the NBRG employees, and that Karkazis is expected to provide independent contractor services on a part-time, at will, basis to Sun beginning upon the Commencement Date.

2. Retained Obligations. Sun shall not assume or otherwise have any responsibility for any liabilities or other obligations of NBRG or Karkazis whatsoever, whether known or unknown, absolute or contingent, fixed or variable in amount, and whether or not referred to in this Agreement or otherwise disclosed to Sun (collectively the "*Retained Obligations*").

3. Representations and Warranties.

(a) By NBRG. NBRG hereby represents and warrants to Sun that the following statements are true and correct:

- (1) **Authority.** NBRG has all requisite power and authority to execute and deliver this Agreement and each document to be executed by it pursuant to this Agreement (collectively, the "*NBRG Closing Documents*"), and to perform its obligations thereunder. The execution, delivery and performance by NBRG of each NBRG Closing Document have been validly authorized and approved by all necessary action and no other proceedings on the part of NBRG are necessary to authorize such execution, delivery and performance. Each NBRG Closing Document has been validly executed and delivered by NBRG and constitutes the legal, valid and binding obligation of NBRG, enforceable against it in accordance with the instrument's terms.
- (2) **Absence of Conflicts and Consent Requirements.** NBRG's execution and delivery of the NBRG Closing Documents and performance of its obligations thereunder, do not (i) conflict with or violate NBRG's operating agreement or other organizational documents; (ii) conflict with, violate or, alone or with notice and/or the passage of time, result in the material breach or termination of, or otherwise give any contracting party the right to terminate or declare a default under, any contract to which NBRG is a party or by which NBRG or any of its assets are bound; or (iii) conflict with or violate any judgment, order, decree, law, statute, regulation, other judicial or governmental restriction, by which NBRG or any of its assets are bound. There is no requirement applicable to NBRG to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental or regulatory authority or any third party, as a condition to the performance by NBRG of its obligations under the NBRG Closing Documents.
- (3) **Litigation.** Except as disclosed in the NBRG Disclosure Schedule attached hereto, there are no actions, suits or proceedings pending or threatened against NBRG. Except as disclosed in the NBRG Disclosure Schedule attached hereto, NBRG is not subject to any judgment, order, writ, injunction, decree or award.
- (4) **Customers.** Except as disclosed in the NBRG Disclosure Schedule attached hereto, since January 1, 2011, none of the Customers has terminated or materially reduced or, to NBRG's knowledge, threatened to terminate or materially reduce, the

Customer's purchases of building maintenance services or goods from NBRG. NBRG has not billed for, or received, payment (in any medium) for any building maintenance service or good to be provided after the date of this Agreement.

- (5) **Employment Matters.** Except as disclosed in the NBRG Disclosure Schedule attached hereto, NBRG is not in material violation of any federal, state, local, or foreign laws respecting employment, employment practices, terms and conditions of employment, wages and hours, or unfair labor practices. Except as disclosed in the NBRG Disclosure Schedule attached hereto, NBRG has no pending or threatened labor disputes.
- (6) **Liabilities.** Except (i) as reflected on the balance sheet of NBRG included in the NBRG Disclosure Schedule attached hereto, (ii) as otherwise disclosed in the NBRG Disclosure Schedule attached hereto, and (iii) executory obligations to provide services or goods to customers in the ordinary course of business, there are no debts or other liabilities of NBRG of any nature, whether or not liquidated in amount and whether or not contingent. NBRG is not insolvent, and will not be rendered insolvent as a result of the transactions contemplated by this Agreement, either in the sense that the sum of its liabilities will exceed its assets or in the sense that NBRG will not be able to pay its liabilities as they become due. Except as disclosed in the NBRG Disclosure Schedule attached hereto, there exist no security interests, mortgages, hypothecations, deeds of trust, or other liens or encumbrances of any type ("*Liens*") encumbering any of NBRG's real or personal, tangible or intangible, property.

(b) **By Sun.** Sun hereby represents and warrants to NBRG that the following statements are true and correct:

- (1) **Authority.** Sun has all requisite power and authority to execute and deliver this Agreement and each document to be executed by it pursuant to this Agreement (collectively, the "*Sun Closing Documents*"), and to perform its obligations thereunder. The execution, delivery and performance by Sun of each Sun Closing Document have been validly authorized and approved by all necessary action and no other proceedings on the part of Sun are necessary to authorize such execution, delivery and performance. Each Sun Closing Document has been validly executed and delivered by Sun and constitutes the legal, valid and binding obligation of Sun, enforceable against it in accordance with the instrument's terms.

- (2) **Absence of Conflicts and Consent Requirements.** Sun's execution and delivery of the Sun Closing Documents and performance of its obligations thereunder, do not (i) conflict with or violate Sun's limited liability company agreement or other organizational documents; (ii) conflict with, violate or, alone or with notice and/or the passage of time, result in the material breach or termination of, or otherwise give any contracting party the right to terminate or declare a default under, any contract to which Sun is a party or by which Sun or any of its assets are bound; or (iii) conflict with or violate any judgment, order, decree, law, statute, regulation, other judicial or governmental restriction, by which Sun or any of its assets are bound. There is no requirement applicable to Sun to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental or regulatory authority or any third party, as a condition to the performance by Sun of its obligations under the Sun Closing Documents.

4. Indemnification.

- (a) **By NBRG.** NBRG shall indemnify, defend and hold harmless each of Sun, Sun's managers and members, and the successors and assigns of each of the foregoing (collectively the "Sun Indemnified Parties"), for, from, and against any and all liability, loss, damage, or expense (including without limitation any court costs or reasonable attorneys' fees) suffered or incurred directly or indirectly by any Sun Indemnified Party as a result of (i) the breach of any covenant, agreement, representation, warranty or other term of this Agreement by NBRG or Karkazls, (ii) any Retained Obligation, or (iii) the assertion by NBRG or any other person or entity of any Lien upon, or other claim (other than NBRG's enforcement of its rights under this Agreement and the matters referenced in Section 4(b)(ii) and (iii)) with respect to, Sun's solicitation and procurement of the building maintenance business of any Customer, Sun's provision of building maintenance services and goods to any Customer, or Sun's receipt of payments from any Customer for building maintenance services or goods. Without limiting Sun's other rights and remedies, Sun may set off, dollar for dollar, any amount to which a Sun Indemnified Party is entitled pursuant to this Section 4(a) against any amounts then or thereafter due for payment under Section 1(b) of this Agreement.
- (b) **By Sun.** Sun shall indemnify, defend and hold harmless each of NBRG, NBRG's managers and members, and the successors and assigns of each of the foregoing (collectively the "NBRG Indemnified Parties") for, from, and against any and all liability,

loss, damage, or expense (including without limitation, any court costs and reasonable attorneys' fees) suffered or incurred directly or indirectly by any NBRG Indemnified Party as a result of (i) the breach of any covenant, agreement, representation, warranty or other term of this Agreement by Sun, (ii) Sun's failure to perform Sun's obligations under a Customer Building Maintenance Service Agreement that Sun has with any Customer, or (iii) Sun's failure to perform Sun's obligations under Sun's employment of persons following the Commencement Date.

5. Restrictive Covenants. In consideration of Sun's undertaking of Sun's obligations in this Agreement, each of NBRG and Karkazis covenants to Sun as provided in the Restrictive Covenant Addendum attached to this Agreement.

6. Karkazis Guaranty and Representation and Warranty. As an additional primary obligor, Karkazis hereby unconditionally guarantees the prompt payment and other performance of all of NBRG's obligations in this Agreement. Karkazis hereby represents and warrants to Sun that his execution and delivery of this Agreement and performance of his obligations thereunder do not (i) conflict with, violate or, alone or with notice and/or the passage of time, result in the material breach or termination of, or otherwise give any contracting party the right to terminate or declare a default under, any contract to which he is a party or by which he or any of his assets are bound; or (ii) conflict with or violate any judgment, order, decree, law, statute, regulation, other judicial or governmental restriction, by which he or any of his assets are bound.

7. Commencement Date; Conditions.

(a) Subject to Section 7(b), the "Commencement Date" shall be November 1, 2011.

(b) Sun's obligations under Section 1 of this Agreement shall be subject to the satisfaction of each of the following conditions on the Commencement Date:

(i) Each member of NBRG has consented in writing to this Agreement and the transactions contemplated by this Agreement, in form and substance satisfactory to Sun.

(ii) Each person or entity asserting a Lien on any intangible asset of NBRG in writing has consented to this Agreement and the transactions contemplated by this Agreement, and acknowledged that any Lien it has does not encumber or otherwise apply to any right of Sun granted in or otherwise arising with respect to this Agreement, all in form and substance satisfactory to Sun. Provided, however, (i) that such consent shall not be required as to NBRG's landlord, One North LaSalle Properties (the "*Landlord*"), under the Lease Agreement dated December 31, 2009 if the amount of rent and other payment obligations under such lease remaining owing by NBRG as of the Commencement Date does not exceed \$20,000.00 and (ii) that such consent shall not be required as to NBRG's

factor, Gateway Commercial Finance, LLC ("*Gateway*"), if as of the Commencement Date the only amounts factored which have not been collected by Gateway are NBRG's receivables with respect to One North Dearborn and 360 N. Michigan Avenue for building maintenance services rendered in August and September totaling not more than \$140,000.00. NBRG and Karkazis acknowledge and agree that the absence of requiring consent from the Landlord and Gateway shall not relieve either of them from any obligations under this Agreement, including but not limited to under Section 4(a)(ii) and (iii) with respect to the Landlord and Gateway.

(iii) Sun has entered into one or more collective bargaining and related agreements by Sun, on terms satisfactory to Sun, with the unions and related organizations representing employees of NBRG, in connection with the employment by Sun of such employees as Sun may elect to employ.

(iv) Sun has received tenders of Customer Building Maintenance Agreements executed by Customers, in form and on terms satisfactory to Sun, providing aggregate Projected Annual Revenues for the first twelve months of services of not less than \$4,000,000.00.

(v) All of the representations and warranties of each of NBRG and Karkazis in this Agreement shall be true and correct on the Commencement Date, each of NBRG and Karkazis shall have performed all obligations required by this Agreement to have been performed by it or him before or on the Commencement Date, respectively, and each of NBRG and Karkazis shall have provided Sun with a certificate as to the foregoing in form and substance satisfactory to Sun.

(vi) No action or other proceeding instituted by any person or entity other than Sun, shall be pending or threatened before any court, governmental or regulatory authority, or arbitrator, which seeks to restrain or prohibit, or to obtain damages, discovery, or other relief in connection with, this Agreement or the consummation of the transactions contemplated by this Agreement.

(c) NBRG's obligations under Section 1 of this Agreement, and the obligations of NBRG and of Karkazis under Section 5 of this Agreement and the Restrictive Covenant Addendum, shall be subject to the satisfaction of each of the following conditions on the Commencement Date:

(i) Each member of NBRG other than Karkazis has consented in writing to this Agreement and the transactions contemplated by this Agreement, in form and substance satisfactory to NBRG.

(ii) Each person or entity asserting any Lien on any intangible asset of NBRG has consented in writing to this Agreement and the transactions contemplated by this Agreement, in form and substance satisfactory to NBRG. Provided, however, (i) that such consent shall not be required as to NBRG's landlord, One North Lasalle Properties (the "*Landlord*"), under the Lease Agreement dated December 31, 2009 if the amount of rent

and other payment obligations under such lease remaining owing by NBRG as of the Commencement Date does not exceed \$20,000.00 and (ii) that such consent shall not be required as to NBRG's factor, Gateway Commercial Finance, LLC ("*Gateway*"), if as of the Commencement Date the only amounts factored which have not been collected by Gateway are NBRG's receivables with respect to One North Dearborn and 360 N. Michigan Avenue for building maintenance services rendered in August and September totaling not more than \$140,000.00. NBRG and Karkazis acknowledge and agree that the absence of requiring consent from the Landlord and Gateway shall not relieve either of them from any obligations under this Agreement, including but not limited to under Section 4(a)(ii) and (iii) with respect to the Landlord and Gateway.

(iii) Sun has indicated in writing to NBRG that Sun is prepared to accept tenders of Customer Building Maintenance Agreements executed by Customers providing aggregate Projected Annual Revenues for the first twelve months of services of not less than \$4,000,000.00.

(iv) All of the representations and warranties of Sun in this Agreement shall be true and correct on the Commencement Date, Sun shall have performed all obligations required by this Agreement to have been performed by Sun before or on the Commencement Date, and Sun shall have provided NBRG and Karkazis with a certificate as to the foregoing in form and substance satisfactory to NBRG.

(v) No action or other proceeding instituted by any person or entity other than NBRG, shall be pending or threatened before any court, governmental or regulatory authority, or arbitrator, which seeks to restrain or prohibit, or to obtain damages, discovery, or other relief in connection with, this Agreement or the consummation of the transactions contemplated by this Agreement.

(d) Unless all of the conditions of a party's obligations as set forth in Section 7(a) or (b), as applicable, are satisfied or waived in writing by such party on the Commencement Date, such party shall have the right to terminate this Agreement by delivering notice of termination to each other party on or at any time after the Commencement Date. Provided, however, that such termination shall not relieve any party to this Agreement (i) from the party's obligation to continue to comply with Sections 2, 3, 4, 6, 7, and 8 of this Agreement following such termination or (ii) from any liability the party may have for failure to comply with any provision of this Agreement prior to such termination.

(e) If the conditions to Sun's obligations set forth in Section 7(b) are satisfied on the Commencement Date, Sun agrees (i) that it shall execute on the Commencement Date all the Customer Building Maintenance Agreements executed by Customers that then or theretofore have been tendered to Sun that are in form and satisfactory to Sun, and (ii) that, Section 1(b)(i) notwithstanding, Sun shall pay NBRG on the Commencement Date the sum of \$280,000.00 (or such larger amount as Sun in its discretion may agree with NBRG, the "**Commencement Date Payment**"). The Commencement Date Payment shall be applied dollar for dollar against the Customer Transition Payments coming due

for payment on the Commencement Date under Section 1. If the Commencement Date Payment exceeds the sum of the Customer Transition Payments coming due for payment on the Commencement Date under Section 1, Sun may set off such excess (the "**Excess Amount**") dollar for dollar against any Customer Transition Payments thereafter coming due for payment under Section 1 or against any other amount that may from time to time become owing to Sun by NBRG, whether under Section 4(a) or otherwise. To the extent the Excess Amount has not been realized by Sun through such set-off by the thirtieth (30th) day following the first anniversary of the Commencement Date, Sun may then or at any time thereafter declare such remaining unpaid Excess Amount due and payable, in which case NBRG shall immediately pay such remaining unpaid Excess Amount in full.

8. Miscellaneous.

- (a) **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns, subject to Section 8(c) of this Agreement.
- (b) **Entire Agreement; Amendment.** This Agreement, including Exhibit A, the NBRG Disclosure Schedule, and the Restrictive Covenant Addendum, each of which are hereby incorporated into this Agreement, constitute the entire agreement of the parties with respect to the subject matter hereof, in which all previous agreements, understanding, or negotiations between the parties with respect to the subject matter hereof, are merged and superseded. This Agreement may not be changed, modified or amended, except by an instrument in writing signed by the party against whom any such change, modification or amendment is asserted.
- (c) **Third Party Beneficiaries.** Except to the extent otherwise provided in Section 4, this Agreement is not intended to create, and shall not be construed as creating, any rights enforceable by any person not a party hereto or the successor or assign of such a party.
- (d) **Notices.** All notices, requests, demands, consents and other communications made hereunder shall be in writing and shall be delivered to the following address:

If to NBRG or Karkazis, addressed to such party at the following address:

1542 Hawthorne
Deerfield, IL 60015

If to Sun, addressed to such party at the following address:

2400 Centre Park West Drive, Suite 175
West Palm Beach, FL 33429

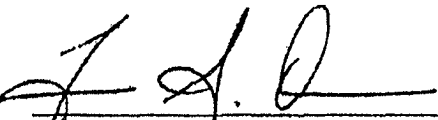
or at such other address for a party as may be furnished in writing by such party, provided that a party shall always maintain a street address and a mailing address (which may be the same or different from the street address) for purposes of this Agreement. All such notices, requests, demands, consents and other communications shall be deemed to have been given (i) on the date of delivery shown on the return receipt, if sent by United States Postal Service registered or certified mail, postage prepaid, return receipt requested, or (ii) on the date of actual delivery to the party's street address, if sent by other means.

- (e) **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws and judicial decisions of the State of Illinois.
- (f) **Further Assurances.** After the date of this Agreement, and without further consideration, each party hereto will execute and deliver such documents and instruments, and take such other actions, in addition to those provided for herein, as may be reasonably requested by another party hereto to effectuate the provisions of this Agreement.
- (g) **Survival.** The parties' respective rights and obligations under this Agreement shall survive the closing of the transactions contemplated by this Agreement.
- (h) **Electronic Delivery.** Handwritten signatures to this Agreement or to any amendment of this Agreement transmitted by facsimile, email or other similar electronic transmission (for example, through the use of a Portable Document Format or "PDF" file), shall be valid and effective to bind the party so signing.
- (i) **Severable.** The provisions of this Agreement (including without limitation, the provisions of the Restriction Covenant Addendum) are severable. In the event any such provision is held by a court of competent jurisdiction to be unenforceable in any jurisdiction, the remaining provisions of this Agreement shall remain in force as applied to such jurisdiction and such provision shall remain in force as to any other jurisdiction in which it is enforceable.

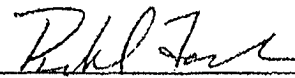
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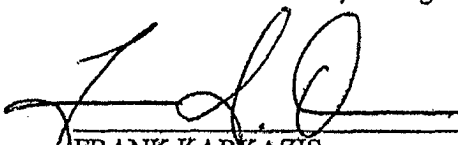
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written as a sealed instrument.

NATIONAL BUILDING RESOURCE
GROUP, LLC (SEAL)

By: 
Frank Karkazis, Manager

SUN BUILDING MAINTENANCE LLC

By:  (SEAL)
Richard Fowler, Manager

 (SEAL)
FRANK KARKAZIS

Seacrest Services, Inc., a member of Sun Building Maintenance LLC, hereby unconditionally guarantees the prompt payment and other performance of all of Sun's obligations in the foregoing Agreement.

SEACREST SERVICES, INC.

By: 
Mark Wade, President

EXHIBIT A
CUSTOMERS

See attached list.

CUSTOMERS CONTRACTS AND EXTRAS CONTRACTS

November 2011

Contract Customer	Location	Revenues	Extras	TOTAL
Jackson Building	175 W Jackson	\$161,000.00	\$8,000.00	\$169,000.00
MB Real Estate	224 W Des Plaines	\$6,223.00	\$200.00	\$6,423.00
MB Real Estate	One North Dearborn	\$56,962.00	\$6,600.00	\$63,562.00
MB Real Estate	360 N Michigan Ave.	\$29,300.00	\$1,400.00	\$30,700.00
MB Bank	9 Locations	\$8,457.00	\$500.00	\$8,957.00
Becker Ventures	200 N. Michigan Ave.	\$8,500.00	\$100.00	\$8,600.00
Leopardo Companies	5200 Prairie Stone Pkwy	\$3,200.00	\$500.00	\$3,700.00
Washington-Franklin	309 W Washington	\$9,125.00	\$100.00	\$9,225.00
Tandem Development	300 N Martingate Rd	\$14,600.00	\$500.00	\$15,100.00
Spectrum Properties	350 N LaSalle	\$12,500.00	\$400.00	\$12,900.00
McCollum Realty	1010 Lake St. Oak Pk	\$4,900.00	\$600.00	\$5,500.00
Griffith Building	40 S Clay St	\$3,950.00	\$100.00	\$4,050.00
Miscellaneous	Hellenic, Captive, Pittsfield KTPA	\$10,910.00	\$300.00	\$11,210.00
Weiss Properties	8100 McCormick, 8707 Skokie	\$7,750.00	\$0.00	\$7,750.00
TOTALS				\$356,677.00

**RESTRICTIVE COVENANT ADDENDUM
TO
CUSTOMER TRANSITION AGREEMENT**

This Restrictive Covenant Addendum shall constitute a part of the Customer Transition Agreement for all purposes.

For purposes of this Addendum, "*Restricted Party*" shall mean each of NBRG and Karkazis and "*the Company*" shall mean Sun and its successors and assigns.

Capitalized terms used in this Addendum but not otherwise defined in this Addendum shall have the meanings provided in the other provisions of the Customer Transition Agreement.

1. Covenants.

(a) **Customers.** Subject to Paragraph 1(d) below, during the period provided in Paragraph 1(c) below Restricted Party shall not, directly or indirectly, solicit or accept business from any Customer listed on Exhibit A to the Customer Transition Agreement for purposes of Restricted Party or another person or entity (other than the Company) providing building maintenance services to such customer.

(b) **Employees and Contractors.** During the period provided in Paragraph 1(c) below, Restricted Party shall not, directly or indirectly, hire, solicit, take away, or attempt to hire, solicit or take away, any person who is, at the time or at any time within the then preceding 30 days, an employee, vendor, or other independent contractor of the Company, whether on behalf of any other person or entity or on Restricted Party's own behalf; provided that the foregoing shall not prohibit Restricted Party from engaging a vendor or other independent contractor to provide goods or services in a manner that does not prevent the vendor or other independent contractor from continuing to provide goods or services to the Company at levels not materially less than those theretofore in effect.

(c) **Time Period.** Subject to Paragraph 1(c)(3):

(1) With respect to any Customer listed on Exhibit A of Customer Transition Agreement as to which Sun enters a Customer Building Maintenance Agreement prior to expiration or termination of the Customer Transition Period, the time period covered by the covenants in Paragraph 1(a) shall commence on the Commencement Date of the Customer Transition Agreement and shall continue until the last day of the twenty-third month following the month in which Sun began providing building maintenance services to such Customer. With respect to any Customer listed on Exhibit A of Customer Transition Agreement as to which Sun does not enter a Customer Building Maintenance Agreement prior to expiration or termination of the Customer Transition Period, the time period covered by the covenants in Paragraph 1(a) shall commence on the Commencement Date of the Customer Transition Agreement and shall continue until the earlier of (x) the date upon which Sun notifies NBRG in writing that Sun is not seeking to

enter into a Customer Building Maintenance Agreement with such Customer, or (y) the expiration or termination of the Customer Transition Period.

(2) The time period covered by the covenants in Paragraph 1(b) shall commence on the Commencement Date of the Customer Transition Agreement and shall continue until the second anniversary of such Commencement Date, except that in the case of any employee providing services for the Company to a Customer listed on Exhibit A to the Customer Transition Agreement with respect to whom Sun enters a Customer Building Maintenance Agreement prior to expiration or termination of the Customer Transition Period, the time period shall continue until the last day of the twenty-third month following the month in which Sun began providing building maintenance services to such Customer.

(3) The time period provided in Paragraph 1(c)(1) or 1(c)(2) for the covenants referenced therein shall automatically extend by an additional day for each day that either Restricted Party is in breach of any such covenant.

(d) **Exception to Paragraph 1(a).** Paragraph 1(a) shall not prohibit NBRG from continuing to provide building maintenance services to a Customer listed on Exhibit A until the date the Company's services to such Customer under the Company's Customer Building Maintenance Agreement with the Customer commence.

(e) **Necessity and Consideration.** The parties acknowledge and agree that the restrictions in this Paragraph 1 are reasonably necessary to protect the Company's lawful interests, and that the Company's undertaking of the Company's obligations in the Customer Transition Agreement constitutes full and sufficient consideration for Restricted Party's abiding by such restrictions.

2. Karkazis Livelihood. Karkazis represents and warrants to the Company that his experience and financial and other capabilities are such that no provision of this Addendum will prevent him from obtaining a sufficient livelihood.

3. Company's Right to Obtain an Injunction. Restricted Party acknowledges and agrees that a breach of this Addendum would cause the Company irreparable harm for which there is no adequate remedy at law. Accordingly, in the event of any threatened or actual breach of this Addendum, the Company shall be entitled to enforce this Addendum by injunctive and any other appropriate equitable relief in any court of competent jurisdiction, in addition to all other remedies available. In any action to enforce this Addendum the prevailing party shall be entitled to attorneys' fees and expenses.

NBRG DISCLOSURE SCHEDULE

- A. Pending Legal Proceedings pursuant to Paragraph 3(a)(3) of the Customer Transition Agreement
1. Laborers' Pension Fund and Laborer's Welfare v. National Building Resource Group, LLC, 11-CV-3309.
- B. Customers who have terminated, materially reduced, threatened to terminate or materially reduce purchases of goods and supplies since January 1st, 2001 pursuant to Paragraph 3(a)(4) on the Customer Transition Agreement.
1. 205 W. Randolph, Chicago, Illinois. The building was sold in Spring/Summer of 2011 and contract terminated – Oak Lawn.
 2. Customer reduced services from approximately \$7,300.00 per month to \$5,300.00 per month for 1010 Lake Street, Oak Park because owner lost major tenant.
- C. Disclosure of all pending or threatened federal, state and local claims and actions respecting employment, employment practices, terms and conditions, wages and hours and unfair labor practices pursuant to Paragraph 3(a)(5) of the Customer Transition Agreement.
1. None.
- D. Liability and Debts of NBRG pursuant to Paragraph 3(a)(6) of the Customer Transition Agreement
1. Federal and state payroll taxes of approximately \$225,000- \$250,000.
 2. Loan due to Frank Karkazis in the amount of \$241,000.*
 3. Union obligations in the approximate amount of \$120,000.*
 4. Steven B. Fisher LLC loan - \$75,000.
 5. Peter Kanaris, LLC loan - \$75,000.
 6. Gateway Financial (see E1 below).
 7. Other balance sheet items (see below).

* Please note that only the items with an asterisk are reflected in NBRG's Summary Balance Sheet dated July 31, 2011 at their then current balances.

E. Liens

1. Gateway has a lien on receivables for One North Dearborn and 360 N. Michigan Avenue for the time period prior to August 1, 2011.
2. Lien of One North LaSalle by the landlord.

F. Members of LLC

1. Steven B. Fisher LLC, an Illinois limited liability company;
2. Peter Kanaris, LLC, an Illinois limited liability company;
3. Ronald Rochester, individually;
4. Harry Karkazis, individually; and
5. Frank Karkazis, individually.

G. Customer list (see attached)

H. Balance sheet (see attached)

I. Leases

1. One North LaSalle Street office lease, Chicago, Illinois.

J. Other

1. Sun Building Maintenance, LLC will have to execute Collection Bargaining Agreement with SEIU Local. Current agreement expires April 8, 2012.

2:09 PM

9/01/11

accrual Basis

National Building Resources Group LLC
Summary Balance Sheet
As of July 31, 2011

	Jul 31, 11
ASSETS	
Current Assets	
Checking/Savings	174,120.22
Accounts Receivable	470,245.22
Other Current Assets	11,582.84
Total Current Assets	615,707.84
Fixed Assets	17,581.49
TOTAL ASSETS	<u>633,289.33</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	103,915.66
Other Current Liabilities	833,657.47
Total Current Liabilities	937,573.13
Long Term Liabilities	260,126.40
Total Liabilities	1,217,799.53
Equity	883,530.10
TOTAL LIABILITIES & EQUITY	<u>2,101,329.63</u>

EXHIBIT B

Collection Action

Transfer of Assets - Assessment and Notice of Intent



January 13, 2014



Letter ID: L0948101984

SUN BUILDING MAINTENANCE
500 N MICHIGAN AVE STE 300
CHICAGO IL 60611-3775

Taxpayer ID: XX-XXX6352
Asset Transfer ID: 1081003



NATIONAL BUILDING RESOURCE GRO
1 N LA SALLE ST
1850
CHICAGO, IL 60602-3931

We have determined you are personally liable for \$28,579.73.

Illinois law (35 ILCS 5/902 and 35 ILCS 120/5j) provides that a purchaser or transferee is personally liable for any debt incurred by the seller or transferor if the sale, purchase, or transfer of assets was made without proper notification to the Illinois Department of Revenue's Bulk Sales Unit.

You purchased or transferred assets from NATIONAL BUILDING RESOURCE GRO. However, you did not make the required notification to us and the NATIONAL BUILDING RESOURCE GRO had outstanding debt with us at the time of this purchase or transfer. You can be held personally liable for this debt.

Pay us \$28,579.73 immediately.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000,** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal,** file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within **60 days** of the date of this notice, which is **March 14, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue,** you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 203/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and becomes final, we intend to take collection enforcement action against you to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your bank accounts.

LORI GATHARD
COLLECTIONS
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD, IL 62794-9035

For information about
› how to pay
› what you owe
› collection actions



217 524-2549
217 524-0526 fax

To avoid collection action

Pay

You must pay using one of the following two methods.

1. Pay by guaranteed remittance (i.e., cashier's check, money order) made payable to the Illinois Department of Revenue. Send your guaranteed payment (i.e., cashier's check, money order) to us with the voucher on the next page or bring your payment to us at the address on the front of this letter.
2. Pay using the "check by phone" method by calling us at 217 524-2549 . You will need your check number, account number, and bank routing number, and we will prepare a check to submit to your financial institution.
Note: If you pay using "check by phone", we may apply your payment to your liability that day, which will reduce the amount of daily interest that accrues.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Collection actions

Applicable Illinois laws

Illinois law (35 ILCS 5/902 and 35 ILCS 120/5j) provides that a purchaser or transferee may be liable for any debt incurred by the seller or transferor if the sale, purchase or transfer of assets was done without proper notification to the Illinois Department of Revenue's Bulk Sales Unit.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, etc.
- seizure and sale of your assets.
- referral to a collection agency.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- civil judgments.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action

Transfer of Assets - Assessment and Notice of Intent



January 13, 2014



Letter ID: L0948101984

SUN BUILDING MAINTENANCE
500 N MICHIGAN AVE STE 300
CHICAGO IL 60611-3775

Taxpayer ID: XX-XXX6352

Asset Transfer ID: 1081003



This statement lists our most recent information about your unpaid balance.

IL Withholding Income Tax

Account ID: 27-0427643-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2010	21,292.81	1,192.14	42.19	-	(21,299.25)	1,227.89
30-Jun-2011	28,651.66	2,474.49	1,132.42	-	(4,906.73)	27,351.84

IDOR-4-XFER (R-11/13)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L0948101984
SUN BUILDING MAINTENANCE

Total amount due: \$28,579.73

Write the amount you are paying below.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

\$ _____
Write your Taxpayer ID on your check.

000 006 008070236326 731 123199 1 0000002857973