

**OFFICE LEASE AGREEMENT**

**FOR**

**TOWER II**

**ERF TOWER II, INC.  
AS LANDLORD**

**AND**

**NUECES COUNTY**

**AS TENANT**

**The submission of this document for examination does not constitute an option or offer to lease space. This document shall have no binding effect on the parties unless executed by the Landlord and the executed copy is delivered to the Tenant.**

**OFFICE LEASE**

This Lease is made this \_\_\_\_ day of \_\_\_\_\_, 2020 ("**Effective Date**") by and between ERF TOWER II, INC., a Texas nonprofit corporation ("**Landlord**") and Nueces County, a government entity ("**Tenant**").

**1. BASIC LEASE PROVISIONS:**

- 1.1. Project Name: Tower II  
Address: 555 N. Carancahua St., Corpus Christi, Texas 78401, as more particularly described in **Schedule 1**.
- 1.2. Building: Tower II  
Unit/Suite No.: 930  
Floor: 9th
- 1.3. Premises: 1619 rentable square feet ("**RSF**") as reflected on the floor plan attached hereto as **Schedule 2**.
- 1.4. Commencement Date of Lease: 1 April, 2020.
- 1.5. Expiration Date of Lease: 31 March, 2023 [**OR 36 FULL MONTHS AFTER THE COMMENCEMENT DATE**].
- 1.6. Tenant's Percentage Share: 0.56%. Based upon a Premises of 1619 RSF in a Building of 289,586 RSF.
- 1.7. Security Deposit: None. (See **Paragraph 24**)
- 1.8. Base Rent:

<u>PERIOD OF LEASE TERM:</u>	<u>\$/RSF PER YEAR</u>	<u>ANNUALIZED BASE RENT:</u>	<u>MONTHLY BASE RENT:</u>
Apr 20–Mar 21	\$8.00	\$12,952.00	\$1,079.33
Apr 21–Mar 22	\$8.00	\$12,952.00	\$1,079.33
Apr 22–Mar 23	\$8.00	\$12,952.00	\$1,079.33

- 1.9. Operating Expense Rent: The estimated Operating Expense Rent shall initially be \$8.57 per RSF per year, which is equivalent to \$1156.24 per month for the Premises, plus any applicable taxes. The Operating Expense Rent is subject to adjustment from time to time as hereinafter set forth.
- 1.10. (Intentionally Deleted)
- 1.11. Permitted Use: General office use including the conduct of public meetings with respect to tenant’s operations and no other purposes.
- 1.12. Parking Spaces: None.

1.13. (Intentionally Deleted)

1.14. Addresses:

(a) Address for payment of Rent and notices:

Landlord:  
555 N. Carancahua St.  
Suite 220  
Corpus Christi, Texas 78401  
Phone: (361) 698-7800  
Email: tupaj@edrachal.org

Tenant:  
Nueces County Courthouse  
901 Leopard St. Suite 303  
Corpus Christi, TX 78401  
Phone: 361.888.0264  
Email: maggie.turner@nuecesco.com

(b) **Payment information for Landlord**

Make checks payable to: **ERF TOWER II, INC.**

(c) Landlord reserves the right to change Landlord's notice and payment address at any time by written notice to Tenant.

1.15. Broker: Landlord is not represented by a Broker. Tenant is not represented by a Broker (See **Paragraph 41.**)

2. **DEFINITIONS:** Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:

2.1. Common Areas: shall mean all areas and facilities outside the Premises and within the exterior boundaries of the Project that are not leased to other tenants and that are provided and designated by Landlord, in its sole discretion from time to time, for the general use and convenience of Tenant and other tenants of the Project and their authorized representatives, employees, invitees and the general public (such as common entrances, walkways, stairways, elevators, restrooms, and lobbies) as more particularly set forth in **Paragraph 4.** Landlord may also designate, from time to time, other areas in the Project, such as pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, elevators, restrooms, stairways, decorative walls, plazas, loading areas, parking areas and roads for the non-exclusive use of Tenant.

2.2. Operating Expenses: shall mean all costs of operating, servicing, managing, repairing and maintaining the Project, the landscaping of Common Areas of the Project and the parking lot or garage used as parking for the Project, including any reasonable and necessary costs of operation, maintenance and repair, computed in accordance with sound accounting principles applied on a consistent basis, and will include by way of illustration, but not limitation:

(a) all necessary costs of managing, operating, repairing and maintaining the Project, including, without limitation, wages, salaries, fringe benefits and payroll burden for employees associated with the Project; employees on-site utilized in the day to day operation of the Project; public liability, flood, property damage and all other insurance premiums paid by Landlord with respect to the Project, including any amounts that would be charged as premiums if Landlord self-insures any of the insurance risks; liability disclaimers; electricity water, sewer, heating, air

conditioning, ventilating and all other utility charges (other than with respect to utilities separately metered and paid directly by Tenant or other tenants); the cost of contesting the validity or amount of real estate and personal property taxes; janitorial services; access control; window cleaning; elevator maintenance; fire detection and security services; gardening and landscape maintenance; all costs of snow and ice removal; trash, rubbish, garbage and other refuse removal; pest control; painting; facade maintenance; lighting; exterior and partition (demising) wall repairs; roof repairs; maintenance of all steam, water and other water retention and discharging piping, lakes, culverts, fountains, pumps, weirs, lift stations, catch basins and other areas and facilities, whether or not on-site; canal embankment and related maintenance; repair and repainting of sidewalks due to settlement and potholes and general resurfacing and maintenance of parking areas; sanitary control; depreciation of machinery and equipment used in any of such maintenance and repair activities; repair, maintenance and replacement of signage located in the Project; management fees; union increases; road sidewalk and driveway maintenance; and all other Project maintenance, repairs and insurance;

- (b) the costs (amortized together with a reasonable finance charge) of any capital improvements: (A) made to the Project by Landlord primarily for the purpose of reducing Operating Expenses; or (B) made to the Project by Landlord primarily to comply with any governmental law or regulation that was not in force at the Commencement Date;
- (c) the costs of supplies, materials, tools and equipment for repairs and maintenance;
- (d) all real and personal property taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit taxes, franchise taxes, and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income taxes), which may now or hereafter be levied or assessed against the land upon which the Project stands or the Project for such year or the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Project for the operation thereof (the "**Taxes**").

Operating Expenses shall not include:

- (e) depreciation on the Project or any Common Areas;
- (f) costs of space planning, tenant improvements, marketing expenses, finders fees and real estate broker commissions;
- (g) any and all expenses for which Landlord is reimbursed (either by an insurer, condemnor, tenant or other person or entity), but only to the extent of such reimbursement;
- (h) costs in connection with services or benefits of a type which are not Project standards and are not available to Tenant, but are available to another tenant or occupant;
- (i) mark-ups on electricity and condenser cooling water for heat pumps in excess of Landlord's costs therefore;

- (j) Landlord's general overhead and administrative expenses not directly allocable to the operation of the Project;
  - (k) attorneys' fees and cost related to negotiating or enforcing any tenant lease, or resolving disputes with any lender of Landlord;
  - (l) interest on debt or amortization payments on any mortgage/deed of trust; and
  - (m) federal and state taxes on income, death, estate or inheritance taxes.
- 2.3. Environmental Law: shall mean any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, **CERCLA** (Comprehensive Environmental Response, Compensation and Liability Act of 1980), **RCRA** (Resources Conservation and Recovery Act of 1976), **SARA** (Superfund Amendments and Reauthorization Act of 1986), **EPCRA** (Emergency Planning and Community Right-to-Know Act), and any applicable laws or regulations of the State in which the Building is located.
- 2.4. Hazardous Substance: shall mean any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant", which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products, or which becomes hazardous to the health and welfare of any occupants in the Building.
- 2.5. Building Hours: shall mean Monday through Friday from 6:30 a.m. to 6:30 p.m., and Saturdays from 8:00 a.m. to 1:00 p.m., excluding federal and state legal holidays.
- 2.6. Legal Requirements: shall mean any and all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, the Building and/or the Project, including, but not limited to, the Americans with Disabilities Act.
- 2.7. Schedules: shall mean the Schedules attached hereto and incorporated herein by reference. This Lease contains the following Schedules:
- |            |  |
|------------|--|
| Schedule 1 | Description of Project                         |
| Schedule 2 | Floor Plan of Premises                         |
| Schedule 3 | Work Letter                                    |
| Schedule 4 | <b>Intentionally Deleted</b>                   |
| Schedule 5 | Rules and Regulations                          |
| Schedule 6 | Tenant Acceptance Letter                       |
| Schedule 7 | Addendum                                       |
| Schedule 8 | <b>Intentionally Deleted</b>                   |
| Schedule 9 | Parking Agreement/Garage Rules And Regulations |
- 2.8. Term/Lease Term: shall mean the initial term of this Lease. It shall commence as of the Commencement Date and end as of the Expiration Date unless sooner terminated as provided herein or extended pursuant to the terms of this Lease.

3. **PREMISES:**

- 3.1. Lease of Premises: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby mutually agree, the premises (the "**Premises**") described in **Paragraph 1** above. The parties hereby stipulate the number of rentable square feet in the Premises and both parties waive the right either may have to remeasure the same. Upon occupancy of the Premises by Tenant, Tenant shall promptly execute and deliver to Landlord the Tenant Acceptance Letter attached hereto as **Schedule 6**. If Landlord is unable to deliver possession of the Premises on the Commencement Date, Landlord shall not be liable for any damage caused thereby, nor shall this Lease be void or voidable, but Tenant shall not be liable for any Rent and the Commencement Date shall be delayed until possession is delivered, at which time the Term shall commence and the Expiration Date shall be extended so as to give effect to the full stated Term.
- 3.2. Project: The Premises are a part of the project (the "**Project**") described in **Paragraph 1**. Landlord may increase, reduce or change the number, dimensions or locations of the walks, buildings, mall areas, parking and other Common Areas and other improvements located in the Project in any manner that Landlord, in its sole discretion, shall deem proper. Landlord further reserves the right to make alterations and/or additions to and to build or cause to be built additional stories on the Building in which the Premises are situated and to add any buildings adjoining the Premises or elsewhere in the Project. Without limiting the generality of the foregoing, Landlord may add additional tenants, retail shops, building and parking facilities anywhere in the Project. Such alterations and/or additions by Landlord shall not materially impair the Tenant's ability to use the Premises for its Permitted Use. Landlord reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Building and/or Project in a manner that will not materially interfere with Tenant's use of the Premises, except temporarily in the case of an emergency. Landlord will also have the right to increase and expand the size of the Project by adding additional land, buildings and other structures to the Project, provided such expansion does not materially impair the Tenant's ability to use the Premises for its Permitted Use and the Tenant's Percentage Share is equitably adjusted. Landlord shall have the right to change the Project's name without notice, to change the Project's street address, each upon ninety (90) days prior notice, and the right to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Project, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in **Paragraph 1**, to retain at all times master keys or passkeys to the Premises, and to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Project.
- 3.3. Relocation of Tenant: Upon Landlord's request and, if mutually convenient to both parties, Landlord expressly reserves the right after the execution and during the Term of this Lease, or any extension or renewal thereof, at its sole cost and expense, to remove the Tenant from the Premises and relocate the Tenant to some other space of Landlord's choosing of approximately the same size within the Project, which other space shall be built-out and decorated by Landlord at Landlord's expense and Landlord may in its discretion use such decorations and materials from the existing Premises or other materials, so that the space in which Tenant is relocated is comparable in its interior design and decoration to the Premises from which Tenant is removed. Tenant, by the execution of this Lease, acknowledges the foregoing right of Landlord, and no rights granted in this Lease to Tenant, including, but not limited to, the right of peaceful and quiet enjoyment, shall be deemed to have been breached or interfered with by reason of Landlord's exercise of the

right of relocation reserved in this Paragraph. Landlord's sole obligation for costs and expenses of removal and relocation shall be the actual cost of relocating and decorating the space in which Tenant is relocated and the reasonable moving costs of Tenant actually incurred in connection with the same, and Tenant agrees that Landlord's exercise of its election to remove and relocate Tenant shall not terminate this Lease or release the Tenant, in whole or in part, from the Tenant's obligation to pay the Rents and perform the covenants and agreements hereunder for the full Term of this Lease.

4. **COMMON AREAS:**

- 4.1. Tenant's Right to Use Common Areas: Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas subject to Landlord's rights as set forth in this Lease.
- 4.2. Landlord's Control: Landlord has the right to: (a) establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use and operation of the Common Areas, the initial rules and regulations are attached to the Lease as **Schedule 5**; (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas; (c) close temporarily any of the Common Areas for maintenance purposes; (d) select a person, firm or corporation which may be an entity related to Landlord to maintain and operate any of the Common Areas; and (e) designate other lands outside the exterior boundaries of the Project to become part of the Common Areas. Notwithstanding the provisions of this **Paragraph**, in exercising its rights hereunder, Landlord shall provide Tenant with a means of reasonable access to and from the Premises.

5. **RENT:**

- 5.1. Base Rent: Tenant will pay to Landlord as Rent for the use and occupancy of the Premises at the times and in the manner provided below, Base Rent in the amount specified in **Paragraph 1** payable in U.S. funds, in advance starting on the Commencement Date and on or before the first day of each and every successive calendar month thereafter during the Term without demand, setoff or deduction.
- 5.2. Tenant's Percentage Share. Tenant's Percentage Share of the Operating Expenses is the proportion that the rentable square footage occupied by Tenant bears to the total rentable square footage of the Building, as determined by Landlord (said Percentage Share shall be adjusted in the event the rentable area of the Building or the Project is increased or decreased).
- 5.3. Operating Expense Rent:
- (a) Calculation.

In addition to Base Rent, Tenant shall pay in advance starting on the Commencement Date and on or before the first day of each and every successive calendar month thereafter during the Term without demand, setoff or deduction, Tenant's Percentage Share, as specified in Paragraph 1, of the Operating Expenses paid or incurred by Landlord in such year ("Operating Expense Rent").

- (b) Payment: During December of each calendar year or as soon thereafter as practicable, Landlord shall provide Tenant with a written notice of its estimate (line item and detailed support included) of Operating Expense Rent for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord 1/12th of such estimated amounts, provided that if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given.
  - (c) Statement: Within one hundred twenty (120) days after the close of each calendar year or as soon after such one hundred twenty (120) day period as practicable, Landlord will deliver to Tenant a statement of amounts of Operating Expense Rent payable under this Lease for such calendar year. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant will pay the deficiency to Landlord within thirty (30) days after delivery of the statement. If the total of the estimated monthly installments paid by Tenant during any calendar year exceeds the actual expense adjustment amount due from Tenant for such calendar year and provided Tenant is not in default hereunder, such excess shall, at Landlord's option, be either credited against payments next due hereunder or refunded by Landlord to Tenant. The terms and conditions of this **Subparagraph** shall survive expiration or other termination of this Lease.
  - (d) Audit Rights. Tenant has the right, exercisable no more than once each calendar year on reasonable notice and at a time reasonably acceptable to Landlord, to cause an audit to be performed at Tenant's sole cost and expense of Landlord's operations and/or books and records pertaining to Operating Expense Rent for the preceding calendar year. In the event Landlord has overstated Operating Expense Rent, and provided Tenant is not in default hereunder, within thirty (30) days after demand therefor by Tenant accompanied by Tenant's verification of such overcharges and paid invoices, Landlord shall reimburse Tenant for such overcharges. In the event that Landlord has overstated Operating Expenses for the calendar year being reviewed by more than five percent (5%), and provided Tenant is not in default hereunder, within thirty (30) days after demand therefor by Tenant accompanied by Tenant's verification of such overcharges and paid invoices, Landlord shall also reimburse Tenant for the reasonable costs of such audit not to exceed one thousand five hundred dollars (\$1,500.00); provided, however, the person or company performing such audit shall not be compensated, in whole or in part, on a contingency fee basis.
  - (e) Gross Up. Notwithstanding any provision of this Paragraph to the contrary, if the Building (or Project, as applicable) is less than ninety-five percent (95%) leased and/or occupied during any calendar year, an adjustment shall be made so that Operating Expense Rent shall be grossed up for such year as though ninety-five percent (95%) of the Project had been leased and occupied during such year.
- 5.4. Sales Tax; Additional Rent: Only if and to the extent actually charged by any applicable governmental or quasi-governmental authority, Tenant agrees to pay to Landlord, concurrently with Tenant's payments under this Lease, all taxes for which tenant is not exempt (including, without limitation, sales tax), or other charges, that are imposed upon any payment to be made by Tenant to Landlord under this Lease (collectively, "**Rent Taxes**"). Tenant shall also be responsible for timely payment of sales tax or other taxes, if

any (and for any interest and penalties assessed for untimely payment to the extent taxes applicable to tenant), on all payments to third parties or performance by Tenant under the Lease. All sums of money as shall become due and payable by Tenant to Landlord under this Lease, including, without limitation, Rent Taxes, Operating Expense Rent and Parking Charges (if any) shall be deemed additional Rent, which Tenant shall be obligated to pay. Landlord shall have the same remedies for default in the payment of additional Rent as are available to Landlord in the case of a default in the payment of Base Rent. All Base Rent, Operating Expense Rent and additional sums payable hereunder are sometimes collectively referred to as "Rent."

- 5.5. Late Fee / Default Interest. Landlord may impose a late payment charge of 5% of any installment of Rent not paid within ten (10) days after it is due. Also, any installment of Rent not paid within one month after it is due and payable shall bear interest at eighteen percent (18%) per annum from the date one month after the installment was due and payable until paid. In the event any check, bank draft or negotiable instrument given for any payment under this Lease shall be dishonored at any time for any reason whatsoever not attributable to Landlord, Landlord shall be entitled, in addition to any other remedy that may be available, to an administrative charge of two hundred fifty dollars (\$250.00).
- 5.6. First Month's Rent. The Base Rent installment and Operating Expense Rent installment due for the first full calendar month in which Base Rent is due (plus any partial month occurring at the beginning of the Lease Term) and the Security Deposit, if any, shall be delivered to Landlord by Tenant simultaneously with Tenant's delivery to Landlord of its signature(s) to this Lease.
- 5.7. Proration: If for any reason other than the default of Tenant or a Tenant Delay, as defined in **Schedule 3**, this Lease commences on a day other than the first day of a calendar month or terminates on a day other than the last day of a calendar month or year, the amount of Rent payable by Tenant for such partial month or year will be prorated on a per diem basis, as applicable.

## 6. **USE OF PREMISES:**

- 6.1. Quiet Enjoyment. Provided Tenant pays the Rent and fully performs all of its other covenants and agreements under this Lease, Tenant shall have the right to occupy the Premises without hindrance from Landlord or any person lawfully claiming through Landlord, subject to the terms of this Lease, all mortgages, insurance requirements and applicable Legal Requirements. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective periods of ownership of Landlord's interest hereunder.
- 6.2. Effect on Insurance: Tenant shall not use any portion of the Premises for purposes other than those specified in **Paragraph 1** and no use shall be made or permitted to be made upon the Premises, nor acts done, which would cause cancellation of any insurance policies covering the Project. If Landlord's insurance premiums increase due to Tenant's activity, Landlord may elect to charge Tenant directly for such additional cost as additional Rent hereunder and Tenant shall pay Landlord for the same within ten (10) days after written demand thereof.
- 6.3. Miscellaneous Restrictions: Tenant will not use the Premises for or permit in the Premises any offensive, noisy, or dangerous trade, business, manufacture or occupation or interfere

with the business of any other tenant in the Project. Tenant agrees not to cause, permit or suffer any waste or damage, disfigurement or injury to the Premises or the fixtures or equipment thereof or the Common Areas. Tenant will not use the Premises for washing clothes or cooking (except for a small kitchenette customarily located in an office) and nothing will be prepared, manufactured or mixed in the Premises, which might emit any offensive odor into the Project. Tenant will not obstruct the Common Areas in the Project or use the same for business operations or advertising. Tenant will not use the Premises for any purpose which would create unreasonable elevator loads, cause structural loads to be exceeded or adversely affect the mechanical, electrical, plumbing or other base building systems. Tenant will at all times comply with the rules and regulations of the Project attached hereto as **Schedule 5** and with such additional rules and regulations as may be commercially reasonably adopted by Landlord from time to time.

- 6.4. Prohibited Uses. In addition, and not by way of limitation of the restrictions on use set forth herein, Tenant shall not use or permit the use of the Premises in any manner, nor shall Tenant keep the Premises in such a condition, which violates any Legal Requirements (as defined in **Paragraph 2**) now in effect or hereafter promulgated regulating the use, condition or occupancy of the Premises, or the conduct of Tenant's employees and agents, and Tenant, at its sole expense, shall promptly comply with all such applicable Legal Requirements and Tenant will indemnify, defend and hold harmless to the extent allowed by law, Landlord from any failure to materially comply with any Legal Requirements and from all fines, suits, proceedings, claims, demands or actions of any kind arising out of or in connection with the occupancy or use of the Premises by Tenant. The commencement or pendency of any state or federal court proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof. Tenant shall not use or permit any part of the Premises to be used for any unlawful purpose or for any purpose not approved by Landlord. Tenant shall not use or permit the use of the Premises in any manner, which will tend to create waste or a nuisance or will tend to interfere with, annoy, or disturb Landlord or any occupants of adjoining premises. This Lease is subject and subordinate to all encumbrances and matters of public record applicable to the Premises, including without limitation, any reciprocal easement or operating agreements, covenants, conditions and restrictions, and Tenant shall not act or permit the Premises to be operated in violation thereof.
- 6.5. Temporary Closure. Notwithstanding anything contained in this Lease to the contrary, should Landlord determine in its reasonable opinion that an emergency or force majeure condition exists that threatens the Building or Project or any of the tenants or persons therein, or any of their property (e.g. an impending hurricane, a bomb threat to the Building and/or Project), including but not limited to emergencies caused by persons or natural conditions outside of Landlord's control, Landlord shall have the right to close the Building and/or the Project and require all tenants, including Tenant, to evacuate the Building until such emergency ceases to exist. Such closure shall not affect Base Rent, any other Rent or the Lease Term.

## 7. **PARKING:**

- 7.1. Tenant's Parking Rights: Subject to the rules and regulations of the Project, including the initial Parking Agreement/Garage Rules and Regulations attached as **Schedule 9**, Tenant shall be entitled to the number of Parking Spaces set forth in **Paragraph 1** above. Tenant

and its authorized representatives will park their cars only in areas specifically designated for that purpose by Landlord. Within five (5) days after written request by Landlord or any parking space operator, Tenant will furnish to Landlord the license numbers assigned to its cars and the cars of all of its authorized representatives. Tenant will not park or permit the parking of any vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. Only automobiles and pickup trucks will be permitted in the parking areas. If Tenant is entitled to Reserved Spaces, Landlord reserves the right to relocate the Reserved Spaces from time to time upon written notice to Tenant. Landlord will have the right to institute reasonable procedures and/or methods to enforce the Terms of this **Paragraph**, including but not limited to, a card access system, the hiring of parking attendants or a management company.

- 7.2. Parking Charges. Tenant shall pay the Parking Charges (if any) to Landlord (or the designated parking facility operator if Landlord so directs) on the first day of each calendar month. Tenant's obligation to pay the monthly Parking Charges shall be considered an obligation to pay additional Rent for all purposes of the Lease. In the event that for any reason whatsoever Landlord is not permitted by governmental law, ordinance, or otherwise to charge Parking Charges for the Parking Spaces as provided in this Paragraph, then the Base Rent shall be increased by an amount equal to the total annual Parking Charges otherwise payable by Tenant.
8. **SIGNAGE:** Landlord, at Tenant's sole cost and expense, will install and maintain all letters or numerals on the entrance doors for the Premises. All such letters and numerals shall be in the form specified by Landlord, and no other shall be used or permitted on the Premises. If a Tenant directory exists at the Building, Landlord shall include Tenant's name in the directory. Without Landlord's prior written approval, Tenant shall not place any signs within the Premises, which are visible from the outside of the Premises.
9. **ASSIGNMENT AND SUBLETTING:**
  - 9.1. Prohibition. Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, provided Tenant is not in default under the Lease at the time of such request. The parties agree that it shall be reasonable for Landlord to withhold consent if (i) Landlord is not satisfied with the financial condition, identity, reputation or business character of the proposed assignee or sublessee, (ii) the proposed assignee or sublessee is an existing tenant of the Building, (iii) the identity of or the use contemplated by the proposed assignee or sublessee would violate an exclusive given by Landlord to another Tenant, (iv) the proposed assignee or sublessee is a governmental subdivision or agency or any person or entity who enjoys diplomatic or sovereign immunity, or if Landlord or its agents have shown any space in the Project to or attempted to negotiate lease Terms with such proposed assignee or sublessee regarding other available space in the Project within the proceeding six (6) months of the proposed amendment. Any change in the majority ownership, interest or control of Tenant, if Tenant is a corporation, partnership, limited liability company or other similar type entity, shall constitute an assignment for purposes of this Paragraph. Notwithstanding any consent by Landlord, Tenant and Guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant, Guarantor, if applicable, or any assignee or sublessee without proceeding in any way against any other party. In the

event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant. No usage of the Premises different from the usage provided for in **Paragraph 1** above shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease.

- 9.2. Consent Process. If Tenant requests Landlord's consent to an assignment of this Lease or subletting of all or part of the Premises, Landlord may, at its option: (i) approve such sublease or assignment (but no approval of an assignment or sublease shall relieve Tenant of any liability hereunder); (ii) negotiate directly with the proposed subtenant or assignee and, in the event Landlord is able to reach agreement with such proposed subtenant or assignee, upon execution of a lease with such subtenant or assignee, terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice; (iii) recapture the Premises or applicable portion thereof from Tenant and terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice in which case Landlord shall be permitted to lease the Premises to any third party; or (iv) if Landlord should fail to notify Tenant in writing of its decision within a thirty (30) day period after Landlord is notified in writing of the proposed assignment or sublease, Landlord shall be deemed to have refused to consent to such assignment or subleasing, and to have elected to keep this Lease in full force and effect. If Landlord consents to any assignment or sublease, Tenant shall pay to Landlord, on demand as additional Rent, an administrative fee of one thousand dollars (\$1,000.00) and will reimburse Landlord for all reasonable attorneys' fees and costs associated with Landlord's consent to the assignment or sublease.
- 9.3. No Profit. All cash or other consideration received by Tenant as the proceeds of any assignment or sublease of Tenant's interest in this Lease and/or the Premises, whether consented to by Landlord or not, shall be paid to Landlord, notwithstanding the fact that such proceeds exceed the Rent due hereunder, unless Landlord agrees to the contrary in writing, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. This covenant and assignment shall benefit Landlord and its successors in ownership of the Building and shall bind Tenant and Tenant's heirs, executors, administrators, personal representatives, successors and assigns. Any assignee, sublessee or purchaser of Tenant's interest in this Lease, by occupying the Premises and/or assuming Tenant's obligations hereunder, shall be deemed to have assumed liability to Landlord for all amounts paid to persons other than Landlord in consideration of any such sale, assignment or subletting, in violation of the provisions hereof.
10. **ORDINANCES AND STATUTES:** At Tenant's sole cost, Tenant will comply with all Legal Requirements. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof. Landlord warrants that on the date of commencement and prior to occupancy by tenant the premises shall comply with all legal requirements.
11. **MAINTENANCE, REPAIRS, ALTERATIONS:**
- 11.1. Tenant's Obligations: Except for the completion of any Work by Landlord that may be defined in **Schedule 3**, Tenant has agreed to accept the Premises in its "AS IS" condition without any representation or warranty of any kind. Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at its own expense and at all times, maintain the Premises in good and safe condition. Tenant,

at Tenant's expense, shall be responsible for all maintenance and repairs required in the Premises, except any electrical wiring, plumbing and HVAC installations and any other Building systems or Building equipment located outside the Premises, roof, exterior walls, structural foundations, parking areas and other Common Areas, which shall be maintained and repaired by Landlord and included in Operating Expenses. Notwithstanding the foregoing, Tenant shall be responsible for maintaining and repairing any electrical wiring, telecommunications or computer cabling, supplemental HVAC equipment, non-standard flooring, wall surfaces, non-standard light fixtures, (not including fixtures in the ceiling grid, which are maintained and repaired by Landlord and included in Operating Expenses) plumbing fixtures or the like exclusively serving the Premises. Should the Tenant request the Landlord to make repairs or maintenance required of Tenant, then such shall be at Landlord's cost plus 15%.

- 11.2. Limitations: Tenant may make any improvements or alterations to the Premises without Landlord's prior written consent, if they are nonstructural, do not affect any Building system, cost less than five thousand dollars (\$5,000.00) in the aggregate during any six (6) month period, cannot be seen from the exterior of the Premises, and otherwise comply with all Legal Requirements and the following provisions of this **Paragraph 11**. All other improvements or alterations to the Premises require Landlord's prior written consent. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give Landlord at least two (2) business days written notice in order that Landlord may post appropriate notices to avoid any liability for liens. All repairs, improvements or alterations will be made by a licensed and insured contractor, consented to by Landlord, and performed in a good and workmanlike manner. Landlord recognizes that state law may require tenant to utilize a bid and award procedure in the selection of contractors and landlord agrees to fully cooperate with tenant as may be necessary to satisfy applicable law. All materials used shall be of a quality comparable to or better than those in the Premises (or such specific materials that Landlord may identify) and shall be in accordance with plans and specifications approved by Landlord.
- 11.3. Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Project free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Project shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. Tenant agrees to indemnify, defend and hold harmless to the extent allowed by law Landlord from and against any and all costs and liabilities (including attorneys' fees and expenses) and any and all construction, mechanic's, materialman's, laborer's or supplier's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Project are hereby placed on notice of the provisions of this Paragraph, and Tenant shall further notify in writing such persons or entities of the provisions of this Paragraph prior to commencement of any Tenant work in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Project in connection with any such Tenant work, Tenant shall, within ten (10) days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within ten (10) days after receipt of notice from Landlord, Landlord shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all costs and

expenses incurred by Landlord associated with the discharge of the lien, including, without limitation, attorneys' fees, shall constitute additional Rent hereunder and shall be immediately due and payable by Tenant.

- 11.4. **Surrender of Premises:** On the last day of the Term hereof or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear, tear and casualty excepted, and clear and free of debris. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any of Tenant's property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant, and Landlord, in addition to all other rights and remedies it may have, shall have the right to keep in place and use all of such property in the Premises and/or remove any or all of such property from the Premises, which may then be disposed of, or stored at the cost of and for the account of Tenant. Landlord shall not be responsible for the care or safekeeping of any such property and Tenant waives any claim against Landlord relating thereto. The provisions of this subparagraph shall survive the expiration or earlier termination of this Lease.
  
12. **ENTRY AND INSPECTION:** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times upon 24-hour verbal notice for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Project. Notwithstanding the foregoing, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency or for the provision of janitorial services. Tenant will permit Landlord at any time within one hundred and eighty (180) days prior to the expiration or early termination of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises.
  
13. **INDEMNIFICATION:**
  - 13.1. **Indemnification.** Subject to **Paragraph 16** below, Tenant agrees to and shall indemnify, defend and hold harmless to the extent allowed by law Landlord from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses at all levels) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's negligent acts or omissions, Tenant's willful misconduct, or relating to Tenant's breach or default under this Lease, including, but not limited to, Tenant's breach of **Paragraph 14** below or Tenant's use or occupancy of the Premises or caused by Tenant or its agents, employees or invitees unless proximately caused by the gross negligence of Landlord. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Project or by any owner or occupant of adjoining or contiguous property. Tenant agrees to pay for all damage to the Project as well as all damage to tenants or occupants thereof caused by misuse or neglect of said Premises, its apparatus or appurtenances or the Common Areas, the Building or the Project, by Tenant or Tenant's employees, agents and invitees. The provisions of this **Paragraph 13.1** shall survive the termination of this Lease.
  
14. **TENANT'S INSURANCE:** At all times during the Term of this Lease, Tenant shall, at its sole expense, procure and maintain the following types of insurance coverage:
  - 14.1. **Commercial General Liability:** Commercial General Liability insurance, including Bodily Injury and Property Damage Liability, Products and Completed Operations, Personal and

Advertising Injury Liability, and Fire Damage Liability against any and all damages and liability, including attorneys' fees and expenses, on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Premises in amounts not less than one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) annual aggregate, and one hundred thousand dollars (\$100,000.00) Fire Damage Liability;

- 14.2. Personal Property: Insurance on an all risks basis covering one hundred percent (100%) of the replacement cost value of property at the Premises including, without limitation, leasehold improvements above building standard and all additions and improvements made by Tenant, trade fixtures, merchandise, furnishings, equipment, goods and inventory;
- 14.3. Mechanical Equipment: Where applicable, insurance covering central heating, air conditioning and ventilating systems, generators, refrigeration equipment, machinery and electrical equipment, boilers, and other high pressure piping and machinery, and other similar apparatus installed in the Premises, including Business Income loss;
- 14.4. Business Income: a) Business Interruption insurance for a period of not less than twelve (12) months from the date of fire or casualty; b) Loss of Rents insurance to cover rental loss of Landlord for a period of not less than 12 months from the date of fire or casualty, naming Landlord as Loss Payee;
- 14.5. Employer's Liability/Workers' Compensation: If and to the extent required by applicable law, Employer's Liability insurance with limits not less than five hundred thousand dollars (\$500,000.00), and Workers' Compensation insurance providing statutory state benefits for all persons employed by Tenant in connection with the Premises;
- 14.6. Sprinkler Leakage: Insurance covering damage from leakage of sprinkler systems now or hereafter installed in the Premises in an amount not less than the current replacement cost covering Tenant's merchandise, Tenant's improvements and Tenant's trade fixtures; and
- 14.7. Automobile Liability: Automobile liability insurance in commercially reasonable amounts, covering company owned vehicles, if any.
- 14.8. Other Insurance: Such other insurance and in such amounts as may be required by Landlord against other insurable hazards as at the time are commonly required by prudent owners of comparable office projects in the area in which the Project is located.
- 14.9. Form of Insurance/Companies: All insurance provided for in Section 14 hereof shall be in a form satisfactory to Landlord and carried with insurance companies reasonably acceptable to Landlord that are licensed or authorized to do business in the State in which the Project is located, are in good standing with the Department of Insurance in the State in which the Project is located and have a current rating issued by A.M. Best Company of not less than A-:VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage, which Landlord may carry, and, Landlord, and Landlord's managing agent shall be named as Additional Insureds with respect to Commercial General Liability and Automobile Liability, including any Umbrella or Excess policies. Tenant shall furnish Landlord at the inception of this Lease (i) a Certificate of Insurance evidencing that all such insurance is in effect and that Landlord will be given at least thirty (30) days prior

written notice of cancellation or non-renewal, and (ii) proof that premiums have been paid by Tenant. Not later than fifteen (15) days prior to the expiration of any insurance policy, evidence of renewals or replacements of such policy shall be delivered to Landlord, together with proof of payment of the associated premiums. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, procure such insurance on behalf of Tenant and the cost thereof shall be payable to Landlord as additional Rent within ten (10) days following written demand therefor.

15. **LANDLORD'S INSURANCE:**

- 15.1. All Risk. Landlord (or its principals naming Landlord as an additional insured) shall, as part of the Operating Expenses, maintain fire and extended coverage insurance on the Project and the Premises (which may include vandalism and malicious mischief coverage) and such endorsements as Landlord may require or is otherwise reasonably consistent with other similarly situated buildings) in an amount not less than the full replacement value thereof (which may be exclusive of foundations and may be exclusive of improvements made to the Premises by Tenant), or in such amounts as any mortgagee of Landlord shall require, with such deductibles as shall be determined by Landlord from time to time. The insurance obtained by Landlord may be limited to building standard improvements and not include above building standard costs. Landlord (or its principals naming Landlord as an additional insured) reserves the right to self-insure the Project so long as a financial institution such as an insurance company, bank, savings and loan association, or pension fund having a net worth of at least one hundred million dollars (\$100,000,000.00) owns an interest in the Project of fifty percent (50%) or more. Landlord (or its principals naming Landlord as an additional insured) also reserves the right to provide the insurance required hereunder as part of a blanket policy. All insurance obtained by Landlord in connection with the Project shall be passed through to the tenants of the Project, including Tenant, as part of the Operating Expenses, and payments for losses thereunder shall be made solely to Landlord or Landlord's mortgagee as their interests shall appear. In the event of self-insurance, the premium cost equivalency of such policy or policies shall be a part of the Operating Expenses. In the event of blanket insurance, Landlord shall reasonably allocate the portion of the blanket premium to the Operating Expenses for the Project.
- 15.2. Liability. Landlord shall, as part of the Operating Expenses, maintain a policy or policies of commercial general liability insurance with respect to the Common Areas and the activities thereon in such amounts as Landlord or any mortgagee of Landlord may require. In the event of self-insurance (as referenced in **Paragraph 15.1** above), the premium cost equivalency of such policy or policies shall be part of the Operating Expenses.
- 15.3. Other. Landlord may purchase insurance for windstorm, flood, plate glass, sign, automobile, sinkhole, business income, Rent loss, liquor liability, terrorism, earthquake and such other insurance which Landlord or any mortgagee of Landlord may require in their sole discretion and with such deductibles as Landlord may desire. The costs of all such insurance shall be part of the Operating Expenses. Landlord may hereafter raise or lower such coverage in such amounts as may from time to time be prudent to Landlord within its sole discretion or as Landlord's mortgagee may require.

- 15.4. If requested by Tenant, Landlord shall furnish certificate of insurance and such other evidence reasonably satisfactory to Tenant confirming the maintenance of insurance required hereunder.
16. **SUBROGATION:** Landlord and Tenant shall each obtain from their respective insurers under all policies of property insurance maintained by either of them at any time during the Term hereof insuring or covering the Premises or Project, as applicable, a waiver of all rights of subrogation which the insurer of one party might otherwise have, if at all, against the other party.
17. **UTILITIES AND SERVICES:**
- 17.1. Standards. Pursuant to the terms and conditions of this Lease, Landlord shall use all reasonable efforts to furnish heating, ventilation, and air conditioning ("HVAC"), electricity for normal lighting and office machines, cold water for reasonable and normal drinking and lavatory use, replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures, exterior window washing, standard trash removal, sewer and waste water services, and janitorial services five (5) days per week. Said services and utilities shall be provided during Building Hours, except for janitorial which may be provided after Building Hours. HVAC required at other times shall be subject such charges as Landlord may from time to time establish. Tenant shall pay for any electricity that may be separately metered for use in the Premises. Landlord shall provide automatic elevators providing adequate ingress and egress to floor on which premises located and temporary freight elevator service.
- 17.2. Temporary Interruption. Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop or interrupt or reduce any of the services listed in this **Paragraph 17** or to stop or interrupt or reduce any other services, required of Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) accidents, emergencies, strikes or the occurrence of any of the other events of force majeure, (ii) the making of repairs or changes which Landlord is required by law or is permitted by this Lease to make or in good faith deems necessary, (iii) difficulty or excessive expense in securing proper supplies of fuel, steam, water, electricity, or (iv) any other cause beyond Landlord's reasonable control, whether similar or dissimilar to the foregoing. Landlord does not warrant that the services provided for in this Lease will be free from interruption or stoppage resulting from the above causes, and specifically no reduction, interruption or stoppage of any such services for any reason, shall ever be construed as an eviction of Tenant nor shall the same cause any abatement of the Rent payable hereunder or in any manner or for any purpose relieve Tenant from any of Tenant's obligations hereunder, and in any event, Landlord shall not be liable for any loss, cost or damage, direct or consequential, of any nature arising in connection with interruption or stoppage of any of such services or for any damage to persons or property resulting therefrom; provided, however, Landlord agrees to use reasonable diligence to resume the service or to cause the same to be resumed. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this **Paragraph 17**. Except for repairs and maintenance, that tenant must undertake under terms of this lease, Landlord at Landlord's expense shall make and perform all other repairs and replacements to the building, common areas, and premises in a condition comparable to other similar first-class office buildings in the Corpus Christi, TX area. This maintenance shall include, but without limitation, the roof,

foundation, exterior walls, interior structure walls, all structural components and all systems such as electrical, mechanical, heating, plumbing, and air conditioning.

- 17.3. **Security.** Landlord shall have no obligation to provide any security whatsoever for the Building, the Premises, the Project and/or Tenant's business therein. Tenant does hereby acknowledge and agree that it shall provide and be solely responsible for its own security, at Tenant's sole cost and expense, as may be required for the operation of Tenant's business within the Premises. Landlord shall have no liability to any Tenant and its employees, agents or invitees for losses due to theft or burglary, or for damages done by unauthorized persons in the Premises, the Building, any parking facility, or the Project or for any injury, trauma or other harm to any person, and neither shall Landlord be required to insure against any such losses. Tenant shall be responsible for all repairs and replacements of damage and/or destruction of the Premises necessitated by burglary or attempted burglary, or any other illegal or forcible entry into the Premises. Notwithstanding the foregoing, Tenant acknowledges and agrees Landlord may, but will not be required to, adopt and provide security services for the Project from time to time. Tenant shall cooperate fully in any efforts of Landlord to maintain security in the Project and shall follow all rules and regulations promulgated by Landlord with respect thereto. However, any security services that are voluntarily undertaken by Landlord may be changed or discontinued from time to time in Landlord's sole and absolute discretion, without liability to any Tenant and its employees, agents or invitees. Tenant or any of its employees, agents or invitees waive any claims it may have against Landlord arising out of any security services provided by Landlord, or the inadequacy or absence thereof, specifically including Landlord's negligence with respect to the providing or failure to provide such services.
18. **CONDEMNATION:** If the whole or substantially the whole of the Building or Premises should be taken for any public or quasi-public use, by right of eminent domain or otherwise or should be sold in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Building and/or Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Building, Premises or Project is thus taken or sold, Landlord (whether or not the Premises are affected thereby) may, at its option, terminate this Lease by giving written notice thereof to Tenant; in which event this Lease shall terminate as of the date when physical possession of such portion of the Building, the Premises or the Project is taken by condemning authority. If this Lease is not terminated upon any such taking or sale, and if the Premises are affected, the Base Rent payable hereunder shall be diminished by an equitable amount, and Landlord shall, to the extent Landlord deems feasible, restore the Building and, if affected, the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Building and installing the Work, if constructed by Landlord pursuant to Schedule 3 in the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking. All amounts awarded upon a taking of any part or all of the Project, Building, or Premises shall belong to Landlord, and Tenant shall not be entitled to any part thereof, provided however, that Tenant shall be entitled to retain any amount separately awarded to it for its trade fixtures or moving expenses if such award to Tenant does not reduce Landlord's award.
19. **TRADE FIXTURES:** Any and all improvements made to the Premises during the Term hereof shall, unless Landlord requests their removal, belong to the Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures of the Tenant which can be removed without defacing the Premises or any portion of the Building or Project. Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or

value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed at Landlord's expense regardless of whether title to such improvements is in Tenant or Landlord.

20. **DESTRUCTION OF PREMISES:**

20.1. Termination or Repair. If the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord if Landlord does not otherwise have actual knowledge thereof. In case the Building or the Project shall be so damaged that substantial alteration or reconstruction of the Building or the Project shall, in Landlord's sole opinion, be required (whether or not the Premises shall have been damaged by such casualty), or in the event any mortgagee of Landlord's interest in the Building or the Project should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt, or in the event of any material uninsured loss to the Building or the Project, Landlord may, at its option, terminate this Lease by notifying Tenant in writing of such termination within 90 days after the date of such casualty. If Landlord does not elect to terminate this Lease, Landlord shall commence and proceed with reasonable diligence to restore the Building and any Work constructed by Landlord pursuant to **Schedule 3** (as described in the Work Letter); except that Landlord's obligation to restore shall not require Landlord to spend for such work an amount in excess of the insurance proceeds actually received by Landlord as a result of the casualty, nor to rebuild or replace above building standard. Notwithstanding anything to the contrary contained in this **Paragraph**, Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damage resulting from any casualty contained under this Paragraph occurs during the final twelve (12) months of the Lease Term, and Landlord may terminate this Lease.

20.2. Abatement of Rent. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such casualty damage or the repair thereof; except that, subject to the provisions of the next sentence, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unfit for occupancy. If the Premises or any other portion of the Building or Project be damaged by fire or other casualty resulting from the fault or negligence of Tenant or any of Tenant's agents, contractors, employees, or invitees, the Rent hereunder shall not be diminished during the repair of such damage, and Tenant shall be liable to Landlord for the cost of the repair and restoration of the Building or Project caused thereby to the extent such cost and expense is not covered by insurance proceeds.

20.3. Last Year of Term. Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damage resulting from any casualty contained under this Paragraph occurs during the final twelve (12) months of the Lease Term, and Landlord or Tenant may terminate the Lease upon written notice to within thirty (30) days after the occurrence of the damage or destruction.

21. **HAZARDOUS SUBSTANCES:**

21.1. Tenant's Responsibilities: At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Project by Tenant, its agents, employees, contractors or invitees without the prior written consent

of Landlord except for routine office cleaning supplies that may be deemed Hazardous Substances, provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the Term of the Lease, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Project, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto.

21.2. Indemnification: If the Premises or the Project become contaminated in any manner for which Tenant is legally liable, or if the Premises otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, and Tenant shall indemnify, defend and hold harmless to the extent allowed by law Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Project or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees and expenses at all levels, consultant fees and expert fees) arising during or after the Term of this Lease and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. This provision of this **Paragraph 21.2** shall survive termination of this Lease.

22. **EVENTS OF DEFAULT**: If one or more of the following events (each an "**Event of Default**") occurs, such occurrence constitutes a breach of this Lease by Tenant:

22.1. Abandonment/Vacation: Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property from the Premises, except in the normal course of business; or

22.2. Rent: Tenant fails to pay any monthly Base Rent or Operating Expense Rent, if applicable, as and when the same becomes due and payable, and such failure continues for more than ten (10) days; or

22.3. Other Sums: Tenant fails to pay any other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than fifteen (15) days after Landlord gives written notice thereof to Tenant; or

- 22.4. Other Provisions: Tenant fails to perform or observe any other non-monetary agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due (or immediately if the failure involves a hazardous condition), and such failure continues for more than fifteen (15) days after Landlord gives written notice thereof to Tenant, or if the default does not involve a hazardous condition and cannot be reasonably cured within said fifteen (15) day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default within said fifteen (15) day period or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default; or
- 22.5. Insolvency: Tenant or any Guarantor, if any, (a) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; and in the case of Guarantor a replacement for Guarantor acceptable to Landlord is not provided within thirty (30) days after the filing or occurrence of any matters in Subparagraph (a) - (d) above; or
- 22.6. Receiver: A court or governmental authority of competent jurisdiction, without consent by Tenant or Guarantor, as applicable, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or Guarantor, if any, or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant or Guarantor and such receivership or petition is not dismissed within sixty (60) days; or
- 22.7. Attachments: This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within sixty (60) days; or
- 22.8. Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises in contravention of the terms and conditions of **Paragraph 9**.

23. **REMEDIES UPON DEFAULT:**

- 23.1. Termination: Upon the occurrence of an Event of Default under this Lease, Landlord may, at its option, terminate the Lease and repossess the Premises pursuant to the laws of the State in which the Project is located and recover from Tenant as damages:
- (a) the unpaid Rent (including, but not limited to Base Rent and Operating Expense Rent) and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;
  - (b) the present value of the balance of the Rent for the remainder of the Term after termination less the present value of the fair market value rental of the Premises for said period (both determined by applying a discount rate of the Wall Street Journal Prime Rate); and

- (c) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering the Premises.

23.2. **Landlord's Options:** Landlord may, in the alternative, (i) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the Rent as it becomes due under the Lease; or (ii) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Project is located in which event Landlord may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Project is located), relet the Premises for the account of Tenant for such Rent and upon such terms as shall be satisfactory to Landlord. For purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense. Tenant shall also be responsible for Rent for the period that the Premises are vacant and all costs of re-letting, including, without limitation, brokerage commissions and attorneys' fees. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the Term of this Lease. If said breach of the Lease continues, Landlord may, at any time thereafter, elect to terminate the Lease; or (iii) exercise any and all other rights and remedies available to Landlord at law or in equity.

24. **SECURITY DEPOSIT:** The Security Deposit set forth in **Paragraph 1**, if any, shall secure the performance of the Tenant's obligations hereunder. Landlord may, but shall not be obligated to, apply all or portions of the Security Deposit on account of Tenant's obligations hereunder. In the event that Landlord applies all or a portion of the Security Deposit to Tenant's obligations hereunder, Tenant shall be obligated, within ten (10) days after receipt of notice from Landlord, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount stated in **Paragraph 1** above. Failure to deposit such cash shall be a default under the Terms of this Lease. Provided Tenant is not in default, any balance remaining upon termination shall be returned to Tenant. Tenant shall not have the right to apply the Security Deposit in payment of the last month's Rent. No interest shall be paid by Landlord on the Security Deposit. In the event of a sale of the Project, Landlord shall have the right to transfer the Security Deposit to the purchaser, upon such transfer Landlord shall have no further liability with respect thereto, and Tenant agrees to look solely to such purchaser for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.

25. **LIEN FOR RENT:** To the extent allowed by law Tenant hereby grants to Landlord a lien and security interest on all furnishings, equipment, fixtures, inventory and other personal property of any kind of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all Rent and other sums agreed to be paid by Tenant herein. The provisions of this Paragraph relating to such lien and security interest shall constitute a security agreement under and subject to the laws of the State in which the Project is located so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, in addition to and cumulative of the Landlord's liens and rights provided by law or by the other Terms and provisions of this Lease. Notwithstanding anything contained herein to the contrary, Landlord's lien rights granted hereunder shall automatically be subordinate to the rights of any equipment or personal property lessor with respect to the equipment or personal property leased by it to Tenant. Tenant agrees to execute as

debtor such financing statement or statements and other documents as Landlord may now or hereafter request. Landlord may at its election at any time file a copy of this Lease as a financing statement. Notwithstanding the above, Landlord shall neither sell nor withhold from Tenant, Tenant's business records and Landlord's lien rights shall not apply with respect to any property that is leased to Tenant.

26. **LIMITATION ON LANDLORD'S PERSONAL LIABILITY:** Tenant specifically agrees to look solely to Landlord's interest in the Project for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, shareholders, partners, members, managers, directors, employees, affiliates, subsidiaries or parents of Landlord) shall never be personally liable for any such judgment. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Project, Building and/or Premises referred to herein, and in such event and upon such transfer, Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations. TENANT HEREBY WAIVES ALL CLAIMS AGAINST LANDLORD AND ITS PARTNERS, MANAGERS, MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, AFFILIATES, SUBSIDIARIES, PARENTS, HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ALLEGEDLY SUFFERED BY TENANT OR ITS DIRECTORS, OFFICERS, PARTNERS, MEMBERS, SHAREHOLDERS, REPRESENTATIVES, AGENTS, CONTRACTORS, EMPLOYEES, SERVANTS, INVITEES, PATRONS, GUESTS, VISITORS, LICENSEES, SUBTENANTS, ASSIGNEES, INCLUDING LOST PROFITS AND BUSINESS INTERRUPTION.
27. **ATTORNEYS' FEES:** In the event there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees at all tribunal levels (including allocated costs of Landlord's in-house attorney), incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court handling the proceeding and will be included in and as a part of such judgment. The term "prevailing party" is defined to mean the party who obtains a determination of wrongful conduct by the other party regardless of whether actual damages are awarded.
28. **WAIVER:** No failure of Landlord or Tenant to enforce any term hereof shall be deemed to be a waiver. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement contained herein or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Tenant or receipt by Landlord of a lesser amount than the applicable Rent payment due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.
29. **SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The

inadvertent failure to attach any exhibit (or schedule or addendum) described in this Lease to the fully executed version hereof shall not render this Lease invalid, incomplete, or ineffective in any way. Upon notice from one party to the other, Landlord and Tenant shall cooperate in good faith to provide any missing information regarding such missing exhibit, and shall both append the missing exhibit to their respective fully executed original of the Lease.

30. **NOTICES:** Unless otherwise set forth in this Lease, any notice, demand, or request to be given under this Lease (i) may be given by either party or its attorney or agent, (ii) shall be in writing, and (iii) shall be deemed to have been properly given (a) on the date delivered personally (including by courier), (b) one (1) business day following deposit with a nationally recognized overnight delivery service, (c) three (3) business days following deposit with the United States Postal Service (designated certified mail, return receipt requested, bearing adequate postage and addressed as designated in **Paragraph 1** of the Lease), or (d) upon refusal of delivery by the recipient. Landlord's address for notices may be changed by ten (10) days prior written notice from time to time. The foregoing notice provisions shall in no way prohibit notices from being given as provided by statute or in the rules or civil procedure of the state in which the Building is located, as the same may be amended from time to time (including by posting notice on the door of the Premises) and any notice so given shall constitute notice herein.
31. **HOLDING OVER:** Any holding over after the expiration or termination of this Lease shall be construed as a tenancy at sufferance at a rental of twice the Base Rent and Operating Expense Rent for the month of the Lease Term preceding the month in which the expiration or termination occurred. In the event Tenant shall be or become a holdover tenant, Tenant shall also indemnify to extent allowed by law Landlord against all claims for damages against Landlord as a result of Tenant's possession of the Premises, including, without limitation, claims for damages by any tenant to whom Landlord may have leased the Premises, or any portion thereof, for a Term commencing after the expiration or termination of this Lease.
32. **TIME:** Time is of the essence with respect to the obligations of any party under this Lease.
33. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and Tenant's heirs and successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns.
34. **SUBORDINATION:** This Lease is and shall always be subject and subordinate to the lien of any mortgages which are now or shall at any future time be placed upon the Project, the Premises or Landlord's rights hereunder, and to any renewals, extensions, modifications or consolidations of any such mortgage. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request.
35. **ESTOPPEL CERTIFICATE:** Tenant shall at any time upon not less than five (5) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing on the form provided by Landlord: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any security deposit, and the date to which the Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective

purchaser or encumbrancer to the Premises. At Landlord's option, Tenant's failure to deliver such statement within such time shall be an Event of Default under this Lease or shall be conclusive upon Tenant: (i) that this Lease is in full force and effect, without modification, except as may be represented by Landlord; (ii) that there are no uncured defaults in Landlord's performance; and (iii) that not more than one month's Rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease.

36. **FINANCIAL STATEMENTS.** Tenant shall furnish Landlord, within ten (10) business days after Landlord's request therefor, its most recent financial statement of Tenant and any Guarantor. Unless: (i) Landlord has reason to believe there has been a material reduction in the financial worth of any of such parties; or (ii) requested by any current or proposed lender, investor or purchaser of Landlord or the Building, such financial statement(s) shall not be required to be furnished more than twice each calendar year. If Tenant is a publicly traded company and Tenant's financial information is publicly available, Tenant and any Guarantor shall not be obligated to deliver annual financial statement(s).

37. **REPRESENTATIONS; AUTHORITY:**

37.1. Tenant. Tenant represents and warrants that: (i) there are no proceedings pending or, to the knowledge of Tenant, threatened before any court or administrative agency that would materially adversely affect the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (ii) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (iii) if Tenant is a corporation, limited liability company, partnership or other legal entity, the person executing this Lease on behalf of Tenant represent and warrant that this Lease has been authorized and approved by the appropriate officers, members, managers, partners, beneficiaries, shareholders or other beneficial owner(s) of Tenant as may be required by law; (iv) Tenant is in good standing, qualified to do business in the state in which the Project is located; (v) Tenant has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, and to grant the estate herein demised, with no other person needing to join in the execution hereof in order for this Lease to be binding on Tenant; and (vi) the financial information provided by Tenant to Landlord materially and accurately depicts the financial condition of Tenant as of the Effective Date of this Lease.

37.2. Landlord. Landlord represents and warrants to Tenant that Landlord has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, and to grant the estate herein demised.

38. **JOINT AND SEVERAL LIABILITY:** In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder. Each Guarantor, if any, shall also be jointly and severally liable for all of Tenant's obligations herewith.

39. **FORCE MAJEURE:** Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or causes beyond Landlord's absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or financing or Acts of God.

40. **RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be withheld in Landlord's sole discretion.
41. **BROKERS.** Landlord and Tenant each represent and warrant one to the other that except as the Brokers set forth in **Paragraph 1**, neither of them has employed any broker in connection with the negotiations of the Terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold harmless to the extent allowed by law each other against any loss, expense or liability with respect to any claims for commissions, finder's fees or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord shall be responsible for paying any commission due Landlord's Broker in connection with this transaction pursuant to a separate written agreement between them. Landlord shall be responsible for any payment due to Tenant's Broker pursuant to a separate written agreement with Tenant's Broker.
42. **ENTIRE AGREEMENT:** The foregoing, together with all exhibits, schedules and riders attached hereto, constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The exhibits, schedules and riders attached hereto are incorporated herein and made a part of this Lease for all purposes.
43. **GOVERNING LAW:** This Lease shall be construed in accordance with the laws of the State in which the Project is located. Exclusive venue in any legal proceeding related to or arising out of this Lease shall be in the county and state where the Premises are located, and Tenant submits to personal jurisdiction and venue in such forum.
44. **EFFECT OF DELIVERY OF THIS LEASE: LANDLORD HAS DELIVERED A COPY OF THIS LEASE TO TENANT FOR TENANT'S REVIEW ONLY, AND THE DELIVERY HEREOF DOES NOT CONSTITUTE AN OFFER TO TENANT OR OPTION TO LEASE. THIS LEASE SHALL NOT BE EFFECTIVE UNTIL A FULLY EXECUTED COPY OF THIS LEASE HAS BEEN DELIVERED TO BOTH LANDLORD AND TENANT.**
45. **BANKRUPTCY:** Landlord and Tenant understand that, notwithstanding certain provisions to the contrary contained herein, a trustee or debtor in possession under the Bankruptcy Code may have certain rights to assume or assign this Lease. Landlord and Tenant further understand that, in any event, Landlord is entitled under the Bankruptcy Code to adequate assurances of future performance of the provisions of this Lease. The parties agree that, with respect to any such assumption or assignment, the term "adequate assurance" shall include at least the following:
- (a) In order to assure Landlord that the proposed assignees will have the resources with which to pay all Base Rent, Operating Expense Rent or other sum payable by Tenant pursuant to the provisions of this Lease, any proposed assignee must have, as demonstrated to Landlord's satisfaction, a net worth (as defined in accordance with generally accepted accounting principles consistently applied) of not less than the net worth of Tenant or any guarantor (whichever is greater) on the date this Lease became effective, increased by seven percent (7%), compounded annually, for each year from the Commencement Date through the date of the proposed assignment. It is understood and agreed that the financial condition and resources of Tenant were a material inducement to Landlord in entering into this Lease.
  - (b) Any proposed assignee must have been engaged in the conduct of business for the 5 years prior to any such proposed assignment, which business does not violate the Permitted Use, and such proposed assignee shall continue to engage in the

Permitted Use and will not cause Landlord to be in violation or breach of any provision in any other lease, financing agreement, operating agreement or other agreement relating to the Project. It is understood and agreed that Landlord's asset will be substantially impaired if the trustee in bankruptcy or any assignee of this Lease makes any use of the Premises other than the Permitted Use.

- (c) Any proposed assignee of this Lease must assume and agree to be personally bound by the provisions of this Lease.

- 46. **SURVIVAL:** Anything contained in this Lease to the contrary notwithstanding, the expiration or termination of the Term of the Lease, whether by lapse of time or otherwise, shall not relieve Tenant from Tenant's obligations accruing prior to the expiration or termination of the Term, all of which shall survive the same, whether or not same is expressly stated in the particular paragraph of this Lease, including, without limitation, Tenant's obligations with respect to: (i) the payment of Rent, (ii) any provisions of this Lease with respect to indemnities of Landlord made by Tenant; and (iii) the removal of all property of Tenant required to be removed hereunder and the repair of all damage to the Premises caused by such removal at the expiration or termination of this Lease to the extent required hereunder.
- 47. **COUNTERPARTS:** This Lease may be executed in any number of counterparts, which when taken together shall constitute one complete document.
- 48. **TELECOM:** Tenant understands and agrees that Landlord, in its reasonable discretion, expressly reserves the right to grant or deny access (to the Building or any portion thereof, including without limitation, any tenant's premises) to any telecommunications service provider whatsoever, and that Tenant shall not have the right to demand or require Landlord to grant such access to any such telecommunications service provider. Further, Tenant expressly understands and agrees that notwithstanding anything to the contrary contained herein, Tenant shall not have the right to use the risers, raceways, conduits, or mechanical rooms in the Building for telecom purposes without Landlord's express written consent, which consent Landlord may withhold or condition in its reasonable discretion.
- 49. **CONFIDENTIALITY:** Tenant agrees, on behalf of Tenant and Tenant's employees, agents, contractors, consultants, partners, affiliates, assignees and subtenants, not to disclose or the results of any audit of Landlord's books and records under this Lease to any third party except (i) legal counsel to Tenant, (ii) any assignee of Tenant's interest in this Lease or any subtenant of Tenant relative to the Premises (or any portion thereof), (iii) as required by applicable law or by subpoena or other similar legal process, or (iv) for financial reporting purposes.
- 50. **DAYS:** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.
- 51. **OFAC REPRESENTATION:** For purposes hereof, "List" shall mean the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, and "OFAC" shall mean the Office of Foreign Assets Control, Department of the Treasury. Each party represents and warrants to the other that (i) each Person owning a ten percent (10%) or greater interest in such party is (A) not currently identified on the List, and (B) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States and (ii) each party has implemented procedures, and will consistently

apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Each party shall comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and shall use reasonable efforts to notify the other in writing if any of the foregoing representations, warranties or covenants are no longer true or have been breached or if such party has a reasonable basis to believe that they may no longer be true or have been breached. In addition, at the request of a party, the other party shall provide such information as may be requested by the requesting to determine the other party's compliance with the terms hereof.

52. **TENANT REQUESTS:** Landlord shall accept or reject any request by Tenant to sign any agreement that is ancillary to this Lease in Landlord's sole and absolute discretion (including without limitation, an agreement to subordinate a lien held by Landlord in favor of a third-party lender, an agreement relating to an assignee or subtenant of Tenant, or an estoppel letter request by Tenant). Tenant shall promptly reimburse Landlord, as additional Rent, for any costs incurred by Landlord in connection with the negotiation, preparation, review, or execution any such agreement, including without limitation, Landlord's attorneys' fees or the allocated costs of Landlord's in-house counsel.
53. **GUARANTOR.** As a material inducement for and as a condition precedent to Landlord to enter into this Lease, any person or entity designated in Section 1 as a Guarantor shall execute the Guaranty in the form attached hereto as **Schedule 4**.
54. **TAX WAIVER:** Intentionally Deleted
55. **METHOD OF CALCULATION:** Tenant is knowledgeable and experienced in commercial transactions and does hereby acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid and constitute satisfactory methods for determining such charges and amounts as required by Section 93.012 of the Texas Property Code. **TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH SECTION, AS IT NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED OR SUCCEDED.**
56. **WAIVER OF CONSUMER RIGHTS: TENANT HEREBY WAIVES ALL ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY ADOPTS THIS WAIVER.**
57. **LEASE EFFECTIVE.** Notwithstanding the fact that the Term will commence at a date subsequent to the execution of this Lease by Landlord and Tenant, such parties intend that each shall have vested rights immediately upon the signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

ERF TOWER II, INC.

By: \_\_\_\_\_  
Name: JP Jordan  
Title: Vice President

Attest:

\_\_\_\_\_

Witness: \_\_\_\_\_

**TENANT:**

Nueces County

By: \_\_\_\_\_  
Name: Barbara Canales  
Title: Nueces County Judge

Attest:

\_\_\_\_\_  
Nueces County Clerk