

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**AGENDA DATE:** May 24, 2022  
**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Elizabeth Triggs, 915-212-0094

**DISTRICT(S) AFFECTED:** District 8

**STRATEGIC GOAL:** Goal 1: Create an Environment Conducive to Strong Sustainable Economic Development

**SUBGOAL:** Goal 1.1 Stabilize and Expand El Paso's Tax Base

**SUBJECT:**

Discussion and action on a resolution that the City Manager be authorized to sign a long-term lease by and between the **CITY OF ELPASO, TEXAS** ("Lessor") and **1 TEXAS TOWER, LLC** ("Lessee") to support and facilitate the development of a hotel, which includes the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**.

**BACKGROUND / DISCUSSION:**

This long-term lease agreement facilitates the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at 109 North Oregon Street, El Paso, Texas 79901. This is a companion item to a Chapter 380 Economic Development Program Agreement between the City, the Lessee, and Hotel Dulcinea, LLC. Under that Agreement, the City commits to applying for participation in the State Convention Center Hotel Program, established under Chapter 351 of the Texas Tax Code. The program allows the City to leverage State dollars with local dollars to complete projects that increase the number of hotel rooms necessary to attract conventions and visitor spending. As a prerequisite to the participation, the City must own the property on which the hotel project is being built. This 40-year lease enables the City to lease the ground to the lessee and developer of the hotel project.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**   X   YES      NO

**PRIMARY DEPARTMENT:** Economic and International Development

**SECONDARY DEPARTMENT:** N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a long-term lease by and between the **CITY OF EL PASO** (“Lessor”) and **1 TEXAS TOWER, LLC** (“Lessee”) to support and facilitate the development of a hotel, which includes the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

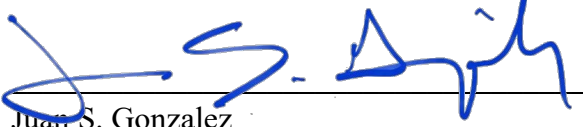
### CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeser  
Mayor


### ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Juan S. Gonzalez  
Senior Assistant City Attorney

### APPROVED AS TO CONTENT

  
\_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic & International Development

# GROUND LEASE

CITY OF EL PASO, TEXAS

Landlord

**1 TEXAS TOWER, LLC**

Tenant

\_\_\_\_\_, 2022  
Effective Date

**GROUND LEASE  
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## GROUND LEASE

THIS LEASE AGREEMENT ("Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the **City of El Paso** ("Landlord") and **1 Texas Tower, LLC**, a Texas limited liability company ("Tenant").

**WHEREAS**, Landlord owns and operates the El Paso Convention Center, located in the County of El Paso, State of Texas;

**WHEREAS**, Landlord owns the real property more particularly described in Section 1.01 below; and

**WHEREAS**, Tenant proposes to lease on a net basis from Landlord the Premises and to avail itself of certain privileges, rights and uses pertaining thereto under a lease; and

**WHEREAS**, Tenant has indicated a willingness and ability to properly keep, maintain and improve said Premises in accordance with standards established by Landlord;

**NOW THEREFORE**, Landlord and Tenant agree as follows:

### **ARTICLE I - PREMISES**

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described real property located in El Paso County, Texas:

6 Mills 54 feet on Oregon X 120 Feet on Sheldon NEC, City of El Paso, El Paso County, Texas.

Said parcel of land contains approximately 0.15 acres (6,480 Sq. Ft.) of land.

### **ARTICLE II - TERM OF LEASEHOLD**

**2.01 Term.** This Lease shall be for a term of Fifty (50) years, commencing on the Effective Date as noted on the Title Page of this Lease ("Initial Term").

**2.02 Holding Over.** Any holding over by Tenant of the Premises at the expiration, termination or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of the current monthly rent, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is

required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

**2.03 [INTENTIONALLY DELETED]**

**ARTICLE III - RENT**

**3.01 Rent.** Tenant shall pay Landlord rent at the rate of \$1,000.00 per year during the primary term hereof. All rentals to be paid by Tenant to Landlord shall be in lawful money of the United States of America and at such place or places as may be designated from time to time by Landlord. Tenant's obligation to pay rent under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay rent as required by this Lease.

**3.02 Commencement of Rent.** Payment of Rent by Tenant to Landlord shall commence as of the Effective Date.

**3.03 [INTENTIONALLY DELETED]**

**3.04 [INTENTIONALLY DELETED]**

**3.05 Time of Payment.** The Rent shall be paid annually. The Rent payments shall be paid in advance on or before the first day of the annual anniversary of the Effective Date of this Lease. The initial Rent payment will be paid within 5 days of the Effective Date of this Lease.

**3.06 Unpaid Rent, Fees and Charges.** Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Landlord by the 20th day of the month in which payment is due, shall be deducted from any payments to Tenant from the City of El Paso as contemplated by any Incentive Agreements associated with the development located on Premises.

**3.07 Place of Payment.** All rent payments provided herein shall be paid to Landlord at the following address:

Office of the Comptroller  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Landlord.

**ARTICLE IV - PRIVILEGES**

**4.01 Right to Construct.** Tenant shall have the right and privilege to construct, maintain, remodel, and remove improvements upon the Premises subject to the terms, covenants, and



conditions herein contained. Landlord and Tenant recognize and agree that there are existing improvements located on the Premises of which Tenant has had possession and title for a number of months pursuant to the predecessor to this Lease.

**4.02 Restriction of Privileges, Uses and Rights.** The rights and privileges granted Tenant hereunder are subject and expressly limited to the terms and conditions of that certain 380 Economic Development Program Agreement by and between Tenant and Landlord attached hereto as Exhibit “A”, and fully incorporated herein by reference (the “Incentive Agreement”).

**4.03 Conditions of Granting Lease.** The granting of this Lease and its acceptance by Tenant is conditioned upon the following covenant:

- A. That no functional alteration of the Premises used for the Hotel or functional change in the uses of such Premises used for the Hotel, except as reflected in the Incentive Agreement, shall be made without the prior written consent of Landlord, which will not be unreasonably conditioned, withheld or delayed.
- B. Tenant will require its prime and/or general Contractor performing any substantial remodeling work on the Premises in conjunction with the Incentive Agreement to obtain and maintain a payment bond during the development and construction of the hotel contemplated in the Incentive Agreement. Tenant will require that proof of same, once available, will be provided to Landlord and will have Landlord added to receive Notice of Default or Termination from the Surety issuing said bond. This requirement shall not create any contractual relation between the Landlord, the prime and/or general contractor, any sub-contractors working on the Premises.
- C. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable governmental rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law and which rules, regulations and/or ordinances apply equally to all property owned by the City of El Paso, so long as the after prescribed rules, regulations and/or ordinances do not affect the use of the Premises by Tenant.

## **ARTICLE V - OBLIGATIONS OF LANDLORD**

**5.01 Quiet Enjoyment.** Landlord agrees that upon Tenant's paying rent and performing all of the covenants, conditions, and agreements set forth in this Lease, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises. Landlord has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

## **ARTICLE VI - OBLIGATIONS OF TENANT**

**6.01 Net Lease.** This Lease shall be without cost to Landlord except for Landlord's obligations specifically set forth in Article V above and elsewhere in this Lease Agreement. Tenant shall:

- A. Keep and maintain the Premises and improvements located thereon in a good repair at all times;
- B. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Tenant's interest in the Premises and improvements, and all of Tenant's personal property located on the Premises; subject to Tenant's right to protest the valuation in accordance with state law and the Incentive Agreement attached to this lease as Exhibit A; and

**6.02 Condition of Premises.** Tenant accepts the Premises in their present condition and agrees that the Premises are suitable for Tenant's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Landlord has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Tenant accepts the Premises "As Is", with all faults, relying on Tenant's own inspection and judgment and not in reliance on any representations of Landlord. Landlord shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**6.03 Compliance with Laws.** Tenant, at Tenant's expense, agrees that it will construct, remodel, operate and maintain improvements on the Premises in accordance with the Incentive Agreement and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Tenant, at Tenant's expense, specifically agrees to comply with existing Disabilities and Environmental laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities.

- A. Definitions.
  - (1) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
  - (2) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.
- B. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Materials in violation of applicable Environmental Laws; other than those used during the construction, use and operation of a Hotel, restaurant or other residential and business uses to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its subtenants, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law.

**TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS SUCCESSORS AND ASSIGNS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY AND ANY AND ALL CLAIMS OR ACTIONS BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, ALLEGING OR ARISING IN CONNECTION WITH ENVIRONMENTAL CONTAMINATION OF, OR ADVERSE ENVIRONMENTAL EFFECTS ON, THE ENVIRONMENT OR VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENT OR JUDICIAL ENTITY WHICH ARE INCURRED OR ASSESSED AS A RESULT (WHETHER IN PART OR IN WHOLE) OF ANY ACTIVITY OR OPERATION ON OR ENVIRONMENTAL DISCHARGE FROM THE PREMISES OR ANY IMPROVEMENTS IN VIOLATION OF APPLICABLE ENVIRONMENTAL LAWS THEREON CAUSED BY THE ACT OR OMISSION OF TENANT, IT SUBTENANTS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES. THIS OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL COSTS AND EXPENSES RELATED TO CLEANING UP THE PREMISES, IMPROVEMENTS, LAND, SOIL, UNDERGROUND OR SURFACE WATER TO THE EXTENT REQUIRED**

**UNDER ENVIRONMENTAL LAWS. TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS PARAGRAPH SHALL CONTINUE SO LONG AS LANDLORD BEARS ANY LIABILITY OR RESPONSIBILITY UNDER THE ENVIRONMENTAL LAWS FOR ANY ACTION THAT OCCURRED ON THE PREMISES OR ANY IMPROVEMENTS THEREON. THIS INDEMNIFICATION OF LANDLORD BY TENANT INCLUDES, WITHOUT LIMITATION, COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEANUP, REMEDIAL, REMOVAL OR RESTORATION WORK TO THE EXTENT REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION HAVING AUTHORITY TO ENFORCE ENVIRONMENTAL LAWS BECAUSE OF HAZARDOUS MATERIAL LOCATED ON THE PREMISES OR ANY IMPROVEMENTS THEREON, OR PRESENT IN THE SOIL OR GROUND WATER ON, UNDER OR ABOUT THE PREMISES. THE PARTIES AGREE THAT LANDLORD'S RIGHT TO ENFORCE TENANT'S PROMISE TO INDEMNIFY IS NOT AN ADEQUATE REMEDY AT LAW FOR TENANT'S VIOLATION OF ANY PROVISION OF THIS SECTION. LANDLORD SHALL ALSO HAVE ALL OTHER RIGHTS AND REMEDIES PROVIDED BY LAW OR OTHERWISE PROVIDED IN THIS LEASE.**

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant results in any permanent contamination of the Premises or any improvements thereon, or any surrounding property in violation of Environmental Laws, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or the surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon or the surrounding property; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, conditioned or delayed so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon or the surrounding property.

- (3) Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon or on surrounding property to comply with applicable Environmental Laws, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord to determine the applicability of the Environmental Laws to the Premises to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property.
- (4) Tenant shall notify Landlord within five (5) working days after Tenant becomes aware of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.

C. Reporting.

- (1) At any time that Tenant submits any filing or response pertaining to its property, operations, or presence on the Premises with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the EPA or the TCEQ, or any successor agencies, Tenant shall provide duplicate copies to Landlord of such filing(s) or response(s) with any related documents at the time same are made.

**6.04 ~~INTENTIONALLY DELETED~~**

**6.05 Landlord's Approval of Plans.** Landlord's approval of any plans, specifications and working drawings for Tenant's construction or alterations of improvements or any plans, specifications and working drawings for Tenant's removal of improvements shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities.

**6.06 Landscaping and Maintenance of Improvements.** Tenant shall keep the improvements on the Premises in a good state of repair and condition and in a presentable condition which adhere to the applicable municipal rules.

**6.07 Utilities.** Tenant shall pay for all costs or charges for utility services furnished to Tenant

during the term hereof. Tenant shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

**6.08 Trash, Garbage, and Other Refuse.** Tenant shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Tenant shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse if reasonably possible, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner.

**6.09 Permitted Uses.** Tenant or Hotel Dulcinea, LLC or their successors and/or assigns will operate a Convention Center Hotel on the Premises, allow third parties to operate restaurants, bars and other retail, business and residential uses on the Premises.

**6.10 Penalties Assessed by State or Federal Agencies.** Tenant understands and agrees that in the event any state or federal agency assesses a civil penalty against Landlord for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Tenant, its subtenants, agents, employees contractors, licensees or invitees, Tenant shall reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

## **ARTICLE VII - INSURANCE AND INDEMNIFICATION**

**7.01 Insurance.** Prior to the execution of this Agreement, Tenant shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below:

Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence, and

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence,

or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

**7.02 Additional Insured.** Landlord shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without at least thirty (30) calendar days prior written notice to the Landlord

or at least ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Commercial General Liability and Property Damage coverage requirements may be satisfied through a combination of individual policy limits and umbrella coverage but the amounts under each type of coverage shall be subject to the final approval of the City's Risk Manager.

**7.03 Fire and Other Risks Insurance.** Tenant, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value").

**7.04 [INTENTIONALLY DELETED]**

**7.05 Authorized Insurance and Surety Companies.** All required policies of insurance and bonds shall be written by insurance and surety companies with an A.M. Best rating of A- or higher. Certificates of insurance shall be delivered to Landlord at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Landlord to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Landlord.

**7.06 Indemnification. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF**

**TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL REASONABLY ACCEPTABLE TO LANDLORD.**

**ARTICLE VIII - DESTRUCTION OF IMPROVEMENTS BY FIRE  
OR OTHER CASUALTY**

**8.01 Obligations of Tenant.** During the term hereof, except as provided in Section 8.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and Tenant, upon Tenant's receipt of the insurance proceeds, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Tenant as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Tenant shall deliver to Landlord, for notation, a set of the preliminary construction plans and specifications. In the event the preliminary plans and specifications are substantially different from the original development plans, Tenant will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto. Absent agreement on these construction plans, Landlord may immediately upon written notice to Tenant, exercise its Put option. The City of El Paso will cease any incentive payments associated with the City ownership of the premises immediately. However, the put option cost to the Tenant shall be the pro rata rent amount due.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Tenant shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to Landlord one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable



therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

C. **[INTENTIONALLY DELETED]**

D. Upon compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Tenant. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

E. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.

**8.02 Insurance Proceeds.** Upon receipt by Tenant of the proceeds (or Landlord, if Landlord has received the insurance proceeds) of the insurance policy or policies, Tenant (or Landlord, as applicable) shall promptly deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Tenant during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Tenant shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Tenant.

**8.03 [INTENTIONALLY DELETED]**

**ARTICLE IX – OPTION TO PURCHASE/PUT**

**9.01 Tenant's Option to Purchase.**

A. **Grant of Option.** Landlord grants to Tenant a purchase option (the "Option"), pursuant to and subject to the conditions of this Article IX, to purchase the Leased Premises (excluding all the Improvements thereon, which are owned by Tenant), from Landlord for the agreed upon amount of \$100.00 ("Purchase Price") for the Leased Premises.

B. **Exercise of Option.**

(1) Tenant shall have the right to exercise the Purchase Option upon the Hotel's opening and expiring one (1) year thereafter (the "Option Period"). Tenant shall give notice of the exercise of the Option one (1) year prior to the expiration of the Option Period; provided, however, if Tenant fails to exercise the Option within such time period, Landlord shall deliver written notice to Tenant requesting, in conspicuous type, that Tenant notify Landlord whether Tenant will exercise the

Option set forth in this Section 9.01. Tenant will have Fifteen (15) days after receipt of Landlord's notice to exercise the Option, even if such Fifteen (15) day period extends beyond the Option Period.

(2) Subsequent to the provisions in Article 9.01 B. (1), tenant may exercise the Purchase Option at any time, subject to the conditions in Article IX.

(3) If Tenant has exercised the Purchase Option, Tenant shall purchase the Leased Premises within 180 days after the date of the expiration of the Option Period, and shall pay the Purchase Price, as defined in paragraph (a) of this Section 9.01, subject to Section 9.04 below.

C. Participation in State Convention Center Hotel Program.

(1) Tenant's exercise of the Purchase Option contemplated in Section 9.01, paragraph A shall immediately terminate any incentive payments associated only with the Development's participation in the State Convention Center Hotel Program, as contemplated in the Incentive Agreement attached to this Lease as Exhibit A;

**9.02 Landlord's Put Option.** Landlord's Put Option. Tenant hereby grants to Landlord an option to put the Leased Premises to Tenant (the "Put Option") during the Option Period if Tenant is unable to qualify for incentive payments associated with the Development's participation in the State Convention Center Hotel Program, as contemplated in the Incentive Agreement attached to this Lease as Exhibit A, for the Purchase Price as provided in Section 9.01(a) hereof, and Tenant shall be obligated to accept such conveyance within One Hundred Eighty (180) days after Landlord provides notice to Tenant. To exercise the Put Option, Tenant must not qualify for incentive payments associated with the Development's participation in the State Convention Center Hotel Program and after such final determination has been made, Landlord must give notice of its exercise within one hundred eighty (180) days prior to the expiration of the Option Period; provided, however, if Landlord fails to exercise the Put Option within such time period, Tenant shall deliver written notice to Landlord requesting, in conspicuous type, that Landlord notify Tenant whether Landlord will exercise the Put Option set forth in this Section 9.02. Landlord will have One Hundred Eighty (180) days following receipt of Tenant's notice to exercise the Put Option, even if such One Hundred Eighty (180) day period extends beyond the Option Period.

A. Participation in State Convention Center Hotel Program.

(1) If Tenant is unable to qualify for incentive payments associated with the Development's participation in the State Convention Center Hotel Program, as contemplated in the Incentive Agreement attached to this Lease as Exhibit A; Landlord will immediately be able to Exercise the Put Option contemplated in Section 9.02.

B. Default.

- (1) Any unresolved Default will allow Landlord to immediately cancel this Lease and exercise the Put Option in accordance with the terms of Article IX.

**9.03 Tenant's Termination Right.** Tenant shall have the right, at any time, in its sole discretion to terminate this Lease by providing Landlord a thirty (30) day written notice of the termination of this Lease. Upon such termination, Tenant will tender the Purchase Price in accordance with Section 9.04 hereunder.

**9.04 Terms and Conditions of Purchase/Put.** In the event that the Leased Premises are to be acquired by Tenant pursuant to Tenant's exercise of the Option or Landlord's exercise of the Put Option or Tenant's termination of this Lease pursuant to Section 9.03: (a) the closing of such acquisition shall occur in such place as Landlord and Tenant mutually determine; (b) the closing shall occur on a date designated by Tenant (by at least thirty (30) days' advance written notice to Landlord) not later than ninety (90) days after the termination of the Option Period or the date Tenant's written notice to Landlord terminates this Lease as provided in Section 9.03 (the "Acquisition Closing Date"); (c) the purchase price, as defined and determined in accordance with Section 9.01(A) shall be paid in cash; (d) Landlord and Tenant shall terminate this Lease and file a memorandum of termination in the Deed Records of El Paso County; (e) Landlord shall execute and deliver such other documentation including, a Special Warranty Deed and Bill of Sale from Landlord to Tenant, as shall be necessary to vest title to the to the Leased Premises and all appurtenances owned by Landlord in Tenant; and (f) all expenses of closing, including but not limited to any title policy premiums, survey costs, and recording fees (but excluding attorneys' fees, which shall be borne by the party incurring such fees), shall be borne solely by Tenant.

**9.05 Continuation of Incentives.** Nothing herein shall affect the right of the tenant to continue to receive all other incentives as contemplated in the Incentive Agreement, attached hereto as Exhibit A, except for the incentives under the State Convention Center Hotel Program.

## **ARTICLE X - ENCUMBRANCES**

**10.01 Encumbrance.** As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Tenant may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage; if so, Tenant shall promptly notify Landlord in writing. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

- A. The amount of the obligation secured by the Mortgage,
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Landlord upon Tenant under the terms and provisions of this Lease so long as such Mortgage is in effect.

**10.02 Mortgagee's Rights.** Upon receipt of a notice or demand in accordance with Section 10.01 above, Mortgagee shall, and if required in accordance with any such Tri Party Agreement that may have been entered into between the Landlord, Tenant and Mortgagee, have Ninety (90) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within ninety (90) days, to commence performance within such ninety (90) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.
- E. No notice of a default by Tenant hereunder given by Landlord shall be effective against a Mortgagee that has provided Landlord the information specified in Section 10.01 of this Lease unless Landlord has given a copy of it to such Mortgagee.
- F. No Mortgagee shall have any personal liability under this Lease unless and until it becomes Tenant under this Lease.
- G. The Director will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Landlord's knowledge Tenant is not in default, and the date through which rent has been paid.
- H. If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.
- I. This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.
- J. Exercise all rights under Article 9.

**10.03 Rights on Foreclosure.** In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Lease.

**10.04 Estoppel Certificates.** Upon request, Landlord, acting through the Director of Economic and International Development, shall within thirty (30) days after written request, provide to Tenant or Tenant's Mortgagee an estoppel certificate containing the following information and no more: confirmation that Landlord remains owner of the Premises and lessor under this Lease; that this lease contains the full agreement between Landlord and Tenant with regard to the Premises; that Tenant is current in its obligations under this Lease as of a certain date; that, to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, and length of term under this Lease.

## **ARTICLE XI - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**11.01 Expiration.** This Lease shall expire at the end of the term or any extension thereof or upon the exercise of the terms and conditions set forth in Article IX above.

**11.02 Cancellation.** Subject to the provisions of Article IX above, the following shall be events of default and this Lease shall be subject to cancellation by Landlord and in which Tenant shall have its rights under Section 9.03 to terminate this Lease, in the event Tenant shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Landlord has notified Tenant in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Tenant, and such violation or default continues for a period of ninety (90) days after receipt of written notice from Landlord to cure such default, unless during such ninety-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings;

- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within ninety (90) days after the appointment of such receiver; or
- H. After applicable cure periods, be in default of any Incentive Agreements associated with the Hotel Dulcinea, LLC development.

In any of the aforesaid events, Landlord may immediately exercise the Put Option contemplated in Section 9.02, and Tenant may exercise its rights under Section 9.01 or to terminate this Lease pursuant to Section 9.03.

Failure of Landlord to declare this Lease canceled upon the default of Tenant for any of the reasons set out shall not operate to bar or destroy the right of Landlord to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

### **11.03 [INTENTIONALLY DELETED]**

**11.04 Assignment and Transfer.** Tenant shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord's approval shall not be required in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee or to a related party to Tenant or an affiant of the Tenant. Tenant shall provide Landlord with advance notice of any proposed assignment.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

**11.05 Subleasing.** Tenant shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the effective date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Tenant shall be responsible for the observance by its subtenants of the terms and covenants contained in this Lease.

It is the intention of Tenant that Hotel Dulcinea, LLC will sublease floors 2 through 14 of the building from Tenant subject to the provisions of this Section 11 and the existing lease(s) with Café Central, the current ground floor tenant, and Tenant may also sublease a portion of the building for residential use.

**11.06 Rights Upon Expiration.** At the expiration of this Lease, Landlord may, at its option, immediately exercise the Put Option in accordance with Article IX of this Lease, and Tenant may exercise its rights under Section 9.03 of this Lease.

**11.07 [INTENTIONALLY DELETED]**

## **ARTICLE XII - CONDEMNATION**

**12.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. “Total Taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial Taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant;
  - 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Tenant under this Lease.
- D. “Partial Taking” means the taking of a fee title that is not either a total or substantial taking.

- E. “Improvements” includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. “Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take containing a description or map reasonably defining the extent of the Taking.
- G. “Award” means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. “Date of Taking” means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**12.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

**12.03 Process.** Upon receipt of Notice of Condemnation, Landlord will immediately exercise the Put Option according to the provisions of Article IX and Tenant may exercise its rights under Section 9.03 of this Lease.

### **ARTICLE XIII - GENERAL PROVISIONS**

**13.01 Incentive Agreement.** This Lease agreement is made in conjunction with the terms, covenants and conditions contained in the Incentive Agreements entered by the City of El Paso, Tenant and and Hotel Dulcinea, LLC, and attached hereto as Exhibit A. If this lease conflicts with the provisions of Incentive Agreement benefitting the development located on the Premises, the Incentive Agreement shall control. Notwithstanding the provisions of Section 13.01, the provisions of Article IX shall not be affected in any way.

**13.02 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.



**13.03 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD: City Clerk  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

TENANT: 1 Texas Tower, LLC  
109 North Oregon, Suite 1300  
El Paso, Texas 79901

MORTGAGEE: [MORTGAGEE]  
[ADDRESS]  
[CITY/STATE/ZIP]

Copy To: James Scherr  
109 North Oregon  
El Paso, Texas 79901

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**13.04 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**13.05 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

**13.06 Nondiscrimination Covenant.** To the extent required by Federal, State and Local law of a tenant on city property, and only to that extent, Tenant, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. Tenant shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to such state and federal regulations regarding nondiscrimination as said Regulations may be amended.

- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Tenant shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Lease, Tenant furnishes goods or services to the public at Tenant's development, Tenant agrees that it shall, adhere to relevant Federal, State and Municipal law regulating the hotel's operation:
  - 1. Tenant's furnishing each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of Tenant's Development, and
  - 2. Tenant's charging fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.

**13.07 Cumulative Rights and Remedies.** All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**13.08 Interpretation.** Landlord and Tenant agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**13.09 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**13.10 Paragraph Headings.** The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**13.11 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**13.12 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators. Tenant shall cause any assignee to execute an agreement whereby the assignee expressly agrees to be bound by all terms and conditions hereof.

**13.13 Taxes and Other Charges.** Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By September 1 of each year of this Lease and at no charge to Landlord, within fifteen (15) days after Landlord's written request, Tenant will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full, subject to the right of the Tenant's Mortgagee and the securing of the documents to be provide by the Mortgagee, with prior notice to Landlord.

Landlord is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Tenant's use of the property or possession of the Premises.

Tenant in good faith may contest any tax or governmental charge, subject to the provisions in the Incentive Agreement attached hereto as Exhibit A and provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest, subject to state law, and any appeal therefrom.

**13.14 Waiver of Warranty of Suitability.** **LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT ACKNOWLEDGES THAT TENANT HAS BEEN IN POSSESSION OF THE PREMISES FOR AT LEAST SIX (6) MONTHS, THAT TENANT IS FULLY AND COMPLETELY FAMILIAR WITH THE PREMISES AND TENANT LEASES THE PREMISES "AS IS – WHERE IS"**

**AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.**

**13.15 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 6.03 and 7.06.

**13.16 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Tenant reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and landlord consents to and will diligently and promptly execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Landlord's interest in the Premises.

Landlord reserves for itself and any authorized agent to, at any reasonable time and with fifteen (15) working days' prior written notice (including notice via electronic mail), enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with Municipal, State, Federal, and Environmental Laws. Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**13.17 Authorization to Enter Lease.** Each of the persons executing this Lease on behalf of Tenant and Landlord warrants to the other Party that they are a duly authorized and existing corporation or legal entity, that each Party is qualified to do business in the State of Texas, that each Party has full right and authority to enter into this Lease, and that each and every person signing on behalf of each Party is authorized to do so. Upon a Party's request, the other Party will provide evidence satisfactory to the requesting Party confirming these representations.

**13.18 Effective Date/Memorandum.** Regardless of the date signed, this Lease shall be effective as of the date indicated on the Title Page of this Lease. Simultaneously with the full execution and delivery of this Lease, Landlord and Tenant may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Landlord and Tenant. Tenant shall provide to Landlord a copy of any memorandum filed of record in the Real Property records for El Paso County, Texas.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

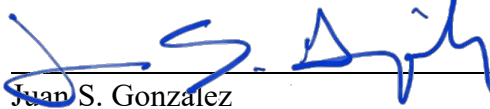
**LANDLORD: CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**ATTEST:**

\_\_\_\_\_  
Laura Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Juan S. Gonzalez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth Triggs, Director  
Economic and International Development

**ACKNOWLEDGMENT**

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Tomás González as City Manager for the City of El Paso, Texas (Landlord).

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

***[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]***

ATTEST:

TENANT: 1 Texas Tower, LLC,  
a Texas limited liability company  
By its Manager  
TBC Property Management, LLC,  
a Texas limited liability company

JAMES F. SCHERR

Print Name: \_\_\_\_\_

By: [Signature]

Printed Name: JAMES F. SCHERR

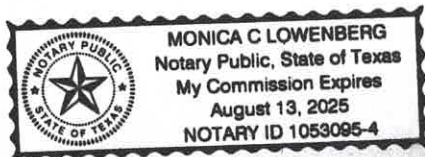
Title: Authorized representative

### ACKNOWLEDGMENT

THE STATE OF TEXAS )

COUNTY OF EL PASO )

This instrument was acknowledged before me this 19 day of MAY, 2022,  
by James F. Scherr as Manager of TBC Property Management, LLC, a Texas limited liability  
company, the Manager of 1 Texas Tower, LLC, a Texas limited liability company.



[Signature]  
Notary Public, State of TEXAS

**EXHIBIT “A”**  
**Incentive Agreement**