

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

**AGENDA DATE:** 10/26/21

**PUBLIC HEARING DATE:** 10/26/21

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Sam Rodriguez, (915) 212-1845

**DISTRICT(S) AFFECTED:** 8

**STRATEGIC GOAL:** No. #6: Set the standard for sound governance and fiscal management

**SUBGOAL:**

**SUBJECT:**

Resolution authorizing the City Manager, or designee, to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease.

**BACKGROUND / DISCUSSION:**

The City of El Paso desires to exercise the first renewal for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street and to accept the Landlord's determination of the Market Base Rental Rate of \$19 per square foot.

The current lease, executed ten (10) years ago is an annual cost of \$136,700.16. The renewal constitutes an 11% increase to \$151,563. There is no provision for increases over the next five (5) year period.

**PRIOR COUNCIL ACTION:**

No

**AMOUNT AND SOURCE OF FUNDING:**

Tax Office Operating Budget

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** \_\_\_ YES \_\_\_ NO x N/A

**PRIMARY DEPARTMENT:** N/A

**SECONDARY DEPARTMENT:** N/A

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

**DEPARTMENT HEAD:**

*Jerry DeMuro/for Sam Rodriguez*

(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, or designee, is authorized to exercise the first renewal option under a Lease Agreement entered on November 29, 2011 between the City of El Paso, Texas and Madison River Investments, LLC for the lease of the property commonly known as Suite 300 of the Wells Fargo Building located at 221 N. Kansas Street. Further, that the City Manager, or designee, is authorized to accept the Landlord's determination of the Market Base Rental Rate as provided in the lease. Further, that the City Manager, or designee, is authorized to exercise all rights and perform all obligations under the lease agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the lease without further City Council approval. Further, that the City Manager, or designee, is authorized to exercise the second renewal option and accept future Landlord determinations of Market Base Rental Rate if the City Manager determines that the renewal of the lease is required for operation purposes.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**THE CITY OF EL PASO:**

**ATTEST:**

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

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Omar A. De La Rosa  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Mary Lou Espinoza, Real Estate  
Capital Improvement Department



October 7, 2021

Mary Lou Espinoza  
City of El Paso (Consolidated Tax Office)  
221 N. Kansas, Suite 300  
El Paso, TX 79901

Dear Mary Lou:

Franklin Mountain Property Services appreciates the opportunity to provide City of El Paso (Consolidated Tax Office) with this proposal for your consideration for an extension of the lease at Wells Fargo Plaza. The following are the proposed terms and conditions:

Landlord	Mills Plaza Properties VII, LP (“Landlord”)
Tenant	City of El Paso (Consolidated Tax Office) (“Tenant”)
Building Management	Franklin Mountain Property Services (“FMPS”) 201 E. Main, Suite 100 El Paso, TX 79901
Premises	Wells Fargo Plaza at 221 N. Kansas  Suite 300 – 7,977 rentable square feet
Use	The Premises shall be used for general office use.

**Lease Terms and Conditions**

Term	Five (5) years
Lease Commencement/ Occupancy Date	The <b>Second Amendment to Lease</b> Commencement Date shall be immediately following the expiration of the First Amendment to Lease, <b>June 1, 2022</b> .

Base Rent	\$19.00/rsf based on current fair market value; 2% annual increases thereafter.
Operating Costs	The Base Operating Expense Year will be calculated on actual 2022 Base Year.  If Base Operating Costs per square foot of Total Building Rentable Area in the Premises for any calendar month during the Lease Term exceed the Operating Cost Base Year (the "Excess"), Tenant shall pay to Landlord as Additional Rent an amount equal to the Tenant's Rentable Square Feet times the Excess per rentable square foot.
Tenant Improvements	Landlord will provide a Tenant Improvement Allowance of \$10.00 per rentable square foot for a total amount of \$79,770.00.

**Other Terms and Conditions**

Building Hours	Standard operating hours are from 7:00 am to 6:00 pm, Monday-Friday, except Holidays. Tenant shall be entitled to set and keep its own operating hours. Tenant is responsible for after-hours HVAC as it relates to its premises.
Building Access System	The Wells Fargo Plaza utilizes an electronic card access system that will allow entry to the buildings on a 24/7 basis. Each of the Tenants employees will be issued an access card.
Janitorial Services	Routine janitorial services will continue to be provided Monday through Friday, except state and federal holidays.
Parking	Tenant shall continue to have the right to use <u>twenty (20) parking spaces</u> , the cost of which is in the annual rent per the terms in the First Amendment to Lease.
Brokerage Commissions	A broker commission was not considered for this lease renewal proposal.

This is a proposal only and is not intended to be legally binding on either party. If the City of El Paso (Consolidated Tax Office) is in agreement with the terms outlined in this letter, please execute below and Landlord will prepare a definitive Amendment to Lease Agreement containing the terms and conditions stated set forth above and other such items as may be requested and mutually agreed to by both parties.

This proposal can be withdrawn or amended at any time and will automatically be deemed stale and withdrawn November 7, 2021.

We appreciate the opportunity to present this proposal to you. Please feel free to contact me if you have any questions or comments.

Sincerely,

MILLS PLAZA PROPERTIES VII, LP



Laura Sanchez  
Property Manager / Leasing

**AGREED AND ACCEPTED:**

**City of El Paso (Consolidated Tax Office)**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

CITY CLERK DEPT.

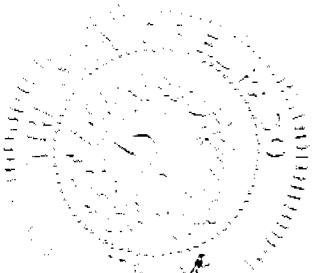
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RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement between the CITY OF EL PASO and MADISON RIVER INVESTMENTS, LLC for Suite 300 at the Wells Fargo Building, 221 N. Kansas Street.

ADOPTED this 29<sup>th</sup> day of November, 2011.



THE CITY OF EL PASO

John F. Cook  
John F. Cook, Mayor

ATTEST:

Richarda D. Mohnsen  
Richarda D. Mohnsen, City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert  
for R. Alan Shubert, P.E., Director  
Engineering and Construction Management

Juan Sandoval  
Juan Sandoval, Director  
Consolidated Tax Office

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**LEASE AGREEMENT**

**Between**

**MADISON RIVER INVESTMENTS, LLC**  
**(Landlord)**

**and**

**CITY OF EL PASO, TEXAS,**  
**(Tenant)**

**Dated as of**

*November 29*, 2011

CITY CLERK DEPT.  
2011 NOV 23 AM 11:38

**LEASE AGREEMENT**

THIS LEASE AGREEMENT is hereby made and entered into on this 29<sup>th</sup> day of November, 2011, between MADISON RIVER INVESTMENTS, LLC ("Landlord"), and City of El Paso, Texas. ("Tenant").

**LEASE OF PREMISES**

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the "Premises") described in *Item 3* of the Basic Lease Provisions and as shown in the drawing attached hereto as *Exhibit A-1*. The Premises are located in the Building described in *Item 2* of the Basic Lease Provisions. The Building is located on that certain land (the "Land") more particularly described on *Exhibit A-2* attached hereto, which is also improved with landscaping, parking facilities and other improvements, fixtures and common areas and appurtenances now or hereafter placed, constructed or erected on the Land (sometimes referred to herein as the "Project").

**BASIC LEASE PROVISIONS**

1. **Tenant:** City of El Paso, Texas (Consolidated Tax Office) ("Tenant")
2. **Building:** The Wells Fargo Building
3. **Description of Premises:** Suite(s): 300  
**Rentable Area Square Footage:** Approximately 7,977 square feet  
**Building Size:** 309,814 square feet (subject to Paragraph 18)
4. **Tenant's Proportionate Share:** 2.57% (7,977 rsf / 309,814 rsf) (See Paragraph 3)
5. **Basic Annual Rent and Parking Charges:** (See Paragraph 2)  
Months 1 to 24, inclusive:  
Monthly Installment: \$10,110.14 (\$15.21/square foot of Rentable Area/annum)  
Each Lease Year: \$121,321.65  
Months 25 to 48, inclusive:  
Monthly Installment: \$10,417.35 (\$15.67/square foot of Rentable Area/annum)  
Each Lease Year: \$125,008.25  
Months 49 to 72, inclusive:  
Monthly Installment: \$10,730.97 (\$16.14/square foot of Rentable Area/annum)  
Each Lease Year: \$128,771.60  
Months 73 to 96, inclusive:  
Monthly Installment: \$11,058.13 (\$16.64/square foot of Rentable Area/annum)  
Each Lease Year: \$132,103.35  
Months 97 to 120, inclusive:  
Monthly Installment: \$11,391.68 (\$17.14/square foot of Rentable Area/annum)  
Each Lease Year: \$136,700.17
6. **Installment Payable Upon Execution:** \$10,110.14 to include first month's rent

7. **Security Deposit Payable Upon Execution:** N/A
8. **Expense Stop for Operating Costs:** Base Year 2012
9. **Initial Term:** One hundred twenty (120) months, commencing on the Commencement Date and ending on the last day of the month in which the 120<sup>th</sup> month anniversary of the Commencement Date occurs (See Paragraph 1)
10. **Estimated Commencement Date:** April 1, 2012
11. **Estimated Termination Date:** March 31, 2022
12. **Broker(s) (See Paragraph 19(k)):** N/A
- Landlord's Broker:** \_\_\_\_\_
- Tenant's Broker:** \_\_\_\_\_
13. **Number of Parking Spaces:** Parking Allocation -- During the term of this Lease, Tenant shall have the right to use the following parking spaces, the cost of which is included in the annual rent stated above: Twenty (20) full time employee parking spaces shall be made available at all times in the detached parking garage located adjacent to the Wells Fargo Building. Landlord shall also make available an additional six (6) temporary employee parking spaces during the months of November through April, and two (2) temporary employee parking spaces during months of October through August. Temporary employees may park in the attached parking facility on an "as available" basis, or may be allocated to another Landlord controlled facility within walking distance of the Premises. (See Paragraph 18).
14. **Addresses for Notices:**
- |  |   |
|--|---|
| <p><b>To: TENANT:</b></p> <p><b>Prior to occupancy of the Premises:</b><br/> City of El Paso,<br/> #2 Civic Center Plaza<br/> El Paso, TX 79901<br/> <b>Attn: City Manager</b></p> | <p><b>To: LANDLORD:</b></p> <p>Madison River Investments, LLC<br/> c/o BCT Property Services, LLC<br/> 201 E. Main, Suite 104<br/> El Paso, Texas 79901</p> |
|--|---|

**After occupancy of the Premises:**

City of El Paso  
El Paso, TX 79901  
**Attn: City Manager**

With Copy to:

City of El Paso  
221 Kansas, Suite 300  
El Paso, Texas 79901  
Attn: Consolidated Tax Office

and

City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901  
Attn: Capital Assets Manager

**With a copy to:**

ScottHulse, P.C.  
Attn: W. David Bernard  
1100 Chase Tower, 201 E. Main Drive  
El Paso, Texas 79901

- 15. **Place of Payment:** All payments payable under this Lease shall be made out to the Landlord, and shall be sent to Landlord at 201 East Main, Suite 104, El Paso, Texas 79901, or to such other address as Landlord may designate in writing.
- 16. **Guarantor:** N/A
- 17. **Date of this Lease:** See cover page
- 18. **Landlord's Construction Allowance:** Up to \$25.00 per square foot (See Exhibit B)
- 19. **The "State" is the State of Texas.**

This Lease consists of the foregoing introductory paragraphs and Basic Lease Provisions (consisting of Items 1 through 19), the provisions of the Standard Lease Provisions (the "*Standard Lease Provisions*") (consisting of Paragraphs 1 through 19 which follow) and Exhibits A-1 through A-2 and Exhibits B through Exhibit F, and Addendum One, all of which are incorporated herein by this reference. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control. Addendum One shall control over any conflicting provisions of the Basic Lease Provisions or the Standard Lease Provisions.

## STANDARD LEASE PROVISIONS

### 1. TERM

(a) The Initial Term of this Lease and the Rent (defined below) shall commence on the earliest of (i) the date that the Tenant Improvements are Substantially Completed, or (ii) the date the Tenant Improvements would have been Substantially Completed except for Tenant Delays, or (iii) the date that Tenant, or any person occupying any of the Premises with Tenant's permission, commences business operations from the Premises (the "Commencement Date"). Unless earlier terminated in accordance with the provisions hereof, the Initial Term of this Lease shall be the period shown in *Item 9* of the Basic Lease Provisions. As used herein, "Lease Term" shall mean the Initial Term referred to in *Item 9* of the Basic Lease Provisions, subject to any extension of the Initial Term hereof exercised in accordance with the terms and conditions expressly set forth herein. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Initial Term of this Lease. The terms "Tenant Improvements" and "Substantial Completion" or "Substantially Completed" are defined in the attached Exhibit B Work Letter. "Tenant Delays" consist of those delays defined in Exhibit B.

(b) The Premises will be delivered to Tenant when the Tenant Improvements have been Substantially Completed. If the Commencement Date is delayed or otherwise does not occur on the Estimated Commencement Date, set forth in *Item 10* of the Basic Lease Provisions, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

(c) Upon Substantial Completion of the Tenant Improvements, Landlord shall prepare and deliver to Tenant, Tenant's Initial Certificate in the form of Exhibit E attached hereto (the "Certificate") which Tenant's Authorized Representative shall acknowledge by executing a copy and returning it to Landlord. If Tenant fails to sign and return the Certificate to Landlord within ten (10) days of its receipt from Landlord, the Certificate as sent by Landlord shall be deemed to have correctly set forth the Commencement Date and the other matters addressed in the Certificate. Failure of Landlord to send the Certificate shall have no effect on the Commencement Date. For the purposes of this agreement, the City's Authorized Representative shall be the City Manager or such person as the City Manager may designate in writing.

### 2. BASIC ANNUAL RENT

(a) Tenant agrees to pay during each month of the Lease Term as Basic Annual Rent ("Basic Annual Rent") for the Premises the sums shown for such periods in *Item 5* of the Basic Lease Provisions. For purposes of this Lease, a "Lease Year" shall be each twelve (12) calendar month period commencing on the Commencement Date (or anniversary thereof).

(b) Except as expressly provided to the contrary herein, Basic Annual Rent shall be payable in equal consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Basic Annual Rent payable under this Lease shall be paid upon Tenant's execution of this Lease. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant agrees it shall be bound by and subject to all terms, covenants, conditions and obligations of this Lease during the period between the date possession is delivered and the Commencement Date, other than the payment of Basic Annual Rent, in the same manner as if delivery had occurred on the Commencement Date.

(c) Intentionally Deleted.

(d) The parties agree that for all purposes hereunder the Premises shall be stipulated to contain the number of square feet of Rentable Area described in *Item 3* of the Basic Lease Provisions.

3. ADDITIONAL RENT

(a) If Operating Costs (defined below) per square foot of Rentable Area in the Project (subject to the gross-up of Paragraph 3(g) below) for any calendar year during the Lease Term exceed Expense Stop for Operating Costs, Tenant shall pay to Landlord as additional rent ("*Operating Costs Additional Rent*") an amount equal to Tenant's Proportionate Share (defined below) of such excess ("*Operating Costs Excess*").

(b) "*Tenant's Proportionate Share*" is, subject to the provisions of Paragraph 18, the percentage number described in Item 4 of the Basic Lease Provisions. Tenant's Proportionate Share represents, subject to the provisions of Paragraph 18, a fraction, the numerator of which is the number of square feet of Rentable Area in the Premises and the denominator of which is the number of square feet of Rentable Area in the Project, as determined by Landlord pursuant to Paragraph 18.

(c) The term "*Expense Stop for Operating Costs*" shall be equal to the "per square foot" amount for the Rentable Area in the Project, as described in Item 8 of the Basic Lease Provisions.

(d) "*Operating Costs*" means all costs, expenses and obligations incurred or payable by Landlord in connection with the operation, ownership, management, repair or maintenance of the Building and the Project during or allocable to the Lease Term, including without limitation, the following:

(i) The cost of fuel, supplies, equipment, tools, materials, service contracts, janitorial services, waste and refuse disposal, gardening and landscaping; insurance, including, but not limited to, public liability, fire, property damage, flood, rental loss, rent continuation, boiler machinery, business interruption, contractual indemnification and "comprehensive" coverage insurance for up to the full replacement cost of the Project and such other insurance as is customarily carried by operators of other similar class office buildings in the city in which the Project is located, to the extent carried by Landlord in its discretion, and the deductible portion of any insured loss otherwise covered by such insurance); the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons (including independent contractors) who perform services connected with the operation, maintenance, repair or replacement of the Project; personal property taxes on and maintenance and repair of equipment and other personal property used in connection with the operation, maintenance or repair of the Project; repair and replacement of window coverings provided by Landlord in the premises of tenants in the Project; such reasonable auditors' fees and legal fees as are incurred in connection with the operation, maintenance or repair of the Project; reasonable costs incurred for administration and management of the Project; the maintenance of any easements or ground leases benefiting the Project, whether by Landlord or by an independent contractor; a reasonable allowance for depreciation of personal property used in the operation, maintenance or repair of the Project; license, permit and inspection fees; all costs and expenses required by any governmental or quasi-governmental authority or by applicable law, for any reason, including capital improvements, whether capitalized or not, and the cost of any capital improvements made to the Project by Landlord that improve life-safety systems or reduce operating expenses (such costs to be amortized over such reasonable periods as Landlord shall reasonably determine); the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance, and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance; sign maintenance; and Common Area (defined below) repair, resurfacing, operation and maintenance; and the cost of providing security services, if any, deemed appropriate by Landlord.

The following items shall be excluded from Operating Costs:

(A) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Project for tenants or prospective tenants of the Project;

(B) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space;

- (C) Landlord's costs of any services sold to tenants for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Basic Annual Rent and Operating Costs payable under the lease with such tenant or other occupant;
- (D) any depreciation or amortization of the Project except as expressly permitted herein;
- (E) costs incurred due to a violation of Law (defined below) by Landlord relating to the Project;
- (F) interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;
- (G) all items and services for which Tenant or other tenants reimburse Landlord outside of Operating Costs;
- (H) repairs or other work occasioned by fire, windstorm or other work paid for through insurance or condemnation proceeds (excluding any deductible);
- (I) repairs resulting from any defect in the original design or construction of the Project; and
- (J) capital expenditures for work done on the Project (e.g., common area renovations, retail, workout facility, etc) or any capital improvements that are unrelated to the regular operations of the Project.

(e) Operating Costs shall also include all real property taxes, assessments, license fees, excises, levies, charges, assessments, both general and special assessments, or impositions and other similar governmental ad valorem or other charges levied on or attributable to the Project or its ownership, operation or transfer, and all taxes, charges, assessments or similar impositions imposed in lieu of the same (collectively, "Real Estate Taxes"). Real Estate Taxes shall also include all taxes, assessments, license fees, excises, levies, charges or similar impositions imposed by any governmental agency, district, authority or political subdivision (A) on any interest of Landlord, any mortgagee of Landlord or any interest of Tenant in the Project, the Premises, or on the occupancy or use of space in the Project or the Premises; (B) for the provision of amenities, services or rights of use, whether or not exclusive, public, quasi-public or otherwise made available on a shared use basis, including amenities, services or rights of use such as fire protection, police protection, street, sidewalk, lighting, sewer or road maintenance, refuse removal or janitorial services or for any other service, without regard to whether such services were formerly provided by governmental or quasi-governmental agencies to property owners or occupants at no cost or at minimal cost; and (C) related to any transportation plan, fund or system instituted within the geographic area of the Project or otherwise applicable to the Premises, the Project or any portion thereof. Real Estate Taxes shall not include any estate, inheritance successor, transfer, gift, franchise, corporation, income or profit tax imposed by the State or federal government on Landlord unless such income, franchise, transfer or profit taxes are in substitution for any Real Estate Taxes payable hereunder. Real Estate Taxes shall expressly include any new taxes (including House Bill 3 and franchise taxes) levied against Landlord and/or the Project in lieu of or in substitution of any ad valorem taxes on the Project as a result of property tax reform in the State of Texas ("HB3"); and

(f) Operating Costs shall also include Utilities. The term "Utilities" shall mean all electricity, gas, water, sewer and other utility costs incurred by Landlord in each calendar year in connection with operating the Building and the Project.

(g) Operating Costs for any calendar year during which actual occupancy of the Project is less than ninety-five percent (95%) of the Rentable Area of the Project shall be appropriately adjusted to reflect ninety-five percent (95%) occupancy of the existing Rentable Area of the Project during such period. In determining Operating Costs, if any services or Utilities are separately charged to tenants of the Project or others, Operating Costs shall be adjusted by Landlord to reflect the amount of expense which would have been incurred for such services or Utilities on a full time basis for normal Project operating hours. In the event (i) the Commencement Date shall be a date other than January 1, (ii) the date fixed for the expiration of the Lease Term shall be a date other than December 31, (iii) of any early termination of this Lease, or (iv) of any increase or decrease in the size of the Premises, then in each such event, an appropriate adjustment in the application of this Paragraph 3 shall, subject to the provisions of

this Lease, be made to reflect such event on a basis determined by Landlord to be consistent with the principles underlying the provisions of this Paragraph 3.

(h) Prior to the commencement of each calendar year of the Lease Term following the Commencement Date, Landlord shall have the right to give to Tenant a written estimate of Tenant's Proportionate Share of the Operating Costs Excess, if any, over the Expense Stop for Operating Costs for the Project for the ensuing year. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance on the first day of each month. Within a reasonable period after the end of each calendar year, Landlord shall furnish Tenant a statement indicating in reasonable detail the excess of Operating Costs over the Expense Stop for Operating Costs for such period, and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's actual share of such excess as indicated by such annual statement. Any payment due Landlord shall be payable by Tenant within 30 days from date of written demand from Landlord. Any amount due Tenant shall be credited against installments next becoming due under this Paragraph 3(h) or refunded to Tenant, if requested by Tenant.

(i) All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent to be allocated to monthly Operating Costs.

(j) Tenant is a municipal corporation and is exempt from all taxes and assessments (i) levied against any personal property, tenant improvements or trade fixtures of Tenant in or about the Premises and (ii) based upon this Lease or any document to which Tenant is a party creating or transferring an interest in this Lease or an estate in all or any portion of the Premises. If any such taxes or assessments are levied against Landlord or Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant, Landlord shall immediately notify Tenant and Tenant will challenge the assessment (on its behalf and on behalf of Landlord) for the taxes and assessments so levied against Landlord, or such taxes, levies and assessments resulting from such increase in assessed value. Landlord agrees it will reasonably cooperate with Tenant in the challenge of any taxes assessed in contravention of law.

(k) Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3, or (ii) computing or billing Tenant's Proportionate Share of excess Operating Costs shall not constitute a waiver of its right to require an increase in Rent, or in any way impair the continuing obligations of Tenant under this Paragraph 3. In the event of any dispute as to any Additional Rent due under this Paragraph 3, an officer of Tenant or Tenant's certified public accountant shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office. If after such inspection, Tenant still disputes such Additional Rent, upon Tenant's written request therefor, a certification as to the proper amount of Operating Costs and the amount due to or payable by Tenant shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's Proportionate Share of Operating Costs due by Tenant for the period in question; provided, however, such certified public accountant shall not be the accountant who conducted Landlord's initial calculation of Operating Costs to which Tenant is now objecting. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid Tenant's Proportionate Share of Operating Costs for the period in question, then Landlord shall credit such excess to Tenant's next payment of Operating Costs, Real Estate Taxes and/or Utilities and conversely, if Tenant has underpaid Tenant's Proportionate Share of Operating Costs, Tenant shall pay within 30 days from written demand from Landlord such additional Operating Costs to Landlord. Tenant agrees to pay the cost of such certification and the investigation with respect thereto. Tenant waives the right to dispute any matter relating to the calculation of Operating Costs or Additional Rent under this Paragraph 3 if any claim or dispute is not asserted in writing to Landlord within one hundred eighty (180) days after delivery to Tenant of the original billing statement with respect thereto.

(l) Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of excess Operating Costs for the year in which this Lease

terminates, Tenant shall pay any increase due over the estimated Operating Costs paid within 30 days from written demand from Landlord, and conversely, any overpayment made by Tenant shall be promptly refunded to Tenant by Landlord.

(m) Landlord and Tenant agree that each provision of this Lease for determining charges, amounts, and Additional Rent payments by Tenant is commercially reasonable, and as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 (Assessment of Charges) of the Texas Property Code, as such section now exists or as it may be hereafter amended or succeeded.

(n) The Basic Annual Rent, as adjusted pursuant to Paragraphs 2, 3 and 7, and other amounts required to be paid by Tenant to Landlord hereunder (including the Operating Costs Excess), are sometimes collectively referred to as, and shall constitute, "*Rent*".

#### 4. IMPROVEMENTS AND ALTERATIONS

(a) Effective on and as of the Commencement Date, Landlord shall deliver to Tenant, and Tenant agrees to accept from Landlord, the Premises in its "*AS-IS*", "*WHERE-AS*" and "*WITH ALL FAULTS*" condition and Landlord shall have no obligation to make any improvements or refurbishments to the Premises throughout the Initial Term; provided, however, notwithstanding any of the foregoing to the contrary and if applicable, Landlord and Tenant hereby agree that Landlord, at Tenant's sole cost and expense (except for Landlord's Construction Allowance), shall perform (or cause to be performed) the work described in the Work Letter attached hereto as Exhibit B (such work being defined in said Exhibit B as the "*Tenant Improvements*") in accordance with, and subject to the terms of, said Exhibit B.

(b) Subsequent to the completion of Tenant Improvements, any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("*Alterations*") shall be subject to Landlord's prior written consent. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Laws and shall construct, at its sole cost and expense, any alteration or modification required by Laws as a result of any Alterations. All Alterations shall be constructed at Tenant's sole cost and expense and in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval, which approval will not be unreasonably withheld, delayed or conditioned. Landlord may monitor construction of the Alterations. Tenant shall pay Landlord upon demand a reasonable fee not to exceed fifteen percent (15%) to compensate Landlord for its review of the plans and specifications and monitoring of the construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Landlord shall have the right, in its sole discretion, to instruct Tenant to remove those Alterations from the Premises which (i) were not approved in advance by Landlord, (ii) were not built in conformance with the plans and specifications approved by Landlord, or (iii) Landlord specified during its review of plans and specifications for Alterations would need to be removed by Tenant upon the expiration of this Lease. Landlord shall not unreasonably withhold or delay its approval with respect to what Alterations Landlord may require Tenant to remove at the expiration of the Lease. If upon the termination of this Lease Landlord requires Tenant to remove any or all of such Alterations from the Premises, then Tenant, at Tenant's sole cost and expense, shall promptly remove such Alterations and Tenant shall repair and restore the Premises to its original condition as of the Commencement Date, reasonable wear and tear excepted. Any Alterations remaining in the Premises following the expiration of the Lease Term or following the surrender of the Premises from Tenant to Landlord, shall become the property of Landlord unless Landlord notifies Tenant otherwise. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation from all of Tenant's contractors and subcontractors and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for bodily injury or property damage during construction. Upon completion of any Alterations and upon Landlord's reasonable request, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Alterations and final lien waivers from all such contractors and subcontractors.

(c) Tenant shall keep the Premises, the Building and the Project free from any and all liens arising out of any Alterations, work performed, materials furnished, or obligations incurred by or for Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Landlord, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as it shall deem proper (including payment of or defense against the claim giving rise to such lien); in such case, Tenant shall reimburse Landlord for all amounts so paid by Landlord in connection therewith, together with all of Landlord's costs and expenses, with interest thereon at the Default Rate (defined below). Such rights of Landlord shall be in addition to all other remedies provided herein or by law.

(d) Landlord shall furnish Tenant with two (2) keys for the Building corridor doors entering the Premises. Additional keys will be furnished by Landlord upon an order signed by Tenant and payment by Tenant of Landlord's charge therefor. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises without providing keys to Landlord, and Tenant shall not make or permit to be made any duplicate keys, except those furnished by Landlord. Upon termination of this lease, Tenant shall surrender to Landlord all keys to any locks on doors entering or within the Premises, and give to Landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises.

(e) Tenant acknowledges that a Confirmatory Asbestos Survey ("*Environmental Report*") of the Building dated January 23, 1993, prepared by Fugro McClelland for Landlord, indicates that there are asbestos containing materials in the Building. By its execution of this Lease, Tenant acknowledges that it has received a copy of the Environmental Report and agrees that Landlord shall in no event have any obligation to Tenant hereunder to remove such materials. Tenant agrees to cooperate and comply with any reasonable requirements of Landlord in connection with the asbestos management system of Landlord for the Building. Tenant further acknowledges that the asbestos has been encapsulated and that Landlord has implemented an Operation and Management Program ("*O&M Program*") in order to manage the presence of such materials in the Building in accordance with all federal requirements. Tenant further acknowledges and agrees that all construction and maintenance activities performed by Tenant or its employees, agents or contractors must be coordinated through the manager of the Building, and only trained and licensed personnel will be allowed access to the service areas of the Building. Tenant also acknowledges and agrees that in the event Tenant or its agents, employees or contractors come into contact with such materials in connection with Tenant's construction and/or installation of any Alterations to the Premises hereunder, Tenant is and shall be solely responsible for the encapsulation and containment of same and any and all remedial actions which may be necessary by virtue of such contact. In no event shall Landlord be liable for any increase in the cost of such Alterations which may result by virtue of the existence of such asbestos-containing materials and the necessary handling and treatment of same.

## 5. REPAIRS

(a) Landlord shall keep the Common Areas of the Building and the Project in a clean and neat condition. Subject to subparagraph (b) below, Landlord shall make all necessary repairs, within a reasonable period following receipt of notice of the need therefor from Tenant, to the exterior walls, exterior doors, exterior locks on exterior doors and windows of the Building, and to the Common Areas and to public corridors and other public areas of the Project not constituting a portion of any tenant's premises and shall use reasonable efforts to keep all Building standard equipment used by Tenant in common with other tenants in good condition and repair and to replace same at the end of such equipment's normal and useful life, reasonable wear and tear and casualty loss excepted. Except as expressly provided in Paragraph 9 of this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project.

(b) Tenant, at its expense, (i) shall keep the Premises and all fixtures contained therein in a safe, clean and neat condition, and (ii) shall bear the cost of maintenance and repair, by contractors selected by Tenant and approved by Landlord, of all facilities which are not expressly required to be maintained or repaired by Landlord and which are located in the Premises, including, without limitation, lavatory, shower, toilet, wash basin and kitchen facilities, and supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems installed by or on behalf of Tenant or existing in the Premises at the time of Landlord's delivery of the Premises to Tenant). Tenant shall make all repairs to the Premises not required to be made by Landlord under

subparagraph (a) above with replacements of any materials to be made by use of materials of equal or better quality. Tenant shall do all decorating, remodeling, alteration and painting required by Tenant during the Lease Term. Tenant shall pay for the cost of any repairs to the Premises, the Building or the Project made necessary by any negligence or willful misconduct of Tenant or any of its assignees, subtenants, employees or their respective agents, representatives, contractors, or other persons permitted in or invited to the Premises or the Project by Tenant. If Tenant fails to make such repairs or replacements within fifteen (15) days after written notice from Landlord, Landlord may at its option make such repairs or replacements, and Tenant shall upon demand pay Landlord for the cost thereof, including, without limitation, an additional reasonable charge not to exceed fifteen percent (15%).

(c) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a safe, clean and neat condition, normal wear and tear excepted. Except as otherwise set forth in Paragraph 4(b) of this Lease, Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring from the Premises, shall repair all damage caused by such removal, and shall restore the Premises to its original condition, reasonable wear and tear excepted. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property, Tenant shall be deemed to have abandoned the same, in which case Landlord may store the same at Tenant's expense, appropriate the same for itself, and/or sell the same in its discretion.

## **6. USE OF PREMISES**

(a) Tenant shall use the Premises only for general office uses for the Consolidated Tax Office and shall not use the Premises or permit the Premises to be used for any other purpose, without the prior written consent of the Landlord. Landlord shall have the right to deny its consent to any change in the permitted use of the Premises in its sole and absolute discretion.

(b) Tenant shall not at any time use or occupy the Premises, or permit any act or omission in or about the Premises in violation of any law, statute, ordinance or any governmental rule, regulation or order (collectively, "Law" or "Laws") and Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority to be a violation of Law. If any Law shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to (i) modification or other maintenance of the Premises, the Building or the Project, or (ii) the use, alteration or occupancy thereof, Tenant shall comply with such Law at Tenant's sole cost and expense. This Lease shall be subject to and Tenant, to the extent that Tenant has notice thereof, shall comply with, all financing documents encumbering the Building or the Project and all covenants, conditions and restrictions affecting the Premises, the Building or the Project, including, but not limited to, Tenant's execution of any subordination agreements requested by a mortgagee of the Premises, the Building or the Project.

(c) Tenant shall not at any time use or occupy the Premises in violation of the certificates of occupancy issued for or restrictive covenants pertaining to the Building or the Premises, and in the event that any architectural control committee or department of the State or the city or county in which the Project is located shall at any time contend or declare that the Premises are used or occupied in violation of such certificate or certificates of occupancy or restrictive covenants, Tenant shall, upon five (5) days' notice from Landlord or any such governmental agency, immediately discontinue such use of the Premises (and otherwise remedy such violation). The failure by Tenant to discontinue such use shall be considered a default under this Lease and Landlord shall have the right to exercise any and all rights and remedies provided herein or by Law. Any statement in this Lease of the nature of the business to be conducted by Tenant in the Premises shall not be deemed or construed to constitute a representation or guaranty by Landlord that such business will continue to be lawful or permissible under any certificate of occupancy issued for the Building or the Premises, or otherwise permitted by Law.

(d) Tenant shall not do or permit to be done anything which may invalidate or increase the cost of any fire, comprehensive or other insurance policy covering the Building, the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of the appropriate fire codes and ordinances or any other organization performing a similar function. In addition to all other remedies of Landlord, Landlord may require Tenant, promptly upon demand, to reimburse Landlord for the full amount of any additional premiums charged for such policy or policies by reason of Tenant's failure to comply with the provisions of this Paragraph 6.

(e) Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Premises, the Building or the Project. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises, the Building or the Project. Tenant shall not place weight upon any portion of the Premises exceeding the structural floor load (per square foot of area) which such area was designated (and is permitted by Law) to carry or otherwise use any Building system in excess of its capacity or in any other manner which may damage such system or the Building. Tenant shall not create within the Premises a working environment with a density of greater than five (5) employees per 1,000 square feet of Rentable Area. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in locations and in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not commit or suffer to be committed any waste in, on, upon or about the Premises, the Building or the Project.

(f) Tenant shall take all reasonable steps necessary to adequately secure the Premises from unlawful intrusion, theft, fire and other hazards, and shall keep and maintain any and all security devices in or on the Premises in good working order, including, but not limited to, exterior door locks for the Premises and smoke detectors and burglar alarms located within the Premises and shall cooperate with Landlord and other tenants in the Project with respect to access control and other safety matters.

(g) As used herein, the term "*Hazardous Material*" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (A) defined or listed as a "*hazardous waste*," "*pollutant*," "*extremely hazardous waste*," "*restricted hazardous waste*," "*hazardous substance*" or "*hazardous material*" under any applicable federal, state or local Law or administrative code promulgated thereunder, (B) petroleum, (C) asbestos, or (D) polychlorobiphenyls ("*PCBs*").

(i) Tenant agrees that all operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "*Tenant Affiliates*"), throughout the term of this Lease, shall be in all respects in compliance with all federal, state and local Laws then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Materials.

(ii) Intentionally Deleted.

(iii) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "*Remedial Work*") is required under any applicable federal, state or local Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Premises by Tenant or Tenant Affiliates, Landlord shall perform or cause to be performed the Remedial Work in compliance with such Law or order at Tenant's sole cost and expense. All Remedial Work shall be performed by one or more contractors, selected and approved by Landlord, and under the supervision of a consulting engineer, selected by Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

(iv) Each of the covenants and agreements of Tenant set forth in this Paragraph 6(g) shall survive the expiration or earlier termination of this Lease.

## **7. UTILITIES AND SERVICES**

(a) Provided that Tenant is not in default hereunder, Landlord shall furnish, or cause to be furnished to the Premises, the utilities and services described in Exhibit C attached hereto, subject to the conditions and in accordance with the standards set forth therein and in this Lease.

(b) Tenant agrees to cooperate fully at all times with Landlord and to comply with all regulations and requirements which Landlord may from time to time prescribe for the use of the utilities and services described herein and in Exhibit C. Landlord shall not be liable to Tenant for the failure of any other tenant, or its assignees, subtenants, employees, or their respective invitees, licensees, agents or other representatives to comply with such regulations and requirements.

(c) If Tenant requires utilities or services in quantities greater than or at times other than that generally furnished by Landlord pursuant to Exhibit C, Tenant shall pay to Landlord, upon receipt of a written statement therefor, Landlord's charge for such use. In the event that Tenant shall require additional electric current, water or gas for use in the Premises and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards and/or appurtenances are installed in the Building, subject to the conditions stated below, Landlord shall proceed to install the same at the sole cost of Tenant, payable upon demand in advance. The installation of such facilities shall be conditioned upon Landlord's consent, and a determination that the installation and use thereof (i) shall be permitted by applicable Law and insurance regulations, (ii) shall not cause permanent damage or injury to the Building or adversely affect the value of the Building or the Project, and (iii) shall not cause or create a dangerous or hazardous condition or interfere with or disturb other tenants in the Building. Subject to the foregoing, Landlord shall, upon reasonable prior notice by Tenant, furnish to the Premises additional elevator, heating, air conditioning and/or cleaning services upon such reasonable terms and conditions as shall be determined by Landlord, including payment of Landlord's charge therefor. In the case of any additional utilities or services to be provided hereunder, Landlord may require a switch and metering system to be installed so as to measure the amount of such additional utilities or services. The cost of installation, maintenance and repair thereof shall be paid by Tenant upon demand.

(d) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described herein or in Exhibit C for any reason (other than Landlord's gross negligence or willful misconduct), including, without limitation, when caused by accident, breakage, repairs, Alterations or other improvements to the Project, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability to obtain electricity, water or fuel, or any other cause beyond Landlord's control. Landlord shall be entitled to cooperate with the energy conservation efforts of governmental agencies or utility suppliers. No such failure, stoppage or interruption of any such utility or service shall be construed as an eviction of Tenant, nor shall the same relieve Tenant from any obligation to perform any covenant or agreement under this Lease. In the event of any failure, stoppage or interruption thereof, Landlord shall use reasonable efforts to attempt to restore all services promptly. No representation is made by Landlord with respect to the adequacy or fitness of the Building's ventilating, air conditioning or other systems to maintain temperatures as may be required for the operation of any computer, data processing or other special equipment of Tenant.

(e) Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to the above standards (including, without limitation, those described in Exhibit C) for utilities and services.

## **8. NON-LIABILITY OF LANDLORD; INSURANCE**

(a) Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Premises, the Building or the Project from any cause, EVEN IF SUCH LIABILITIES ARE CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR LANDLORD'S DESIGNATED PROPERTY MANAGEMENT COMPANY, OR EITHER OF THEIR PARTNERS, MEMBERS, SHAREHOLDERS, OWNERS, OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES, CONTRACTORS, AGENTS, AND REPRESENTATIVES (COLLECTIVELY "*RELEASED PARTIES*"), BUT NOT TO THE EXTENT SUCH LIABILITIES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SUCH RELEASED PARTIES. Without limiting the foregoing, neither Landlord nor any of the Released Parties shall be liable for and there shall be no abatement of Rent (except in the event of a casualty loss or a condemnation as set forth in Paragraphs 9 and 10 of this Lease) for (i) any damage to Tenant's property stored with or entrusted to Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or

from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Project, or (v) any latent or other defect in the Premises, the Building or the Project. Tenant shall give prompt notice to Landlord in the event of (i) the occurrence of a fire or accident in the Premises or in the Building, or (ii) the discovery of a defect therein or in the fixtures or equipment thereof. This Paragraph 8(a) shall survive the expiration or earlier termination of this Lease.

(b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) Insurance.

(i) Tenant at all times during the Lease Term shall, at its own expense, keep in full force and effect (A) commercial general liability insurance providing coverage against bodily injury and property damage to a combined single limit of \$1,000,000.00 each occurrence, \$2,000,000 general aggregate, which shall include provision for contractual liability coverage insuring Tenant for the performance of its indemnity obligations set forth in this Paragraph 8 and in Paragraph 6(g)(ii) of this Lease, (B) worker's compensation insurance to the statutory limit, if any, and employer's liability insurance to the limit of \$1,000,000 per occurrence, (C) property insurance covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises and (D) flood insurance covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises. Landlord and its designated property management firm shall be named an additional insured on each of said policies (excluding the worker's compensation policy) and said policies shall be issued by an insurance company or companies authorized to do business in Texas and which carry an A. M. Best Key rating of at least A-VIII or better (latest edition in effect as of the Effective Date of this Lease and subsequently in effect as of the date of renewal of the required policies). Landlord agrees that Tenant may self-insure against the risks described in clauses (A) and/or (B) above. EACH OF SAID THIRD-PARTY POLICIES SHALL ALSO INCLUDE A WAIVER OF SUBROGATION PROVISION OR ENDORSEMENT IN FAVOR OF LANDLORD, AND AN ENDORSEMENT PROVIDING THAT LANDLORD SHALL RECEIVE THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION OF, NONRENEWAL OF, REDUCTION OF COVERAGE OR MATERIAL CHANGE IN COVERAGE ON SAID POLICIES. Tenant hereby waives its right of recovery against Landlord and any of the Released Parties of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with satisfactory evidence of the payment of the premiums therefor, shall be deposited with Landlord on the date Tenant first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Tenant shall allow Landlord, at all reasonable times, to inspect the policies of insurance required herein.

(ii) It is expressly understood and agreed that the coverages required represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's other obligations contained in this Lease. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (B) the failure of any insurance company to pay claims occurring nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's obligations under this Paragraph 8 and Paragraph 6(g)(ii) or any other provision of this Lease. With respect to insurance coverages, except worker's compensation, maintained hereunder by Tenant and insurance coverages separately obtained by Landlord, all insurance coverages afforded by policies of insurance maintained by Tenant shall be primary insurance as such coverages apply to Landlord, and such insurance coverages separately maintained by Landlord shall be excess, and Tenant shall have its insurance policies so endorsed. The amount of liability insurance under insurance policies maintained by Tenant shall not be reduced by the existence of insurance coverage under policies separately maintained by Landlord. Landlord shall cooperate with Tenant and Landlord's insurers in the adjustment of any insurance claim

pertaining to such coverage. Tenant shall be solely responsible for any premiums, assessments, penalties, deductible assumptions, retentions, audits, retrospective adjustments or any other kind of payment due under its policies.

(iii) Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance.

(iv) Throughout the Lease Term, Landlord agrees to maintain (i) property insurance on the insurable portions of Building and the remainder of the Project in an amount not less than the fair replacement value thereof, subject to reasonable deductibles (ii) boiler and machinery insurance amounts and with deductibles that would be considered standard for similar class office building in El Paso, Texas metropolitan area and (iii) commercial general liability insurance with a combined single limit coverage of at least \$1,000,000.00 per occurrence. All such insurance shall be obtained from insurers Landlord reasonably believes to be financially responsible in light of the risks being insured. The premiums for any such insurance shall be a part of Operating Costs.

(e) Mutual Waivers of Recovery. Landlord and Tenant, on behalf of themselves and all parties claiming by, through or under them each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Premises or by Landlord with respect to the Building or the Project (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Premises, or Landlord with respect to the Building or the Project, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. The mutual releases, discharges and waivers contained in this provision shall apply even if the loss or damage to which this provision applies is caused solely or in part by the negligence of Landlord or Tenant.

(f) Business Interruption. Landlord shall not be responsible for, and Tenant releases and discharges Landlord from, and Tenant further waives any right of recovery from Landlord for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant's use or occupancy of the Premises, even if such loss is caused solely or in part by the negligence of landlord.

(g) Adjustment of Claims. Tenant shall cooperate with Landlord and Landlord's insurers in the adjustment of any insurance claim pertaining to the Building or the Project or Landlord's use thereof.

(h) Increase in Landlord's Insurance Costs. Tenant agrees to pay to Landlord any increase in premiums for Landlord's insurance policies resulting from Tenant's use or occupancy of the Premises, provided that Landlord can establish by satisfactory evidence that such increase is the result of Tenant's use.

(i) Failure to Maintain Insurance. Any failure of Tenant to obtain and maintain the insurance policies and coverages required hereunder or failure by Tenant to meet any of the insurance requirements of this Lease shall constitute an event of default hereunder, and such failure shall entitle Landlord to pursue, exercise or obtain any of the remedies provided for in Paragraph 12(b), and Tenant shall be solely responsible for any loss suffered by Landlord as a result of such failure. In the event of failure by Tenant to maintain the insurance policies and coverages required by this Lease or to meet any of the insurance requirements of this Lease, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may obtain said insurance policies and coverages or perform any other insurance obligation of Tenant, but all costs and expenses incurred by Landlord in obtaining such insurance or performing Tenant's insurance obligations shall be reimbursed by Tenant to Landlord, together with interest on same from the date any such cost or expense was paid by Landlord until reimbursed by Tenant, at the rate

of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject.

## 9. FIRE OR CASUALTY

(a) Subject to the provisions of this Paragraph 9, in the event the Premises, or access thereto, is wholly or partially destroyed by fire or other casualty, Landlord shall (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) rebuild, repair or restore the Premises and access thereto to substantially the same condition as existing immediately prior to such destruction and this Lease shall continue in full force and effect. Notwithstanding the foregoing, (i) Landlord's obligation to rebuild, repair or restore the Premises shall not apply to any personal property, above-standard tenant improvements or other items installed or contained in the Premises, and (ii) Landlord shall have no obligation whatsoever to rebuild, repair or restore the Premises with respect to any damage or destruction occurring during the last twelve (12) months of the term of this Lease or any extension of the term.

(b) Landlord may elect to terminate this Lease in any of the following cases of damage or destruction to the Premises, the Building or the Project: (i) where the cost of rebuilding, repairing and restoring (collectively, "*Restoration*") of the Building or the Project, would, regardless of the lack of damage to the Premises or access thereto, in the reasonable opinion of Landlord, exceed twenty percent (20%) of the then replacement cost of the Building; (ii) where, in the case of any damage or destruction to any portion of the Building or the Project by uninsured casualty, the cost of Restoration of the Building or the Project, in the reasonable opinion of Landlord, exceeds \$500,000; or (iii) where, in the case of any damage or destruction to the Premises or access thereto by uninsured casualty, the cost of Restoration of the Premises or access thereto, in the reasonable opinion of Landlord, exceeds twenty percent (20%) of the replacement cost of the Premises; or (iv) if Landlord has not obtained appropriate zoning approvals for reconstruction of the Project, Building or Premises. Any such termination shall be made by thirty (30) days' prior written notice to Tenant given within ninety (90) days of the date of such damage or destruction. If this Lease is not terminated by Landlord and as the result of any damage or destruction, the Premises, or a portion thereof, are rendered untenable, the Basic Annual Rent shall abate reasonably during the period of Restoration (based upon the extent to which such damage and Restoration materially interfere with Tenant's business in the Premises). This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building or the Project. Notwithstanding anything in this Paragraph 9 to the contrary, in the event that the damages to the Premises or access thereto are such that, in the reasonable opinion of Landlord, such Restoration cannot be completed within six (6) months following the date of such damage or destruction, then Tenant may elect to terminate this Lease by giving Landlord written notice of its election to terminate on or before the earlier of (i) thirty (30) days from the date that Landlord notifies Tenant in writing that the Restoration cannot be completed within six (6) months from the date of the damage or destruction, or (ii) the expiration of six (6) months from the date of damage or destruction, if the Restoration is not then completed.

## 10. EMINENT DOMAIN

In the event the whole of the Premises, the Building or the Project shall be taken under the power of eminent domain, or sold to prevent the exercise thereof (collectively, a "*Taking*"), this Lease shall automatically terminate as of the date of such Taking. In the event of any Taking of a portion of the Project, the Building or the Premises shall, in the reasonable opinion of Landlord, substantially interfere with Landlord's operation thereof, Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant given at any time within sixty (60) days following the date of such Taking. For purposes of this Lease, the date of Taking shall be the earlier of the date of transfer of title resulting from such Taking or the date of transfer of possession resulting from such Taking. In the event that a portion of the Premises is so taken and this Lease is not terminated, Landlord shall, with reasonable diligence, use commercially reasonable efforts to proceed to restore (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) the Premises (other than Tenant's personal property and fixtures, and above-standard tenant improvements) to a complete, functioning unit. In such case, the Basic Annual Rent shall be reduced proportionately based on the portion of the Premises so taken. If all or any portion of the Premises is the subject of a temporary Taking, this Lease shall remain in full force and effect and Tenant shall continue to perform each of its obligations under this Lease; in such case, Tenant shall be entitled to receive the entire award allocable to the temporary Taking of the Premises. Except as provided herein, Tenant shall not assert any claim against Landlord or the condemning authority for, and hereby assigns to Landlord, any

compensation in connection with any such Taking, and Landlord shall be entitled to receive the entire amount of any award therefor, without deduction for any estate or interest of Tenant. Nothing contained in this Paragraph 10 shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the condemning authority for the Taking of personal property, fixtures, above standard tenant improvements of Tenant or for relocation or moving expenses recoverable by Tenant from the condemning authority. This Paragraph 10 shall be Tenant's sole and exclusive remedy in the event of a Taking.

#### **11. ASSIGNMENT AND SUBLETTING**

(a) Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, sublet, mortgage, hypothecate or otherwise encumber all or any portion of its interest in this Lease or in the Premises or grant any license in or suffer any person other than Tenant or its employees to use or occupy the Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such attempted assignment, subletting, license, mortgage, hypothecation, other encumbrance or other use or occupancy without the consent of Landlord shall be null and void and of no effect. Any mortgage, hypothecation or encumbrance of all or any portion of Tenant's interest in this Lease or in the Premises and any grant of a license or sufferance of any person other than Tenant or its employees to use or occupy the Premises or any part thereof shall be deemed to be an "assignment" of this Lease. In addition, as used in this Paragraph 11, the term "*Tenant*" shall also mean any entity that has guaranteed Tenant's obligations under this Lease, and the restrictions applicable to Tenant contained herein shall also be applicable to such guarantor. Landlord's agreement to not unreasonably withhold its consent shall only apply to the first assignment or sublease under the Lease.

(b) No assignment or subletting in violation of the terms of this Lease shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subletting or assignment. Consent by Landlord to one subletting or assignment shall not be deemed to constitute a consent to any other or subsequent attempted subletting or assignment. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord all pertinent information relating to the proposed assignee or sublessee, all pertinent information relating to the proposed assignment or sublease, and all such financial information as Landlord may reasonably request concerning the proposed assignee or subtenant. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease.

(c) At any time within thirty (30) days after Landlord's receipt of the information specified in subparagraph (b) above, Landlord may by written notice to Tenant elect to terminate this Lease as to the portion of the Premises so proposed to be subleased or assigned (which may include all of the Premises), with a proportionate abatement in the Rent payable hereunder.

(d) Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease in any of the following instances:

(i) The assignee or sublessee is not, in Landlord's reasonable opinion, sufficiently creditworthy to perform the obligations such assignee or sublessee will have under this Lease;

(ii) The intended use of the Premises by the assignee or sublessee is not the same as set forth in this Lease or otherwise reasonably satisfactory to Landlord;

(iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Building;

(iv) Occupancy of the Premises by the assignee or sublessee would, in the good faith judgment of Landlord, violate any agreement binding upon Landlord, the Building or the Project with regard to the identity of tenants, usage in the Building, or similar matters;

(v) The assignee or sublessee is then negotiating with Landlord or has negotiated with Landlord within the previous six (6) months, or is a current tenant or subtenant within the Building or Project;

(vi) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Building or Project; or

(vii) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease.

The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease.

(e) In the event that Landlord approves of any assignment or sublease as set forth herein, Tenant shall be released from any and all liability under this Lease accruing from and after the date of such permitted assignment.

(f) If this Lease is assigned or if the Premises is subleased (whether in whole or in part), or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest, or grant of any concession or license within the Premises, or if the Premises are occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect Rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next Rent payable hereunder; and all such Rent collected by Tenant shall be held in deposit for Landlord and immediately forwarded to Landlord. No such transaction or collection of Rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

(g) Should Tenant request of Landlord the right to assign or sublet, Landlord shall charge Tenant Seven Hundred Fifty and No/100 Dollars (\$750.00) as an administration fee.

(h) Notwithstanding any provision of this Lease to the contrary, in the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money and other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

## 12. DEFAULT

(a) Default by Tenant. The following events shall be deemed to be events of default (herein so called) by Tenant under this Lease: (i) Tenant shall fail to pay Rent or any other rental or sums payable by Tenant hereunder when due; (ii) Tenant shall fail to comply with or observe any other provision of this Lease and such failure shall continue for thirty (30) days after written notice to Tenant (or, in the case of Tenant's failure to comply with or observe any other single provision of this Lease more than two (2) times during the Lease Term, upon the occurrence of the third and all subsequent such failures, without notice from Landlord); (iii) Tenant or any guarantor of Tenant's obligations hereunder shall make a general assignment for the benefit of creditors; (iv) any petition shall be filed by or against Tenant or any guarantor of Tenant's obligations hereunder under the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, and such petition shall not be dismissed within sixty (60) days of filing, or Tenant or any guarantor of Tenant's obligations hereunder shall be adjudged bankrupt or insolvent in proceedings filed thereunder; (v) a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder, and such appointment shall not be vacated or otherwise terminated, and the action in which such appointment was ordered dismissed, within sixty (60) days of filing; (vi) Tenant shall fail to take possession of or shall desert, abandon or vacate the Premises; (vii) the death of any guarantor; or (viii) the occurrence of an event described in clause (iv) or (v) of this Paragraph (without regard to any cure periods contained therein), and the failure thereafter of Tenant (A)

to timely and fully make any payment of Rent or any other sum of money due hereunder or (B) to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder. Notwithstanding the foregoing, if the nature of Tenant's default under Paragraph 12(a)(ii) above is such that more than thirty (30) days are reasonably required for its performance, Tenant shall not be in default if Tenant commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

(b) Remedies for Tenant's Default. Upon the occurrence of any event of default specified in this Lease, Landlord shall have the option to pursue any (i) one or more of the following remedies without any notice or demand whatsoever and without releasing Tenant from any obligation under this Lease; or (ii) other remedy offered Landlord in law or in equity:

(i) Landlord may enter the Premises without terminating this Lease and perform any covenant or agreement or cure any condition creating or giving rise to an event of default under this Lease and Tenant shall pay to Landlord on demand, as additional rent, the amount expended by Landlord in performing such covenants or agreements or satisfying or observing such condition. Landlord, or its agents or employees, shall have the right to enter the Premises, and such entry and such performance shall not terminate this Lease or constitute an eviction of Tenant.

(ii) Landlord may terminate this Lease by written notice to Tenant (and not otherwise or Landlord may terminate Tenant's right of possession without terminating this Lease). In either of such events Tenant shall surrender possession of and vacate the Premises immediately and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter the Premises, in whole or in part, with or without process of law and to expel or remove Tenant and any other person, firm or entity who may be occupying the Premises or any part thereof and remove any and all property therefrom, using such lawful force as may be necessary.

(iii) In the event Landlord elects to re-enter or take possession of the Premises after Tenant's default, with or without terminating this Lease, Landlord may change locks or alter security devices and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages.

(iv) Notwithstanding anything herein to the contrary, if Landlord terminates Tenant's right to possession without terminating this Lease after an event of default, Landlord shall use commercially reasonable efforts to relet the Premises and mitigate damage as set forth in Paragraph 12(c) below.

(v) Notwithstanding any prior election by Landlord to not terminate this Lease, Landlord may at any time, including subsequent to any re-entry or taking of possession of the Premises as allowed hereinabove, elect to terminate this Lease. Tenant shall be liable for and shall immediately pay to Landlord the amount of all Basic Annual Rent and other sums of money due under this Lease as may have accrued as of the date of termination. Tenant shall also immediately pay to Landlord, as agreed upon liquidated damages, an amount of money equal to the Basic Annual Rent and other amounts due for the remaining portion of the Lease Term (had such term not been terminated by Landlord prior to the expiration of the Lease Term), less the fair rental value of the Premises for the residue of the Lease Term, both discounted to their present value based upon an interest rate of eight percent (8%) per annum. In determining fair rental value, Landlord shall be entitled to take into account the time and expenses necessary to obtain a replacement tenant or tenants, including lost rental revenues and anticipated expenses hereinafter described relating to recovery, preparation and reletting of the Premises. If Landlord elects to relet the Premises, or any portion thereof, before presentation of proof of such liquidated damages, the amount of rent reserved upon such reletting shall be deemed prima facie evidence of the fair rental value of the portion of the Premises so relet.

Landlord and Tenant agree that because of the difficulty or impossibility of determining Landlord's damages from the loss of anticipated Additional Rent and other lease charges from the Tenant, there shall be included as a component of Tenant's annual total rent obligation (for the calculation of Landlord's remedies), an amount equal to the average monthly Additional Rent paid by Tenant for the

twelve (12) full calendar months immediately preceding the event of default (or such lesser period of the term if the event of default occurs prior to the twelfth (12<sup>th</sup>) full calendar month of the term) multiplied by the number of months remaining in the Lease Term.

(vi) In addition to any sum provided to be paid above, Tenant shall also be liable for and shall immediately pay to Landlord all broker's fees incurred by Landlord in connection with any reletting of the whole or any part of the Premises, the costs of removing and storing Tenant's or any other occupant's property, the cost of repairing, altering, remodeling, renovating or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, the cost of removal and replacement of Tenant's signage and all reasonable expenses by Landlord in enforcing Landlord's remedies, including reasonable attorneys' fees.

(c) Mitigation of Damages.

(i) In the event of a default under the Lease, Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease.

(ii) Landlord's obligation to mitigate damages after a default by Tenant shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "*Substitute Tenant*") in accordance with the following criteria:

(A) Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant.

(B) Landlord shall not be obligated to offer the Premises to a Substitute Tenant when other premises in the Project suitable for that prospective tenant's use are (or soon will be) available.

(C) Landlord shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar space, nor shall Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space.

(D) Landlord shall not be obligated to enter into a lease with any proposed tenant whose use would:

- a. Disrupt the tenant mix or balance of the Project;
- b. Violate any restriction, covenant, or requirement contained in the lease of another tenant of the Project;
- c. Adversely affect the reputation of the Project; or
- d. Be incompatible with the operation of the Project.

(E) Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant (a "*Substitute Lease*") which does not have, in Landlord's reasonable opinion, sufficient financial resources or operating experience to operate the Premises in a first-class manner.

(F) Landlord shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

a. Tenant pays any such sum to Landlord in advance of Landlord's execution of a Substitute Lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease); or

b. Landlord, in Landlord's sole discretion, determines that any such expenditure is financially justified in connection with entering into any such Substitute Lease.

(iii) Upon compliance with the above criteria regarding the releasing of the Premises after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and Tenant waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord, unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Paragraph 12(c).

(iv) Tenant's right to seek damages from Landlord as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

(d) Effect of Suit or Partial Collection. Institution of a forcible detainer action to re-enter the Premises shall not be construed to be an election by Landlord to terminate this Lease. Landlord may collect and receive any Rent due from Tenant and the payment thereof shall not constitute a waiver of or affect any notice or demand given, suit instituted or judgment obtained by Landlord, or be held to waive or alter the rights or remedies which Landlord may have at law or in equity or by virtue of this Lease at the time of such payment.

(e) Remedies Cumulative. All rights and remedies of Landlord herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other.

(f) Late Payment Charge and Interest Payable. Landlord may, without further notice to Tenant, impose a late payment charge equal to five percent (5%) of any amount due if any amount due under this Lease is not paid within five (5) days from the date required to be paid hereunder. In addition, any payment due under this Lease not paid within ten (10) days after the date herein specified to be paid shall bear interest from the date such payment is due to the date of actual payment at the rate of eighteen percent (18%) per annum or the highest lawful rate of interest permitted by Texas or federal law, whichever rate of interest is lower.

(g) Cashier's Check. If Tenant fails to timely make two (2) consecutive payments of Basic Annual Rent or any two (2) such payments are returned for insufficient funds, then, in addition to any other remedy Landlord may have, Landlord may require that all future payments be made by cashier's check or money order.

(h) Default by Landlord. Landlord shall in no event be charged with default in any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days after written notice to Landlord from Tenant specifically describing such failure (except if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion). If Landlord shall continue in default in the performance of any of the covenants or agreements herein contained after the time limit for the curing thereof, then, Tenant shall have the right to notify Landlord of its intent to terminate this Lease by giving written notice of such intention ("*Termination Notice*") to Landlord and any lender designated by Landlord, if Landlord has notified Tenant of its desire for Tenant to give Termination Notices or other notices of default hereunder to such lender. If Landlord fails to cure such default within thirty (30) days of the giving of the Termination Notice, then Tenant shall have the right to terminate this Lease, seek the remedy of

specific performance, money damages, or any other remedy available at law or in equity.

### 13. ACCESS; CONSTRUCTION

Landlord reserves the right to use the roof and exterior walls of the Premises and the area beneath, adjacent to and above the Premises, together with the right to install, use, maintain, repair, replace and relocate equipment, machinery, meters, pipes, ducts, plumbing, conduits and wiring through the Premises, which serve other portions of the Building or the Project in a manner and in locations which do not unreasonably interfere with Tenant's use of the Premises. In addition, Landlord shall have free access to any and all mechanical installations of Landlord or Tenant, including, without limitation, machine rooms, telephone rooms and electrical closets. Tenant agrees that there shall be no construction of partitions or other obstructions which materially interfere with or which threaten to materially interfere with Landlord's free access thereto, or materially interfere with the moving of Landlord's equipment to or from the enclosures containing said installations. Upon at least twenty-four (24) hours' prior notice (except in the event of an emergency, when no notice shall be necessary), Landlord reserves and shall at any time and all times have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to alter, improve, restore, rebuild or repair the Premises or any other portion of the Building, or to do any other act permitted or contemplated to be done by Landlord hereunder, all without being deemed guilty of an eviction of Tenant and without liability for abatement of Rent or otherwise. For such purposes, Landlord may also erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall conduct all such inspections and/or improvements, alterations and repairs so as to minimize, to the extent reasonably practical and without additional expense to Landlord, any interruption of or interference with the business of Tenant. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of such purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises (excluding Tenant's vaults and safes, access to which shall be provided by Tenant upon Landlord's reasonable request). Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency in order to obtain entry to the Premises or any portion thereof, and Landlord shall have the right, at any time during the Lease Term, to provide whatever access control measures it deems reasonably necessary to the Project, without any interruption or abatement in the payment of Rent by Tenant. Any entry into the Premises obtained by Landlord by any of such means shall not under any circumstances be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, Alterations or decorations to the Premises or the Project except as otherwise expressly agreed to be performed by Landlord pursuant to the provisions of this Lease.

### 14. BANKRUPTCY

(a) If at any time on or before the Commencement Date there shall be filed by or against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, this Lease shall ipso facto be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any applicable law or by an order of any court, tribunal, administrative agency or any other forum having jurisdiction, shall be entitled to possession of the Premises and Landlord, in addition to the other rights and remedies given by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

(b) If, after the Commencement Date, or if at any time during the term of this Lease, there shall be filed against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, and the same is not dismissed after sixty (60) calendar days, or if Tenant makes an assignment for the benefit of creditors, this Lease, at the option of Landlord exercised within a reasonable time after notice of the happening of any one or more of such events, may be canceled and terminated and in such event neither Tenant nor any person

claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies granted by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

(c) In the event of the occurrence of any of those events specified in this Paragraph 14, if Landlord shall not choose to exercise, or by applicable law, shall not be able to exercise, its rights hereunder to terminate this Lease upon the occurrence of such events, then, in addition to any other rights of Landlord hereunder or by virtue of applicable law, (i) Landlord shall not be obligated to provide Tenant with any of the utilities or services specified in Paragraph 7, unless Landlord has received compensation in advance for such utilities or services, and the parties agree that Landlord's reasonable estimate of the compensation required with respect to such services shall control, and (ii) neither Tenant, as debtor-in-possession, nor any trustee or other person (hereinafter collectively referred to as the "*Assuming Tenant*") shall be entitled to assume this Lease unless on or before the date of such assumption, the Assuming Tenant (x) cures, or provides adequate assurance that the latter will promptly cure, any existing default under this Lease, (y) compensates, or provides adequate assurance that the Assuming Tenant will promptly compensate Landlord for any pecuniary loss (including, without limitation, attorneys' fees and disbursements) resulting from such default, and (z) provides adequate assurance of future performance under this Lease, it being covenanted and agreed by the parties that, for such purposes, any cure or compensation shall be effected by the immediate payment of any monetary default or any required compensation, or the immediate correction or bonding of any nonmonetary default. For purposes of this Lease, (i) any "adequate assurance" of such cure or compensation shall be effected by the establishment of an escrow fund for the amount at issue or by the issuance of a bond, and (ii) "adequate assurance" of future performance shall be effected by the establishment of an escrow fund for the amount at issue or by the issuance of a bond.

**15. SUBSTITUTION OF PREMISES**

Subject to the conditions specified in this Paragraph 15, Landlord reserves the right without Tenant's consent, on ninety (90) days' prior written notice to Tenant, to substitute other premises within the Project for the Premises. In each such case, the substituted premises shall (a) contain at least the same Rentable Area as the Premises, (b) contain comparable tenant improvements, and (c) be made available to Tenant at the then current rental rate for such space, which in no event, shall exceed the per square foot rental rate in effect at the time of such substitution. Landlord shall pay all reasonable moving expenses of Tenant incidental to such substitution of premises.

**16. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES**

(a) Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate to any and all deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, "*Security Documents*") which now or hereafter constitute a lien upon or affect the Project, the Building or the Premises. Such subordination shall be effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. In addition, Landlord shall have the right to subordinate or cause to be subordinated any such Security Documents to this Lease and in such case, in the event of the termination or transfer of Landlord's estate or interest in the Project by reason of any termination or foreclosure of any such Security Documents, Tenant shall, notwithstanding such subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Furthermore, Tenant shall within fifteen (15) days of demand therefor execute any instruments or other documents which may be required by Landlord or the holder of any Security Document and specifically shall execute, acknowledge and deliver within fifteen (15) days of demand therefor a subordination of lease or subordination of deed of trust, in the form required by the holder of the Security Document requesting the document; the failure to do so by Tenant within such time period shall be a material default hereunder; provided, however, the new landlord or the holder of any Security Document shall agree that Tenant's quiet enjoyment of the Premises shall not be disturbed as long as Tenant is not in default under this Lease.

(b) If any proceeding is brought for default under any ground or master lease to which this Lease is subject or in the event of foreclosure or the exercise of the power of sale under any mortgage, deed of trust or other Security Document made by Landlord covering the Premises, at the election of such ground lessor, master lessor or purchaser at foreclosure, Tenant shall attorn to and recognize the same as Landlord under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired term of this Lease then remaining).

(c) Intentionally Deleted.

(d) Tenant shall, upon not less than fifteen (15) days' prior notice by Landlord, execute, acknowledge and deliver to Landlord a written statement, reasonably acceptable to Landlord, certifying to those facts for which certification has been requested by Landlord or any current or prospective purchaser, holder of any Security Document, ground lessor or master lessor, including, but without limitation, that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Basic Annual Rent, Additional Rent and other charges hereunder have been paid, if any, and (iii) whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. Tenant's failure to execute and deliver such statement within such time shall, at the option of Landlord, constitute a material default under this Lease and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord in any such certificate prepared by Landlord and delivered to Tenant for execution. Any statement delivered pursuant to this Paragraph 16 may be relied upon by any prospective purchaser of the fee of the Building or the Project or any mortgagee, ground lessor or other like encumbrancer thereof or any assignee of any such encumbrance upon the Building or the Project.

#### **17. SALE BY LANDLORD; TENANT'S REMEDIES; NONRECOURSE LIABILITY**

(a) In the event of a sale or conveyance by Landlord of the Building or the Project, Landlord shall be released from any and all liability under this Lease. If the Security Deposit has been made by Tenant prior to such sale or conveyance, Landlord shall transfer the Security Deposit to the purchaser, and upon delivery to Tenant of notice thereof, Landlord shall be discharged from any further liability in reference thereto.

(b) Landlord shall not be in default of any obligation of Landlord hereunder unless Landlord fails to perform any of its obligations under this Lease within thirty (30) days after receipt of written notice of such failure from Tenant; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be in default if Landlord commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

(c) Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord and/or any Landlord Indemnitee in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages, or (ii) an action for injunctive relief; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable for punitive, consequential or special damages or loss of profits under this Lease and Tenant waives any rights it may have to such damages under this Lease in the event of a breach or default by Landlord under this Lease.

(d) As a condition to the effectiveness of any notice of default given by Tenant to Landlord, Tenant shall also concurrently give such notice under the provisions of Paragraph 17(b) to each beneficiary under a Security

Document encumbering the Project of whom Tenant has received written notice (such notice to specify the address of the beneficiary). In the event Landlord shall fail to cure any breach or default within the time period specified in subparagraph (b), then prior to the pursuit of any remedy therefor by Tenant, each such beneficiary shall have an additional thirty (30) days within which to cure such default, or if such default cannot reasonably be cured within such period, then each such beneficiary shall have such additional time as shall be necessary to cure such default, provided that within such thirty (30) day period, such beneficiary has commenced and is diligently pursuing the remedies available to it which are necessary to cure such default (including, without limitation, as appropriate, commencement of foreclosure proceedings).

#### **18. PARKING; COMMON AREAS**

(a) Tenant shall have the right to the nonexclusive use of the number of parking spaces located in the parking areas of the Project specified in *Item 13* of the Basic Lease Provisions for the parking of operational motor vehicles used by Tenant, its officers and employees only. Landlord reserves the right, at any time upon written notice to Tenant, to designate the location of Tenant's parking spaces as determined by Landlord in its reasonable discretion. The use of such spaces shall be subject to the rules and regulations adopted by Landlord from time to time for the use of the parking areas. Landlord further reserves the right to make such changes to the parking system as Landlord may deem necessary or reasonable from time to time; i.e., Landlord may provide for one or a combination of parking systems, including, without limitation, self-parking, single or double stall parking spaces, and valet assisted parking. Tenant's use of the parking spaces allocated in *Item 13* of the Basic Lease Provisions is subject to availability, in Landlord's reasonable discretion, and Landlord shall have the right to relocate such allocated parking spaces to other parking facilities controlled by Landlord which are in reasonably close proximity to the Building. Tenant shall pay such reasonable amounts as may be charged by Landlord to Tenant for such right of use from time to time. Tenant agrees that Tenant, its officers and employees shall not be entitled to park in any reserved or specially assigned areas designated by Landlord from time to time in the Project's parking areas. Landlord may require execution of an agreement with respect to the use of such parking areas by Tenant and/or its officers and employees in form satisfactory to Landlord as a condition of any such use by Tenant, its officers and employees. A default by Tenant, its officers or employees in the payment of such charges, the compliance with such rules and regulations, or the performance of such agreement(s) shall constitute a material default by Tenant hereunder. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's officers, employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Paragraph, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

(b) Subject to subparagraph (c) below and the remaining provisions of this Lease, Tenant shall have the nonexclusive right, in common with others, to the use of such entrances, lobbies, restrooms, elevators, ramps, drives, stairs, and similar access ways and service ways and other common areas and facilities in and adjacent to the Building and the Project as are designated from time to time by Landlord for the general nonexclusive use of Landlord, Tenant and the other tenants of the Project and their respective employees, agents, representatives, licensees and invitees ("*Common Areas*"). The use of such Common Areas shall be subject to the rules and regulations contained herein and the provisions of any covenants, conditions and restrictions affecting the Building or the Project. Tenant shall keep all of the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operations, and shall use the Common Areas only for normal activities, parking and ingress and egress by Tenant and its employees, agents, representatives, licensees and invitees to and from the Premises, the Building or the Project. If, in the reasonable opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall correct such situation by appropriate action or proceedings against all such unauthorized persons. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to prevent the use of any of said areas by unauthorized persons. Landlord reserves the right to make such changes, alterations, additions, deletions, improvements, repairs or replacements in or to the Building, the Project (including the Premises) and the Common Areas as Landlord may reasonably deem necessary or desirable, including, without limitation, constructing new buildings and making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading areas, landscaped areas and walkways; provided, however, that there shall be no unreasonable permanent obstruction of access to or use of the Premises resulting therefrom. In the

event that the Project is not completed on the date of execution of this Lease, Landlord shall have the sole judgment and discretion to determine the architecture, design, appearance, construction, workmanship, materials and equipment with respect to construction of the Project. Notwithstanding any provision of this Lease to the contrary, the Common Areas shall not in any event be deemed to be a portion of or included within the Premises leased to Tenant and the Premises shall not be deemed to be a portion of the Common Areas. This Lease is granted subject to the terms hereof, the rights and interests of third parties under existing liens, ground leases, easements and encumbrances affecting such property, all zoning regulations, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Project or any part thereof.

(c) Notwithstanding any provision of this Lease to the contrary, Landlord specifically reserves the right to redefine the term "*Project*" for purposes of allocating and calculating Operating Costs so as to include or exclude areas as Landlord shall from time to time determine or specify (and any such determination or specification shall be without prejudice to Landlord's right to revise thereafter such determination or specification). In addition, Landlord shall have the right to contract or otherwise arrange for amenities, services (the cost of which is included within Operating Costs) or Utilities to be on a common or shared basis to both the Project (i.e., the area with respect to which Operating Costs and Utilities are determined) and adjacent areas not included within the Project, so long as the basis on which the cost of such amenities, services or Utilities is allocated to the Project is determined on an arms-length basis or some other basis reasonably determined by Landlord. In the case where the definition of the Project is revised for purposes of the allocation or determination of Operating Costs, Tenant's Proportionate Share shall be appropriately revised to equal the percentage share of all Rentable Area contained within the Project (as then defined) represented by the Premises. Notwithstanding the foregoing, Landlord agrees that in no event shall Tenant's Proportionate Share of Operating Costs increase due to Landlord redefining the term "*Project*." Landlord shall have the sole right to determine which portions of the Project and other areas, if any, shall be served by common management, operation, maintenance and repair. Landlord shall also have the right, in its sole discretion, to allocate and prorate any portion or portions of the Operating Costs on a building-by-building basis, on an aggregate basis of all buildings in the Project, or any other reasonable manner, and if allocated on a building-by-building basis, then Tenant's Proportionate Share shall, as to the portion of the Operating Costs so allocated, be based on the ratio of the Rentable Area of the Premises to the Rentable Area of the Building.

## 19. MISCELLANEOUS

(a) Attorneys' Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.

(b) Waiver. No waiver by either party of any provision of this Lease or of any breach by the other party hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by the other party. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this Lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of the Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.

(c) Notices. Any notice, demand, request, consent, approval, disapproval or certificate ("*Notice*") required or desired to be given under this Lease shall be in writing and given by certified mail, return receipt requested, by personal delivery or by Federal Express or a similar nationwide overnight delivery service providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Section 19(c) (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed at the address specified in *Item 14* of the Basic Lease Provisions or to such other

addresses as may be specified by written notice from Landlord to Tenant and if to Tenant, at the Premises. Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Paragraph; provided, however, no notice of either party's change of address shall be effective until fifteen (15) days after the addressee's actual receipt thereof.

(d) Access Control. Landlord shall be the sole determinant of the type and amount of any access control or courtesy guard services to be provided to the Project, if any. In all events, Landlord shall not be liable to Tenant, and Tenant hereby waives any claim against Landlord, for (i) any unauthorized or criminal entry of third parties into the Premises, the Building or the Project, (ii) any damage to persons, or (iii) any loss of property in and about the Premises, the Building or the Project, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction and/or insufficiency of the access control or courtesy guard services provided by Landlord.

(e) Storage. Nothing contained herein shall be construed as a grant from Landlord to Tenant to use any storage space located in the Project. If Landlord grants Tenant the right to use any such storage space, such use shall be pursuant to the terms and conditions of a separate written agreement between the parties.

(f) Holding Over. If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Basic Annual Rent for the holdover period, an amount equal to double the Basic Annual Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph shall not be construed as consent for Tenant to retain possession of the Premises.

(g) Condition of Premises. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED PURPOSE OR USE, WHICH DISCLAIMER IS HEREBY ACKNOWLEDGED BY TENANT. THE TAKING OF POSSESSION BY TENANT SHALL BE CONCLUSIVE EVIDENCE THAT TENANT:

(i) ACCEPTS THE PREMISES, THE BUILDING AND LEASEHOLD IMPROVEMENTS AS SUITABLE FOR THE PURPOSES FOR WHICH THE PREMISES WERE LEASED;

(ii) ACCEPTS THE PREMISES AND PROJECT AS BEING IN GOOD AND SATISFACTORY CONDITION;

(iii) WAIVES ANY DEFECTS IN THE PREMISES AND ITS APPURTENANCES EXISTING NOW OR IN THE FUTURE, EXCEPT THAT TENANT'S TAKING OF POSSESSION SHALL NOT BE DEEMED TO WAIVE LANDLORD'S COMPLETION OF MINOR FINISH WORK ITEMS THAT DO NOT INTERFERE WITH TENANT'S OCCUPANCY OF THE PREMISES; AND

(iv) WAIVES ALL CLAIMS BASED ON ANY IMPLIED WARRANTY OF SUITABILITY OR HABITABILITY.

(h) Quiet Possession. Upon Tenant's paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of this Lease and to the provisions of any

(i) covenants, conditions and restrictions, (ii) master lease, or (iii) Security Documents to which this Lease is subordinate or may be subordinated.

(i) Matters of Record. Except as otherwise provided herein, this Lease and Tenant's rights hereunder are subject and subordinate to all matters affecting Landlord's title to the Project recorded in the Real Property Records of the County in which the Project is located, prior to and subsequent to the date hereof, including, without limitation, all covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that it will comply with and not violate any such covenants, conditions and restrictions or other matters of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, the Building or the Project, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not materially interfere with the use of the Premises by Tenant. At Landlord's request, Tenant shall join in the execution of any of the aforementioned documents.

(j) Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord.

(k) Brokers. Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the brokers named in *Item 12* of the Basic Lease Provisions and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease.

(l) Name. Landlord shall have the exclusive right at all times during the Lease Term to change, modify, add to or otherwise alter the name, number, or designation of the Building and/or the Project, and Landlord shall not be liable for claims or damages of any kind which may be attributed thereto or result therefrom.

(m) Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

(n) Time. Time is of the essence of this Lease and each and all of its provisions.

(o) Defined Terms and Marginal Headings. The words "*Landlord*" and "*Tenant*" as used herein shall include the plural as well as the singular and for purposes of Articles 5, 7, 13 and 18, the term Landlord shall include Landlord, its employees, contractors and agents. If more than one person is named as Tenant the obligations of such persons are joint and several. The marginal headings and titles to the articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other.

(p) Conflict of Laws; Prior Agreements; Severability. This Lease shall be governed by and construed pursuant to the laws of the State of Texas. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The illegality, invalidity or unenforceability of any provision of this Lease shall in no way impair or invalidate any other provision of this Lease, and such remaining provisions shall remain in full force and effect.

(q) Authority. Tenant is a municipal corporation and political subdivision of the State of Texas and acts through the City Council of the City of El Paso. Tenant hereby covenants and warrants that Tenant has full right and authority to enter into this Lease, and that the City Manager (or any person designated by the City Manager in writing) is the only person signing on behalf of the Tenant that is authorized to do so.

(r) Event of Nonappropriation. Notwithstanding anything in this Lease to the contrary, Tenant's obligation to make the rental and other payments due hereunder is subject to appropriation by the El Paso City Council and/or other governing body of the City of El Paso of funds lawfully available to make such payments. Tenant shall provide Landlord (and if directed by Landlord, Landlord's designated lender) written notice within seventy-two (72) hours of (i) the presentation of any proposed budget to the City Council which does not include sufficient funds to meet the Tenant's payment obligations due hereunder, or (ii) the occurrence of any action by the El Paso City Council which would make unavailable or reduce any previously appropriated monies below the amounts necessary to permit Tenant to meet its payment obligations hereunder ("Notice of Nonappropriation"). Either Landlord or Tenant may elect to terminate this Lease by giving notice of such election to the other within sixty (60) days from the date of such Notice of Nonappropriation.

(s) Rental Allocation. For purposes of Section 467 of the Internal Revenue Code of 1986, as amended from time to time, Landlord and Tenant hereby agree to allocate all Rent to the period in which payment is due, or if later, the period in which Rent is paid.

(t) Rules and Regulations. Tenant agrees to comply with all rules and regulations of the Building and the Project imposed by Landlord as set forth on Exhibit D attached hereto, as the same may be changed from time to time upon reasonable notice to Tenant. Landlord shall not be liable to Tenant for the failure of any other tenant or any of its assignees, subtenants, or their respective agents, employees, representatives, invitees or licensees to comply with such rules and regulations.

(u) Joint Product. This Lease is the result of arms-length negotiations between Landlord and Tenant and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Lease and this Lease shall not be construed against either party.

(v) Financial Statements. Upon Landlord's written request, Tenant shall promptly furnish Landlord, from time to time, with the most current audited financial statements prepared in accordance with generally accepted accounting principles, certified by Tenant and an independent auditor to be true and correct, reflecting Tenant's then current financial condition.

(w) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Paragraphs 6 and 8 of this Lease and Paragraph 19(f) of this Lease and any extension of the Construction Termination Date as set forth in Paragraph (d) of Exhibit B to this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

(x) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(y) APPRAISED VALUE. TENANT HEREBY WAIVES ALL RIGHTS TO PROTEST THE APPRAISED VALUE OF THE PROJECT OR TO APPEAL THE SAME AND ALL RIGHTS TO RECEIVE NOTICES OF REAPPRAISALS AS SET FORTH IN SECTIONS 41.413 AND 42.015 OF THE TEXAS TAX CODE.

(z) DTPA WAIVER (WAIVER OF CONSUMER RIGHTS). IT IS THE UNDERSTANDING AND INTENTION OF THE PARTIES THAT TENANTS RIGHTS AND REMEDIES WITH RESPECT TO THE TRANSACTIONS PROVIDED FOR AND CONTEMPLATED IN THIS LEASE (COLLECTIVELY, THIS "TRANSACTION") AND WITH RESPECT TO ALL ACTS OR PRACTICES OF LANDLORD, PAST, PRESENT OR FUTURE, IN CONNECTION WITH THIS TRANSACTION, ARE AND SHALL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE TEXAS DECEPTIVE TRADE PRACTICES

- CONSUMER PROTECTION ACT (THE "DTPA"). ACCORDINGLY, TENANT HEREBY (A) AGREES THAT PURSUANT TO SECTIONS 17.42 AND 17.49(F) OF THE DTPA, THIS TRANSACTION IS NOT GOVERNED BY THE DTPA AND (B) CERTIFIES, REPRESENTS AND WARRANTS TO LANDLORD THAT (I) TENANT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH LANDLORD, (II) TENANT HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THIS TRANSACTION WHO HAS NOT BEEN DIRECTLY OR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY LANDLORD, ITS AGENTS OR REPRESENTATIVES AND (III) THE PREMISES WILL NOT BE OCCUPIED BY TENANT AS TENANT'S FAMILY RESIDENCE. BY ITS EXECUTION OF THIS LEASE, TENANT FURTHER AGREES TO THE FOLLOWING:

TENANT WAIVES ITS RIGHTS UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.

TENANT EXPRESSLY RECOGNIZES THAT THE TOTAL CONSIDERATION AS AGREED TO BY LANDLORD HAS BEEN PREDICATED UPON THE INAPPLICABILITY OF THE DTPA TO THIS TRANSACTION AND THAT LANDLORD, IN DETERMINING TO PROCEED WITH THE ENTERING INTO OF THIS LEASE, HAS EXPRESSLY RELIED ON THE INAPPLICABILITY OF THE DTPA TO THIS TRANSACTION.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Date of this Lease.

**'LANDLORD':**

**MADISON RIVER INVESTMENTS, LLC,**  
a Texas limited liability company

By: *Steven Weber*  
Name: Steven Weber  
Title: Vice President

**'TENANT':**

**CITY OF EL PASO, TEXAS** a Municipal Corporation

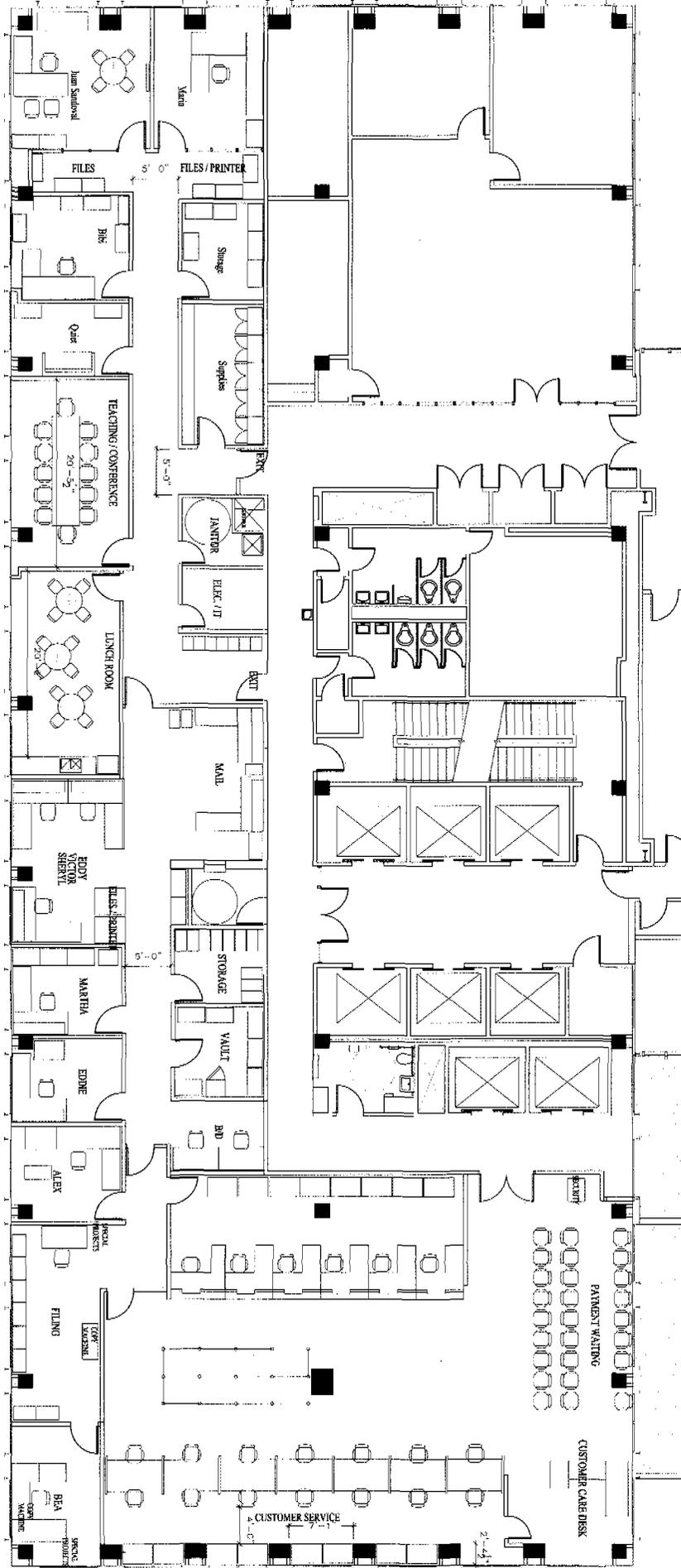
By: *Joyce Wilson*  
Name: Joyce Wilson  
Title: City Manager

**EXHIBITS:**

- Exhibit A-1 Floor Plan(s)
- Exhibit A-2 Legal Description of the Project
- Exhibit B Work Letter
- Exhibit C Utilities and Services
- Exhibit D Building Rules and Regulations
- Exhibit E Tenant's Initial Certificate
- Exhibit F ADA and TABA
- Addendum One

CITY CLERK DEPT.  
2011 NOV 23 AM 11:38

Exhibit A-1  
Leased Premises



Overall Floor Plan - 3rd Level

Color Legend  
Available

WELLS FARGO PLAZA

WELLS FARGO BANK, N.A. MEMBER FDIC  
Member FDIC  
WELLS FARGO BANK, N.A. MEMBER FDIC  
Member FDIC

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Exhibit A-2  
Legal Description of the Project  
SCHEDULE I

**PARCEL 1:** A portion of Block 11, ANSON MILLS MAP, an addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof.

**PARCEL 2:** All of Block 41 and rights in and to the alley which was vacated and closed, ANSON MILLS MAP (a/k/a MILLS ADDITION), an addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "B", attached hereto and made a part hereof, SAVE and EXCEPT that portion conveyed to EL PASO COUNTY 911 DISTRICT in Deed dated 7/21/05, filed 7/29/05 under file No. 20050067589, Real Property Records, El Paso County, Texas.

**PARCEL 3:** The franchise rights in and to an underground tunnel in and across Kansas Street by virtue of Ordinance No. 4422 dated 6/11/70, of record in Volume 305, Page 1730, Real Property Records, El Paso County, Texas; and a subsequent ordinance, passed and approved on 6/27/00, and filed in Volume 3824, Page 1125, Real Property Records, El Paso County, Texas.

**EXHIBIT B**  
**WORK LETTER**

THIS WORK LETTER constitutes the further agreement between Landlord and Tenant as follows:

(a) Tenant Improvements. Landlord, as provided in Paragraph 4(a) of the Lease, agrees to furnish or perform those items of design and/or construction and those improvements (the "*Tenant Improvements*") specified in the Final Plans to be agreed to by Landlord and Tenant as set forth in Paragraph (b) below; provided, however, Landlord shall (i) pay for the cost of such Tenant Improvements up to the extent of Landlord's Construction Allowance as set forth in Paragraph (e) below. Tenant shall designate a Project Manager from the Tenant's Engineering and Construction Management Department to coordinate and oversee the Tenant Improvements with the Landlord.

(b) Planner. Landlord has retained PERSPECTIVA (the "*Planner*") to prepare certain plans, drawings and specifications (the "*Temporary Plans*") for the construction of the Tenant Improvements to be installed in the Premises by a general contractor selected by Landlord pursuant to this Work Letter. Tenant shall deliver to Space Planner within ten (10) days after the execution of this Lease all necessary information required by the Space Planner to complete the Temporary Plans. Tenant shall have five (5) business days after its receipt of the proposed Temporary Plans to review the same and notify Landlord in writing of any comments or required changes, or to otherwise give its approval or disapproval of such proposed Temporary Plans. If Tenant fails to give written comments to or approve the Temporary Plans within such five (5) business day period, then Tenant shall be deemed to have approved the Temporary Plans as submitted. Landlord shall have five (5) business days following its receipt of Tenant's comments and objections to redraw the proposed Temporary Plans in compliance with Tenant's request and to resubmit the same for Tenant's final review and approval or comment within five (5) business days of Tenant's receipt of such revised plans. Such process shall be repeated twice and if at such time final approval by Tenant of the proposed Temporary Plans has not been obtained, then Landlord shall complete such Temporary Plans, at Tenant's sole cost and expense, and it shall be deemed that Tenant has approved the Temporary Plans. Once Tenant has approved or has been deemed to have approved the Temporary Plans, then the approved (or deemed approved) Temporary Plans shall be thereafter known as the "*Final Plans*". The Final Plans shall include the complete and final layout, plans and specifications for the Premises showing all doors, light fixtures, electrical outlets, telephone outlets, wall coverings, plumbing improvements (if any), data systems wiring, floor coverings, wall coverings, painting, any other improvements to the Premises beyond the shell and core improvements provided by Landlord and any demolition of existing improvements in the Premises. The improvements shown in the Final Plans shall (i) utilize Landlord's building standard materials and methods of construction, (ii) be compatible with the shell and core improvements and the design, construction and equipment of the Premises, and (iii) comply with all applicable laws, rules, regulations, codes and ordinances.

(c) General Contractor. As soon as practicable following the approval of the Final Plans, Landlord shall (i) obtain a written non-binding itemized estimate of the costs of all Tenant Improvements shown in the Final Plans as prepared by a general contractor selected by Landlord, and (ii) if required by applicable law, codes or ordinances, submit the Final Plans to the appropriate governmental agency for the issuance of a building permit or other required governmental approvals prerequisite to commencement of construction of such Tenant Improvements ("*Permits*"). Tenant acknowledges that any cost estimates are prepared by the general contractors and Landlord shall not be liable to Tenant for any inaccuracy in any such estimate. Within five (5) business days after receipt of the written non-binding cost estimates prepared by the general contractors, Tenant shall either (A) give its written approval thereof and authorization to proceed with construction or (B) immediately request the Planner to modify or revise the Plans in any manner desired by Tenant to decrease the cost of the Tenant Improvements. If Tenant is silent during such five (5) business day period, then Tenant shall be deemed to have approved such non-binding cost estimate as set forth in Clause (A) above. If the Final Plans are revised pursuant to Clause (B) above, then Landlord shall request that the general contractor provide a revised cost estimate to Tenant based upon the revisions to the Final Plans. Such modifications and revisions shall be subject to Landlord's reasonable approval and shall be in accordance with the standards set forth in Paragraph (b) of this Work Letter. Within ten (10) business days after receipt of the general contractor's original written cost estimates and the description, if any, of any Tenant Delay, Tenant shall give its final approval of the Final Plans to Landlord which shall constitute authorization to commence the construction of the Tenant Improvements in accordance with the Final Plans, as modified or revised. Tenant shall

signify its final approval by signing a copy of each sheet or page of the Final Plans and delivering such signed copy to Landlord.

(d) Construction. Construction of the Tenant Improvements shall commence within ten (10) days following the later of (i) the approval of the Final Plans, or (ii) the receipt of any, if required, building permit or other governmental approval required by applicable law, codes or ordinances as a prerequisite to commencement of construction of such Tenant Improvements ("Permits"). Landlord shall diligently pursue completion of construction of the Tenant Improvements and use its commercially reasonable efforts to complete construction of the Tenant Improvements as soon as reasonably practicable, and, subject to Tenant Delays shall endeavor to substantially complete construction of the Tenant Improvements by the Estimated Commencement Date. The term "*Tenant Delay*" shall include, without limitation, any delay in the completion of construction of Tenant Improvements resulting from (i) Tenant's failure to comply with the provisions of this Work Letter, (ii) any additional time as reasonably determined by Landlord required for ordering, receiving, fabricating and/or installing items or materials or other components of the construction of Tenant Improvements, including, without limitation, mill work, (iii) delay in work caused by submission by Tenant of a request for any change order (defined below) following Tenant's approval of the Final Plans, or for the implementation of any change order, or (iv) any delay by Tenant in timely submitting comments or approvals to the Temporary Plans. The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of Rent by Tenant. The construction work to be performed by the general contractor shall be covered by the one (1) year warranty contained in the construction contract and such warranty shall be for the benefit of Tenant.

(e) Construction Allowance. Subject to the terms and provisions of this Work Letter, Landlord shall pay the cost of the Tenant Improvements ("*Work*") up to the amount of the Construction Allowance (\$197,500.00 based upon \$25.00 per rentable square foot). If the actual cost of the Tenant Improvements is less than the Construction Allowance, then Tenant shall not receive any credit whatsoever for the difference between the actual cost of the Tenant Improvements and the Construction Allowance.

Any payments made by Landlord in excess of the Construction Allowance shall be paid by Tenant to Landlord in lump sum payment, within thirty (30) days of notice of cost overage. The cost of the permits, working drawings, hard construction costs, mechanical and electrical planning, fees, permits, general contract overhead shall be payable out of the Construction Allowance and shall be included in the cost of the Work. The cost of the Work shall not include Landlord's construction manager or any other fees payable to Landlord. Notwithstanding the foregoing, Tenant acknowledges and agrees that Landlord shall not be required to make any payments in excess of the Construction Allowance.

(f) Change Order. If Tenant shall desire any changes to the Final Plans, Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. Any and all costs of reviewing any requested changes, and any and all costs of making any changes to the Tenant Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense, and shall be paid to Landlord on demand before execution of the Change order. In no event shall Landlord be obligated to accept any change order which would extend the construction period past April 1, 2012, unless such extension is mutually agreed to in writing by Landlord and Tenant prior to the commencement of said construction. If Landlord approves Tenant's requested change, addition, or alteration, the Planner, at Tenant's sole cost and expense, shall complete all working drawings necessary to show the change, addition or alteration being requested by Tenant.

(g) Substantial Completion. "*Substantial Completion*" of construction of the Tenant Improvements shall be defined as the date upon which the Planner or another consultant engaged by Landlord provides an AIA approved written substantial completion certificate stating that the Tenant Improvements have been substantially completed in accordance with the Final Plans, except for such items that constitute minor defects or adjustments which can be completed after occupancy without causing material interference with Tenant's use of the Premises ("*Punch List Items*"). After substantial completion of the Tenant Improvements, Tenant shall, upon request, execute and deliver to Landlord a letter of acceptance of the Tenant Improvements constructed on the Premises, subject to the Punch List Items.

**EXHIBIT C**  
**STANDARDS FOR UTILITIES AND SERVICES**

The following are the Project Standards for Utilities and Services. Landlord reserves the right to adopt such reasonable, nondiscriminatory modifications and additions hereto as it deems appropriate.

1. As long as Tenant is not in default under any of the terms, covenants, conditions, provisions or agreements of this Lease, Landlord shall, subject to the limitations and provisions hereinafter set forth in this Exhibit C:

(a) Provide automatic elevator facilities on Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturday from 8:00 a.m. to 12:00 Noon, excepting state and federal holidays (hereinafter referred to as "*Business Hours*"), and provide one (1) automatic elevator at all other times.

(b) Landlord will furnish Building standard heating, ventilating and air conditioning (HVAC) during Tenant's business hours, but only to the extent the same occur between 7 a.m. and 6 p.m. on weekdays (from Monday through Friday, inclusive) and Saturdays between 8 a.m. and 12 noon, all exclusive of Holidays (defined below). Landlord will provide sufficient heating, ventilating and air conditioning to maintain an ambient temperature in the leased premises between 70 degrees Fahrenheit and 78 degrees Fahrenheit. Upon request of Tenant made in accordance with the rules and regulations for the Building, Landlord will furnish air conditioning and heating at other times (that is, at times other than the times specified above), upon request of Tenant made in accordance with the rules and regulations for the Building, in which event Tenant shall reimburse Landlord for furnishing such services at the Building standard charge therefor in effect from time to time. The current charge for providing overtime air conditioning and heating is fifty-five dollars (\$55.00) per hour per air handling unit which is activated to provide the air conditioning or heating service.

The following dates shall constitute "*Holidays*" as said term is used in this Lease:

- (1) New Year's Day
- (2) Memorial Day
- (3) Independence Day
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Friday following Thanksgiving Day
- (7) Christmas Day
- (8) Martin Luther King Day

If in the case of any holiday described in (1) through (10) above, a different day shall be observed than the respective day above-described, then the day which constitutes the day observed by national banks in El Paso, Texas, on account of such holiday shall constitute the holiday under this lease.

(c) Furnish to the Premises, during Business Hours, electric current for routine lighting and the operation of general office machines such as computers, printers, copiers, televisions, and the like, which use 110 volt electric power, ("*Office Equipment*") not to exceed the reasonable capacity of Building standard office lighting and receptacles, and not in excess of limits imposed or recommended by governmental authority.

(d) Provide janitorial services to the Premises Monday through Friday (except state and federal holidays), provided the same are used exclusively for the uses permitted under the foregoing Lease, and are kept reasonably in order by Tenant. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish, to the extent that the same exceeds the refuse and rubbish which generally would be produced by the use of the Premises for general office purposes.

2. No data processing equipment, other special electrical equipment (excluding Office Equipment utilizing 110 volt electric power), air conditioning or heating units, or plumbing additions shall be installed, nor shall any changes to the Building HVAC, electrical or plumbing systems be made without the prior written consent of

Landlord, which consent shall be subject to Landlord's sole and absolute discretion. In the case of any such change, Landlord reserves the right to designate and/or approve the contractor to be used. Any permitted installations shall be made under Landlord's supervision.

3. Landlord shall not provide reception outlets or television or radio antennas for television or radio broadcast reception, and Tenant shall not install any such equipment without prior written approval from Landlord.

4. Tenant will not, without the prior written consent of Landlord, use any apparatus, machine or device in the Premises, including, without limitation, any Office Equipment and machines using current in excess of 110 volts, which will in any way increase the amount of electricity or water usually furnished or supplied for use of the Premises as general office space, nor connect with electric current, except through existing electrical outlets in the Premises, any apparatus or device for the purpose of using electric current in excess of that usually furnished or supplied for use of the Premises as general office space.

5. Tenant agrees to cooperate fully at all times with Landlord, and to abide by all regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building HVAC, electrical, plumbing and other systems. Tenant shall comply with all laws, statutes, ordinances and governmental rules and regulations now in force or which may hereafter be enacted or promulgated in connection with Building services furnished to the Premises, including, without limitation, any governmental rule or regulation relating to the heating and cooling of the Building.

**EXHIBIT D**  
**BUILDING RULES AND REGULATIONS**

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways and corridors of halls shall not be obstructed or used for any purpose other than ingress and egress. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and the Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence, in the judgment of the Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the Tenant normally deals only for the purpose of conducting its business in the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No tenant and no employees of any tenant shall go upon the roof of the Building without the written consent of Landlord.

2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard window coverings. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreensed without the written consent of Landlord.

3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Premises, the Building or the Project without the prior written consent of the Landlord. If the Landlord shall have given such consent at the time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by the Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of the Landlord with respect to each and every such sign, advertisement or notice other than the particular sign, advertisement or notice, as the case may be, so consented to by the Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to such tenant. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for each tenant by the Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to the Landlord. The directory tablet will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills. Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and must observe strict care not to leave windows open when it rains. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing window coverings when the sun's rays fall directly on the windows of the Premises. Tenant shall not tamper with or change the setting of any thermostats or temperature control valves.

5. The toilet rooms, water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were considered, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused the same.

6. No tenant shall mark, paint, drill into, or in any way deface any part of the Premises, the Building or the Project. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings shall be permitted, except with the prior written consent of the Landlord and as the Landlord may direct.

7. No bicycles, vehicles, birds or animals of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by any tenant on the Premises, except that the preparation of coffee, tea, hot chocolate and similar items (including those suitable for microwave heating) for tenants and their

employees shall be permitted, provided that the power required therefor shall not exceed that amount which can be provided by a 30 amp circuit. No tenant shall cause or permit any unusual or objectionable odors to be produced or permeate the Premises. Smoking or carrying lighted cigars, cigarettes or pipes in the Building is prohibited.

8. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No tenant shall occupy or permit any portion of the Premises to be occupied as an office for a public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco (except by a cigarette vending machine for use by Tenant's employees) in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau, without the express written consent of Landlord. No tenant shall engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.

9. No tenant shall make, or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or skylights or down the passageways.

10. No tenant, subtenant or assignee nor any of their servants, employees, agents, visitors or licensees shall at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanisms thereof. Each tenant must, upon the termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

12. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours which Landlord shall determine from time to time, without the express written consent of Landlord. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to the Project Management Office and under its supervision, and the persons employed by any tenant for such work must be acceptable to the Landlord. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Landlord to distribute the weight.

13. No tenant shall purchase spring water, ice, towel, janitorial maintenance or other similar services from any person or persons not approved by Landlord.

14. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or the Project or its desirability as an office location, and upon written notice from Landlord, any tenant shall refrain from or discontinue such advertising.

15. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 7:00 A.M. and at all hours on Saturday, Sunday and legal holidays all persons who do not present a pass or card key to the Building approved by the Landlord. Each tenant shall be responsible for all persons who enter the Building with or at the invitation of such tenant and shall be liable to Landlord for all acts of such persons. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right, without abatement of Rent, to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the tenants, the protection of the Building, and the property in the Building.

16. Any persons employed by any tenant to do janitorial work shall, while in the Building and outside of the Premises, be subject to and under the control and direction of the Project Management Office (but not as an agent or servant of said Office or of the Landlord), and such tenant shall be responsible for all acts of such persons.

17. All doors opening onto public corridors shall be kept closed, except when in use for ingress and egress.
18. The requirements of Tenant will be attended to only upon application to the Project Management Office.
19. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall report and otherwise cooperate to prevent the same.
20. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise or annoyance.
21. No air conditioning unit or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.
22. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks, except those equipped with rubber tires and rubber side guards.
23. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of Landlord.
24. The scheduling of tenant move-ins shall be subject to the reasonable discretion of Landlord.
25. If the Tenant desires telephone or telegraph connections, the Landlord will direct electricians as to where and how the wires are to be introduced. No boring or cutting for wires or otherwise shall be made without direction from the Landlord.
26. The term "*Personal Goods or Services Vendors*" as used herein means persons who periodically enter the Building of which the Premises are a part for the purpose of selling goods or services to a tenant, other than goods or services which are used by the Tenant only for the purpose of conducting its business in the Premises. "*Personal Goods or Services*" include, but are not limited to, drinking water and other beverages, food, barbering services and shoe shining services. Landlord reserves the right to prohibit personal goods and services vendors from access to the Building except upon Landlord's prior written consent and upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Building, the preservation of good order thereon, and the relief of any financial or other burden on Landlord or other tenants occasioned by the presence of such vendors or the sale by them of personal goods or services to the Tenant or its employees. If necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Building.
27. **Non-Smoking Building.** The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas. This prohibition applies during business and non-business hours to restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, the lunch room and any other public/common area, as well as to all areas within the Leased Premises by Tenants. Smoking is only permitted in the designated smoking area outside the Building and away from the entrances to the Building. At any time during the Lease Term, upon thirty (30) days prior written notice to the tenants of the Building, Landlord can designate the Project as a "no smoking building", and enforce a no smoking rule within the Project.
28. **Weapons Prohibited.** The Building and Project is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, all surface parking areas and the surrounding land related to the building.



**EXHIBIT F**  
**AMERICANS WITH DISABILITIES ACT**  
**AND TEXAS ARCHITECTURAL BARRIERS ACT**

Subject to any changes in either Act, Tenant agrees to comply with all requirements of the Americans With Disabilities Act of 1990 (Public Law 101-336 {July 26, 1990}) ("*ADA*") and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. {1990}) ("*TABA*") applicable to the Premises and the Project to accommodate its employees, invitees and customers. Tenant acknowledges that it shall be wholly responsible for any accommodations or alterations which need to be made to the Premises. No provision in this Lease should be construed in any manner as permitting, consenting to or authorizing Tenant to violate requirements under either such Act and any provision to the Lease which could arguably be construed as authorizing a violation of either Act shall be interpreted in a manner which permits compliance with such Act and is hereby amended to permit such compliance.

**Addendum One to Lease Agreement**  
dated November 29, 2011 ("*Lease*") by and between  
**Madison River Investments, LLC as Landlord**  
**and City of El Paso, Texas (Consolidated Tax Office), as Tenant**

This Addendum One ("*Addendum*") is executed simultaneously with the Lease and is attached to and part of the Lease. Notwithstanding anything in the Lease to the contrary, Landlord and Tenant agree as follows, which terms shall control over any contrary terms and provisions set forth in the Lease:

1. **Defined Terms.** Capitalized terms used in this Addendum and not otherwise defined shall have the same meaning as such terms are given in the Lease

2. **Peak Season.** Landlord and Tenant acknowledge that Tenant will have a very high customer volume each year during the Lease Term during the period from January 15<sup>th</sup> through January 31<sup>st</sup> on account of taxpayers paying their taxes in person at the Premises. The period from January 15<sup>th</sup> through January 31<sup>st</sup> of each year during the Lease Term is hereinafter referred to as the "*Peak Season*". Tenant further acknowledges that the high volume of customers physically visiting the Premises during the Peak Season will require that Tenant retain extra personnel to provide security and traffic control during the Peak Season. Accordingly, Landlord and Tenant agree that Tenant will provide such additional personnel as hereinafter specified in paragraphs 3 and 4 below.

3. **Customer Parking.** Tenant acknowledges that the parking available in the detached parking garage located adjacent to the Building ("*Parking Garage*") will not be available to Tenant's customers during Peak Season, and that parking for customers of Tenant in the Parking Garage, while available to Tenant's customers during times of the year other than Peak Season, may not be adequate for Tenant's customer volume. Accordingly, Tenant acknowledges that Landlord does not provide for or guarantee the adequacy of hourly parking availability to Tenant's customers in the Parking Garage. Tenant agrees to provide sufficient traffic control personnel during Peak Season to insure that all of Tenant's customers are directed (i) not to park in the Parking Garage, and (ii) to park in off-premises parking. Landlord shall have the right to notify Tenant at any time during the term of this Lease that its traffic management control is not adequate, in which event Tenant agrees to take prompt and reasonable measures to provide an adequate level of parking control such that Tenant's customer volume does not impede, impair or otherwise adversely affect ingress and egress to the Parking Garage and/or other areas of the Building.

4. **Security:**

(a) Tenant acknowledges that it has inspected the Premises and that Tenant is not relying upon Landlord to provide security to the Premises or otherwise for the benefit of Tenant, its employees, agents, customers, invitees, contractors, or licensees. Tenant acknowledges that Tenant is responsible for its own security at the Premises. Tenant has not relied upon any statement or representation made by Landlord or any of its agents or employees regarding the adequacy or existence of any security measures or services on the Premises or within the Project. Tenant expressly waives any claim against Landlord its agents or employees arising out of Landlord's failure to provide security, or the inadequacy of any such service if provided. Tenant acknowledges that Landlord has no express or implied duty to provide any security measures whatsoever. Landlord has voluntarily elected, at Landlord's sole option, to provide general security in some Common Areas of the Building as of the Commencement Date of this Lease, but reserves the right, in its sole discretion, to replace such security with access control systems or other security monitoring systems and to modify, increase, and/or terminate such on site security altogether without liability to Tenant, its employees, agents, invitees, contractors or licensees. Landlord will have no duty to notify Tenant of such changes to or termination of on-site security. Tenant is advised by Landlord to employ adequate security personnel, guards and employees, and to install all necessary alarms, devices and other security measures for Tenant's benefit at Tenant's sole cost and expense. Any such measures or devices must comply with all applicable laws, ordinances and local guidelines governing their installation and monitoring, including but not limited to, the payment of any and all fees or charges assessed by any governmental agency in connection therewith. Landlord has no responsibility to prevent, and is not liable to Tenant for, any loss to Tenant, its employees, agents, customers, or invitees due to theft, burglary, or damages, including injury or death to persons or property, caused or done by persons gaining access to the Premises or the Building or parking areas.

(b) During Peak Season, and at any other times as may be required, Tenant shall also provide additional security personnel, guards or employees for the purpose of crowd control into and out of the Premises, the Building and areas adjoining the Project to the extent affected by Tenant's customer flow to and from the Premises.

5. **Renewal Option.**

(a) Subject to the terms and conditions contained in this Addendum One, Tenant is hereby granted two (2) options (the "*Renewal Option*") to renew the term of this Lease for a period of five (5) additional years each (the "*Renewal Term*"), to commence on the day immediately following the date of the expiration of the Initial Term of this Lease (the "*Renewal Term Commencement Date*"). Tenant shall exercise its option to renew by delivering written notice (the "*Preliminary Notice*") of such election to Landlord no earlier than nine (9) months prior to expiration of the current term and no later than six (6) months prior to the expiration of the then current term.

(b) The renewal of this Lease shall be for the entire Premises (as then constituted) and upon the same terms and conditions of this Lease, except that (i) the Basic Annual Rent during the Renewal Term shall be the prevailing Market Base Rental Rate (as hereinafter defined) for similar space in the downtown El Paso, Texas area at the time the applicable Renewal Term commences, (ii) Tenant shall have no option to renew this Lease beyond the expiration of the first Renewal Term, and (iii) the Premises will be provided in their then existing condition (on an "as is" basis) at the time the Renewal Term commences.

(c) Within thirty (30) days following its receipt of the Preliminary Notice, Landlord shall notify Tenant in writing of Landlord's good faith determination of the Market Base Rental Rate for leases commencing as of the applicable Renewal Term Commencement Date, and Tenant shall have an additional period of thirty (30) days after receipt of such notice to make one of the following elections by written notice (the "*Final Notice*") to Landlord:

(i) accept Landlord's determination of the Market Base Rental Rate for purposes of determining the annual Base Rental rate during the Renewal Term and confirm Tenant's exercise of the applicable Renewal Option by the El Paso City Council; or

(ii) withdraw its exercise of the applicable Renewal Option, in which event this Lease shall terminate and expire at the end of the initial term of this Lease or the then current Renewal Term, as applicable. The term "*Market Base Rental Rate*" as used herein shall mean the rate charged to tenants for space of comparable size, location and condition, and for a comparable term, in other first class office buildings in the downtown El Paso area under leases and/or renewals entered into within the twelve (12) months immediately preceding the date Landlord receives the Preliminary Notice. In determining the Market Base Rental Rate, consideration shall be given to the location, quality and age of each building (including the Building), use of the space in question, location and/or floor level within each building, definition of "rentable" area, leasehold improvements or improvement allowances to be provided, abatements (including with respect to base rental, Operating Costs and taxes, and parking charges), lease takeovers/assumptions, moving/relocation allowances, space planning allowances, refurbishment and repainting allowances and other concessions, extent of services provided or to be provided, distinction between "gross" and "net" lease, base year or dollar amount for escalation purposes (inclusive of operating costs, management fees and ad valorem/real estate taxes), and other adjustments (including by way of indexes) to base rental, leasing or brokerage commissions, credit standing and financial stature of the tenant, term or length of lease, and the time the particular rental rate under consideration was agreed upon and became or is to become effective, or any other relevant term or condition contained in comparable lease transactions.

[signature page follows ]

Executed by Landlord and Tenant as of December 7, 2011.

**Landlord:**

Madison River Investments, LLC

By: Steven Weber  
Steven Weber

Title: VP

Date: 12/7/11

**Tenant:**

City of El Paso, Texas

By: Joyce Wilson  
Joyce Wilson

Title: City Manager

Date: 11/29/2011