

2016 SEP 27 AM 11:02

## RESOLUTION

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

That the City Manager be authorized to sign the Lease Agreement by and between West El Paso Boeing TX, LLC, a Delaware limited liability company ("Landlord"), and the City of El Paso ("Tenant"), covering a building and a parcel containing approximately 112,341 square feet of land located in the City of El Paso, El Paso County, Texas.

Dated this 4<sup>th</sup> day of October 2016.

CITY OF EL PASO



Oscar Leeser

Mayor

**MAYOR PRO TEMPORE***Michael R. Moore*

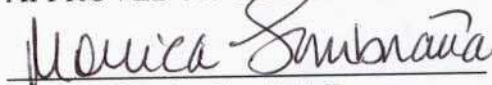
ATTEST:

Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

Marvin Foust  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E.  
Director of Aviation

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made by and between West El Paso Boeing TX, LLC, a Delaware limited liability company, with its principal office at 40 Danbury Road, Wilton, Connecticut 06897 ("Landlord") and The City of El Paso, Texas having its principal office at 300 N. Campbell Street, El Paso, Texas 79901, Texas ("Tenant"), and dated effective as of 9/20/16 ("Effective Date").

### WITNESSETH:

In consideration of the respective representations and agreements herein contained, Landlord and Tenant covenant and agree as follows:

### ARTICLE I DEFINITIONS

In addition to the words and terms elsewhere defined in this Lease, the following words and terms as used in this Lease shall have the following meanings unless the context or use indicates another or different meaning or intent:

**Section 1.1** "Additional Rent," shall include, but not be limited to the provisions of Article IV.

**Section 1.2** "Annual Factor" not applicable.

**Section 1.3** "Annual Rent" shall mean an amount which shall initially be the Base Rent for one year and shall be adjusted upwards on each Applicable Month of Adjustment whereby the Base Rent then in effect shall be adjusted upwards per Section 4.2.

**Section 1.4** "Applicable Month of Adjustment" shall be the first day of the first month following the end of the first Lease Year (i.e. the first day of the second Lease Year) and the first day of each and every Lease Year thereafter.

**Section 1.5** "B.O.M.A." shall mean the standard Method of Floor Measure as published by the Building Owners and Managers Association International Reprint May 1981 ANSIZ65.1-1980 (Revision of ANSIZ65.1-1972) approved July 31, 1980 by the American National Standards Institutes, Inc.

**Section 1.6** "Base Rent" for each year of the Lease shall be the sum of \$429,680.00 USD per year, payable in 12 even monthly installments of \$35,806.67 in advance on the 1<sup>st</sup> day of each month during the Term.

**Section 1.7** "Building" shall mean that structure as is located on the Building Land.

**Section 1.8** "Building Land" shall mean that certain real property more particularly described on Exhibit A annexed hereto and made a part hereof.

**Section 1.9** "Business Days" shall mean all days except Saturday, Sunday and days observed by the Federal or State government as legal holidays.

**Section 1.10** "Commencement Date" shall mean the later of (i) August 1, 2016, or (ii) the date Landlord Tenders Possession of the Premises to Tenant.

**Section 1.11** "Common Areas" shall mean the following areas (as initially constructed



or as the same may be enlarged or reduced at any time hereinafter): (i) any areas of the Building devoted to lobbies, hallways, elevators, restrooms, janitorial closets, vending areas and other similar facilities provided for the common use or benefit of tenants generally and/or for the public located in the building; (ii) within the exterior walls of the Building used for mechanical rooms, electrical facilities, telephone closets, building stairs, fire towers, elevator shafts, vents, stacks, pipe shafts and vertical ducts (but shall not include any such areas designated for the exclusive use and benefit of the Tenant); (iii) those portions of the Building Land which are provided and maintained for the common use and benefit of Landlord and tenants of the Building generally and employees and invitees and licensees of Landlord and such tenants; including, without limitation, all parking areas and all streets, sidewalks and landscaped areas comprising the Building Land. For purposes of this lease, Tenant shall have exclusive use of the entire property.

**Section 1.12** "Complex" shall mean the Building Land.

**Section 1.13** "Default" shall mean a breach of this Lease by Tenant which entitles the Landlord to exercise the remedies set forth in this Lease.

**Section 1.14** "Fiscal Year" shall mean the twelve (12) month period commencing January 1st and ending on the following December 31st.

**Section 1.15** "Index" not applicable.

**Section 1.16** "Landlord" shall mean West El Paso Boeing TX, LLC, its grantees, successors and assigns.

**Section 1.17** "Lease Year" shall mean each twelve (12) month period beginning on the Commencement Date and each anniversary thereof, provided the Commencement is on the first day of a month. If the Commencement Date falls on a day other than the first day of a month, then the first Lease Year shall begin on the first day of the calendar month next following the Commencement Date. If the Commencement Date falls on a day other than the first day of a month, then the Term shall be extended by the period of time ("Partial Lease Year") from such Commencement Date through the end of the calendar month in which the Commencement Date falls.

**Section 1.18** Notice Addresses:

To Landlord: West El Paso Boeing TX, LLC  
c/o UIRC  
15700 103<sup>rd</sup> St. Lemont, IL 60439  
Chicago, Illinois 60632  
Attn: Eric Warden

With a Copy to: Wick Phillips Gould & Martin, LLP  
3131 McKinney Ave. Suite 100  
Dallas, Texas 75204

Attn: D.C. Sauter

To Tenant: City of El Paso  
801 Texas Ave, 3<sup>rd</sup> Floor  
Attn: Jose Carlos Villalva  
El Paso, Texas 79901

With a Copy to: City Attorney's Office  
301 N. Campbell Street, 2d Floor  
El Paso, Texas 79901

**Section 1.19** "Normal Business Hours" shall mean 7:00 a.m. to 6:00 p.m. during Business Days.

**Section 1.20** "Premises" shall mean the entire property, including the Building Land, and the Building, being substantially identified on Exhibit B annexed hereto and made a part hereof.

**Section 1.21** "Rentable Area" shall mean 20,960 square feet. The term Rentable Area is comprised of rentable area in the Premises based on the B.O.M.A. method and adding thereto an amount which allocates a portion of other Common Areas located in the Building. This is an agreed amount of square footage and actual square footage may vary, but neither party shall be entitled to any increase or decrease in rent as a result of such difference, if any.

**Section 1.22** "Rent" shall mean all Annual Rent as total gross rent inclusive of all "Operating Expenses."

**Section 1.23** Intentionally Deleted

**Section 1.24** "Specific Brokers" N/A. The Brokers shall be paid solely by Landlord except as provided for in Article XXXVIII.

**Section 1.25** "Tenant" shall mean the City of El Paso.

**Section 1.26** "Tenant's Proportionate Share" shall mean 100% percent.

**Section 1.27** "Tender of Possession", "Tenders Possession" or "Tendered Possession" shall mean the point in time in which the Landlord delivers the Premises to Tenant in such a condition as to complete Tenant's Work in accordance with Landlord's Work.

**Section 1.28** "Term" shall mean the period beginning on the Commencement Date, and terminating on the last day of the last month of the 10th Lease Year thereafter. This Lease shall at all times be subject to the Tenant continuing to receive funding from the State of Texas under the Texas Anti-Gang Unit program (the "TAG Program"). In the event the State of Texas discontinues granting funds to Tenant under the TAG program (or reduces the funding to the



point that City must pay a larger amount of the TAG Program than as of the date of this Lease), the Tenant shall have the right to terminate this Lease by delivering written notice to Landlord along with sufficient evidence of such Tenant's failure to receive funding under the TAG Program ("Termination Notice), and the Term of this Lease shall then expire on the date that is sixty (60) days from the date Landlord receives the Termination Notice ("Early Termination Date") with Rent and all other costs and expenses under this Lease being prorated through such Early Termination Date.

**Section 1.29** "Use" shall mean General Office use and purposes related to a law enforcement task force, including without limitation the holding of detainees, the storage of weaponry, and related uses, and for no other use whatsoever without the express written consent of Landlord which may be withheld in its sole and absolute discretion.

## **ARTICLE II**

### **PREMISES**

Landlord does hereby demise and lease to Tenant and Tenant hires from Landlord the Premises within the Building upon the Building Land subject to the terms provided in this Lease to have and to hold for the Term unless the Term shall be sooner terminated as herein provided.

## **ARTICLE III**

### **BUILDING, PREMISES AND TERM**

**Section 3.1 Term.** The Term shall commence on the Commencement Date. The Landlord shall permit the Tenant, its agents, employees and contractors to have the ability to enter the Premises prior to the Commencement Date for the purpose of taking measurements and performing other work required in connection with Tenant's prospective occupancy thereof, provided such entry does not interfere with Landlord's general construction of the Building (or any portion thereof) and/or Landlord's work to be done, if any, in preparing the Premises for Tenant and/or other tenant's occupancy. Notwithstanding the foregoing, the Tenant shall not be permitted access to the Premises until such time as (i) the Tenant has provided Landlord with the insurance required by Article XVI; (ii) Tenant has contacted Landlord and coordinated such entry to the Premises with the Landlord and Landlord's general contractor; and (iii) the Tenant shall provide Landlord operations of Tenant within the Premises and, (iv) except where necessary and solely as determined by Landlord's architect, no pipes, conduits, utility lines or wires installed by Landlord shall be exposed in the Premises.

**Section 3.2 Acceptance of Premises.** As often as may be reasonably requested by Landlord, Tenant, acting through its City Manager or designee, shall promptly and without cost to Landlord, execute, acknowledge and deliver to Landlord and/or Landlord's mortgagee a written acceptance or estoppel certificate with respect to the Premises and/or this Lease in form and substance acceptable to Landlord. The taking of possession by Tenant of the Premises shall be conclusive evidence that the Premises were in good and satisfactory condition at the time such Premises were taken; provided, however, that the Tenant will have the right to provide Landlord with a written notice of any reasonable punch-list items in connection with Landlord's Work within ten (10) days after the Commencement Date, specifying in detail, any items, with



reasonable particularity, that do not comply with Landlord's Work as set forth under Section 15.3 this Lease. Failure to give notice of any punch-list items to Landlord within such ten (10) day period shall waive Tenant's right to provide such notice and shall constitute Tenant's acceptance of the Premises and Landlord shall have no obligation to complete the punch-list items.

**Section 3.3 Quiet Enjoyment & Ground Lease.** Tenant, upon paying the rents herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on Tenant's part to be performed and observed, shall peacefully and quietly have, hold and enjoy the Premises during the Term, subject, nevertheless, to the terms of this Lease and to any mortgages, ground or underlying leases, agreements *and* encumbrances to which this Lease is subordinate, including without limitation, that certain Industrial Site Lease dated effective as of May 1, 2007 (the "Ground Lease") by and between the City of El Paso ("Ground Lessor") and Landlord as successor by assignment due to operation of law to the original "Lessee" thereunder. A true and correct copy of the Ground Lease and Landlord's Recognition of Assignment Due to Operation of Law are attached hereto as Exhibit D and incorporated herein by this reference. Notwithstanding anything contained in this Lease to the contrary, this Lease and all rights of Landlord and Tenant are subject and subordinate at all times to the Ground Lease. Tenant acknowledges it has examined and is familiar with all of the terms and provisions of the Ground Lease. Tenant shall not do or permit anything to be done in connection with this Lease that will violate or threaten to violate or breach or otherwise cause Landlord to be in default under the Ground Lease, nor shall Tenant have any right with respect to the Premises greater than Landlord's under the Ground Lease. This Lease shall terminate upon the termination of the Ground Lease, or pursuant to the provisions of this Lease, whichever occurs first.

#### **ARTICLE IV** **RENT AND ADJUSTMENT TO RENT**

**Section 4.1 Payment of Annual Rent.** Tenant shall pay Landlord without previous demand therefore and without any setoffs or deductions whatsoever, the Annual Rent for each Lease Year during the Term, which Annual Rent shall be payable in equal monthly installments, payable on the first (1st) day of each month in advance. If the Term commences on a day other than the first day of a calendar month, Tenant shall additionally pay to Landlord on the first day of the Term, a pro rata amount of such Annual Rent for such Partial Lease year of the Term calculated on the basis of a thirty (30) day calendar month with the then next installment of Annual Rent being due on the first day of the next calendar month following the month of the Commencement Date.

**Section 4.2 Adjustment of Rent.** For so long as this Lease remains in effect, the Base Rent shall be increased 3% every five (5) years and Tenant thereafter covenants to pay Landlord, such new adjusted Base Rent

#### **Section 4.3 Tenant Personal Property.**

(a) Tenant is a tax-exempt entity. If any taxing entity imposes a new tax not in existence as of the date of this Lease which is ultimately determined in the courts as a valid tax, then Tenant shall pay same; Tenant and Landlord shall give best efforts to oppose or diminish any

such tax..

**Section 4.4 Tenant Services.** Tenant shall furnish and maintain at all times throughout the Term, at Tenant's sole cost and expense: (i) janitorial and garbage/refuse services to the Premises; and (ii) security services to the Premises, as reasonably approved by Landlord. Landlord, shall have no liability to Tenant, its employees, agents, invitees or licensees for losses due to theft or burglary or for damages done by unauthorized persons on the Premises or the Complex and neither shall Landlord be required to insure against any such losses. Tenant shall cooperate fully in Landlord's efforts to maintain security at the Complex and shall follow all reasonable regulations promulgated by Landlord with respect thereto. Tenant shall pay for all costs and expenses with respect to security personnel and security systems with respect to the Premises.

**Section 4.5 Common Areas and Operating Expenses.**

**Section 4.5.1 Common Areas.** Tenant, by this Lease, occupies the entirety of the Premises; therefor there are no Common Areas. This Section is intentionally omitted.

**Section 4.5.2 Operating Expenses.** Any excessive use of utilities or services provided to Tenant under Article VII or upon Tenant's written request, such other services as Landlord may agree in writing to provide to Tenant during the Term.

**Section 4.6 Real Estate Taxes.** Tenant shall pay to Landlord each year, within thirty (30) days after Landlord's written demand, as Additional Rent, any increases in property taxes for the Premises that have occurred since the Commencement Date, with such obligations continuing each year thereafter during the Term, based on any further increases in property taxes for the Premises. Tenant shall have the right to contest the validity or amount of real estate taxes as permitted by law, either in its own name or in the name of Landlord, in either case with Landlord's full cooperation; provided Landlord shall not be required to incur any costs as a result of such protest unless Tenant agrees to reimburse Landlord for any and all such expenses. Any resultant refund, rebate or reduction shall be used first to repay the expenses of obtaining such relief. Landlord shall provide Tenant with government notices of assessment (or reassessment) in time sufficient to reasonably permit Tenant, at Tenant's election, to make contest.

**Section 4.7 Sales Tax.** Tenant shall pay all applicable sales and use taxes, now or hereafter imposed by any and all taxing authorities, on Rent at the time such rental payments are due to be paid.

**Section 4.8 Place for Payment of Rent.** Tenant covenants and agrees to pay Landlord the Rent at the office of the Landlord as set forth in this Lease or at such other place as Landlord may hereinafter from time to time designate to Tenant in accordance with the notice provisions of this Lease. All payments due from Tenant to Landlord pursuant to this Lease shall be paid in legal tender of the United States of America without demand or right of setoff or abatement.



**Section 4.9 Gross Rent.** It is agreed between the parties that this Lease is a "gross lease" and that the payments of Rent and of all other payments to be made to the Landlord hereunder are to be net to Landlord.

**Section 4.10 Rent Abatement.** N/A

**ARTICLE V**  
**CONSTRUCTION OF PREMISES**

Intentionally omitted.

**ARTICLE VI**  
**SIGNS**

Tenant shall not construct any signs on the Premises or any other portion of the Building or Complex. The Landlord will provide and install, at Tenant's sole expense, all letters or numerals on doors entering the Premises. All such letters and numerals shall be in the standard graphics as approved in writing by Landlord for the Building and no others shall be permitted on the Premises without the Landlord's prior written consent which consent may be arbitrarily withheld. Tenant shall not display or affix any sign, advertising, placard, insignia, decal, informational material, advertising matter or any other item or items on the surface of any exterior door, wall or window within five feet (5') of same or in any other manner as to be clearly visible outside of the Premises. The Landlord shall have the right without notice to Tenant and without liability for damage to the Premises, reasonably cause thereby, to remove any item displayed or affixed in violation of the foregoing provision.

**ARTICLE VII**  
**SERVICES**

Landlord agrees to furnish Tenant the following services:

(a) During Normal Business Hours for the Building, and such other hours as the Tenant shall request, central air conditioning at not greater than approximately 78 degrees and central heat at not less than approximately 68 degrees, or as required by governmental authority; and water services as provided by an applicable municipality; provided however, air conditioning and heating service at times other than for Normal Business Hours for the Building shall be furnished only upon the request of Tenant. The Landlord reserves the right to comply with any energy conservation measures either suggested or required by governmental agencies including the possible elimination of heating or cooling on certain days as a part of a governmental sponsored energy conservation program. In the event, in the reasonable opinion of the Landlord, Tenant has excessive equipment in use on the Premises and/or the electricity or other utility source required for the use of the equipment or Tenant's water use shall at any time exceed that which is routine usage as a result of Tenant's Use, then Tenant shall pay the additional costs attributable thereto as Additional Rent within ten (10) days from the date Tenant receives such statement from Landlord;



(b) Routine maintenance and electric lighting service for all Common Areas of the Building in the manner and to the extent deemed by Landlord to be standard; and

(c) All building standard fluorescent bulb replacement in the Premises and fluorescent and incandescent bulb replacement throughout the Premises.

The failure by Landlord to any extent to furnish the defined services as noted above, in whole or in part, or the interruption or termination of same, resulting from causes beyond the direct control of Landlord, or due to the Ground Lease, shall not render Landlord liable in any respect nor be construed as an eviction (constructive or otherwise) of Tenant, nor cause an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in the provision of such services cease for any reason to function properly.

The Landlord shall have no liability to the Tenant for any stoppages of any heating, ventilating, air conditioning, electrical, water or other service required to be provided by Landlord to Tenant under this Lease whenever and so long as such stoppage is necessary by reason of accident, emergency or strike or the making of repairs, maintenance (preventative or otherwise) installations, or changes which Landlord is required or permitted under this Lease or by applicable law to make including the preparation of office space in the Building for other occupants which stoppage Landlord caused in good faith to be made because of difficulty in securing proper supplies of fuel, steam, water, electricity, labor or supplies for any other cause beyond Landlord's direct control.

## **ARTICLE VIII**

### **USE**

Tenant shall use and occupy the Premises only for the purposes stated in Section 1.29 hereof. Throughout the Term of this Lease, the decor and fixturing of the Premises and the operation of Tenant's business conducted on the Premises shall be consistent with the operation of a first-class, high-quality office. The Use of the Premises must always be in compliance with all laws, ordinances, rules and regulations of all governmental authorities having jurisdiction. Tenant further agrees that it shall comply with all reasonable rules and regulations as may be adopted from time to time hereafter by Landlord, or as otherwise may be provided under the Ground Lease. The current rules and regulations are attached hereto as Exhibit C. Tenant's use of electrical services shall not exceed, either in voltage, rated capacity, or over all load that which Landlord reasonably determines necessary for normal office use. In the event Tenant shall request that it be allowed to consume electrical service in excess of that so determined by Landlord to be necessary, Landlord may refuse to consent to such usage or may consent upon conditions as Landlord elects.

## **ARTICLE IX**

### **FINANCING**

**Section 9.1 Subordination.** Landlord and Tenant agree that this Lease be and the same is hereby made subject and subordinate at all times to all covenants, declarations of protective

covenants, restrictions, liens, easements and encumbrances now or hereafter affecting the fee title of the Complex and to all ground and underlying leases and mortgages or any other method of financing or refinancing in any amounts, and all advances thereon, which may now or hereafter be placed against or affect any or all of the Complex, and to all renewals, modifications, consolidations, participation, replacements and extensions thereof. The term "mortgages" as used herein shall be deemed to include trust indentures and deeds of trust. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be necessary unless required by Landlord or any such ground or underlying landlords or mortgagees, or the Ground Lease. Should Landlord or any ground or underlying landlords or Ground Lessor or mortgagees desire confirmation of such subordination, then Tenant, within ten (10) days following Landlord's written request therefor or within three (3) days if such request is made in connection with the Ground Lease, agrees to execute and deliver, without charge, any and all documents (in form acceptable to Landlord and such ground or underlying landlords or mortgagees) subordinating this Lease and the Tenant's rights hereunder. However, should Landlord or any such ground or underlying landlords or any mortgagees request that this Lease be made superior, rather than subordinate, to any such ground or underlying lease and/or mortgage, then Tenant, within ten (10) days following Landlord's written request therefor or within three (3) days if in connection with the Ground Lease, agrees to execute and deliver, without charge, any and all documents (in form acceptable to Landlord and such ground or underlying landlords or mortgagees) effectuating such priority.

Tenant agrees that if requested by the holder of any mortgage constituting a first lien on the Premises, it will give to the holder of such mortgage duplicates of any notices under this Lease given by it to Landlord, and in the event of a Landlord default, any such mortgage holder, at its option, shall have in addition to any cure period of Landlord hereunder, an additional thirty (30) days to cure any such default of Landlord.

**Section 9.2 Attornment.** In the event of the sale, transfer or assignment of Landlord's interest in all or any portion of the Complex, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any mortgage on all or any portion of the Complex, at the option of the mortgagee, the Tenant shall attorn to the respective transferee, assignee or purchaser and recognize such party as Landlord under this Lease (to the extent applicable).

**Section 9.3 Joinders.** This section intentionally omitted.

**Section 9.4 Lender's Approval.** It shall be a condition precedent to Landlord's obligation under this Lease that the lender providing financing with respect to all or any portion of the Building or Complex ("Lender"), if applicable, shall consent to the terms and provisions of this Lease.

## **ARTICLE X**

### **ASSIGNMENT, SUBLETTING, PLEDGING OR ENCUMBERING OF LEASE**

Notwithstanding anything to the contrary herein contained and notwithstanding any reference in this Lease to "subtenant" or "assignee" or "Concessionaire" or otherwise, Tenant



will not assign, transfer, or encumber this Lease in whole or in part, nor sublet all or any part of the Premises, unless given prior written consent by Landlord which consent may be withheld in Landlord's sole and absolute discretion. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting or transfer by operation of law. If this Lease is assigned, or if the Premises or any part thereof is underlet or occupied by anyone other than Tenant, Landlord may collect Rent from the assignee, under-tenant or occupant, and apply the net amount collected to the Rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Notwithstanding any assignment or sublease (even if consented to by Landlord or permitted by the terms of this Lease), Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease, and any such assignee or subtenant shall be bound by all of the terms, covenants and conditions of this Lease, including, but not limited to, the restrictions as to Use.

Any attempted assignment, pledge or encumbrance of this Lease or subletting of all or a portion of the Premises by Tenant without the prior written consent of Landlord shall be null and void, and any attempt by Tenant to assign, pledge or encumber this Lease or sublet a portion or all of the Premises without the prior written consent of Landlord shall constitute a Default by Tenant of this Lease.

In the event Tenant shall desire to sublet the Premises, in whole or in part, or assign Tenant's interest under this Lease, in whole or in part, Tenant shall give Landlord not less than thirty (30) days' prior written notice. Such notice shall set forth all pertinent business terms of the proposed assignment or subletting as well as the name and address of the proposed assignee or sublessee, information as to financial condition of such assignee or sublessee, and proposed use which assignee or sublessee desires to make of the Premises. Such notice shall bear the signature of the proposed lessee or assignee with attention to its accuracy. Tenant shall in addition, at Landlord's request furnish such other further information as Landlord may request concerning such proposed assignment or subletting. After receipt of such notice from Tenant, Landlord shall have the following options to be exercised in writing within thirty (30) days from the later to occur of: the receipt of Tenant's notice of such assignment or sublease or if Landlord shall request additional information from Tenant, the receipt of such additional information when furnished by Tenant to Landlord, to wit: (i) In the event Tenant's notice states Tenant's desire to make an assignment or a subletting of all or substantially all of the Premises, Landlord shall have the option to cancel and terminate this Lease as of the date proposed by Tenant for such assignment or subletting, which option shall be exercised in writing within the aforesaid thirty (30) day period and on which date the term of this Lease shall cease and expire with the same force and effect as if such date were originally provided herein as the expiration of the term hereof; or (ii) in the event Tenant's notice states Tenant's desire to make a subletting for less than all or substantially all of the Premises, Landlord shall have the option to be exercised in writing within said thirty (30) day period, to cancel and terminate this Lease only as to such portion of the Premises subject to termination and cancellation to take effect as of the proposed effective

date thereof as stated in Tenant's notice. In the event Landlord exercises this option, the Rent and all other charges payable hereunder shall be equitably adjusted as apportioned.

If Landlord shall not exercise its forgoing options within the time set forth, Tenant shall still be required to obtain Landlord's prior written consent to any assignment or sublease. In the event Landlord should withhold or delay its consent to any proposed assignment or sublease, the sole remedy of Tenant shall be to institute an action for specific performance if Tenant believes that such withholding or delaying of consent was wrongful, and Tenant hereby expressly waives any claim for monetary damages by reason of such withholding or delaying of consent by Landlord.

Further, Landlord may withhold its consent to any assignment subletting if any of the following conditions pertain:

- (1) The financial condition and general reputation of the proposed assignee or subtenant are not consistent with the extent of the obligation undertaken by the proposed assignment or sublease;
- (2) The proposed use of the Premises is not appropriate for the Building or not in keeping with the character of the existing tenancies or permitted by the Lease or the Ground Lease;
- (3) The nature of the occupancy of the proposed assignee or subtenant will cause an excessive density or traffic or make excessive demands on the Building's services or facilities or in any other way will lessen the character of the Building;
- (4) Tenant proposes to assign or sublet to one who at the time is a tenant or occupant of premises in the Building of which the Premises are a part (or to a subsidiary or related entity of such tenant or occupant) or to one with whom Landlord or its agents are actively negotiating for space in the Building;
- (5) Tenant proposes to assign or sublet all or a portion of the Premises at a rental rate less than the rental rate Landlord is then asking for other space in the Building; or currently in effect for this Leaser whichever is greater;
- (6) Tenant at the time of requesting Landlord's consent is in Default in the payment of any Rent or other sums or charges provided to be paid by Tenant hereunder, or Tenant is otherwise in Default under this Lease;
- (7) That each assignee of this Lease shall fail or refuse to assume in writing all of the terms, covenants and conditions of this Lease on the part of Tenant hereunder to be performed and observed;
- (8) That an original or duplicate original of the instrument of assignment and assumption (the terms of such assumption to be in form acceptable to Landlord) or of the sublease agreement shall not be delivered to Landlord within five (5) days following the



making thereof;

(9) That any instrument of sublease shall not specifically state that each sublease is subject to all of the terms, covenants and conditions of this Lease.

If Landlord shall consent to such assignment or subletting, Tenant agrees to pay to the Landlord the sum of Two Hundred Fifty (\$250.00) Dollars as a processing fee for each assignment and/or subletting. It is agreed that if Landlord shall not exercise any of its foregoing options and shall consent to such assignment or subletting and Tenant shall thereupon assign this Lease or sublet all or any portion of the Premises pursuant to the terms of this Lease, then and in that event Tenant shall pay to Landlord as Additional Rent, (i) in the event of an assignment, the amount of all monies, if any, which the assignee has agreed to and does pay to Tenant in consideration of the making of such assignment, less, however, all out of pocket costs actually incurred by Tenant in connection with the making of such assignment, including, but not limited to, any brokerage fees, advertising and alteration costs; (ii) in the event of subletting, the amount, if any, by which the rent and any other charges associated with the subletting, payable by the sublessee to Tenant, shall exceed the Rent allowable to that part of the Premises affected by such sublease, pursuant to the provisions of this Lease plus amounts, if any, payable by such sublease to Tenant pursuant to any side agreement as consideration (partial or otherwise) for Tenant making such subletting. Such Additional Rent payment shall be made monthly within five (5) days after receipt of same by Tenant or within five (5) days after Tenant is credited with the same by the assignee or sublessee. At the time of submitting the proposed assignment or sublease to Landlord, Tenant shall certify to Landlord in writing whether or not the assignee or sublessee has agreed to pay any monies to Tenant in consideration of the making of the assignment or sublease, other than as specified and set forth in such instruments, and if so, Tenant shall certify the amounts and time of payment thereof in reasonable detail.

Each permitted assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the Rent, and for the due performance of all of the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease and any renewals and modifications hereof. No assignment shall be binding on Landlord unless, as hereinabove provided, such assignee or Tenant shall deliver to Landlord a duplicate original of the instrument of assignment which contains a covenant of assumption by the assignee of all of the obligations aforesaid and shall obtain from Landlord the aforesaid written consent prior thereto. Any assignment, sublease or agreement permitting the use and occupancy of the Premises to which Landlord shall not have expressly consented in writing shall be deemed null and void and of no force and effect and shall, at Landlord's option, be deemed a Default by Tenant under this Lease.

## **ARTICLE XI**

### **ADDITIONAL COVENANTS**

**Section 11.1 Additional Covenants of Tenant.** This section intentionally omitted.

**Section 11.2 Rules and Regulations.** This section intentionally omitted.

**Section 11.3 Compliance with Laws and Requirements of Governmental Authorities.** Tenant shall, at its expense, abate any nuisance pertaining to the use of the Premises and comply with all laws, rules, regulations, ordinances, and fire codes and requirements of applicable governmental authorities with respect to the Premises or the use and occupancy thereof, including, but not limited to, any order to Landlord or Tenant arising from any violation thereof by (a) Tenant's use of the Premises; (b) the manner of conduct of Tenant's business or the installation or the operation of its property in any portion of the Complex, (c) any cause or condition created by Tenant; or (d) the breach of any of Tenant's obligations under this Lease.

## **ARTICLE XII** **DEFAULT**

Each of the following in Section 12.1 through 12.4 shall constitute a "Default" under this Lease:

**Section 12.1 Immediate Default-Bankruptcy, Receivership, Insolvency.** Any of the following acts shall constitute an immediate Default, without the necessity of Landlord giving notice to Tenant, to wit: If Tenant shall commit an act of bankruptcy, receivership, insolvency, reorganizations, dissolution, liquidation, or if other similar proceedings shall be instituted by Tenant for all or any part of its property under the Federal Bankruptcy Act or other law of the United States or of any state or other competent jurisdiction; or if any act of bankruptcy, receivership, insolvency, reorganizations, dissolution, liquidation or if other similar proceedings shall be instituted against Tenant for all or any part of. Tenant's property under the Federal Bankruptcy Act or other law of the United States or of any state of competent jurisdiction, and Tenant shall either consent thereto or fail to cause the same to be discharged within sixty (60) days.

**Section 12.2 Monetary Default.** If Tenant does not timely pay all of the Rent required to be paid by this Lease, or if Tenant shall fail to pay any of the other monetary obligations required by this Lease, and such failure to pay shall continue for three (3) days, then Tenant shall be in Default.

**Section 12.3 Other Defaults.** If Tenant fails to perform any of the other covenants, duties, agreements, undertakings or terms of this Lease, Landlord shall give Tenant thirty (30) days' written notice to cure the same or to commence to cure the same and diligently prosecute to completion if the same cannot be cured within a thirty (30) day period. If Tenant does not cure the breach or begin to take such steps and institute and diligently prosecute to completion such proceedings as will cure such breach (if same cannot be cured) within thirty (30) days after Landlord gives notice, Tenant shall be in Default. Notwithstanding anything in this Lease to the contrary, if Tenant does any act or omission in violation of, or that causes Landlord to be in violation of the Ground Lease and the same is not fully cured within the amount of time that Landlord has to cure under the Ground Lease, if any, regardless of whether Tenant receives notice of any such default or violation or has the opportunity to cure any such default, then Tenant shall be in Default hereunder.



**Section 12.4 Abandonment of Premises.** If the Premises are deserted, vacated, or not used as regularly or consistently as would normally be expected for similar premises put to the same use or similar purposes as provided in Article VIII, even though the Tenant continues to pay Rent, and Tenant does not cure such default within fifteen (15) days after notice from Landlord to Tenant, Tenant shall be in Default.

**Section 12.5 Landlord's Remedies Upon Default.** In the event of any Default by Tenant, Landlord may take any action which is permitted under applicable law or in equity for such Default, and may, in addition to all other rights and remedies which Landlord may have, immediately reenter the Premises and may remove all persons and property from the Premises all without service of notice or resort to legal process and without being guilty of trespass, and Landlord shall not become liable for any loss or damage which may be occasioned thereby. If Landlord reenters the Premises, Landlord may make such alterations and repairs as may be necessary in order to relet the Premises and relet said Premises or any portion thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and for such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rentals received by Landlord from such reletting shall be applied as follows: first, to the payment of any costs and expenses of such reletting or attempted reletting, including brokerage commissions, attorneys' fees and costs of alterations and repairs; second, to the payment of any Additional Rent due hereunder from Tenant to Landlord; third, to the payment of other Rent and adjustments to Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. If such rental received from such reletting during any month (including amounts previously due) is less than the Rent to be paid during that month by Tenant hereunder, Tenant shall pay any deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention to terminate this Lease is given to Tenant or unless termination hereof is decreed by a court of competent jurisdiction. Notwithstanding any such reentry or taking of possession, Landlord may, at any time thereafter, elect to terminate this Lease for any previous Default. Notwithstanding any termination of this Lease by Landlord pursuant to any notice given by Landlord to Tenant, Landlord may collect damages from Tenant equal to all Rent that may have been payable by Tenant pursuant to this Lease during the remaining portion of the Term had the Lease not been so terminated (with all such payments to be applied as follows: first, to the payment of any costs and expenses incurred by Landlord with reletting or attempted reletting including brokerage commissions, attorneys' fees and costs of alteration, repairs; second, to the payment of any Additional Rent due hereunder from Tenant to Landlord; third, to the payment of other Rent and adjustments to Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as same may be due and payable hereunder). In addition to any other remedies it may have at law or in equity, Landlord may recover from Tenant all damages Landlord may incur by reason of such breach including the cost of recovering the Premises reasonable attorneys' fees through and including all trial and appellate levels, and the amount of Rent reserved in this Lease for the remainder of the Term of this Lease, all of which amounts, at Landlord's option, shall be accelerated and immediately become due and payable from Tenant to Landlord. Notwithstanding the foregoing, and in addition thereto, Landlord hereby reserves all right and remedies of Ground Lessor as set forth in



the Ground Lease with respect to a Default under this Lease.

**Section 12.6 Notice.** Except as specified in Section, 12.3 or 12.4, Tenant expressly waives any demand for possession of the Premises and other property of Tenant thereon, or any demand for payment of Rent hereunder, or any notice of intention of Landlord to terminate this Lease or to reenter the Premises other than the notices hereinabove provided for in this Article XII. Tenant agrees that services of the notices provided for herein may be made as set forth in this Lease.

**Section 12.7 Attorneys' Fees and Costs.** The prevailing party, Landlord or Tenant, as the case may be, shall be entitled to attorneys' fees through and including all trial and appellate levels and all other costs incurred in any and all actions taken by or against it relating to this Lease.

**Section 12.8 Interest.** All amount due to Landlord by Tenant shall bear interest at the rate of seven percent (7%) per annum.

**Section 12.9 Late Charge.** In the event that any installment of Rent is not paid within ten (10) days of the date any such sum is due, Tenant agrees to pay a late charge equal to five percent (5%) of the amount of the unpaid Rent installment or \$200 whichever is greater to defray Landlord's administrative charges with respect to such late payment.

### **ARTICLE XIII**

#### **LANDLORD'S INTEREST NOT SUBJECT TO MECHANICS' LIENS AND REMOVAL OF LIENS**

**Section 13.1 Landlord's Interest Not Subject to Liens.** All persons to whom these presents may come are put upon notice of the fact that Tenant shall never, under any circumstances, have the power to subject the interest of Landlord in the Premises or any portion of the Complex to any mechanics or materialmen's lien or liens of any kind. All persons who may hereafter, during the continuance of this Lease, furnish work, labor, services or materials to the Premises, or any portion of the Premises upon the request or order of Tenant, or any person claiming under, by or through Tenant, are to look wholly to the interest of Tenant and not to that of Landlord.

**Section 13.2 Tenant's Obligation to Remove Liens.** Tenant shall not permit or suffer to be filed or claimed against the Premises or any portion thereof during the Term any lien or liens of any kind including those filed notwithstanding section 13.1 above; and if any such lien be claimed or filed, Tenant covenants to cause the Premises to be released from such claim or lien ("Claim"), either through the deposit into court pursuant to statute of the necessary sums of money, or in any other way which is competent legally to effect the release ("Release") of the Premises and/or the Complex from the Claim. The time within which Tenant must effect such Release of the Premises and/or the Complex, as aforesaid, is as follows.

- (1) If the Claim shall have been evidenced through the giving of a written



notice of lien claim, and if such notice be filed in the Public Records of El Paso County, Texas, then Tenant shall effect such Release from such Claim within thirty (30) days after the time when such Claim shall have been filed in the Public Records of El Paso County, Texas.

(2) If the Claim be evidenced, without notice having been given as aforesaid, through the filing of a suit in a court having jurisdiction of the subject matter, in which suit the Claim is asserted and sought to be enforced, then Tenant must effect the Release within ten (10) days after the time when service of process shall have been completed against Tenant or Landlord in the suit.

In the event that Tenant shall violate the terms and provisions of this paragraph, such violation shall constitute an immediate Default by Tenant under this Lease.

#### **ARTICLE XIV** **REPAIRS AND MAINTENANCE**

**Section 14.1 Repairs by Landlord.** Landlord shall make necessary structural repairs to the exterior walls (including doors, signs and the exterior of and the frames surrounding all windows); necessary repairs to the roof, foundations, load bearing items, plumbing, pipes and conduits located outside of the Premises and in the Common Areas. Landlord shall maintain the heating, ventilation and air conditioning systems in the Building. Landlord shall not be required to make any repairs where the same were made necessary by any act or omission or negligence of Tenant, any subtenant or concessionaire, or their respective employees, agents, invitees, licensees, visitors or contractors, or by fire or other casualty or condemnation, except as provided in Articles XXIV and XXV. Landlord and Tenant agree that in the event that Landlord begins to make such repairs within a reasonable period of time, (in light of repair or damage required to be made) after receiving notice from Tenant that such repairs are necessary, Landlord shall not be liable for any damage resulting prior to Landlord making such repairs.

**Section 14.2 Repairs and Maintenance by Tenant.** Except as expressly set forth in this Lease, Tenant shall make and pay for all interior repairs to the Premises and all equipment and systems serving the Premises exclusively and shall repair and/or replace all things which are necessary to keep the same in a good state of repair and operating order, such as (but not limited to) all fixtures, furnishings, lighting and signs of Tenant. Tenant shall also maintain, replace and keep in good repair and operating order all inside walls, carpeting, floor and ground surfaces serving the Premises or located within the Premises. Tenant shall at all times keep the Premises and all exterior entrances, glass and show moldings, partitions, doors, floors, fixtures, equipment and appurtenances thereof in good order, condition and repair, and in a reasonably satisfactory condition of cleanliness, including reasonable periodic painting of the Premises and Tenant shall make such other necessary repairs in and to the Premises not specified in Section 14.1 hereof as being the responsibility of Landlord.

#### **ARTICLE XV** **ADDITIONS AND ALTERATIONS**



**Section 15.1 By Landlord.** In the event Landlord shall hereafter determine in its sole and absolute discretion, and without any obligation to do so, to erect additional structures or to construct improvements on all or any portion of the Complex, Tenant hereby consents thereto and to the performance of work necessary to effect the same and attendant inconvenience caused thereby, provided Landlord agrees to use reasonable efforts to minimize such attendant inconvenience to Tenant's ability to utilize the Premises and provided that it does not interfere with the quiet enjoyment of the Premises by Tenant. The design, materials and performance of necessary work therefor shall be in the sole unrestricted discretion of Landlord.

**Section 15.2 By Tenant.** Notwithstanding anything contained hereto to the contrary, Tenant shall not make any changes, alterations or improvements affecting the Premises or the structure of any portion of the Complex without the prior written consent of the Landlord which may be withheld in its sole and absolute discretion. Prior to the commencement of any work performed by Tenant with respect to the Premises, Tenant shall be required to obtain Landlord's prior written approval of the plans and specifications therefor (which approval as to non-structural changes, alterations and improvements affecting only the interior of the Premises shall not be unreasonably withheld or delayed provided the same does not affect the HVAC efficiency, all of Landlord's requirements for bonding, insurance and other contractor requirements have been satisfied and such plans conform with the quality of materials and standards of design, motif and decor of the Building). Any work performed by Tenant shall be performed at Tenant's sole cost and expense and shall be maintained and repaired at the expense of Tenant and all such work shall be free of all liens, encumbrances and security interests of any type. Tenant shall supply paid bills, releases of liens, affidavits and other evidences which Landlord may reasonably request to demonstrate that all of Tenant's works are free and clear of all liens and encumbrances. Any work done by Tenant under the provisions of this Section 15.2 shall not unreasonably interfere with the use by the other tenants of their premises in the Building, nor interfere with Landlord's ownership, operation and maintenance of the Common Areas.

**Section 15.3 By Landlord.** Prior to the Commencement Date, Landlord agrees to (i) repaint and carpet the interior portions of the Premises, (ii) demolish an interior closet (the location of which to be mutually agreed in writing between Landlord and Tenant), (iii) make repairs to non-carpet flooring, (iv) make repairs to the exterior fencing, and (v) re-point the barbed wire along the perimeter; all at Landlord's sole cost and expense ("Landlord's Work").

## **ARTICLE XVI**

### **INSURANCE**

**Section 16.1 Insurance Coverage.** Tenant shall obtain and keep in full force and effect during the performance of any work by Tenant and thereafter throughout the Term, at Tenant's sole cost and expense, (a) Comprehensive General Liability insurance written on an occurrence basis, to afford protection in such amount as Landlord may reasonably determine and in event less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit and Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate for bodily injury and/or property damage; and which insurance shall include Independent Contractor's Liability, Products/Completed Operations Liability and Broad Form Comprehensive General Liability



endorsements; (b) Comprehensive Automobile Liability insurance covering owned, non-owned and hired vehicles, providing bodily injury and property damage coverage, all on a per occurrence basis, at a combined single limit in such amount as Landlord may determine and in no event less than One Million and 00/100 Dollars (\$1,000,000.00); (a) "all risk" property insurance, including coverage for flood and earthquake, upon Tenant's property, improvements and betterment, alterations and property for which Tenant is legally liable, or which was installed by or on behalf of Tenant and which is a portion of the Premises, in an amount equal to the full replacement value thereof; (d) during the course of construction of any alteration, including during performance of Tenant's Work, and until completion thereof, Builder's Risk insurance on an "all risk" basis on a completed value form for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors), and Landlord's mortgagees in all work incorporated in the Complex and all materials and equipment in or about the Premises; (e) Workers' Compensation insurance, as required by law; and (f) such other insurance in such amounts as Landlord or Landlord's mortgagees may reasonably require from time to time, including any and all insurance requirements of Landlord as set forth in the Ground Lease. Tenant shall have the right to insure and maintain the insurance coverage set forth in this section under blanket insurance policies covering other premises operated by Tenant so long as such blanket policies comply as to term and amount with the insurance provisions set forth in this Lease and the Ground Lease.

**Section 16.2 Policy Standard.** All policies of insurance procured by Tenant shall be issued in form and substance acceptable to Landlord by insurance companies with general policy holder's ratings of not less than A and in a Financial Size Category of not less than XIII, as rated in the most current available Best's Insurance Reports, or the then equivalent thereof and licensed to do business in the State of Texas and authorized to issue such policy or policies. All policies of insurance procured by Tenant shall be written as primary policies not contributing with, nor in excess of, coverage that Landlord may carry. Tenant shall not carry separate or additional insurance concurrent in form or contributing, in the event of any loss or damage with any insurance required to be obtained by Tenant under this Lease or the Ground Lease.

**Section 16.3 Named Insured.** All insurance required to be procured pursuant to Section 16.2 hereof shall name Landlord and its managing agent, if any, any underlying lessor, including the Ground Lessor and each of Landlord's mortgagees whose names and addresses shall previously have been furnished to Tenant by Landlord as additional insured, and each such policy shall contain an endorsement that each of Landlord, its managing agent, if any, and Landlord's mortgagees, and any underlying lessor although named as an additional insured, nevertheless shall be entitled to recover under said policies for any loss or damage occasioned to it, its agents, employees, contractors, directors, shareholders, partners and principals (disclosed and undisclosed) by reason of the negligence or tortious acts of Tenant, its servants, agents or mortgagees be specifically named as additional insured in the insurance policy in order to be protected thereby, Tenant shall not be in default under this Lease for failure to provide the insurance required by this Section 15.3 with respect to such persons if Landlord fails, within thirty (30) days after Tenant's written request, to provide Tenant with the names of such persons; provided, however, Tenant shall be required to amend such insurance policy within thirty (30) days from the time Landlord provides Tenant with the names of such persons to be named as additional insured. All policies of insurance procured by Tenant shall contain endorsements



providing as follows: (a) that such policies may not be materially changed, amended, reduced, cancelled or allowed to lapse with respect to Landlord or Landlord's mortgagee or any underlying lessor except after thirty (30) days prior written notice from the insurance company to each, sent by registered mail; and (b) that Tenant shall be solely responsible for the payment of all premiums under such policies and that Landlord shall have no obligation for the payment thereof notwithstanding that Landlord is or may be named as an additional insured.

**Section 16.4 Waiver of Subrogation.** Each party shall include in each of its insurance policies covering loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the other party, or if such waiver should be unobtainable or unenforceable, (a) an express agreement by each party's insurance company that such policy shall not be invalidated if the insured waives or has waived before the casualty or liability the right of recovery against any party responsible for a casualty or liability covered by the policy, or (b) any other form of permission by each party's insurance company for the failure of the other party. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, the insured party shall so notify the other party promptly after learning thereof. During any period while the foregoing waiver of right of recovery is in effect, Landlord shall look solely to the proceeds of its property insurance policies to compensate Landlord for any loss occasioned by fire or other insured casualty. During any period while the foregoing waiver of right of recovery is in effect, Tenant shall look solely to the proceeds of its policies to compensate Tenant for any loss occasioned by fire or other insured casualty.

**Section 16.5 Certificates.** Duly executed certificates of insurance (including evidence of the waivers of subrogation required pursuant to Section 16.4 hereof) or, if required by Landlord or Landlord's mortgagee or pursuant to the Ground Lease, original policies together with reasonably satisfactory evidence of payment of the premiums therefor, shall be delivered to Landlord and Landlord's mortgagee on or before the day Tenant begins Tenant's Work. Any endorsements to any such policies shall also be so deposited not less than ten (10) days prior to the expiration of such policy. The minimum limits of any insurance coverage required herein to be carried by Tenant shall not limit Tenant's liability under this Lease.

**Section 16.6 Re-evaluation of Coverage.** Landlord may, from time to time (but not more frequently than once in any twelve (12) month period) reasonably review and modify the insurance requirements contained in this Article XVI.

**Section 16.7 Landlord's Right to Make Insurance Payments.** If Tenant shall at any time neglect to maintain the insurance coverage as herein required, Landlord may, at its election, without prejudice to its other rights and remedies under this Lease, procure or renew such insurance and the amount so paid therefor by Landlord, including reasonable expenses, shall be so much Additional Rent due to Landlord from Tenant and shall be payable on the next Rent payment date after such payment.

**Section 16.8 Compliance with Policies.** Tenant shall not violate or permit the violation of any condition imposed by any fire insurance, other casualty insurance or liability insurance policy carried by Landlord or Tenant with respect to the Premises, or any portion of the Complex and shall not do or permit anything to be done, or keep or permit anything to be kept in the



Premises which may; (a) subject Landlord to any liability or responsibility for the personal injury or death of any person or any property damage; (b) increase the fire, other casualty or liability insurance rates on the Complex above the rate which would otherwise then be in effect; or (c) result in insurance companies of good standing refusing to insure the Complex in amounts reasonably satisfactory to Landlord. If for any reason Tenant or anyone claiming by, through or under Tenant fails to comply with the foregoing provision and the rate of any insurance policy on the Complex shall be higher than it otherwise would be, Tenant shall reimburse Landlord on demand for that part of the premium or premiums for insurance coverage paid by Landlord because of such failure to comply on the part of Tenant in addition to any other remedies which Landlord may have pursuant to this Lease, such reimbursement shall be deemed Additional Rent and shall be in addition to Tenant's Proportionate Share of Operating Expenses as provided in Section 4.5.2 hereof. In determining whether any increase in such rates is the result of anyone claiming by, through or under Tenant, a schedule or rule book issued by the Insurance Service organization or any insurance rating organization having jurisdiction selected by Landlord, or the rating procedures or rules of Landlord's insurance company(s) shall be conclusive evidence of the several items and charges which made up the insurance rates and premiums.

## **ARTICLE XVII**

### **INDEMNITY**

This article is intentionally omitted.

## **ARTICLE XVIII**

### **LIEN FOR RENT AND LANDLORD'S PROPERTY**

**Section 18.1 Lien for Rent.** To the fullest extent allowed by applicable law, the entire amount of Rent reserved and agreed to be paid hereunder and each and every installment thereof, including but not limited to, the amount of all taxes, assessments, water charges and insurance herein provided for if paid by Landlord under the provisions of this Lease, all costs, including reasonable attorneys' fees through and including all trial and appellate levels, and the amount of all expenses which may be incurred by Landlord in enforcing the provisions of this Lease or on account of any delinquency of Tenant in carrying out any of the provisions of this Lease, shall be and are hereby declared to be a valid lien upon Tenant's leasehold interest in, the Premises and all of Tenant's improvements and all of Tenant's equipment and other property located upon the Premises.

**Section 18.2 Landlord's Property.** All attached fixtures, partitions and air conditioning, ventilating and heating equipment, attached in or on to the Premises at the commencement of or during the Term of this Lease whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, and shall become the property of Landlord and shall not be removed by Tenant at the expiration of the Term of this Lease. Tenant's furniture and equipment including desks, tables, chairs and other furniture purchased by Tenant which may be removed without undue damage to the premises may be removed by Tenant at the expiration of the Term of this Lease; provided, that Tenant is not in Default at the time of the expiration of the Term and

provided that the Premises are left in good condition resulting from the removal of said property, reasonable wear and tear excepted.

**ARTICLE XIX**  
**REMEDIES CUMULATIVE - WAIVER NOT TO BE INFERRED**

Except to the extent specifically set forth in this Lease, no remedy herein or otherwise conferred upon or reserved to Landlord and Tenant shall be considered exclusive to any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute. Further, all powers or remedies given by this Lease to Landlord and Tenant may be deemed expedient. No delay or omission of Landlord or Tenant to exercise any right or power arising from any Default shall impair any such right or power or shall be considered to be a waiver of any such Default or an acquiescence therein. Notwithstanding anything contained herein to the contrary, in no event shall the Tenant have the right to terminate this Lease as a result of any Default by Landlord.

No waiver of any breach of any covenant, agreement or provision of this Lease shall be construed or held to be a waiver of any other breach or waiver, acquiescence or as consent to a further or succeeding breach of the same covenant, agreement or provision.

Neither the rights herein given to receive, collect, sue for any Rent(s), monies or payments nor to enforce any of the terms, provisions or conditions of this Lease nor to prevent the breach or nonobservance thereof nor the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising shall in any way affect or impair the right or power of Landlord to declare ended the Term hereby granted and to terminate this Lease in the manner provided in this Lease or in the Ground Lease because of any Default by Tenant. In the event of an alleged default by Landlord under this Lease, Tenant shall deliver written notice to Landlord specifying such default, and if Landlord is in violation of this Lease, then Landlord shall have the longer of (a) thirty (30) days from the date Landlord received written notice alleging such default, or (b) the amount of time it takes to cure such default so long as Landlord is using commercially reasonable efforts to effectuate and remedy the default set forth in the notice from Tenant, to cure such default by Landlord.

**ARTICLE XX**  
**RIGHT OF INSPECTION, ACCESS, DUCTS,**  
**CHANGES TO BUILDING AND RIGHT TO EXHIBIT PREMISES**

**Section 20.1 Right of Inspection.** Landlord or Landlord's duly authorized representative may, with at least 24 hours' notice and at such reasonable times and in such manner as not to unreasonably interfere with the business of Tenant enter and inspect the Premises. The Landlord shall have the right to enter the Premises without notice at any time with respect to any emergency which necessitates Landlord or Landlord's duly authorized representatives entering the Premises Tenant shall provide keys necessary.

**Section 20.2 Access.** Landlord reserves for itself entry through the Premises that permits access to any other part of the Complex including, but not limited to, the lobby, hallways, exterior building walls, windows, core corridor walls, doors, other entrances, terraces or roofs



adjacent to the Premises and to any space in, under or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other building facilities, for the purposes of operation, maintenance, decoration or repair thereof; provided, however, that access will be at reasonably appropriate hours unless an emergency occurs.

**Section 20.3 Ducts.** Tenant shall permit Landlord to install, use and maintain, replace or add additional pipes, lines, utilities, ducts and conduits within walls, load bearing columns and ceilings located in, under or on the Premises; provided, however, that access will be at reasonably appropriate hours unless an emergency occurs and shall be conducted with an effort to minimize interruption of Tenant's Use of Premises and provided further that Landlord will indemnify Tenant for any damages to Tenant's Premises or personalty, arising out of Landlord utilizing the provisions of this section.

**Section 20.4 Changes to Building.** Landlord reserves the right at any time before or after completion of the Building to make changes to the Building and/or Complex (including, but not limited to the right to construct additional buildings on the Complex) without incurring any liability to Tenant therefor; provided, however changes may not be made to the Premises without Tenant's consent unless such changes will not adversely affect in any material manner, Tenant's access to the Premises as designed, or affect Tenant's peaceful enjoyment and use of the Premises as contemplated by this Lease.

**Section 20.5 Right to Exhibit Premises.** Any time during the last one hundred eighty (180) days of the Term of this Lease, Landlord may, during normal business hours, and with reasonable notice to Tenant, enter the Premises with a prospective tenant and exhibit the Premises to said prospective tenant. Landlord shall have the right, upon reasonable notice to Tenant, to enter the Premises with a prospective purchaser and exhibit the Premises to such prospective purchaser at any time.

## **ARTICLE XXI**

### **SURRENDER UPON TERMINATION**

Tenant covenants and agrees to and with Landlord that upon the termination of this Lease by forfeiture or upon expiration of the Term, Tenant shall at once surrender and deliver up to Landlord the Premises in good condition, reasonable wear and tear excepted, and Tenant shall surrender all keys for the Premises to the Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on all locks and sates, if any, in the Premises. Tenant, on the expiration or sooner termination of this Lease, shall be required to remove all vaults and safes installed by Tenant in the Premises. Tenant's obligation to observe and perform this covenant shall survive the expiration or other termination of the Term of this Lease. If Tenant shall default in so surrendering the Premises, Tenant's occupancy subsequent to such expiration, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy at will and in no event from month to month or from year to year, and it shall be subject to all of the terms, covenants and conditions of this Lease applicable thereto except that Annual Rent then in effect shall be twice the amount then otherwise payable and no extension or renewal of this Lease shall be deemed to have occurred by such holding over.



Prior to the expiration or sooner termination of this Lease, Tenant shall remove any and all trade fixtures, equipment and other unattached items which Tenant may have installed, stored or left in the Premises or elsewhere in the Building, including, but not limited to, counters, shelving, show cases, signs, lettering or advertising material on any glass, chairs, vaults and safes and unattached movable machinery purchased or provided by Tenant and which are susceptible of being moved without damage to the Building. Tenant shall repair any damage to the Premises or other portion of the Complex caused by its removal of such fixtures, property, signs and movables. In the event Tenant does not make such repairs, Tenant shall be liable for and agrees to pay Landlord's costs and expenses in making such repairs, together with a sum equal to fifteen percent (15%) of such costs and expenses to cover Landlord's overhead in making such repairs for Tenant. Except as is specifically permitted hereunder, Tenant shall not remove any plumbing or electrical fixtures or equipment, floor coverings (including, but not limited to, wall to wall carpeting) walls or ceilings, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Landlord, nor shall Tenant remove any fixtures or machinery that were furnished or paid for by Landlord (whether initially installed or replaced). The Premises shall be left in a broom-clean condition. If Tenant shall fail to remove its trade fixtures or other property as provided in this Article XXI, such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and, at the option of Landlord, shall become the property of Landlord or, at Landlord's option, may be removed by Landlord at Tenant's expense plus fifteen percent (15%) as hereinabove provided, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in Landlord's sole discretion and without liability to Landlord, in which event the proceeds of such sale or other disposition shall belong to Landlord.

## **ARTICLE XXII**

### **DURATION OF LIABILITY, NON-LIABILITY, LIMIT OR LIABILITY AND DAMAGE TO PROPERTY OR PERSONS**

**Section 22.1 Duration of Liability.** The term "Landlord" as used in this Lease, so far as covenants and obligations on the part of the Landlord are concerned, shall be limited to the mean and include only the owner or owners at the time in questions of the Premises, and in the event of any transfer or transfers of the Premises, Landlord (and in case of any subsequent transfers or conveyances, the grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenant or obligation in the part of the Landlord as contained in this Lease thereafter to be performed, provided that any such transfer, in which Tenant may have an interest, shall be turned over to the grantee and any amount then due and payable to Tenant by Landlord or the then grantor under any provision of this Lease shall be paid to Tenant, and provided further, that the interest of the successive transferee in the Premises shall at all times remain subject to and liable for the performance of all covenants on the part of the Landlord contained in this Lease.

**Section 22.2 Damage to Property or Persons.** Landlord shall not be liable for any loss of or damage to property of Tenant or of others located in the Premises or any portion of the Complex, by theft or otherwise, nor for any loss or damage whatsoever to any property which Tenant could remove at the end of the Term as provided in Section XXI hereof irrespective of the cause of such injury, damage or loss. Landlord shall not be liable for any injury or damage to persons or property or to the Premises resulting from fire, explosion, falling plaster, steam, gas



electricity, water, rain or leaks from any part of the Complex or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such injury or damage caused by other tenants or any person(s) either in the Premises or elsewhere in the Complex, or by the public, or quasi-public work. In no event shall Landlord be liable for any interruption or failure in the supply of any utility. Landlord shall not be liable for any latent defect in construction. Landlord shall not be responsible for damage or loss of property of Tenant kept or stored on the Premises, no matter how caused. Notwithstanding anything contained herein to the contrary, in no event shall Landlord ever be liable for any consequential damages.

**Section 22.3 Limit of Liability.** Tenant shall look solely to Landlord's interest in the Complex (or the proceeds thereof) for the satisfaction of any of Tenant's rights or remedies or for the collection of a judgment or other judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder. Landlord shall have no personal liability and no property or assets of Landlord (other than the Complex) shall be subject to the levy, execution, judgment or other enforcement procedure for the satisfaction of Tenant's rights or remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises, and Tenant hereby fully and forever waives any claim to the contrary.

### **ARTICLE XXIII**

#### **TIME OF ESSENCE**

Time is of the essence in the performance of this Lease.

### **ARTICLE XXIV**

#### **EMINENT DOMAIN**

**Section 24.1 Tenant's Duty.** In the event of a partial taking of the Premises under the power of eminent domain at any time during the Term, Tenant shall repair or rebuild Tenant's improvements in conformity with the requirements of this Lease.

**Section 24.2 Condemnation.** In the event that the whole of the Premises shall be condemned or taken in any manner for any public or quasi-public use or less than the whole of the Premises is condemned or taken and it is not economically feasible to continue to operate the remaining portion of the Premises, this Lease and the Term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title. In the event that a part of the Complex shall be so condemned or taken (whether or not the Premises are taken and whether or not it is economically feasible to operate the remaining portion of the Premises), then: (i) if substantial structural alteration or reconstruction of the Complex shall, in the reasonable opinion of Landlord, be necessary or appropriate as a result of such condemnation or taking, Landlord may, at its option, terminate this Lease and the Term and estate hereby granted as of the date of such vesting of title by notifying Tenant in writing of such termination within sixty (60) days following the date on which Landlord shall have received notice of vesting of title; or (ii) if Landlord does not elect to terminate this Lease as aforesaid, this Lease shall be and remain

unaffected by such condemnation or taking, except that, effective as of the date of vesting of title, the Annual Rent shall be equitably abated to the extent, if any, the Premises is taken. In the event that only a part of the complex shall be so condemned or taken and this Lease and the Term and estate hereby granted are not terminated as hereinbefore provided, Landlord will, from the proceeds of the condemning authority, restore with reasonable diligence the remaining structural portions of the Premises (to the extent taken) as nearly as practicable to the same condition as it was prior to such condemnation or taking and Tenant shall restore the Premises to, as nearly as practical, to the same condition as it was prior to such condemnation.

In the event of termination in any of the cases hereinabove provided, this Lease and the Term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the date hereinbefore set for the expiration of the Term of this Lease, and all Rent and other charges hereunder shall be apportioned as of such date.

In the event of any condemnation or taking hereinabove mentioned of all or a part of the Premises, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant and Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any part thereof, and Tenant shall be entitled to receive no part of such award. Tenant shall, however, be entitled to claim, prove and receive in such condemnation proceeding such award as may be allowed for trade fixtures, alterations and improvements constructed by Tenant at its sole expense (amortized over the balance of the Term) but only if such award shall be in addition to the award payable to Landlord as set forth above.

**Section 24.3 Governmental Action Short of Physical Taking.** In the case of any governmental action not resulting in the taking of any portion of the Premises, but creating a right to compensation therefor, such as, without limitation, a change of the grade of any street, this Lease shall continue in full force and effect without reduction or abatement of any Rent thereafter due and payable. Landlord shall be entitled to receive the entire amount of compensation made with respect to any such governmental action.

## **ARTICLE XXV**

### **DAMAGE OR DESTRUCTION OF BUILDING**

**Section 25.1 Tenant's Duty.** In the event of any damage or destruction to the Premises at any time during the Term (whether by casualty or condemnation), Tenant shall repair or rebuild Tenant's improvements in conformity with the requirements of this Lease, or as otherwise required by Landlord under the Ground Lease.

**Section 25.2 Rent Abatement.** If the Premises are rendered untenable as a result of any damage or total destruction by fire or other casualty (unless caused by Tenant or its employees' or agents' negligence or willful actions), the Annual Rent shall be equitably adjusted to the extent that the Premises are untenable for the period from the date of such damage or destruction until the earlier to occur of: (i) the date the Premises are rendered tenantable for Tenant to repair Tenant's improvements; or (ii) Tenant opens for business.



**Section 25.3 Substantial Destruction.** If the Complex, Building and/or the Premises are substantially damaged or destroyed by fire or other casualty, then Landlord may terminate this Lease by giving Tenant notice ("Casualty Termination Notice") to such effect within ninety (90) days after the casualty causing such damage. The Term of this Lease shall terminate and expire upon the thirtieth (30th) day after the Casualty Termination Notice is given and Tenant shall vacate the Premises and surrender the same to Landlord on or before said date. The Premises and/or the Building (whether or not the Premises are damaged) shall be deemed substantially damaged or destroyed: (i) if the cost of the repair or restoration after an insurable casualty occurs is fifty percent (50%) or more of the then full replacement cost of the Building or the Premises (as applicable); or (ii) if the cost of repair and restoration after any non-insurable casualty occurs is fifteen percent (15%) or more of the then full replacement cost of the Building or the Premises (as applicable). The Complex (whether or not the Premises are damaged) shall be deemed substantially damaged or destroyed if: (i) the cost of repair or restoration after an insurable casualty occurs is fifty percent (50%) or more of the then replacement cost of the Complex; or (ii) the cost of repair or restoration after any non-insurable casualty occurs is five percent (5%) or more of the then replacement cost of the Complex.

**Section 25.4 Repair of Damage.** If Landlord does not elect to terminate this Lease after a casualty, Landlord shall proceed with due diligence to repair or rebuild the Complex, Building and/or the Premises in order to enable Tenant to occupy the Premises.

## **ARTICLE XXVI**

### **NOTICES**

All notices, demands or other communications made pursuant to this Lease shall be in writing and shall be deemed to have been duly given, upon the delivery thereof by hand to the appropriate addresses herein set forth as evidenced by a signed receipt for same or on the first business day after mailing by United States registered or certified mail, return receipt requested, postage pre-paid, or by a reputable overnight express courier, addressed as set forth in Article I, or to such other address or to such other person as any party may designate to the other for such purpose in the manner hereinabove set forth.

## **ARTICLE XXVII**

### **ESTOPPEL CERTIFICATE, PROHIBITION OF RECORDING LEASE**

**Section 27.1 Estoppel Certificate.** Landlord and Tenant each agree, as reasonably requested by the other party to execute and deliver to the other, within five (5) days of receipt of the request therefor, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modification, stating the modification and that the Lease is in full force and effect as modified), certifying the dates to which the Rent as adjusted has been paid, and stating whether or not, to the best knowledge of the signer, the other party is in breach in the performance of any of its obligations under this Lease, and if so, specifying each such breach of which the signer has knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing.

**Section 27.2 Lease Not to be Recorded.** The Tenant shall not record this Lease or any memorandum of its terms. In addition to all other rights and remedies available to Landlord, the parties agree that the recording of this Lease may create a cloud upon the title of the Complex and the Tenant does hereby indemnify and hold the Landlord harmless for all loss, expenses, including but not limited to attorneys' fees and court costs through all trial and appellate levels which may be incurred by Landlord as a result of Tenant's breach of the terms and provisions of this paragraph. In addition to any and all other rights or remedies available at law or in equity, Landlord shall specifically have the right of injunctive relief to cause any memorandum in violation of this provision to be vacated of record. Landlord reserves the right (but not the obligation) to record this Lease or any memorandum of its terms. Tenant agrees that upon the written request of Landlord, Tenant shall execute a Memorandum of this Lease in form and content (consistent with the terms hereof) acceptable to Landlord.

## **ARTICLE XXVIII**

### **REPRESENTATIONS AND AGREEMENTS**

Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease and any addendum attached hereto or made a part hereof. It is understood and agreed that this Lease alone fully and completely expresses the parties' agreement and that this Lease is entered into after full investigation, neither Party relying upon any statement or representation not embodied in this Lease or any addendum hereto.

## **ARTICLE XXIX**

### **SECURITY DEPOSIT**

Intentionally Deleted

## **ARTICLE XXX**

### **EXCUSE OF LANDLORD'S PERFORMANCE**

Anything in this Lease to the contrary notwithstanding, Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material or service or through an act of God or any other cause beyond the direct control of Landlord. Landlord shall not be liable for failure to give Tenant possession in accordance with the provisions of this Lease, due to any of the foregoing conditions. The time for Landlord's performance shall be extended as a result of any of the foregoing.

## **ARTICLE XXXI**

### **RELATIONSHIP OF THE PARTIES**

Nothing contained in this Lease shall be deemed or construed as creating the relationship



of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computing Rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of Landlord and Tenant.

**ARTICLE XXXII**  
**REQUIREMENT OF EXECUTION**

The submission by Landlord to Tenant of this Lease in draft form shall be deemed submitted solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option for the leasing of the Premises herein described, nor confer any right or impose any obligations upon either party. The submission by Landlord of this Lease for execution by Tenant and the actual execution and delivery thereof by Tenant to Landlord shall similarly have no binding force and effect unless and until Landlord shall have executed this Lease and delivered a copy of this Lease fully executed by Landlord to Tenant

**ARTICLE XXXIII**  
**SCOPE OF LEASE**

This Lease covers all of the covenants, conditions, stipulations and provisions agreed upon between the parties hereto, and no employee or agent (other than an authorized officer) of Landlord has authority to change, modify or alter the terms hereof, and neither party is, nor shall be, bound by any inducement, statement, representation, promise or agreement not in conformity herewith. In no event shall this Lease or any provisions hereof be deemed to be amended, modified or changed in any manner whatsoever, except and unless set forth and provided for in a writing executed by Landlord and Tenant, respectively.

**ARTICLE XXXIV**  
**GOVERNING LAW**

This Lease shall be governed by the laws of the State of Texas and venue with respect to any litigation shall be in El Paso County, Texas.

**ARTICLE XXXV**  
**ACCORD AND SATISFACTION**

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earlier Rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

**ARTICLE XXXVI**

## **PROVISIONS RELATING TO INTERPRETATION**

**36.1 Headings.** Article, Paragraph and Section titles in this Lease are intended only for convenience and for ease of reference, and in no way do such titled define, limit or in any way affect this Lease or the meaning or contents of any material contained herein. Whenever the context so required, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular and the singular shall include the plural.

**36.2 Ground Lease.** Landlord owns the improvements of which the Premises are a part and leases the ground upon which the improvements are located from The City of El Paso acting through its Department of Aviation aka El Paso International Airport ("EPIA") via a ground lease under which Landlord is obligated to, among other things, make monthly ground rental payments and keep insurance coverage in full force for the benefit of EPIA (the "Ground Lease"). The parties recognize that the Tenant under this Lease is a different department of the City than the owner of the ground under the Ground Lease. Nothing contained in this Lease shall have the effect of altering or modifying any portion of the Ground Lease in any manner. In the event that a provision of this Lease shall conflict with a provision of the Ground Lease, the provision of the Ground Lease shall prevail. Any default or failure of performance by Tenant under this Lease shall not affect any obligation of Landlord to EPIA under the Ground Lease but shall be dealt with completely separately from the Ground Lease without any setoff, credit, or deduction from the Ground Lease whatsoever.

## **ARTICLE XXXVII EFFECT OF INVALIDITY OF ANY PROVISION**

If any provision or provisions of this Lease should be held to be invalid or unenforceable by any court of competent jurisdiction, such ruling shall not affect the validity or enforceability of the remainder of this Lease but the Lease (as so modified) shall remain in full force and effect.

## **ARTICLE XXXVIII BROKERAGE**

Tenant covenants, warrants and represents that except for the Specified Broker(s) (if any), Tenant has not dealt with any real estate brokers, salesmen or consultants in the finding, negotiation or execution of this Lease and Tenant hereby indemnifies Landlord for any claims, costs or damages (including, but not limited to, attorneys' fees and court costs through all trial and appellate levels) arising from any breach of the foregoing covenants, warranties and representations.

## **ARTICLE XXXIX JOINT PREPARATION**

The preparation of this Lease has been a joint effort and the resulting Lease shall not as a matter of judicial construction be construed more severely against either Landlord or Tenant.

## **ARTICLE XL**



## **CONDITION OF PREMISES**

Subject to the performance of Landlord's Work pursuant to Section 15.3 hereinabove, upon the Commencement Date, Tenant accepts the Premises in its "AS-IS, WHERE IS, WITH ALL FAULTS" condition, relying on Lessee's own inspection and judgment and not in reliance on any representation or warranty of Landlord, including without limitation, any implied warranty that the Premises are suitable for Tenant's intended use or purpose or the Use, and Tenant hereby waives any claim to the contrary.

## **ARTICLE XLI** **ENVIRONMENTAL CONCERNS**

**Section 41.1 Audit.** Tenant may conduct an Environmental Site Assessment at Tenant's expense prior to taking occupancy of the Premises. TENANT ACKNOWLEDGES AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF TENANT TO ASCERTAIN AND COMPLY WITH ALL HAZARDOUS SUBSTANCES LAWS IN CONNECTION WITH THE HANDLING AND DISPOSAL OF WASTE, INCLUDING HAZARDOUS SUBSTANCES OR ANY OTHER MATERIAL FROM THE PREMISES. For purposes of this Lease, "Hazardous Substances" shall mean any material which could give rise to liability under (i) the Resources Conservation Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("RCRA"), 42, U.S.C. Sections 6901 et seq.; (ii) the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended ("CERCLA"), 42, U.S.C. Sections 9601 et seq.; (iii) the Toxic Substances and Control Act, as now or hereafter amended ("TSCA"), 15 U.S.C. Sections 2601 et seq.; (iv) the Clean Air Act, as now or hereafter amended ("CAA"), 42, U.S.C. Sections 7401 et seq.; (v) any Texas statute governing the generation, storage, disposition, release or existence of hazardous substances; (vi) any common law theory based on nuisance or strict liability; and (vii) any other applicable law (collectively, the "Hazardous Substances Laws").

**Section 41.2 Tenant's Use.** Tenant, at Tenant's expense, shall be responsible to comply with all applicable ordinances, regulations, and governmental requirements respecting its particular use of the Premises and in particular shall be responsible for compliance with all applicable Hazardous Substances Laws, fire and safety requirements with respect to its operations in the Premises. Tenant will provide at Landlord's request a list of chemicals that it uses in connection with its business, including the amounts of such usage. Tenant shall be responsible for compliance with all Hazardous Substances Laws in connection with the delivery of any Hazardous Substances to the Premises, the storage and usage therein, and the disposal thereof. If any license, permit, or consent becomes necessary in connection therewith, Tenant will be responsible for obtaining any such permit, consent, or license, and shall be responsible for paying all additional costs incurred by Landlord by reason thereof. Tenant in its activities shall not be permitted to create noxious or annoying fumes on the Premises, and Tenant shall in any event be responsible for any damage caused by Tenant's exhaust. In no event shall Tenant permit any reprocessing or reclamation activities for or resulting in the photographs, plates or negatives to take place on the Premises, it being acknowledged such activities are inappropriate in a high-rise office building.



**Section 41.3 Contamination.** If at any time during the Term of this Lease, any contamination ("Contamination") of the Premises by Hazardous Substances shall occur, then, if such contamination shall have been caused by the act or omission of Tenant or any of Tenant's agents, contractors, employees, sublessees, licensees, invitees or concessionaires nor any of its or their respective affiliates, partners, directors, officers, agents, employees or contractors, nor any other occupant of the Premises (for purpose of this Section, referred to collectively herein as "Tenant Representative"), Tenant shall, at Tenant's sole cost and expense, and to the satisfaction of Landlord, promptly and diligently remove such Hazardous Substances from the Premises or the groundwater underlying the Premises in accordance with the requirements of the applicable Hazardous Substances Laws (or in accordance with industry standards then prevailing in the Hazardous Substances management and remediation industry in Texas, i.e., if such industry standards shall be more stringent). However, Tenant shall not take any required remedial action in response to any Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Contamination without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Contamination and thereafter commence the required remediation of any Hazardous Substances released or discharged in connection with any Contamination within thirty (30) days after Landlord has approved Tenant's remediation plan and all necessary approvals and consents have been obtained and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause said remediation to be accomplished, and Tenant shall reimburse, within fifteen (15) business days of demand for reimbursement, all amounts paid by Landlord (together with interest on said amounts at the highest lawful rate until paid), when said demand is accompanied by proof of payment of the amounts demanded. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Substances removed from the Premises as part of Tenant's remediation of any Contamination.

**Section 41.4 Environmental Indemnity.** This section is intentionally omitted.

## **ARTICLE XLII**

### **SURVIVAL OF OBLIGATIONS**

Notwithstanding anything contained in this Lease to the contrary, any obligations of the Landlord or Tenant that by their nature are intended to naturally extend beyond the expiration or earlier termination of this Lease, including without limitation any indemnity obligations or the payment of any sums hereunder, shall survive the expiration or earlier termination of this Lease.

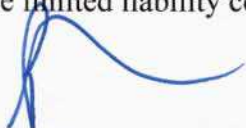
[SIGNATURE PAGES FOLLOW]

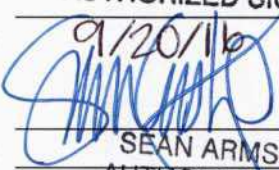


IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed in their respective names by their duly authorized officers and made effective as of the Effective Date.

**LANDLORD:**

**WEST EL PASO BOEING TX, LLC,**  
a Delaware limited liability company

By:   
Name: PETER ARONSON  
Title: AUTHORIZED SIGNER  
Dated: 9/20/16

By:   
Name: SEAN ARMSTRONG  
Title: AUTHORIZED SIGNER  
Dated: 9/20/16

**See Next Page for Notarial Acknowledgement**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

On September 20, 2016 before me, Trisha Murphy, Notary  
(insert name and title of the officer)

personally appeared Peter Aronson and Sean Armstrong,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are  
subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in  
~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)





**TENANT:**

**CITY OF EL PASO, TEXAS**

By: *Tomás González*  
Title: City Manager

Dated: 10/6/16

**APPROVED AS TO FORM:**

*Marvin Foust*

Marvin Foust  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

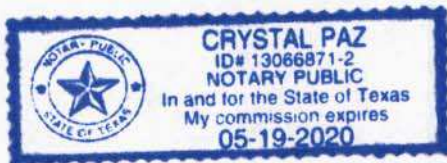
*Monica Lombraña*

Monica Lombraña, A.A.E.  
Director of Aviation

**TENANT'S ACKNOWLEDGEMENT**

THE STATE OF TEXAS       §  
                                          §  
COUNTY OF EL PASO       §

This instrument was acknowledged before me on the 6<sup>th</sup> day of October, 2016,  
by Tomás González, the City Manager of the City of El Paso, Texas.



*Crystal Paz*  
Notary Public – State of Texas

My commission expires: 05-19-20

**EXHIBIT A**

**LEGAL DESCRIPTION - BUILDING LAND**

A portion [REDACTED] Section 552.108  
112,341 square feet of land, City of El Paso, El Paso County, Texas.



**EXHIBIT B**  
**THE PREMISES**

## **EXHIBIT C**

### **RULES AND REGULATIONS**

1. The rights of tenants in the entrances, corridors, elevators and escalators of the Building are limited to ingress to and egress from the tenant's premises for the tenants and their employees, licensees and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, escalators or elevators for any other purpose. No tenant shall invite to the tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the plazas, entrances, corridors, escalators, elevators and other facilities of the Building by other tenants. Fire exits and stairways are for emergency use only and shall not be used for any other purpose by tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of any of the sidewalks, plazas, entrances, corridors, escalators, elevators, fire exits or stairways of the Building. The Landlord reserves the right to control and operate the public portions of the Building and public facilities as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

2. The Landlord may refuse admission to the Building outside of ordinary business hours to any person not having a security pass card issued by the Landlord or the tenant whose premises are to be entered and not otherwise properly identified, and may require all persons admitted to or leaving the Building outside ordinary business hours to register. Any person whose presence in the Building at any time shall, in the judgment of the Landlord, be prejudicial to the safety, character, reputation and interests of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. In case of invasion, riot, public excitement or other commotion the Landlord may prevent all access to the Building during the continuance of the same, by closing the doors or otherwise for the safety of the tenants and protection of the property of the Building and tenants. The Landlord may require any person leaving the Building with any package or other object to exhibit a pass from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on the Landlord for the protection of any tenant against the removal of property from the premises of the tenant. The Landlord shall in no way be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under the provision of this rule. Canvassing, soliciting or peddling in the Building is prohibited and every tenant shall cooperate to prevent the same.

3. No tenant shall obtain or accept for its use in the premises ice, food for on the premises preparation other than warming, beverage, towel, barbering, boot blacking, floor polishing, lighting maintenance, cleaning or other similar services from any persons not authorized by the Landlord in writing to furnish such services, provided that the charges for such services by persons authorized by the Landlord are not excessive and where appropriate and consonant with the security and proper operation of the Building, sufficient persons are so authorized for the same service to provide tenants with a reasonably competitive selection. Such



services shall be furnished only at such hours and in such places within the tenant's premises and under such reasonable regulations as may be fixed by the Landlord. Tenant may have a coffee service, subject to Landlord's approval, and a kitchen for the use of its employees.

4. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or the employees, licensees or invitees of the tenant, shall be paid by such tenant.

5. No lettering, sign, advertisement, notice or object shall be displayed in or on the windows or doors, or on the outside of any tenant's premises, or at any point inside any tenant's premises where the same might be visible outside of such premises, except that the name of the tenant may be displayed on the entrance door of the tenant's premises, and in the elevator lobbies of the floors which are occupied entirely by any tenant, subject to the approval of the Landlord as to the size, color and style of such display. The inscription of the name of the tenant on the door of the tenant's premises shall be done by Landlord at the expense of the tenant. Listing of the name of the tenant on the directory boards in the Building shall be done by the Landlord at its expense; any other listings shall be at the sole discretion of the Landlord.

6. No awnings or other projections over or around the windows shall be installed by any tenant, and only such window blinds as are supplied or permitted by the Landlord shall be used in a tenant's premises. Linoleum, tile or other floor covering shall be laid in a tenant's premises only in a manner approved by the Landlord.

7. The Landlord shall have the right to prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept upon a tenant's premises. If, in the judgment of the Landlord, it is necessary to distribute the concentrated weight of any heavy object, the work involved in such distribution shall be done at the sole expense of the tenant and in such manner as the Landlord may determine. The moving of safes and other heavy objects shall take place only outside of ordinary business hours upon previous notice to the Landlord, and the persons employed to move the same in and out of the Building shall be reasonably acceptable to the Landlord and, if so required by law, shall hold a Master Rigger a license. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only in the freight elevator and through the service entrances and corridors, and only during the hours and in a manner approved by the Landlord. Arrangements will be made by the Landlord with any tenant for moving large quantities of furniture and equipment into or out of the Building.

8. No machines or mechanical equipment of any kind other than typewriters and other ordinary portable business machines, may be installed or operated in any tenant's premises without Landlord's prior written consent, and in no case (even where the same are of a type so excepted or as so consented to by Landlord) shall any machines or mechanical equipment be so placed or operated as to disturb other tenants; but machines and mechanical equipment which may be permitted to be installed and used in a tenant's premises shall be so equipped, installed and maintained by such tenant as to prevent any disturbing noise, vibration or electrical or other interference from being transmitted from such premises to any other area of the Building.



9. No noises, including the playing of any musical instruments, radio or television, which, in the judgment of the Landlord might disturb the other tenants in the Building or constitute a nuisance or violation of applicable law, shall be made or permitted by any tenant, and no cooking shall be done in the Tenant's premises, except as expressly approved by the Landlord. Nothing shall be done or permitted in any tenant's premises, and nothing shall be brought into or kept in any tenant's premises which would impair or interfere with any of the Building services or the proper and economic heating, cleaning or other servicing of the Building or the premises, or the use or enjoyment by any other tenant of any other premises, nor shall there be installed by any tenant any ventilating, air conditioning, electrical or other equipment of any kind which, in the judgment of the Landlord, might cause such impairment or interference. No dangerous, inflammable, combustible or explosive object or material shall be brought into the Building by any tenant or with the permission of any tenant. Any cuspidors or similar containers or receptacles used in any tenant's premises shall be cared for and cleaned by and at the expense of the tenant.

10. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage the same. The water and wash closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purposes for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein.

11. No additional locks or bolts of any kind shall be placed upon any the doors or windows in any tenant's premises and no lock on any door therein shall be changed or altered in any respect. Additional keys for a tenant's premises and toilet rooms shall be procured only from the Landlord, which may take a reasonable time to procure. Any costs associated with obtaining additional keys for tenants shall be borne solely by the tenant. Upon the termination of a tenant's lease, all keys for the tenant's premises and toilet rooms shall be delivered to the Landlord.

12. All entrance doors in each tenant's premises shall be left locked and all windows shall be left closed by the tenant when tenant's premises are not in use. Entrance doors shall not be left open at any time.

13. Hand trucks not equipped with rubber tires and side guards shall not be used within the Building.

14. All windows in each tenant's premises shall be kept closed and all blinds therein above the ground floor shall be lowered when and as reasonably required because of the position of the sun, during the operation of the Building air conditioning system to cool or ventilate the tenant's premises.

15. Neither tenant or any of its employees, agents or visitors shall at any time keep or have at the Building or tenant's premises any kerosene, camphene, benzine, naphtham gasoline or any inflammable or combustible fluid, chemical or explosive during the term of tenant's lease.

16. Landlord shall in no way be responsible to any tenant for any loss of property from its premises, however occurring, or for any damage to the furniture or other effects of any tenant.



17. The Building and/or the Tenant's premises shall not be used for gambling or any immoral or illegal purposes.

18. The parking lot shall be used only for parking and deliveries, and shall not be used for vehicle repairs or servicing. Disabled vehicles or vehicles parked for more than two (2) consecutive days may be towed by Landlord at the vehicle owner's expense. Any damage to the parking lot caused by tenant or tenant's agents, employees, invitees or guests may be repaired by Landlord at tenant's expense, and the cost of such repairs shall be payable by tenant as additional rent.

19. Landscaped areas may not be used for parking or storage. Any damages to landscaped areas caused by tenant or tenant's agents, employees, invitees or guests may be repaired by Landlord at tenant's expense, and the cost of such repairs shall be payable by tenant as additional rent.

20. Landlord shall have the right to prohibit any advertising by tenant which in Landlord's opinion is harmful to the Building, its reputation or its desirability as an office building. Tenant shall discontinue such advertising immediately upon written notification to it from the Landlord.

21. Landlord reserves the right to rescind, alter, waive or modify the foregoing rules and regulations at any time prescribed for the Building when, in its judgment, it deems it necessary, desirable or proper for the reputation, safety, care and cleanliness of the Building and for the preservation of good order therein, its best interest and for the best interest of the other tenants. Any such other and further rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been inserted at the time of the execution of the Lease. No alteration or waiver of any rule or regulation in favor of one tenant shall operate as alteration or waiver in favor of any other tenant. The Landlord shall not be responsible to any tenant for the non-observance or violation by any other tenant of any of the rules and regulations at any time prescribed by the Building.

**EXHIBIT D**  
**GROUND LEASE**



## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
Section 552.108	Certain Law Enforcement, Corrections, and Prosecutorial Information: Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication	36(1)