

STATE OF Texas
COUNTY OF Ector

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“Lease”) is entered into as of this _____ of March, 2017 by and between **CALDERA LONE STAR, LLC**, a Texas Limited Company, (hereafter “Landlord”) and **ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT**, (hereinafter “Tenant”).

WHEREAS, Tenant has requested Landlord to lease certain property to Tenant and Landlord has agreed to do so; and

WHEREAS, Landlord has agreed to arrange for the construction of improvements on the property to suit Tenant’s needs for storage of supplies and material for maintenance of education and other business , and related office space; and

WHEREAS, Landlord and Tenant are willing to enter into this Lease provided that the improvements will suit the Landlord’s and Tenant’s needs and there is a clear understanding between the parties with respect to the responsibilities and duties of each party hereunder; and

WHEREAS, the parties have agreed to enter into this Lease and describe the terms and conditions with respect to said Lease.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I.
BASIC TERMS; DEFINITIONS**

1.01. BASIC TERMS. The following is a summary and definitions of some of the basic terms and provisions of this Lease, which shall not limit any of the other terms and provisions of this Lease:

(a) **DEMISED PREMISES.** That portion of the Building shown on **Exhibit A**, which the parties stipulate will contain approximately 45,00 rentable square feet of space, consisting of approximately 3,000 square feet of office and restroom facilities and approximately 42,00 square feet of shop/storage space. The street address of the Demised Premises is 2415 Catalina Drive, Odessa, Texas, 79763 .

(b) **BUILDING.** The building or complex of buildings of which the Demised Premises are a part (the “Building”).

(c) **PROJECT.** The Building and the real estate located in the City of Odessa, State of Texas, upon which the Building will be located, which includes Common Areas, if any, together with all hereditaments and appurtenances pertaining thereto (the “Project”). The real estate on which the Project is located is described in **Exhibit B**.

(d) **PERMITTED USES.** Storage of supplies and material, and related office space.

(e) **BASE RENT.** Base Rent is as follows: \$3.466 per square foot, per year (\$13,000.00 per month) beginning with the Commencement Date hereof, including any partial month at Lease Commencement, and for the Term of the Lease.

(f) **ADDITIONL RENT (REAL ESTATE TAXES).** The Tenant shall an additional

\$1500.00 per month for years 1-2 in lieu of Real Estate Taxes; for years 3-4, said amount to be increased 1/12 of the amount of increase of Real Estate Taxes of Year 2 over the Taxes for the Tax Year 2017. This amount will be similarly adjusted in Years 5, 7, and 9.

(g) ADDITIONL RENT (INSURANCE): Tenant shall provide Property, Liability & Business Interruption Insurance in an amount mutually agreed upon .

(h) TERM. Term Ten (10) years, plus, in the event the Commencement Date does not occur on the first (1st) day of a calendar month, the period from and including the Commencement Date to and including the last day of the calendar month in which the Commencement Date occurs (the "Term").

(i) OPTION TO RENEW: Tenant is hereby granted two options(s) to extend the term of this lease period of five (5) years each. These option periods shall be referred to as the "Extended Term" of this Lease. The Extended Term shall be governed by same covenants and conditions as the primary Term, except that Base Rent shall be adjusted as set forth herein. If Tenant desires to continue this Lease for the Extended Term, Tenant must give written notice to that effect to the Landlord on or before 180 days prior to the expiration of the primary Term or any option period within the Extended Term. For the first five year Extended Term option period, if any, Base Rent shall be \$14,300 per month; the second five year Extended Term option period, if any, Base Rent shall be \$15,300 per month).

(j) COMMENCEMENT DATE. The "Commencement Date" is the date which is seven (7) business days after Landlord obtains a Certificate of Occupancy for the Building. (Temporary or Permanent)

(k) SCHEDULED COMMENCEMENT DATE. June 1, 2017 (the "Scheduled Commencement Date") is the date that the parties anticipate will be the Commencement Date.

(l) LANDLORD'S WORK. The work described as "Landlord's Work" on **Exhibit C** ("Landlord's Work").

(m) TENANT IMPROVEMENT ALLOWANCE. Not applicable, as confirmed in **Exhibit D** hereto.

(n) SECURITY DEPOSIT. None.

(o) NOTICE ADDRESSES.

A. LANDLORD'S NOTICE ADDRESS:

Caldera Lone Star, LLC.
P.O. Box 4678, Odessa, Texas, 79760

3205 Kermit Highway
Suite 20
Odessa, TX 79764

Telephone: (432)580-8600
Fax (432)580-8602

WITH COPY TO:

Rick Browning
Attorney At Law
5050 East University, Suite One
Odessa, Texas , 79762
Telephone: (432) 368-5974
Fax: (432) 367-9706

B. TENANT'S NOTICE ADDRESS:

Ector County Independent School District
802 N. Sam Houston Avenue
Odessa, Texas 79761

Telephone: (432) 456-9879

WITH COPY TO:

Odessa, Texas
Telephone: (432)

as any such address may be changed from time to time, in writing, and provided to the other parties at the other's Notice Address.

1.02. DEFINITIONS. In addition to the defined terms set forth in **Section 1.01**, Landlord and Tenant agree that, as used in this Lease, the following words and phrases have the following meanings:

(a) **ACCESSIBILITY REGULATIONS.** The Americans with Disabilities Act of 1990, and any other federal, state or local law, statute, code, ordinance, rule or regulation requiring the provision of access or other accommodations to persons with disabilities, all as amended from time to time during the Term.

(b) **ADDITIONAL RENT.** All payments (other than Base Rent) required to be made by Tenant under this Lease, whether to Landlord or to third parties.

(c) **ALTERATIONS.** Any alterations, improvements or physical additions to the Demised Premises made or proposed to be made by Tenant, including, without limitation, Tenant's Work.

(d) **AWARD.** The award for or proceeds of any Taking less all expenses in connection therewith, including reasonable attorneys' fees.

(e) **COMMON AREAS.** There are no common areas on or appurtenant to the Building, Project, or Demised Premises.

(f) **DEFAULT.** As defined in **Section 14.01** for Tenant and **Section 14.02** for Landlord.

(g) **ENVIRONMENTAL LAWS.** Any law, statute, ordinance, code, rule, regulation, order

or decree relating to human health or safety or the environment or governing, regulating or pertaining to the generation, treatment, storage, handling, transportation, use or disposal of Hazardous Substances, presently in effect or that may be enacted, adopted, promulgated or issued in the future, as amended from time to time, including, but not limited to, the following: (i) Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; (ii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 40 U.S.C. §§ 1801 et seq.; (iii) Clean Air Act, 42 U.S.C. §§ 7401-7626; (iv) Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. §§ 1251 et seq.; (v) Insecticide, Fungicide, and Rodenticide Act (Pesticide Act of 1978), 7 U.S.C. §§ 136 et seq.; (vi) Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; (vii) Safe Drinking Water Act, 42 U.S.C. §§ 300(f) et seq.; (viii) National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.; and (ix) Refuse Act of 1899, 33 U.S.C. §§ 407 et seq.

(h) FORCE MAJEURE. Any period of delay which arises from or through: Acts of God; strikes; explosion; sabotage; accident; riot or civil commotion; act of war; fire or other casualty; legal requirements; or any other causes beyond the reasonable control of Landlord.

(i) HAZARDOUS SUBSTANCES. Any petroleum base products, pesticides, paints and solvents, polychlorinated biphenyl, asbestos, asbestos containing materials, lead, cyanide, DDT, acids, ammonium compounds and other chemical products and any substance or material defined or designated as a hazardous or toxic substance, or other similar term, by any Environmental Law.

(j) MORTGAGE. Any mortgage, deed to secure debt, trust indenture or deed of trust which may now or later encumber or be a lien upon the Project or any part thereof, or Landlord's interest therein, and any renewals, modifications, consolidations, replacements and extension of any of the foregoing.

(k) MORTGAGEE. The holder or beneficiary of a Mortgage.

(l) OPERATING EXPENSES. "Operating Expenses" shall include only the following: (i) the costs and expenses paid or incurred with respect to the Management of Project during the Term and any Extended Term of this Lease, not to exceed \$0 per year; (ii) to the extent not separately metered, billed, or furnished to Tenant, all charges for utilities and services furnished to either or both of the Property and the Demised Premises during the Term and any Extended Term, together with any taxes on such utilities; (iii) all premiums for any fire and casualty insurance provided by Landlord relating to the Property and applicable to the Term and any Extended Term; and (iv) all real property taxes assessed and paid by Landlord for the Demised Premises during the Term of this Lease and covering the period in which this Lease is in force. There are no common areas on or appurtenant to the Building, Project, or Demised Premises, and no Common Area Maintenance Expenses shall be included within these Operating Expenses.

(m) PLANS AND SPECIFICATIONS. TENANT ACCEPTS BUILDING "AS IS, WHERE IS".

(n) RENT. Collectively, Base Rent and Additional Rent.

(o) SUBSTANTIAL COMPLETION. TENANT ACCEPTS BUILDING "AS IS, WHERE IS".

(p) TAKING. The taking of, or damage to, the Demised Premises or the Project or any portion thereof, as the case may be, as the result of the exercise of any power of eminent domain, condemnation or purchase under threat thereof or in lieu thereof.

(q) TAKING DATE. The date on which the condemning authority shall take physical possession of the Demised Premises or the Project or any portion thereof, as the case may be.

(r) TENANT DELAY. A delay in Landlord's timely performance of an obligation of Landlord under this Lease caused by an act or omission of Tenant, or its directors, officers, employees, agents, contractors and subcontractors.

**ARTICLE II.
LEASE AND ACCEPTANCE OF THE DEMISED PREMISES;
TENANT IMPROVEMENTS AND ALLOWANCE**

2.01. LEASE OF DEMISED PREMISES. Landlord represents to Tenant that Landlord is the sole owner of the Project. Landlord hereby leases the Demised Premises to Tenant, and Tenant hereby accepts

the Demised Premises from Landlord, upon the terms and conditions set forth in this Lease.

2.02. LANDLORD'S WORK: TENANT ACCEPTS BUILDING "AS IS, WHERE IS".

2.03. TENANT'S WORK. Tenant shall perform all of Tenant's Work. All of Tenant's Work shall be performed in accordance with and shall be subject to the terms and conditions of **Article V** and **Exhibit E**. Landlord shall permit Tenant, its agents, employees and representatives, access to the Demised Premises for purposes of performing Tenant's Work during the thirty (30) day period prior to the Scheduled Commencement Date.

2.04. CONDITION OF DEMISED PREMISES. Landlord represents and warrants that the Demised Premises will be fit for use for the Permitted Uses as set forth in this Lease. At the time possession is delivered to Tenant, the Demised Premises shall comply with all laws, rules, regulations, orders, ordinances, building codes, Accessibility Regulations, and requirements of all federal, state, and municipal government departments, commissions, boards, and officers, and all orders, rules, and regulations of the National Board of Fire Underwriters, the Texas Board of Fire Underwriters, or any other agency or agencies, body or bodies exercising similar functions that may be applicable to the Demised Premises and to the sidewalks, passageways, alleyways, curbs, and vaults adjoining the same or to the use or manner of use of the Demised Premises or the owners, tenants, or occupants thereof, Landlord's obligations under this provision shall survive Tenant's acceptance of the Demised Premises.

2.05. RIGHTS RESERVED TO LANDLORD. Landlord reserves the right to do any of the following at any time and from time to time:

- (a) Landlord grants to Tenant the exclusive right to the Building;
- (b) Control the use of the roof and exterior walls of the Building for any purpose; and
- (c) Enter the Demised Premises from time to time upon reasonable prior notice (except in cases of emergency) to: (i) examine, inspect and protect the Demised Premises; (ii) make any repairs, replacements or alterations which Landlord may be required to perform under this Lease, or which Landlord may deem desirable for the Demised Premises; (iii) exhibit the Demised Premises to prospective purchasers or Mortgagees; or (iv) exhibit the same to prospective tenants during the last six (6) months of the Term.
- (d) No exercise of any of the foregoing rights by Landlord shall give rise to any claim for damages against Landlord, entitle Tenant to any abatement of or offset against Rent, or constitute an actual or constructive eviction of Tenant; provided that Landlord shall not exercise any of the foregoing rights in a manner which would materially deprive Tenant of the benefit and enjoyment of the Demised Premises for the Permitted Uses.

ARTICLE III. TERM

3.01. TERM. The Term shall commence on the Commencement Date and shall expire on the last day of the Term, unless sooner terminated as herein provided. At the request of Landlord, the parties will sign a certificate setting forth the Commencement Date and the date upon which the Term will expire, in the form of **Exhibit E**. On the date on which this Lease expires or terminates, Tenant shall return possession of the Demised Premises to Landlord in good condition, except for ordinary wear and tear, and except for other conditions that Tenant is not required to remedy under this Lease.

3.02. CERTIFICATE OF OCCUPANCY. It is agreed and understood by the Parties that all of the rights and responsibilities of the Tenant as herein recited are expressly contingent and conditioned upon the issuance and continuation during the Term and any Extended Term of this Lease of a Certificate of

Occupancy by the Building Department and all other governmental agencies, including the Fire Department, having jurisdiction thereof, which authorizes the access, use and occupancy of the Building for all Permitted Uses as defined in **Section 1.01(d)** hereof; otherwise, this Lease shall have no legal force or effect whatsoever. It is further understood that Tenant proposes to use the Demised premises for storage. The Parties agree that each will cooperate and assist by all reasonable means to obtain the requisite Certificate of Occupancy.

3.03. DELAY IN POSSESSION. Except for the provisions of **Section 3.02** above, to which this paragraph is made expressly subject to, this Lease shall be deemed a binding obligation of the parties regardless of when the Commencement Date occurs, and the Term shall continue to run for the full length of the Term, unless sooner terminated as herein provided. Landlord shall not be subject to any liability for any delay in completion of Landlord's Work or delivery of possession of the Demised Premises to Tenant, Tenant's sole remedy for any such delay being the abatement of Rent until the Commencement Date. Nonetheless, if the Commencement Date does not occur on or before September 1, 2014, Tenant shall have the right to declare this Lease null and void without further liability or obligation.

ARTICLE IV. RENT

4.01. BASE RENT. Tenant agrees to pay Base Rent to Landlord at Landlord's Notice Address. The first monthly installment of Base Rent shall be payable on the Commencement Date, and each subsequent monthly installment of Base Rent shall be due and payable in advance on the first day of the month

during the Term. If the Commencement Date is not the first day of a calendar month, or if the last day of the Term is not the last day of a calendar month, the payment of Base Rent due in the first or last calendar month of the Term, as the case may be, shall be prorated at a daily rate.

4.02. OPERATING EXPENSES.

(a) For each calendar year or portion thereof during the Term, Tenant shall pay, as Part of the base Rent, all annual Operating Expenses for the calendar year (or portion thereof) in question, which Additional Rent shall be due and payable within ten (10) days after Landlord's invoice therefor, accompanied by a statement setting forth all of the Operating Expenses claimed. Landlord, at its option, may require Tenant to pay monthly, in advance, together with the payment of Base Rent, an amount equal to (i) Landlord's estimate of Tenant's Pro Rata Share of Operating Expenses for the current calendar year (which estimate may be revised by Landlord from time to time), less the amount of any Operating Expenses previously paid by Tenant for such calendar year, divided by (ii) the number of months remaining in such calendar year as of the date Landlord's estimate (or any revision thereof) is given to Tenant.

(b) Within sixty (60) days after the end of each calendar year, Landlord will provide Tenant with a statement in reasonable detail of the Operating Expenses payable by Tenant for such previous calendar year (with credit to Tenant for any monthly estimated payments paid by Tenant). If the total payments made by Tenant exceed Tenant's Pro Rata Share of the actual Operating Expenses, such excess will be credited to the next monthly installments due from Tenant. If Tenant's Pro Rata Share of actual Operating Expenses exceeds the payments actually made by Tenant, Tenant shall pay such deficiency within thirty (30) days after Landlord's delivery of the statement. Tenant's obligation to pay any deficiency and Landlord's obligation to refund any surplus shall survive the termination, expiration, and/or nonrenewal of this Lease.

4.03 ADDITIONAL RENT. All remedies applicable to the nonpayment of Base Rent shall apply to the nonpayment of Additional Rent.

4.04 NO OFFSET. Except as otherwise provided herein, Base Rent and Additional Rent shall be paid without demand, setoff, deduction or counterclaim of any nature whatsoever.

4.05. INTEREST/LATE FEE. In the event any monthly installment of Base Rent or installment of Additional Rent, or both, is not paid within 10 days of the date when due, Tenant shall pay one late charge in an amount equal to 3% of the then delinquent installment of Base Rent and/or Additional Rent (the "**Late Charge**"). Notwithstanding the foregoing, Tenant shall be entitled to make one (1) late payment in each calendar year without payment of any Late Charge, so long as the late payment is received by Landlord within seven (7) days of receipt by Tenant of Landlord's notice of its failure to timely receive any payment of Base Rent or Additional Rent.

ARTICLE V. ALTERATIONS

5.01. ALTERATIONS.

(a) Tenant may make any Alterations without the prior written consent of Landlord, unless the Alteration is "material," in which event the written consent of Landlord shall be required. Such consent shall not be unreasonably withheld. Any Alteration affecting the structure of the Building or the electrical, mechanical or plumbing systems of the Building or requiring penetration of the roof, walls or

floor of the Building or the Demised Premises, and any other Alteration which is expected to cost in excess of \$25,000, shall be considered a “material” Alteration.

(b) If requested by Landlord, Tenant shall provide to Landlord, before commencement of any Alteration or delivery of any materials to be used therefor, complete and final plans and specifications, names and addresses of contractors, copies of contracts and necessary permits and licenses. Upon completion of any Alteration, Tenant shall, if requested by Landlord, furnish Landlord with “as built” plans and specifications.

5.02. MECHANICS' LIENS. If any mechanic’s, materialman’s or similar lien is filed against the Demised Premises, the Building or the Project solely as a result of any work or act of Tenant, its contractors or agents, Tenant shall cause the discharge of the lien within fifteen (15) days after the filing of the lien; or within such fifteen (15) days after the filing of the lien Tenant shall file a bond, letter of credit or other security sufficient to indemnify Landlord and the Project from and against such lien, provided that Tenant diligently contests such lien thereafter. If Tenant shall fail to cause the discharge of the lien, or to provide such security against such lien, Landlord may, after ten (10) days’ written notice to Tenant, but shall not be obligated to, bond or pay the lien or claim for the account of Tenant without inquiring into the validity thereof. In such event, Tenant shall promptly reimburse Landlord the amount so advanced or the costs and expenses of such bond. Landlord shall have the right to post a notice in the Demised Premises disclaiming any liability for payment for any Alterations performed by persons or entities other than Landlord or its contractors, and/or for any liens arising in connection therewith, and Tenant agrees not to disturb any such notice.

ARTICLE VI. LANDLORD’S SERVICES

6.01 UTILITIES. Landlord hereby warrants and represents to Tenant that the sanitary and storm sewers and all utilities, including, but not limited to, gas, water, and electricity, will be available by a public utility company or companies.

ARTICLE VII. TENANT’S OBLIGATIONS

7.01. REPAIRS AND MAINTENANCE BY TENANT. Except for the repairs Landlord is specifically obligated to make under this Lease, Tenant shall perform, at its expense, all maintenance and repairs of and to the Demised Premises, any fixture, systems or utilities located within or exclusively serving the Demised Premises and entirely within Tenant’s control, and exterior landscaping. Tenant shall keep such fixtures, systems, utilities and equipment in reasonably good order and repair and in a clean, sanitary, safe and tenantable condition, including, without limitation, replacing all broken glass with glass of the same quality. Tenant also shall pay for any repairs to the Demised Premises, the Building or the Project which Landlord is obligated to make pursuant to **Section 6.01** when such repairs are necessitated by any act or omission of Tenant, its agents, employees, contractors or invitees, or by the failure of Tenant to perform its obligations under this Lease.

7.02. APPROVAL BY LANDLORD OF REPAIRS. Tenant shall give written notice to Landlord before any material repair work is performed, and any such work shall be performed in accordance with and subject to the terms and conditions of **Article V**. A “material repair” is any which costs more than \$25,000.00.

7.03. USE. Tenant shall use the Demised Premises only for the Permitted Uses and for no other use or

purpose whatsoever, and Tenant shall observe and comply promptly, at its expense, with all present and future laws, codes, ordinances, regulations, governmental requirements and insurance requirements relating to or affecting the use or occupancy of the Demised Premises. Tenant shall not: (i) do or permit anything to be done in or about the Demised Premises which will in any way obstruct or interfere with the rights of other tenants of the Building; (ii) cause, maintain or permit any nuisance in, on or about the Demised Premises or commit or allow to be committed any waste in, on or about the Demised Premises; or (iii) do or permit anything to be done in or about the Demised Premises which would increase the existing rate of insurance on the Building or any portion thereof or cause any cancellation of any insurance policy covering the Building or any portion thereof.

7.04 SURRENDER. Upon the expiration of the Term or earlier termination thereof, Tenant shall peacefully and quietly quit and surrender the Demised Premises to Landlord in the condition required by this Lease.

7.05. UTILITIES. Tenant shall contract directly with the applicable service providers for any electric, gas, water, sewer, telecommunications, and any other utility service furnished to the Demised Premises during the Term. Tenant shall pay when due all charges for electricity, heat, air conditioning, water, gas, fuel, sewage usage, garbage disposal, refuse removal, telephone and any other utility service furnished to the Demised Premises during the Term. Any utilities not separately metered to Tenant and not described in **Exhibit F** shall be included as Operating Expenses under **Article IV**.

7.06 SIGNS. Tenant, at Tenant's sole cost and expense, shall have the right to install one (1) exterior building sign in a location to be reasonably mutually agreed by Landlord and Tenant. Such installation shall be in compliance with applicable statutes, regulations and ordinances and shall be of such size as shall be reasonably approved by Landlord. Tenant shall remove such sign at the expiration or termination of this Lease, whichever occurs earlier. Tenant shall repair any damages arising from the installation, maintenance or removal of such sign. No other sign, advertisement or notice shall be inscribed, painted or affixed on any part of the outside of the Demised Premises or the Building unless of such color, size and style and in such place upon the Demised Premises or the Building as shall first be approved by Landlord.

ARTICLE VIII. ENVIRONMENTAL AND ADA COMPLIANCE

8.01. ENVIRONMENTAL.

(a) Neither party shall, and shall not permit its officers, agents, employees, contractors, subtenants, licensees or invitees to, transport, store, handle, warehouse, use, generate, treat, dispose of or release any Hazardous Substances in or on the Project.

(b) Paragraph (a) of this **Section 8.01** shall not be deemed to prohibit the incidental storage or use of Hazardous Substances in the ordinary course of Tenant's or Landlord's business, provided that (i) the nature, quantity and manner of storage or use of such Hazardous Substances are such as do not require any permit, license or other governmental approval under applicable Environmental Laws, (ii) such storage or use is in strict compliance with all applicable Environmental Laws, and (iii) all such Hazardous Substances shall be removed from the Demised Premises, the Building and the Project, at Tenant's expense, on or before the expiration or termination of this Lease.

(c) Landlord and Tenant shall immediately notify each other if at any time during the Term (i) Either party becomes aware of any spill, disposal, discharge or other release of any Hazardous Substance in or on the Demised Premises, the Building or the Project, however caused; or (ii) Either party receives any notice of investigation, notice of potentially responsible person status, request for information, demand for response action, or other inquiry, request or demand, however identified, from any federal, state or local governmental agency or entity with respect to any activity on or condition of the

Demised Premises, the Building or the Project that affects or allegedly affects human health or safety or the environment.

(d) If it is discovered that a Hazardous Substance exists in, on or about the Demised Premises, the Building or the Project as a result of Tenant's use or occupancy thereof, or in violation of Tenant's obligations under this Lease, then Tenant shall remove such Hazardous Substance within ten (10) days following notice thereof, such removal to be performed in strict compliance with all applicable Environmental Laws and all requirements of Landlord. If such removal is not performed within said period, Landlord shall have the right to enter the Demised Premises and remove the Hazardous Substance and charge Tenant with the cost of removal and all damages (including, but without limitation, lost rents from the Demised Premises and other portions of the Building), which amount shall be payable upon demand.

(e) Landlord warrants that it has provided Tenant with a true copy of all Phase I and other environmental surveys or reports for the Project, the Demised Premises, and the Building which are known to or available to Landlord.

(g) Notwithstanding anything to the contrary contained herein, Tenant understands that it is accepting the Demised Premises "as is" with regard to environmental matters, and Tenant agrees to indemnify and hold harmless Landlord and Landlord's lender from any loss, cost, or expenses arising from any Hazardous Substances other than: (i) matters referring or relating to those issues set forth in the environmental site assessment documents obtained by Landlord with respect to the real property upon which the Project, the Demised Premises, and the Building will be located; (ii) matters caused solely by Landlord; (iii) matters not caused by Tenant; and/or (iv) matters arising prior to the Term of this Lease. Tenant's obligations hereunder are contingent upon Tenant's approval of the environmental reports to be provided to Tenant by Landlord, which will be provided to Tenant by Landlord when they are available following execution of this Lease.

8.02. ADA COMPLIANCE. Landlord's Work for improvements to the Demised Premises shall be initially constructed in accordance with all then applicable municipal, county, state and federal statutes, laws, ordinances and regulations (collectively "Legal Requirements"). Tenant shall cause all Alterations to comply with all then applicable Legal Requirements.

ARTICLE IX.
TRANSFER OF INTEREST, PRIORITY OF LIEN

9.01. ASSIGNMENT OR SUBLEASE BY TENANT.

(a) Tenant may not, voluntarily or involuntarily, by operation of law or otherwise, assign, mortgage, pledge or otherwise transfer or encumber this Lease or any interest therein, or sublease the whole or any part of the Demised Premises, without the prior written consent of Landlord.

(b) Any required prior written consent of Landlord to any such proposed assignment, transfer or sublease shall not be withheld unreasonably, if: (i) the proposed assignee or subtenant is creditworthy considering the obligations to be assumed under this Lease and any applicable sublease; (ii) the proposed assignment or sublease is for a Permitted Use substantially similar to the use being made of the Demised Premises by Tenant, and the assignee or subtenant has reasonable experience and expertise in operating such a business; (iii) no Default shall be in existence at the time of the request for consent or at the time of the assignment or sublease; and (iv) if the consent of any Mortgagee to such assignment or sublease is required, such consent has been obtained at Tenant's expense. If the foregoing conditions are not satisfied, Landlord's consent to the proposed assignment or sublease may be withheld in Landlord's sole and absolute discretion.

(c) If Tenant requests Landlord's consent to a specific assignment or subletting, Tenant will submit in writing to Landlord: (i) the name and address of the proposed assignee or subtenant; (ii) a counterpart of the proposed agreement of assignment or sublease executed by the assignee or subtenant; (iii) information reasonably satisfactory to Landlord as to the nature and character of the business of the proposed assignee or subtenant, and as to the nature of its proposed use of the space; (iv) banking, financial or other credit information sufficient to enable Landlord to determine the financial responsibility and character of the proposed assignee or subtenant; and (v) any other information reasonably requested by Landlord.

(d) If Landlord consents to any proposed assignment or sublease, then (i) Tenant shall remain primarily liable for all of Tenant's obligations under this Lease, (ii) any assignee shall expressly assume in writing all of Tenant's obligations hereunder, and any subtenant shall agree in writing to be bound by and subject to all of the terms and conditions of this Lease, (iii) one-half (1/2) of any rent or other consideration payable by the proposed assignee or subtenant to Tenant in excess of amounts due under this Lease (after deducting Tenant's reasonable and necessary expenses incurred in connection with such assignment or subletting) shall be paid to Landlord, and (iv) Tenant shall reimburse Landlord upon demand for all costs and expenses, including reasonable attorneys' fees, actually incurred by Landlord in connection with such assignment or sublease, up to a maximum of \$2,500.00.

9.02. SUBORDINATION. Subject to **Section 9.03**, this Lease shall be subject and subordinate to the lien of any present or future Mortgage, Deed of Trust or other consensual lien of Landlord, irrespective of the time of execution or the time of recording of the Mortgage. Landlord warrants and represents that there are no present liens or encumbrances against the Project, the Demised Premises, or the Building except as set forth in **Exhibit G**. Notwithstanding the foregoing, any Mortgagee may, from time to time, by giving notice to Tenant, elect that its Mortgage be subordinate to this Lease, which election shall be effective upon the giving of such notice. Upon Landlord's request, from time to time, Tenant shall confirm in a recordable written instrument, in such form as may be required by any Mortgagee, that this Lease is so subordinate or so paramount to the lien of such Mortgagee's Mortgage (as the Mortgagee may elect).

9.03. ATTORNMENT AND NON-DISTURBANCE. If the Demised Premises is encumbered by a Mortgage and the Mortgage is foreclosed, or if the Demised Premises is sold pursuant to foreclosure or by

reason of a default under a Mortgage, the following shall apply notwithstanding **Section 9.02**, the foreclosure, the sale, or the default: (i) Tenant shall not disaffirm this Lease or any of its obligations under this Lease; and, (ii) at the request of the Mortgagee or purchaser at the foreclosure or sale, Tenant shall agree to perform this Lease for the benefit of the Mortgagee or purchaser, provided that Tenant's right to continued use of the Demised Premises is not adversely affected thereby and provided further that the Mortgagee or purchaser agrees to perform all of Landlord's obligations under this Lease. Landlord, Tenant and Landlord's Mortgagees will execute a Non-Disturbance and Attornment Agreement substantially in the form of **Exhibit H**. Any Mortgage entered into by Landlord after the date of this Lease shall provide, or Landlord shall obtain by separate agreement from the Mortgagee, that in the event of a foreclosure of such Mortgage, or the acquisition of the Demised Premises, the Building or the Project by the Mortgagee by deed in lieu of foreclosure, the Mortgagee, its successors and assigns, will not terminate this Lease provided that Tenant is not in default hereunder and continues to perform all of its obligations and pay all amounts due hereunder. In the event of a sale or transfer of the Demised Premises, the Building or the Project, any transferee shall be bound to perform all of the obligations of Landlord under this Lease. Any Mortgagee, Lender or other Creditor secured by a consensual lien against the Project, the Demised Premises, or the Building, shall perform the obligations of Landlord under this Lease in the event of a foreclosure and upon failure to do so, Tenant shall have the right to set off any claims it has under this Lease against any Base Rent or Additional Rent due under this Lease.

9.04. MORTGAGEE PROTECTION. Tenant agrees to give any Mortgagee who has executed a Non-Disturbance and Attornment Agreement, by certified mail, return receipt requested, a copy of any notice of default served upon Landlord, provided that Tenant has been notified previously in writing of the address of such Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then any Mortgagee shall have an additional thirty (30) days within which to cure such default; provided, however, that if such default cannot be cured with diligence within that time, then such Mortgagee shall have such additional time as may be necessary to cure such default so long as such Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default. In the event of the sale of the Building by foreclosure or deed in lieu thereof, the Mortgagee or purchaser at such sale shall not be (i) personally liable for any act or omission of Landlord occurring prior to such sale, (ii) bound by any payment of Base Rent or Additional Rent made more than one month in advance, (iii) responsible for the return of the Security Deposit, except to the extent that such Mortgagee or purchaser actually received the Security Deposit, all subject to Tenant's rights of set-off as provided herein.

9.05. TRANSFER OF LANDLORD'S INTEREST.

(a) The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee in possession for the time being of the Building. In the event the Demised Premises, the Building or the Project is sold or otherwise transferred, the transferring Landlord shall continue to be bound by the terms of this Lease, unless prior written consent of Tenant is given thereto. Notwithstanding the foregoing, the Landlord named initially in this Lease shall have the right to assign its rights hereunder to a business entity created by and affiliated with such Landlord at or before the Lease Commencement Date, provided that the Landlord named herein personally joins in such assignment.

(b) Said written consent shall not be unreasonably withheld, if: (i) the proposed transferee is creditworthy considering the obligations to be assumed under this Lease and any applicable sublease; (ii) the transferee acknowledges in writing that it will be liable for the performance of all obligations pursuant to this Lease, and that it assumes all such obligations; (iii) no Default shall be in existence at the time of the request for consent or at the time of the transfer; (iv) the proposed transferee is not a business

competitor of Tenant; and (v) the consent and agreements as required under this Lease of any creditor of transferee secured or to be secured by the Demised Premises, the Building or the Project is secured and provided to Tenant. If the foregoing conditions are not satisfied, the transferring Landlord shall continue to be bound by all of the terms of this Lease.

(c) If Landlord requests that Tenant consent to the transfer of Landlord's Lease obligations, Landlord will submit in writing to Tenant: (i) the name and address of the proposed transferee; (ii) information reasonably satisfactory to Tenant as to the nature and character of the business of the proposed transferee; (iii) banking, financial or other credit information sufficient to enable Tenant to determine the financial responsibility and character of the proposed transferee; and (iv) any other information reasonably requested by Tenant.

(d) Landlord shall reimburse Tenant upon demand for all costs and expenses, including reasonable attorneys' fees, actually incurred by Landlord in connection with any such request under this **Section 9.05**, up to a maximum of \$2,500.00.

9.06 TENANT'S ESTOPPEL CERTIFICATE

Within ten (10) days after each request by Landlord, Tenant shall deliver a certificate to Landlord, in writing, acknowledged and in proper form for recording. Each certificate shall be certified to Landlord, any Mortgagee, any assignee of any Mortgagee, any purchaser, or any other person specified by Landlord. Each certificate shall contain the following information certified by the person executing it on behalf of Tenant: (i) whether Tenant is in possession of the Demised Premises; (ii) whether this Lease is modified and in full force and effect (or, if there has been a modification of this Lease, whether this Lease is in full force and effect as modified); (iii) whether Landlord is in default under this Lease in any respect; (iv) whether there are then any claimed defenses against the enforcement of any right or remedy of Landlord, or any duty or obligation of Tenant (and if so, specifying the same); (v) the dates, if any, to which any Rent or other charges have been paid in advance; and (vi) any other information reasonably requested by Landlord. Within ten (10) days after each request by Tenant, Landlord shall deliver a similar certificate to Tenant.

ARTICLE X. CASUALTY

10.01. RENT ABATEMENT. Tenant shall immediately notify Landlord of the occurrence of any fire, casualty or other damage to the Demised Premises or the Building. If all or any portion of the Demised Premises is damaged or rendered unusable by fire or casualty covered by a standard all risk form of property insurance policy, and any such fire or casualty is not due to the misconduct of Tenant or its agents, employees, contractors, subtenants or invitees, and this Lease is not terminated pursuant to any provisions of this Lease, then Base Rent and Tenant's obligation to pay Operating Expenses shall abate from the date of the casualty in the proportion that the area of the portion of the Demised Premises rendered unusable for the Permitted Uses bears to the entire areas of the Demised Premises. The abatement shall continue until the Demised Premises, or the portion thereof which shall have been damaged, is again fully usable for the Permitted Uses.

10.02. OPTIONS TO TERMINATE. If, at any time during the Lease Term, the Demised Premises incur "Substantial Damage" (as hereinafter defined) by a fire or other casualty, Landlord shall notify Tenant within ten (10) business days after such damage as to the amount of time a third party fire damage consultant chosen by Landlord reasonably estimates it will take to restore the Demised Premises. "Substantial Damage" shall mean damage to or destruction of the Demised Premises that affects twenty-five percent (25%) or more of the floor area leased by Tenant. If there occurs during the Lease Term Substantial Damage and restoration time is estimated to exceed ninety (90) days following the date

Landlord receives the report from the fire damage consultant, either Landlord or Tenant may elect to terminate this Lease upon written notice to the other party given no later than ten (10) business days after Landlord's notice is given, except neither party may terminate this Lease if the Substantial Damage was caused by the willful misconduct of said party. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take ninety (90) days or less, then Landlord shall promptly, and with all commercially reasonable diligence, restore the Demised Premises, excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to Force Majeure events; and this Lease shall remain in full force and effect.

10.03. OBLIGATION TO REBUILD. If all or any portion of the Demised Premises is damaged as provided in **Section 10.01**, and this Lease is not terminated as provided in **Section 10.02**, then Landlord shall repair or rebuild the Demised Premises to substantially the same condition the Demised Premises was in immediately prior to the casualty, provided that Landlord's repair obligation shall include only those tenant improvements originally included in Landlord's Work. Tenant shall, at its sole expense, repair or replace all items of Tenant's Work, any Alterations and Tenant's personal property. The repair or rebuilding shall be commenced within a reasonable time after the casualty.

10.04. WAIVER OF SUBROGATION. Landlord and Tenant hereby release each other and each other's officers, directors, partners, employees and agents from liability or responsibility for any loss or damage to property covered by any property insurance required to be carried by such party pursuant to this Lease or any other property insurance actually carried by such party to the extent of the limits of such policy. This release shall apply not only to liability and responsibility of the parties to each other, but shall also extend to liability and responsibility for anyone claiming through or under the parties by way of subrogation or otherwise. This release shall apply even if the fire or other casualty shall have been caused by the fault or negligence of a party or anyone for whom a party may be responsible. This release shall not apply to loss or damage unless the loss or damage occurs during the times that the applicable insurance policy contains a clause or endorsement to the effect that any release shall not adversely affect or impair the policy or prejudice the right of the insured to recover thereunder. Landlord and Tenant each agree that any property insurance policies covering the Building or the Demised Premises or their contents shall include this clause or endorsement.

ARTICLE XI. CONDEMNATION

11.01. TOTAL OR SUBSTANTIAL TAKING OF DEMISED PREMISES. If all of the Demised Premises shall be taken, except for a Taking for temporary use, this Lease shall be terminated automatically as of the day prior to the Taking Date. If a substantial part of the Demised Premises, the Building or the Project shall be taken for other than a temporary use, and such Taking renders the Demised Premises unsuitable, in the reasonable judgment of Landlord and Tenant, for the Permitted Uses, then either Landlord or Tenant may terminate this Lease by giving notice to the other party within two (2) months after the Taking Date, and such termination shall be effective as of the day prior to the Taking Date. "Substantial Taking" shall mean a Taking of twenty-five percent (25%) or more of the floor area of the Demised Premises occupied by Tenant. Landlord shall give Tenant notice within ten (10) days of Landlord's receipt of a notice of Taking.

11.02. ABATEMENT AND RESTORATION. If all or a portion of the Demised Premises shall be taken, except for a Taking for temporary use, and this Lease is not terminated under **Section 11.01**, then (i) Base Rent and shall be reduced in the proportion that the area so taken bears to the entire area of the Demised Premises; and (ii) Landlord shall restore the remaining portion of the Demised Premises to the

extent practical, to render it reasonably suitable for the Permitted Uses, as reasonably determined by Landlord. Landlord shall not be obligated to expend an amount greater than the amount of any Award actually received by Landlord and made available to Landlord by any Mortgagee.

11.03. TAKING FOR TEMPORARY USE. If there is a Taking of all or part of the Demised Premises for temporary use, this Lease shall continue in full force and effect without abatement of Base Rent or Additional Rent, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

11.04. DISPOSITION OF AWARDS. Tenant shall be entitled to any Award made for a temporary Taking as described in **Section 11.03**, but only to the extent such Award is attributable to periods included in the Term of this Lease and only on the condition that Tenant continues to perform all of its obligations hereunder. All other Awards arising from a total or partial Taking of the Demised Premises or of Tenant's leasehold interest awarded to Landlord or Tenant shall belong to and be the property of Landlord without any participation by Tenant. Except as otherwise expressly set forth in this **Section 11.04**, Tenant hereby waives any rights it may have with respect to the loss of its leasehold interest in this Lease and the Demised Premises as a result of a Taking. The foregoing shall not prevent Tenant from making a separate claim for relocation expenses and loss of Tenant's personal property or Alterations paid for by Tenant, to the extent allowed by law.

ARTICLE XII. INDEMNITY AND INSURANCE

12.01. INDEMNIFICATION BY TENANT. Tenant shall indemnify, defend and hold Landlord harmless from and against all liabilities, losses, damages, claims, fines, penalties, costs and expenses actually incurred, including reasonable attorneys' fees and other legal costs actually incurred, which may be imposed upon, incurred by or asserted against Landlord by reason of all or any of the following, except to the extent caused by the negligence or willful misconduct of Landlord, its agents or employees: (a) any defect in the Demised Premises or any part thereof which is Tenant's maintenance responsibility under this Lease; (b) any personal injury, death or property damage occurring on the Demised Premises; (c) any negligence, gross negligence, or willful misconduct on the part of Tenant, its employees, agents, contractors, subtenants, licensees or invitees; (d) any failure of Tenant to comply with any requirement of any governmental authority; (e) any prosecution or defense of any suit or other proceeding in discharging the Project, the Building or the Demised Premises or any part thereof from any liens, judgments or encumbrances created or suffered by Tenant upon or against the same or against Tenant's leasehold estate; and (f) any proceedings in obtaining possession of the Demised Premises from Tenant or its assigns after the termination of this Lease by forfeiture or otherwise. The provisions of this **Section 12.01** shall survive the expiration, nonrenewal, and/or termination of this Lease.

12.02. INDEMNIFICATION BY LANDLORD. Landlord shall indemnify, defend and hold Tenant harmless from and against all liabilities, losses, damages, claims, fines, penalties, costs and expenses actually incurred, including reasonable attorneys' fees and other legal costs actually incurred, which may be imposed upon, incurred by or asserted against Tenant by reason of all or any of the following, except to the extent caused by the negligence, gross negligence, or willful misconduct of Tenant, its agents or employees: (a) any personal injury, death or property damage arising out of any negligence on the part of Landlord, its employees, agents, or contractors (excluding, however, any liability expressly assumed by Tenant in this Lease); (b) any prosecution or defense of any suit or other proceeding challenging Landlord's ownership of the Building or Project or its right to enter into this Lease; and (c) any specific indemnification or warranties in this Lease. The provisions of this **Section 12.02** shall survive the expiration, nonrenewal, and/or termination of this Lease.

12.03. RELEASE OF LANDLORD. All property of any kind that may be on or at the Demised Premises shall be at the sole and absolute risk of Tenant or those claiming through or under Tenant. Except as otherwise indemnified or warranted herein, and unless caused by Landlord's willful misconduct, Landlord shall not be liable to Tenant or to any other person or entity and Tenant hereby releases and waives all claims against Landlord, its agents or employees, due to any of the following occurring in, on or about the Demised Premises, the Building or the Project: (a) damage, loss or injury, either to person or property; (b) loss of property sustained by Tenant, or by any other person, persons or entities; (c) equipment, fixtures, appliances or machinery being or becoming out of repair or defective; (d) the happening of any accident, however occurring; (e) any act or neglect of Tenant, or of any other person, persons or entities; (f) water, snow, rain, backing up of water mains or sewers, frost, steam, sewage, illuminating gas, sewer gas, odors, electricity or electric current, bursting, stoppage or leakage of pipes, radiators, plumbing, sinks and fixtures; (g) theft or burglary resulting in any loss to Tenant or its employees; or (h) any nuisance made or suffered.

12.04. TENANT'S INSURANCE.

(a) Throughout the Term, Tenant shall provide and maintain an all risk form property insurance policy on all of Tenant's fixtures, equipment, machinery, improvements, furniture and personal property, in the amount of the full replacement cost thereof, including coverage against, without limitation, sprinkler and water damage. A copy of such policy will be provided to Landlord on request.

(b) Throughout the Term, Tenant shall provide and maintain a policy of commercial general liability insurance with respect to the Demised Premises, written on an "occurrence" basis, with a combined single limit per occurrence of at least \$2,000,000, and a general aggregate limit of at least \$5,000,000., and including without limitation, personal injury and contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in this Lease. Tenant's liability insurance policy shall name Landlord, any Mortgagee, Landlord's management company, and any designee of Landlord as additional insureds. The policy shall be written by an insurance company licensed to do business in the state where the Building is located and reasonably satisfactory to Landlord. A copy of such policy will be provided to Landlord on request.

(c) All insurance policies required to be carried under this Lease by or on behalf of Tenant shall provide, and Tenant shall provide Landlord with certificates stating that, unless Landlord and each other additional insured shall be given thirty (30) days' written notice of any cancellation or failure to renew or material change to the policies, as the case may be, (i) the insurance shall not be canceled and shall continue in full force and effect, (ii) the insurance carrier shall not fail to renew the insurance policies for any reason, and (iii) no material change may be made in any insurance policy. As used in this Lease, the term "insurance policy" shall include any extensions or renewals of an insurance policy.

(d) At all times during the Term, Tenant will carry and maintain an all risk form property insurance policy covering the Building, in the amount of the full replacement cost thereof, and such other insurance as Landlord reasonably determines from time to time. At Tenant's option, Tenant may obtain, but is not required to obtain, at Tenant's expense and on Landlord's behalf the insurance described in this **Section 12.05**, provided the amount of insurance Tenant wishes to obtain is approved in writing by Landlord. In the event that Tenant exercises this option, Landlord will cooperate reasonably in Tenant's effort to obtain this insurance and to negotiate a reasonable cost thereof.

**ARTICLE XIII.
COVENANT OF QUIET ENJOYMENT**

13.01. Landlord covenants that if Tenant shall pay the Base Rent and Additional Rent and perform all of the terms and conditions of this Lease to be performed by Tenant, Tenant shall during the Term (including any Extended Term) peaceably and quietly occupy and enjoy possession of the Demised Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease, any Mortgage to which this Lease is subordinate and any encumbrances described in **Exhibit G**.

**ARTICLE XIV.
DEFAULTS; REMEDIES**

14.01. TENANT DEFAULTS. Each of the following events shall constitute a Default by Tenant:

(a) Tenant: (i) makes an assignment for the benefit of creditors, (ii) files a petition in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, (iii) fails to cause any such petition filed against Tenant to be dismissed within ninety (90) days, (iv) applies for the appointment of a trustee or receiver for it or all or any portion of its property, or (v) fails to cause any such receivership or trusteeship to be set aside within ninety (90) days after such appointment.

(b) Tenant fails to pay any installment of Base Rent or Additional Rent or any other charge required to be paid by Tenant under this Lease within ten (10) days after the due date thereof or the expiration of any cure period provided herein.

(c) Tenant fails to perform or observe any of its obligations under this Lease and such failure continues for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if such failure cannot reasonably be cured within such 30-day period, a Default shall not exist hereunder if Tenant commences an appropriate cure promptly within such 30-day period and thereafter pursues such cure diligently to completion within a period not to exceed sixty (60) days.

(d) Tenant abandons or vacates the Demised Premises, or fails to take occupancy of the Demised Premises within ten (10) days after the Commencement Date.

14.02. LANDLORD'S DEFAULT. Landlord shall be in Default under this Lease if Landlord fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Landlord under this Lease for a period of thirty (30) days after Tenant's delivery to Landlord of written notice of such Default as provided in this Lease. If, however, such Default cannot, by its nature, be cured within such thirty (30) day period, but Landlord commences and diligently pursues a cure of such Default promptly within such thirty (30) day period and thereafter pursues such cure diligently to completion within a period not to exceed sixty (60) days, Landlord's Default shall be cured as long as the failure or inability to promptly cure does not unreasonably interfere with Tenant's use of the Demised Premises, the Building or the Project.

14.03. LANDLORD'S REMEDIES.

(a) Upon the occurrence of a Default by Tenant, Landlord may, in addition to pursuing any other remedy available to Landlord under this Lease, at law or in equity, either (i) cancel and terminate this Lease, and this Lease shall not be treated as an asset of Tenant's bankruptcy estate, and such termination will not release Tenant from liability for all amounts as provided in subsection (c) hereof; or (ii) terminate Tenant's right to possession only without canceling, terminating or releasing Tenant's

continued liability as set forth in subsection (b) hereof. Notwithstanding the fact that initially Landlord elects to terminate Tenant's right to possession only, Landlord shall have the continuing right to cancel and terminate this Lease at any time thereafter by giving written notice to Tenant.

(b) In the event Landlord elects to terminate Tenant's right to possession only, Landlord may, at Landlord's option, enter into the Demised Premises and take and hold possession thereof, without such entry into possession terminating this Lease, constituting an acceptance of surrender or releasing Tenant in whole or in part from Tenant's obligation to pay all amounts hereunder for the full stated Term. Upon such reentry, Landlord may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, without Landlord becoming liable for any loss or damage which may be occasioned thereby. Such reentry may be conducted in any lawful manner. Upon and after entry into possession without termination of the Lease, Landlord may relet the Demised Premises, or any part thereof, to anyone other than Tenant, for such time and upon such terms as Landlord shall determine. Landlord will use reasonable efforts to relet the Demised Premises. Whether or not Landlord re-enters the Demised Premises, upon the election by Landlord to terminate Tenant's right to possession, Tenant shall be liable to Landlord for (i) all reasonable attorneys' fees and other enforcement costs incurred by Landlord by reason of the Default or in connection with exercising any remedy hereunder; (ii) the unpaid installments of Base Rent or Additional Rent or other unpaid sums which were due prior to such termination of right to possession, including interest and late payment fees, which sums shall be payable immediately; (iii) the installments of Base Rent and Additional Rent and other sums falling due pursuant to the provisions of this Lease for the periods after termination of Tenant's right to possession during which the Demised Premises remain vacant, including interest, which sums shall be payable as they become due hereunder; (iv) all reasonable, actual, out-of-pocket expenses incurred in reletting or attempting to relet the Demised Premises including, without limitation, costs for leasing commissions, remodeling and fixturing, which shall be payable by Tenant as they are incurred by Landlord; and (v) while the Demised Premises are subject to any new lease or leases made pursuant to this subsection (b), for the amount by which the monthly installments payable under such new lease or leases is less than the monthly installments for all Rent and other charges payable pursuant to this Lease, which deficiencies shall be payable monthly.

(c) In addition to the foregoing remedies, Landlord may (but shall not be obligated to) make any payment or do any act required in Landlord's judgment to cure the Default, and charge the cost thereof to Tenant. Such amount shall be due and payable upon demand; however, the making of such payment or the taking of such action by Landlord shall not be deemed to cure the Default or to stop Landlord from pursuing any remedy to which Landlord would otherwise be entitled.

(d) **ADDITIONAL REMEDIES, WAIVERS, ETC.** The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No waiver of a Default shall extend to or affect any other Default or impair any right or remedy with respect thereto. No action or inaction by either party shall constitute a waiver of a Default. The acceptance by Landlord of any Base Rent, Additional Rent or other amounts, whether partial or full payment, shall not constitute an accord and satisfaction or a waiver of any Default. The acceptance of any Base Rent or Additional Rent from any third party shall not constitute a waiver of any of the restrictions of **Article IX**. No waiver of a Default shall be effective against either party unless the same is in writing and is duly executed by an authorized representative of such party. The foregoing shall not apply to any default that has been cured by Tenant and accepted by Landlord.

14.04. TENANT'S REMEDIES. In the event of any default by Landlord under this Lease, Tenant, at its option, and after any applicable notice and cure period, but without additional notice or demand from Tenant, may in addition to all other rights and remedies provided in this Lease, or otherwise at law or in equity: (a) cure the default of Landlord, and (b) have the right to set off any amounts paid or expended by

it to cure any Landlord default against any Base Rent or Additional Rent due from Tenant to Landlord or Landlord's successors. If Tenant elects to cure said default, Tenant may (but shall not be obligated to) make any payment or do any act required in Tenant's judgment to cure the default, and charge the cost thereof, with interest, to Landlord. Such amount shall be due and payable upon demand; however, the making of such payment or the taking of such action by Tenant shall not be deemed to cure the default or to stop Tenant from pursuing any remedy to which Tenant would otherwise be entitled.

ARTICLE XV. MISCELLANEOUS

15.01. INTERPRETATION. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. In the event that any provision of this Lease shall be declared by a court of competent jurisdiction to exceed the scope that such court deems reasonable and enforceable, then the court may modify this Lease to the scope deemed reasonable and enforceable by the court.

15.02. NOTICES. No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, or recognized national overnight courier such as Federal Express, postage or fees prepaid, addressed to each party at such party's Notice Address. Notices shall be deemed given effective on the date of mailing or deposit with the courier as provided in this Section.

15.03. SUCCESSORS AND ASSIGNS. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives and permitted assigns.

15.04. LIABILITY OF LANDLORD. Landlord and its parent, subsidiary and related or affiliated corporations or entities, and its and their officers, directors, shareholders, partners and members shall have no personal liability under any provision of this Lease or with respect to any obligation or liability arising from or in connection with this Lease, except as specifically provided herein.

15.05. LIABILITY OF TENANT. Tenant's parent, subsidiary and related or affiliated corporations or entities, and its and their officers, directors, shareholders, partners and members shall have no personal liability under any provision of this Lease or with respect to any obligation or liability arising from or in connection with this Lease, except as specifically provided herein.

15.06. GOVERNING LAW. This Lease shall be governed by and construed according to the laws of the State in which the Demised Premises are located.

15.07. BROKERAGE. Tenant warrants that it has not dealt with any broker other than the Broker, if any, identified in Article I, in connection with this Lease or concerning the renting of the Demised Premises. Tenant shall indemnify, defend and hold Landlord harmless from and against any claims for brokerage fees, commissions or compensation arising out of any breach of the foregoing warranty. The provisions of this **Section 15.07** shall survive the expiration, nonrenewal, and/or termination of this Lease.

15.08. AUTHORITY. Landlord represents and warrants that: (a) Landlord is a duly authorized and existing business entity; (b) Landlord is qualified to do business in the state in which the Demised Premises is located; (c) Landlord has full right and authority to enter into this Lease; (d) Landlord has taken the necessary corporate action to authorize, execute, and deliver and perform the terms of this

Lease; (e) this Lease is the legal, valid and binding obligation of Landlord enforceable in accordance with its terms; (f) this Lease does not violate any provisions of law or conflict with, result in a breach of, or constitute a default under Landlord's Operating Agreement, Articles of Incorporation, Bylaws or any other agreements to which Landlord is a party or is bound. Tenant represents and warrants that: (a) Tenant is a duly authorized and existing business entity; (b) Tenant is qualified to do business in the state in which the Demised Premises is located; (c) Tenant has full right and authority to enter into this Lease; (d) Tenant has taken the necessary corporate action to authorize, execute, and deliver and perform the terms of this Lease; (e) this Lease is the legal, valid and binding obligation of Tenant enforceable in accordance with its terms; (f) this Lease does not violate any provisions of law or conflict with, result in a breach of, or constitute a default under Tenant's Articles of Incorporation, Bylaws or any other agreements to which it is a party or is bound. The persons executing this Lease on behalf of Landlord and Tenant represent and warrant that each person signing on behalf of Landlord and Tenant has actual authority to do so.

15.09. FORCE MAJEURE. Except for Tenant's monetary obligations under this Lease, neither party shall be held responsible for delays in the performance of its obligations hereunder when caused by a Force Majeure event. In order for its performance to be excused for the period of a Force Majeure event, a party must give written notice to the other party within ten (10) days after the occurrence of the Force Majeure event.

15.10. GENERAL. Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to lease. This Lease is not effective until execution by both Landlord and Tenant. This Lease may not be amended or modified in any respect, except by a writing signed by both Landlord and Tenant. The word "Tenant" wherever used in this Lease shall be construed to mean tenants in all cases where there is more than one tenant, and the necessary grammatical changes required to make the provisions of this Lease applied to corporations, partnerships, trusts, associations, other entities or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. The captions appearing in this Lease in no way limit the scope or intent of any Section. The parties expressly agree that, as a material consideration for the execution of this Lease, this Lease, with the specific references to written extrinsic documents, is the entire agreement of the parties and that there are, and were, no verbal representations, warranties, understandings, stipulations, agreements or promises pertaining to this Lease or the Demised Premises or to expressly mentioned written extrinsic documents not incorporated in writing in this Lease.

15.11. EXHIBITS. The following Exhibits are attached to and made a part of this Lease: **Exhibit A** – the Demised Premises; **Exhibit B** – the Real Estate on Which the Project is located; **Exhibit C** – Landlord's Work-Inapplicable ; **Exhibit D**-Tenant Improvement Allowance; Inapplicable; **Exhibit E** – Tenant's Work-Inapplicable-; and **Exhibit F**- Landlord's Utility Services; **Exhibit G** – Liens or Encumbrances Against the Project, the Building or the Demised Premises; **Exhibit G-1** Landlord Waiver and Consent; **Exhibit H** – Non-Disturbance and Attornment Agreement; **Exhibit I** – Memorandum of Lease; and **Exhibit J** – Commencement Date Certificate.

15.12. LEGAL COSTS. Any party in breach or default under this Lease (the "**Defaulting Party**") shall reimburse the other party (the "**Non-defaulting Party**") upon demand for any reasonable legal fees, attorneys' fees, and court (or other administrative proceeding) costs or expenses that the Non-defaulting Party actually incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees, attorneys' fees, and costs actually incurred for the negotiation of a settlement, enforcement of rights or otherwise. In the event a dispute exists regarding the existence of a default, the prevailing party shall be entitled to payment by the other party of reasonable legal costs, attorneys' fees, and expenses actually incurred. Furthermore, in the event of litigation, the court in such action shall award to the prevailing party a reasonable sum as attorneys' fees and costs, which sum shall be paid by the losing party. Subject to the applicable provisions of this Lease, each party

shall pay the other party's reasonable attorneys' fees reasonably incurred in connection with a request by a party for consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which a party proposes to do and which requires the other party's consent.

15.13. RECORDING OF LEASE. Tenant shall not record or file this Lease in the public records of any county or state. The parties shall execute a Memorandum of Lease substantially in the form of **Exhibit I** attached hereto, or in such form as may be required or permitted under the law of the State where the Project is located. Tenant may record said memorandum, at its sole expense, in the appropriate office to give record notice of this Lease. The parties agree to execute such other and further documents, in recordable form, as may be required to effectuate the provisions of this **Section 15.13**.

15.14. BINDING EFFECT. The terms, provisions and covenants contained in this lease shall apply to, inure to the benefits of and the binding upon the parties hereto and their respective heirs, successors in interest, and legal representatives except as otherwise herein expressly provided.

15.15. MODIFICATION. This lease contains the entire agreement between the parties and no agreements shall be effective to change, modify, or terminate this lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. Landlord and Tenant acknowledge that they are not relying on any representation or promise of the other, except as may be expressly set forth in this lease.

15.16. PARTIES TO USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE DAMAGES. Both Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease.

15.17. CONSTRUCTION. This Lease shall be construed fairly as to both parties and not in favor of or against any party hereto, regardless of which party prepared this Lease.

15.18. WAIVER. Failure to insist upon strict compliance with any of the terms, conditions, or covenants herein shall not be deemed to be a waiver of such term, condition, or covenant, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of that right or power at any time or times.

15.19. COUNSEL. In connection with the negotiation, drafting, and execution of this Lease, the parties have had the advice of independent counsel of their own choosing and agree to pay their respective costs and fees thereof.

15.20. LANDLORD WAIVER AND CONSENT FORM. At the time of execution of this Lease, Landlord agrees to execute the Waiver and Consent Form attached as **Exhibit G-1** hereto.

To evidence their agreement to the foregoing the parties have duly executed this Lease as of the date first indicated above.

LANDLORD:

CALDERA LONE STAR, LLC

By: Larry A. Crutcher
Its: Managing Member
Tax I.D. Number: **81-1836834**

TENANT:

**ECTOR COUNTY INDEPENDENT
SCHOOL DISTRICT**

By: _____
Its: _____

**EXHIBIT A
DRAWING OF THE DEMISED PREMISES
FOLLOWS THIS PAGE**

EXHIBIT B
DESCRIPTION OF THE REAL ESTATE
ON WHICH THE PROJECT IS LOCATED

WESTWOOD ADDITION, BLOCK 3, S. 200' OF LOT 1, 2.0499 ACRES.

**EXHIBIT C
LANDLORD'S WORK**

INAPPLICABLE

**EXHIBIT D
TENANT IMPROVEMENT ALLOWANCE**

INAPPLICABLE

EXHIBIT E
TENANT'S WORK

INAPPLICABLE

EXHIBIT F
LANDLORD'S UTILITY SERVICES

Utilities to be provided by the City of Odessa, Texas: Water & Sewer. Gas to be provided by ATMOS. Electrical services shall be provided by ONCOR.

EXHIBIT G
LIENS OR ENCUMBRANCES AGAINST THE PROJECT, THE BUILDING OR THE
DEMISED PREMISES

Landlord anticipates obtaining a loan on this Project.
The amount and Lender are yet to be determined.

**EXHIBIT G-1
WAIVER AND CONSENT FORM
FOLLOWS THIS PAGE**

WAIVER AND CONSENT

THIS WAIVER AND CONSENT (this “Waiver”) is made and entered into between [REDACTED], together with any successor agent (the “Agent”), as agent for the lenders (collectively, the “Lenders”), and Caldera Lone Star, LLC, a Texas Limited liability Company (hereinafter referred to as “Landlord”) and affects that real property described on Exhibit A attached hereto and incorporated herein by this reference commonly known as [REDACTED] (the “Premises”).

Landlord is the lessor of the Premises pursuant to the provisions of that certain Lease (the “Lease”), dated [REDACTED] between Landlord and [REDACTED], a [REDACTED] corporation (the “Borrower”), as tenant.

The Agent, as agent for the Lenders, has, together with the Lenders, entered into a certain Fourth Amended and Restated Loan and Security Agreement dated as of [REDACTED] (the same as it may be amended, restated, modified and refinanced from time to time being referred to herein as the “Loan Agreement”) with the Borrower pursuant to which the Lenders have made or propose to make certain loans, extensions of credit or other financial accommodations to or for the benefit of the Borrower and under which the Borrower may incur obligations to the Lenders (all such loans and obligations now existing or hereafter arising together with interest thereon and other fees and charges in connection therewith being herein referred to as the “Secured Obligations”). The Secured Obligations are to be secured by, among other things, all inventory, accounts, general intangibles and other personal property (other than machinery and equipment) of the Borrower and the proceeds thereof (collectively, the “Collateral”).

The parties hereto agree as follows:

1. As between Agent and Landlord, neither Agent nor any Lender shall have any right, title or interest in or to (a) the security deposit, if any, and any rent which shall have been or which shall be paid by the Borrower to Landlord under and in accordance with the Lease (other than any portions thereof which shall be returned to Borrower in accordance with the Lease), or (b) the fixtures which are not readily removable trade fixtures (e.g., overhead doors and building systems, including HVAC, plumbing, electrical or sprinkler systems or related fixtures), and such items shall not constitute Collateral.
2. Landlord acknowledges and agrees that certain items constituting Collateral are or are to be located at, and may be affixed to, the Premises or improvements thereon.
3. The Collateral shall be and remain personal property notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, or the intentions of the party making the annexation.
4. Any rights which Landlord may claim to have in and to the Collateral, no matter how arising, shall be subject and subordinate to the rights of Agent therein.
5. Landlord consents to the storage and installation of the Collateral on the Premises and grants to Agent a license, as set forth below, to enter on to the Premises to do any or all of

the following with respect to the Collateral: assemble, have appraised, display, sever, remove, maintain, prepare for sale or lease, repair, lease, remove, transfer and/or sell (via one or more public auctions or private sales).

6. Upon the occurrence of any default, event of default, breach of any covenant or agreement in the Lease or other event or condition which would entitle Landlord and as a result of which Landlord intends to exercise any right, power or remedy thereunder (collectively, a "Lease Default"), and prior to the exercise of any right to terminate the Lease, or the exercise of any other remedies under the Lease, the Landlord will notify the Agent of such Lease Default pursuant to this notice provision at the address set forth below. The notice agreed to be given herein by the Landlord to the Agent will be in writing and sent by registered or certified mail, return receipt requested, to the address set forth below or at such other address as the Agent may specify by written notice to the Landlord at the address set forth below:

If to Agent:

If to Landlord: Caldera Lone Star, LLC
Post Office Box 4678
Odessa, TX 79760
Telephone: (432) 530-0055
Fax: (432) 530-0055

WITH COPY TO:

7. Agent shall have the right and license to occupy the Premises for the purposes described above, for a period not to exceed ninety (90) days (the length of such period being at Agent's discretion), following Landlord's placing Agent in possession of the Premises. Agent shall pay to Landlord, periodically, a daily license fee equivalent to one-thirtieth (1/30th) of the monthly rental provided for in the Lease between Landlord and Borrower without the Agent or any Lender incurring any other obligations as lessee under the Lease; provided, however, that the Agent shall pay the cost of utilities and its pro rata share of taxes during its occupation of the Premises. Any extensions of the foregoing 90-day period shall be with the written consent of Landlord and at the same rate.

8. All structural and cosmetic damage to the Premises caused by the removal of the Collateral shall be repaired to the reasonable satisfaction of Landlord by Agent at its expense. Agent shall indemnify and hold harmless Landlord for personal injury or property damage claims arising out of the Agent's entry or its removal of Collateral arising from such entry.

9. This Waiver shall continue until such time as all of Borrower's obligations to Agent and the Lenders, and expenses (including, without limitation, reasonable attorneys fees) incurred in connection therewith, have been paid and all covenants and conditions as more specifically enumerated in the Loan Agreement have been fully performed.

10. This Waiver shall be governed and controlled by and interpreted under the laws of the State of Texas and shall inure to the benefit of and be binding upon the successors, heirs and assigns of the parties hereto, including, without limitation, any successor Agent.

Dated: _____

LANDLORD:

Caldera Lone Star, LLC, , a Texas Limited Liability Company.

By _____
Title: _____

AGENT:

By _____
Title: _____

EXHIBIT A

ADDRESS OF PROPERTY

2415 CATALINA DRIVE, ODESSA, TEXAS, 79763

EXHIBIT H
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), made and entered into as of the [REDACTED] day of [REDACTED], [REDACTED], by and among [REDACTED], a [REDACTED] ("Tenant"), CALDERA LONE STAR, LLC, , a Texas Limited Liability Company ("Landlord"), and [REDACTED] ("Lender");

WITNESSETH:

WHEREAS, pursuant to certain instrument executed by Landlord in favor of Lender, Lender is secured by a first lien Deed of Trust and other security instruments dated as of [REDACTED] (the "Security Instrument") encumbering all or part of the Demised Premises, the Building, and/or the Project described in the lease mentioned herein and the real property described in **Exhibit A** attached hereto; and

WHEREAS, Landlord and Tenant have entered into that certain lease agreement dated as of [REDACTED] (the "Lease"), with respect to certain premises (the "Demised Premises") that are part of the Demised Premises, the Building, and/or the Project, all as more particularly set forth in the Lease; and

WHEREAS, subject to the terms and conditions of this Agreement, Lender is willing to give certain assurances that Tenant's possession of the Demised Premises will not be disturbed by reason of a foreclosure of the lien and security title of, or exercise of the power of sale under, the Security Instrument;

NOW, THEREFORE, in consideration of the mutual agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Notice to Lender; Lender's Cure. Notwithstanding any provision in the Lease to the contrary, no default in the performance of any of Landlord's obligations under the Lease that is of such a nature as to give Tenant a right to terminate the Lease or to reduce the rent payable under the Lease or to any credit, reduction or offset against future rents shall entitle Tenant to exercise any such right, power or remedy unless and until notice of such default is given to Lender and unless and until thirty (30) days shall have elapsed following receipt of such notice by Lender, during which period Lender shall have the right, but not the obligation, to remedy or cure such default; provided, however, that if such default cannot be cured within thirty (30) days, then Lender shall have such longer period of time as may be necessary to cure such default so long as Lender pursues the cure of same with due diligence, and the failure or inability to cure does not unreasonably interfere with Tenant's use of the Property or the Demised Premises.

2. Non-Disturbance of Tenant's Possession. So long as Tenant is not in default in the payment of rent, additional rent or other charges, or in the performance of any of the other terms, covenants or conditions of the Lease, Tenant shall not be disturbed by Lender in Tenant's occupancy of the Demised Premises during the original or any renewal term of the Lease or any extension thereof, notwithstanding foreclosure of the Security Instrument, exercise of the power of sale thereunder, acceptance of a deed in lieu of foreclosure or exercise of any other remedy provided in the Security Instrument, in any assignment of leases and rents in favor of Lender or pursuant to the laws of the state in which the Demised Premises are situated.

3. Consent and Waiver Form. Landlord and Lender agree to execute a consent and waiver, in form reasonably acceptable to Landlord, Lender and Tenant, in connection with any proposed financing of fixtures, inventory, or equipment located or to be located on the Demised Premises by Tenant (the "Inventory"). The consent and waiver confirm title to the Inventory in Tenant and waive any right to which Landlord or Lender now have or may hereafter have under the laws of the State where the Inventory is located to levy upon, claim or assert title to the Inventory.

4. Lender's Obligations. Except as provided in Section 6 hereof, no person or entity who exercises a right arising under the Security Instrument or any assignment of the Lease to receive the rents payable by Tenant under the Lease shall thereby become obligated to Tenant for the performance of any of the terms, covenants, conditions and agreements of Landlord under the Lease. Landlord and Tenant agree that Tenant shall make all payments to be made by Tenant under the Lease to such person or entity upon receipt of written notice of the exercise of such right, and Tenant agrees not to prepay any sums payable by Tenant under the Lease. Receipt of rent by such other person shall not relieve Landlord of its obligations under the Lease, and Tenant shall continue to look only to Landlord for performance thereof.

5. Special Rights of Lender. Subject to the rights of Tenant under the Lease, and in addition to and not in lieu of any other provisions of this Agreement, Lender shall not in any way or to any extent be:

(a) liable for any act or omission of any landlord (including Lender and Landlord) in contravention of any provision of the Lease (except for Tenant's rights under the Lease); or

(a) bound by any rent or additional rent that Tenant might have paid for more than thirty (30) days in advance to any prior landlord (including Landlord); or

(c) bound by any agreement or modification of the Lease made without Lender's knowledge and which materially harms Lender; or

(d) in any way responsible for any deposit or security that was delivered to Landlord but which was not subsequently delivered to Lender.

6. Attornment. Tenant agrees that if Lender acquires title to the Demised Premises as a result of foreclosure of the Security Instrument, exercise of the power of sale thereunder or the acceptance of a deed in lieu of foreclosure, or if Lender obtains control of the Demised Premises pursuant to any other rights, powers or remedies contained in the Security Instrument, any assignment of leases and rents in favor of Lender or the laws of the state in which the Demised Premises are situated, Tenant will, upon request of Lender or any other person or entity succeeding to the interest of Lender as a result of the exercise of any such right, power or remedy, automatically become the lessee or tenant of Lender or such successor in interest, without any change in the terms and provisions of the Lease, and Tenant will, upon request of Lender or said successor in interest, deliver an instrument or instruments, in recordable form, confirming such attornment. Following Lender's exercise of any such remedy, Tenant's sole remedies against Lender for any act or omission in contravention of any provision of the Lease shall be: (1) to cancel the Lease, or (2) to offset rental payments against any costs incurred by Tenant curing any Landlord default. As against any other person or entity acquiring title or ownership of the Demised Premises by, through, or under Lender or by, through, or under the exercise of any creditor remedy of Lender, Tenant shall have full and complete rights to set off rents against any costs to cure any Landlord defaults, as if the lease were fully binding between Tenant and the new owner of the Demised Premises. Neither Lender's acquisition of title to or control of the Demised Premises in the manner aforesaid nor the

performing of any of the obligations of Landlord pursuant to the Lease shall be construed as an assumption of said Lease by Lender. Furthermore, upon the happening of any of the above-described events, the Lease between Landlord and Tenant shall be deemed to be modified to include the provisions contained herein, notwithstanding any other provision of said Lease.

7. Representations and Warranties of Tenant. Tenant, in order to induce Lender to enter into this Agreement, hereby affirms that:

- (a) the Lease, when fully executed, will be in full force and effect;
- (b) no rent has been prepaid under the Lease;
- (c) to the best knowledge and belief of Tenant, Landlord is not in default in the performance of any of Landlord's obligations under the Lease; and
- (d) Tenant has no present claims of offset against any rent due or to become due under the Lease.

8. Notices. Any and all notices, elections, demands or requests permitted or required to be made under this Agreement shall be in writing and shall be delivered personally, telecopied or sent by certified mail or nationally recognized courier service (such as Federal Express), to the other party at the address set forth below, or at such other address as may be supplied in writing and of which receipt has been acknowledged in writing. The date of personal delivery or telecopy or the date of mailing (or delivery to such courier service), as the case may be, shall be the date of such notice, election, demand or request, and rejection, refusal to accept or inability to deliver because of a changed address of which no notice was sent shall not affect the validity of any notice, election, demand or request given in accordance with the provisions of this Agreement. For purposes of this Agreement:

The address of Tenant is:

The address of Landlord is:

Caldera Lone Star, LLC
Post Office Box 4678
Odessa, TX 79760
Telephone: (432) 530-0055
Fax: (432) 530-0055

The address of Lender is:

9. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns. Numbered and titled paragraph headings are for convenience of reference only, and neither amplify nor limit the provisions hereof. When used herein, the singular shall include the plural, and vice versa, and the use of any gender shall include all other genders. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused this Agreement to be executed, as of the day and year first above written.

TENANT:

By: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the authorized agent of _____, a _____ and is authorized by _____ to execute this instrument on its behalf.

WITNESS my hand, at office, this ____ day of _____, 20__.

Notary Public

My Commission Expires:

LANDLORD:

CALDERA LONE STAR, LLC a Texas Limited Liability

Company

By: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the/a(n) _____ of _____, a _____, and is authorized by the _____ to execute this instrument on behalf of the _____.

WITNESS my hand, at office, this ____ day of _____, 20__.

Notary Public

My Commission Expires:

LENDER:

By: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the/a(n) _____ of _____, a _____, and is authorized by the _____ to execute this instrument on behalf of the _____.

WITNESS my hand, at office, this ____ day of _____, 20__.

Notary Public

My Commission Expires:

EXHIBIT A

[Description of Real Property]

**EXHIBIT I
MEMORANDUM OF LEASE**

This is a memorandum of lease dated as of _____, 20__ between **CALDERA LONE STAR, LLC**, a Texas Corporation ("Landlord") whose address is Post Office Box 4678, Odessa, TX 79760, and _____, a _____ ("Tenant") whose address is _____. On the terms and subject to the conditions contained in the Lease between Landlord and Tenant dated _____ ("the Lease"), the terms and conditions of which are incorporated into this memorandum by reference, Landlord has leased to Tenant approximately _____ square feet of office and warehouse space located in the building ("the Building") on the real property at _____, as such real property is more fully described on the **Exhibit A** attached to this memorandum (the "Demised Premises").

The Lease is for a term of fifteen (15) years commencing on or about _____, 20__ and provides Tenant the option to renew the Lease for Two (2) additional terms of Five (5) years.

Landlord holds title to the Demised Premises by virtue of the deed recorded at Book _____, Page _____, with the _____ County, _____ Register of Deeds or other recording office.

LANDLORD:

Caldera Lone Star, LLC

By: _____
Title: _____

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public in and for said county, duly commissioned and qualified, on this day personally appeared _____, who acknowledged that he/she is the _____ of Caldera Lone Star, LLC, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes expressed therein, for and on behalf of and as the act and deed of said Caldera I Bobcat, LLC, LP, a Texas Corporation, after having been first duly authorized to do so.

Given under my hand and seal of office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

TENANT:

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public in and for said county, duly commissioned and qualified, on this day personally appeared _____, who acknowledged that he/she is **the** _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes expressed therein, for and on behalf of and as the act and deed of said _____, after having been first duly authorized to do so.

Given under my hand and seal of office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Exhibit A

Legal Description:



Street Address:

**EXHIBIT J
COMMENCEMENT DATE CERTIFICATE
FOLLOWS THIS PAGE**

COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE is made as of the [redacted] day of [redacted], 200__, by and between Caldera Lone Star, LLC, a Limited Liability Company duly organized and existing under the laws of the State of Texas (hereafter "Landlord") and [redacted], a [redacted] (hereafter "Tenant").

RECITALS:

A. Landlord and Tenant have entered into a Lease Agreement (the "Lease") dated as of [redacted], 20__ whereby Landlord leased to Tenant, and Tenant leased from Landlord, certain real property located at [redacted].

B. In accordance with Section 3.01 of the Lease, Landlord and Tenant desire to set forth herein the dates that the Lease Term shall commence (the "Commencement Date" as set forth in the Lease).

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

The Commencement Date of the Lease is hereby confirmed as _____, 20__.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Commencement Date Certificate to be executed as of the day and year first above written.

LANDLORD:

TENANT:

Caldera Lone Star, LLC.

By: _____
Its: _____

By: _____
Its: _____