



## SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

### Agenda Item Summary

Meeting Date: May 19<sup>th</sup>, 2021

Purpose:

☐ Presentation/Report    ☐ Recognition    ☒ Discussion/ Possible Action

☐ Closed/Executive Session    ☐ Work Session    ☐ Discussion Only    ☐ Consent

From: Dr. Marc Puig, Superintendent of Schools

Item Title: Approve the Property Lease of 2415 W. Southcross, San Antonio, TX 78211

Description: The House of Freedom International Ministries (Freedom Center Church), has asked to continue the lease of the property located at 2415 W. Southcross, San Antonio, TX 78211 for a period of 5 years (September 1<sup>st</sup>, 2021- August 31<sup>st</sup>, 2026).

Historical Data: The Board of Trustees approved the property lease of 2415 W. Southcross to Freedom Center Church on August 17<sup>th</sup>, 2016 for a term of 5 years, (September 1<sup>st</sup>, 2016 – August 31<sup>st</sup>, 2021)

Recommendation: Approve the Property Lease of 2415 W. Southcross, San Antonio, TX 78211 to Freedom Center Church.

District Goal/Strategy:

Strategy 1 We will engage all school community members through transparency and effective communication to promote a positive perception and create a strong brand.

Funding Budget Code and Amount:

APPROVED BY:

SIGNATURE

DATE

Chief Officer:

\_\_\_\_\_

\_\_\_\_\_

CFO Funding Approval:

\_\_\_\_\_

\_\_\_\_\_

Superintendent:

\_\_\_\_\_

\_\_\_\_\_

## PROPERTY LEASE

THIS PROPERTY LEASE (this "LEASE") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, whose address is 1459 Gillette Boulevard, San Antonio, Texas 78224 ("LANDLORD"), and FREEDOM CENTER CHURCH, whose address is 2415 W. Southcross, San Antonio Texas 78211 ("TENANT").

### ARTICLE I

#### REFERENCE PROVISION, BUILDING, PREMISES AND TERM

##### Section 1.1 FUNDAMENTAL LEASE PROVISIONS.

- a) LEASE PREMISES (hereinafter "PREMISES") – The PREMISES is the real property located at is 2415 W. Southcross, San Antonio Texas 78211 together with any and all improvements located thereon, including that certain commercial building currently used by Tenant as a church facility (the "Building"). The term PREMISES specifically includes the Building. Tenant acknowledges that it has previously occupied the Building since 2016 and is well familiar with its structure, characteristics, suitability for its intended use. Nothing contained in this Lease shall be deemed to be a warranty, representation or agreement by LANDLORD that the Building or the PREMISES is constructed in any particular manner or is in any particular state of repair or is otherwise authorized by law for any particular use.
- b) TERM - shall commence on September 1, 2021(the "Commencement Date") and end on August 31, 2023 (the "Termination Date").
- c) RENT - \$24,000.00 per year, to be paid in equal monthly installments of \$2,000.00 each beginning on the Commencement Date.
- d) OPERATION COSTS - TENANT will be responsible for any and all Operation Costs for the PREMISES, with such costs being specified in Section 2.3.
- e) USE - TENANT shall use the PREMISES only for the lawful operations as a church and for other activities reasonably related thereto.
- f) NOTICE ADDRESSES -

TO LANDLORD:                      SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT  
   Attention: Dr. Marc Puig.  
   1459 Gillette Boulevard  
   San Antonio, Texas 78224

*With a Copy to:* Sanchez & Wilson, PLLC  
   6243 IH-10 West, #1025  
   San Antonio, Texas 78201  
   Attn: Robert W. Wilson  
   (210)222-8899  
   (210)222-9526 (Fax)  
   Rww@sanchezwilson.com

TO TENANT: Freedom Center Church  
c/o \_\_\_\_\_  
2415 W. Southcross  
San Antonio Texas 78211  
Direct: (210) 885-5497  
Fax: (210) \_\_\_\_\_

Each reference in the LEASE to any of the information and definitions set forth in the foregoing fundamental lease provisions shall mean and refer to the information and definitions hereinabove set forth and shall be used in conjunction with and limited by all references thereto in the provisions of the LEASE.

Section 1.2 EFFECT OF REFERENCE TO A FUNDAMENTAL LEASE PROVISION.

Each of the fundamental lease provisions contained in Section 1.1 shall be construed in accordance with the other provisions of this LEASE and shall be limited by such other provisions. In the event of any conflict between the fundamental lease provisions and the balance of this LEASE, the former shall control. As used in this LEASE, the term "TENANT PARTY" shall include TENANT, any assignees, with written consent of Landlord, claiming by, through, or under TENANT, any subtenants claiming by, through, or under TENANT, and any agents, contractors, employees, invitees, visitors, licensees, concessionaires or anyone acting on behalf of or at the direction of the foregoing parties.

Section 1.3 BUILDING. PREMISES AND TERM.

LANDLORD, in consideration of the Rent and the other covenants and agreements to be performed by TENANT and upon the terms hereinafter stated, hereby leases to TENANT and TENANT rents from LANDLORD the PREMISES now existing or hereafter to be erected described in Section 1.1(a). By taking possession of the PREMISES, TENANT stipulates, acknowledges and agrees that: (i) TENANT has had the opportunity to inspect the PREMISES, conducted its own due diligence review and determined, in its sole discretion, cost and expense, to proceed with TENANT's Work (for the lawful operations as a church and for other activities reasonably related thereto), and use the PREMISES for the USE, (ii) TENANT accepts the PREMISES "AS IS", "WHERE IS", and "WITH ALL FAULTS", whether known or unknown to either TENANT or LANDLORD, or both, and deems that the PREMISES complies fully with Landlord's obligations, (iii) LANDLORD, including, but not limited to, its principals, trustees, employees, agents, representatives or contractors, does not make, and TENANT does not rely upon, any representation or warranty of any kind, expressed, implied or otherwise (including, without limitation, the habitability, suitability, merchantability, fitness for a particular purpose, financial value, design, quality, layout, absence or presence of latent defects, or compliance with laws and regulations of the PREMISES), with TENANT solely relying upon TENANT's own (a) special knowledge (with TENANT hereby acknowledging, representing and stipulating to being a sophisticated, knowledgeable party that has extensive experience in transactions similar to the one contemplated herein) and (b) investigations, studies, analyses, inspections, examinations, and evaluations of all aspects of the PREMISES as made by itself and/or its, without limitation, agents, employees, representatives and/or independent contractors. The Term, as described in Section 1.1(b) shall commence on the Commencement Date. The Term shall expire on the Termination Date (as described in Section 1.1(b)). "Lease Year" means a period of twelve (12) consecutive calendar months with the first Lease Year commencing on the Commencement Date and each subsequent Lease Year beginning on the anniversary of the first Lease Year.

Furthermore, TENANT hereby fully and generally exonerates, waives, releases and discharges LANDLORD and its, without limitation, trustees, beneficiaries, managers, directors, officers, employees, attorneys and representatives, and their respective successors and assigns, from any and all suits, causes of action, legal or administrative

proceedings, liabilities, claims, damages, losses, costs and expenses of whatever kind, known or unknown, suspected or unsuspected, latent or patent, whether or not discoverable or foreseeable by TENANT, now or hereafter existing or discovered, in any manner or way connected with the physical or environmental condition of the PREMISES, any latent or patent defects concerning same, and any actual or alleged violations of law concerning same. Additionally, TENANT hereby agrees, represents and warrants that the matters released herein are not limited to matters that are known, disclosed, suspected or foreseeable, but rather the foregoing full and general release extends to both known and unknown claims, and the matters now unknown to LANDLORD that may have given, or which may hereinafter give, rise to actions, legal or administrative proceedings, claims, demands, debts, controversies, damages, costs, losses, liabilities and expenses that are presently unknown, unanticipated and unsuspected. TENANT further stipulates, agrees, represents and warrants that the provisions of this LEASE have been negotiated and agreed upon in light of that realization and that, accordingly, TENANT hereby intends to exonerate, waive, release, discharge and acquit LANDLORD, and LANDLORD's, without limitation, trustees, beneficiaries, managers, directors, officers, employees, attorneys and representatives, and their respective successors and assigns, from any such unknown causes of action, legal or administrative proceedings, claims, demands, debts, controversies, damages, costs (and agrees that LANDLORD and its, without limitation, trustees, beneficiaries, managers, directors, officers, employees, attorneys and representatives, and their respective successors and assigns, shall never be liable to a TENANT PARTY under any circumstances for, without limitation, any speculative, special, direct, indirect, consequential, or other punitive damages), losses, liabilities and expenses which are in any way related to the matters described within said Lease .

The term "improvements" shall include all improvements existing as of the Effective Date or at any time thereafter built by anyone in or on the PREMISES, including without limitation, all walls and partitions which are not load-bearing; the interior decorated or finished surfaces of all perimeter and load-bearing walls and floor slabs; all ceilings and ceiling light fixtures (including those furnished by LANDLORD); all interior windows, all entrance doors, all mechanical and electrical conduits, wiring fixtures and equipment; all floor tile, carpeting or other floor covering and wall covering; any fire safety equipment; any walk-in coolers; and all other fixtures of all kinds, including, without limiting the generality of the foregoing, all ceiling sprinkler systems, air-conditioning, heating and ventilation equipment and ducts, water, electric, telephone and other utility lines, ducts, conduits and facilities serving other portions of the Building that may pass through the PREMISES, including any such improvements installed 01-constructed by TENANT...: Landlord shall have the absolute discretion to have any party remove any improvement. Landlord shall have the absolute right to review and approve any improvement done by any party. Any and all improvements should also be completed in accordance with all applicable laws including not limited to any state, municipality or county statute, ordinance, law, order or resolution including permitting.

Any and all work required for TENANT to open for business and operate from the PREMISES in accordance with this LEASE and in accordance with applicable laws shall be performed by TENANT at TENANT' s sole cost and expense. TENANT shall prepare, at TENANT'S sole cost and expense, and present to LANDLORD plans and specifications for work to be done to finish the PREMISES in accordance with TENANT'S requirements. Landlord shall be able to deny and plans or specifications in their sole absolute reason able discretion. If Tenant fails to follow all applicable laws the Tenant shall be responsible for all damages, including, fines, attorney fees incurred by Landlord for this failure of Tenant.

#### Section 1.4 QUIET ENJOYMENT.

TENANT, upon paying the rents herein reserved and performing and observing all of the other terms, covenants and conditions of this LEASE on TENANT'S part to be performed and observed, shall peaceably and quietly have, hold and enjoy the PREMISES during the Term without hindrance from LANDLORD, subject, nevertheless, to (i) the terms of this LEASE, (ii) any and all conditions, restrictions, easements, licenses, permits, reservations, covenants, encumbrances, rights-of-way or prescriptive rights affecting the PREMISES, whether or not appearing in the applicable county records and (iii) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters

that affect the PREMISES and which are imposed by or exist by reason of any regulatory, governmental or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind of nature.

Section 1.5 LANDLORD'S TERMINATION OPTIONS.

Notwithstanding anything to the contrary contained herein, LANDLORD may terminate this Lease, with such termination not being deemed a default by LANDLORD under any circumstances whatsoever, if:

- a) LANDLORD receives and accepts an offer to sell the PREMISES. If such an event occurs, then LANDLORD will provide sixty (60) days' prior written notice of such termination to TENANT to allow TENANT to vacate the PREMISES. LANDLORD shall have the continuing right to terminate this Lease at any time during the course of the accepted offer to sell the PREMISES.
- b) LANDLORD elects, at its sole and absolute discretion, to terminate this Lease for any reason whatsoever. If such an event occurs, then LANDLORD will provide sixty (60) days' prior written notice of such termination to TENANT to allow TENANT to vacate the PREMISES. LANDLORD shall have the continuing right to terminate this Lease at any time during the Lease Term for convenience. Upon termination under either of these clauses Landlord shall not be liable for any and all costs or expenses or rent that Tenant has incurred or contracted to incur prior to such termination.

ARTICLE II

RENT AND OTHER CHARGES

Section 2.1 MINIMUM ANNUAL RENT

TENANT shall pay to LANDLORD, without previous demand therefor and without any diminution, abatement, set off or deduction whatsoever, 1/12<sup>th</sup> of the Minimum Annual Rent provided in Section 1.1(c), payable in lawful money of the United States, on the first day of each month throughout the Lease Term.

Section 2.2 TAXES.

TENANT shall pay before delinquency any and all taxes, assessments, fees or charges, including without limitation, any sales, gross income, rental, business occupation or other taxes, levied or imposed upon TENANT'S business operations in the PREMISES, if any, and any personal property or similar taxes levied or imposed upon TENANT'S trade fixtures, furnishings, equipment, stock in trade, leasehold improvements or other personal property located within or on the PREMISES. In the event any such taxes, assessments, fees or charges are charged to the account of, or are levied or imposed upon the property of LANDLORD, then TENANT shall, promptly upon demand, reimburse LANDLORD for the same as additional rent.

Section 2.3 OPERATION COSTS.

TENANT will be liable and responsible for all "Operation Costs" (as hereinafter defined) of maintaining and operating the PREMISES. "**Operation Costs**" shall mean any and all costs, fees, expenses and disbursements of every kind and character (subject to the limitations set forth below) incurred, paid or may become obligated to be paid in connection with the operation, maintenance, repair, replacement, management, and security of the PREMISES, including, without limitation, all areas, space, facilities, equipment, utility systems (both on-site and off-site), streets, alleys, parking areas, driveways and access roads, aisles, sidewalks, curbs, delivery passages and loading areas or docks and service ways, loading areas, lighting facilities, landscaped areas, equipment, signs, special services and all other areas and improvements provided for the use or made available for the PREMISES.

LANDLORD hereby expressly reserves the right, but is not obligated to, from time to time, to construct,

maintain and operate any of the foregoing items comprising the Operation Costs; to police the same; to change the areas, level, location and arrangement of the parking areas and other facilities forming a part of the PREMISES; to close temporarily all or any portion of the PREMISES for the purpose of making repairs or changes thereto, to discourage non-customer parking, and/or to prevent the public from obtaining prescriptive rights to make repairs or alterations; to establish, modify and enforce reasonable rules and regulations with respect to the PREMISES and the use to be made thereof. If LANDLORD elects to utilize its right to perform any of the foregoing matters comprising the Operation Costs, then TENANT will reimburse LANDLORD for any such costs as additional rent within five (5) days of TENANT's receipt of an invoice detailing such costs. Without limiting the generality of the foregoing in any manner whatsoever, and by way of example only, the Operation Costs include, without limitation: (i) wages and salaries (including management fees) of all employees and agents engaged in the operation, repair, replacement, maintenance, management, and security of the PREMISES, including taxes, insurance and benefits relating thereto; (ii) all supplies and materials used in the operation, maintenance, repair, replacement, management, and security of the PREMISES; (iii) annual cost of all capital improvements made to the PREMISES which although capital in nature can reasonably be expected to reduce the normal operating costs of the PREMISES or benefit the tenants and users of the PREMISES (as determined by LANDLORD in its sole discretion), as well as all capital improvements made to promote safety and/or comply with any statutes, rules, regulations or directives hereafter promulgated by any governmental authority relating to energy, conservation, public safety or security; (iv) cost of service or maintenance contracts with independent contractors for the operation, maintenance, repair, replacement, or security (if and to the extent provided by LANDLORD) of the PREMISES; (v) cost of casualty and liability insurance (including coverage for loss of Rent) applicable to the PREMISES and LANDLORD's personal property used in connection therewith, which may include "all risk" commercial property insurance and coverage for such other risks as LANDLORD deems necessary or desirable and commercial general liability insurance and excess liability insurance, in such amounts and containing such terms as LANDLORD deems necessary or desirable, which LANDLORD may, but is not obligated to, carry the insurance coverage described in this subpart (v) and shall not be liable to TENANT if LANDLORD, in its sole discretion, decides not to insure against any particular risk. Further LANDLORD may, in its sole discretion, procure blanket insurance coverage and may allocate the costs of such coverage at LANDLORD's sole discretion; (vi) real estate taxes and other amounts owed by TENANT to LANDLORD under Section 2.2 herein; (vii) cost of repairs, replacements, and general maintenance of the PREMISES; (viii) costs of licenses, permits and inspection fees pertaining to the PREMISES; (ix) cost of all utilities, other than the cost of utilities supplied to tenants of the PREMISES that is actually reimbursed to LANDLORD by such tenants or billed to and paid directly by tenants; (x) an overhead fee or overhead administrative cost allowance (in addition to the management or administrative fee) in the amount of fifteen percent (15%) of the total Operating Costs; (xi) any maintenance fees, assessments and other charges required to be paid pursuant to any declarations of covenants, declarations, reciprocal easement agreements, similar documents governing the use and ownership of the PREMISES, or ground or underlying lease affecting the PREMISES; and/or (xii) any other costs described in the lease including but not limited to legal and accounting costs for the PREMISES, including a reasonable allocation of off-site costs, together with the costs of annual audits of the Operation Costs by certified public accountants.

LANDLORD shall not be required to pay TENANT any interest or earnings on any payments of the Operation Costs if such payments by TENANT exceed the actual Operation Costs incurred by LANDLORD.

LANDLORD may at any time and from time to time during the Lease Term hereof exclude and restrain any persons from the use and occupancy of the parking and other areas of the PREMISES, excepting, however, bona fide customers, patrons, and service suppliers of TENANT and other tenants of LANDLORD who make use of said areas in accordance with the rules and regulations established by LANDLORD from time to time with respect thereto. The right of TENANT hereunder in and to said automobile parking areas, the parking spaces thereon and the driveways, entrances and exits thereto, and the sidewalks and pedestrian passageways, shall be subject to the rights of LANDLORD and of all other tenants of LANDLORD using the same in common with LANDLORD, and it shall be the duty of TENANT to keep all of said areas free and clear of any obstructions created or permitted by TENANT or

resulting from TENANT'S operations and to permit the use of any of said areas only for normal parking and ingress and egress by said customers, patrons, and service suppliers, to and from the building occupied by TENANT and such other tenants of LANDLORD. If in LANDLORD'S opinion, unauthorized persons are using any of the PREMISES by reason of TENANT'S occupancy of the PREMISES, TENANT shall, upon LANDLORD'S demand, enforce LANDLORD'S rights against all such unauthorized persons. LANDLORD shall have the right to remove from said areas, or to restrain the use of any of said areas by any persons not specifically authorized by LANDLORD or by lease to use said areas. Nothing contained herein shall affect the rights of LANDLORD at any time to remove any unauthorized persons from said areas, or to restrain the use of any said areas by unauthorized persons. In the event parking becomes an issue, TENANT shall furnish LANDLORD with automobile license numbers of all cars owned or used by TENANT and/or TENANT'S employees within five (5) business days after LANDLORD notifies TENANT of an issue. If TENANT, or any of TENANT'S employees, shall fail to park their vehicles in the parking areas designated by LANDLORD for such purposes, then LANDLORD shall have the right to either have such vehicles towed from the PREMISES at the car owner's expense.

Within one hundred twenty (120) days after the end of the Lease Year in question, LANDLORD will furnish TENANT with a statement of the actual cost of the Operation Costs incurred by LANDLORD. TENANT's failure to give LANDLORD written notice of any objection to the statement within thirty (30) days after the statement is sent shall constitute a waiver of any objection or inquiry TENANT may have about the Operation Costs for such Lease Year. TENANT acknowledges LANDLORD has not made any warranty, agreement or representation of any kind as to the actual dollar amount of the Operation Costs.

LANDLORD and TENANT stipulate and agree that each provision of this LEASE for determining charges and amounts payable by TENANT is commercially reasonable and, as to each such charge or amount, constitutes a statement of the amount of the charge or a method by which the charge is to be computed for purposes of Section 93.012 of the Texas Property Code. AS SUCH, TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH SECTION AS IT NOW EXISTS OR AS IT MAY BE AMENDED OR SUCCEEDED IN THE FUTURE.

#### Section 2.4 UTILITIES.

TENANT shall pay all utility charges relating to the PREMISES which accrue after LANDLORD'S tender of possession directly to the Utility Company.

#### Section 2.5 LATE FEE

Other remedies for nonpayment of Rent notwithstanding, if any Rent payment is not received by LANDLORD on or before the fifth (5th) day of when such Rent was due or if any other payment hereunder due LANDLORD by TENANT is not received by LANDLORD on or before the fifth (5th) day following the date in which TENANT was invoiced, a late payment charge of ten percent ( 10%)of such past due amount shall become due and payable in addition to such amounts owed under this LEASE. Furthermore, TENANT will pay \$75.00 for each check TENANT tenders to LANDLORD that is returned by the institution on which it is drawn for any reason, plus any late charges until LANDLORD receives payment. Such a late payment charge shall be paid to LANDLORD as liquidated damages for each delinquent payment, but the payment of said late payment charge shall not excuse or cure any default by TENANT under this LEASE.

#### Section 2.6 INDEPENDENT COVENANT

Rent for any fractional month at the beginning of the Lease Term shall be prorated based on one three hundred sixty-fifth ( 1/365) of the current annual Rent for each day of the partial month this LEASE is in effect. TENANT shall pay all Rent at the times and in the manner provided in this LEASE, without demand, set-off or counterclaim. TENANT hereby stipulates, acknowledges and agrees that (i) LANDLORD and TENANT have expressly negotiated that

TENANT's covenants to pay Rent are separate and independent from LANDLORD's covenant to provide services and other amenities hereunder, and (ii) had the parties not mutually agreed upon the independent nature of TENANT's covenants to pay Rent, LANDLORD would have required a greater amount of Minimum Annual Rent in order to enter into this LEASE. LANDLORD's acceptance of less than the correct amount of Rent shall be considered a payment on account of the earliest Rent due. No endorsement or statement on a check or letter accompanying a check or payment shall be considered an accord and satisfaction, and LANDLORD may accept the check or payment without prejudice to LANDLORD's right to recover the balance or pursue other available remedies.

### ARTICLE III USE OF THE PREMISES

#### Section 3.1 PURPOSES.

TENANT shall use the PREMISES subject to and in accordance with all rules, regulations, laws, ordinances, statutes and requirements of all applicable governmental and administrative authorities, and the provisions herein. The character of the user and the use of the PREMISES as restricted by this Article and other provisions of this LEASE are additional consideration and inducement for LANDLORD'S granting of this LEASE. TENANT shall use the PREMISES solely as provided for in Section 1. 1(e) and for no other purpose whatsoever.

#### Section 3.2 CONTINUOUS OPERATION BY TENANT.

TENANT shall operate one hundred percent (100%) of the PREMISES during the entire Lease Term under the name set forth in this LEASE or such other name as LANDLORD may approve in writing, with due diligence and efficiency.

#### Section 3.3 ADDITIONAL OBLIGATIONS OF TENANT.

TENANT'S use of the PREMISES shall be subject at all times during the Lease Term to reasonable rules and regulations, now and hereafter adopted by LANDLORD. LANDLORD shall at all times have the right to change such rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care, or cleanliness of the Building and related facilities or PREMISES, and for preservation of good order therein, all of which rules and regulations, changes and amendments will be forwarded to TENANT in writing and shall be carried out and observed by TENANT. TENANT agrees to comply with all such rules and regulations upon notice to TENANT from LANDLORD. TENANT shall further be responsible for the compliance with such rules and regulations by TENANT PARTIES. TENANT expressly agrees as follows:

- a) TENANT shall not permit any use or act in or about the PREMISES which is illegal or of a hazardous or dangerous nature;
- b) TENANT shall not use or occupy said PREMISES for the purpose of storing junk, scrap or other offensive materials;
- c) All deliveries to and from the PREMISES shall be done only at such times, in the areas and through the entrances designated for such purposes by LANDLORD;
- d) All garbage and refuse shall be kept inside the PREMISES in the kind of container specified by LANDLORD, and shall be placed outside of the PREMISES prepared for collection in the manner and at the times and places specified by LANDLORD. If LANDLORD shall provide or designate a service for picking up refuse and garbage, TENANT shall use same at TENANT'S cost. TENANT shall pay the cost of removal of any of TENANT'S refuse and garbage and maintain all common loading areas in a clean manner satisfactory to LANDLORD;

- e) No radio or television aerial or other device or antenna shall be erected on the roof or exterior walls of the PREMISES or the building in which the PREMISES is located without first obtaining in each instance the LANDLORD'S consent in writing, with such consent to be in Landlord's sole and absolute discretion. Any aerial or device installed without such written consent shall be subject to removal at TENANT'S expense without notice at any time;
- f) No loud speakers, televisions, phonographs, radios, tape players or other devices shall be used in a manner so as to be heard or seen outside of the PREMISES without the prior written consent of LANDLORD, with such consent to be in LANDLORD's sole and absolute discretion;
- g) The plumbing facilities shall not be used for any other purpose than that for which they are constructed; no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by TENANT. All grease traps, if any, shall be installed and maintained in accordance with LANDLORD'S requirements;
- h) TENANT at its expense shall contract for termite and pest extermination services covering the inside of the PREMISES, to be rendered on as "as needed" basis as determined by TENANT, but such services should be performed at least once every three (3) months during the Lease Term;
- i) TENANT shall verbally notify LANDLORD within twenty-four (24) hours, and provide written notification within five (5) days, after TENANT learns of any occurrence at the PREMISES, involving TENANT or any subtenant, employee, agent, invitee, guest, licensee, concessionaire, or contractor of TENANT that results in personal injury, property damage, or any other event that may give rise to a claim or suit, whether insured or not, against TENANT or LANDLORD;
- j) TENANT shall keep and maintain the inside of the Building in a neat, sanitary and clean condition. If LANDLORD should determine that any portion of the inside of the Building is dirty or unclean, TENANT shall, within twenty-four (24) hours of written demand by LANDLORD, clean all of same. If it fails to do so LANDLORD may clean same for TENANT, charging TENANT the cost of such cleaning plus 15%;
- k) TENANT shall store and/or stock in the Building only such equipment as TENANT is permitted to use in the Building pursuant to this LEASE;
- l) TENANT shall not perform any act or carry on any practice which may damage, mar or deface the Building or any other part of the PREMISES;
- m) TENANT shall not place a load on any floor in the interior delivery system, if any, or in the PREMISES, or in any area of the Building, exceeding the floor load which such floor was designed to carry, nor shall TENANT install, operate or maintain therein any heavy item or equipment except in such manner as to achieve a proper distribution of weight;
- n) TENANT shall not install, operate or maintain in the PREMISES or in any other area of the Building any electrical equipment which does not bear underwriter's approval, or which would overload the electrical system (or any part) beyond its capacity for proper and safe operation as determined by LANDLORD;
- o) TENANT shall not suffer, allow or permit any vibration, noise, light, odor or other effect to emanate from the PREMISES, or from any machine or other installation therein, or otherwise suffer, allow or permit the same to constitute a waste, nuisance or otherwise disturb, endanger or interfere with the

safety, comfort and convenience of LANDLORD or any customers, agents or invitees or any others lawfully in or upon the PREMISES. Upon notice by LANDLORD to TENANT that any of the aforesaid is occurring, TENANT agrees to forthwith remove or control the same;

- p) TENANT shall not use or occupy the PREMISES in any manner or for any purpose which would injure the reputation or impair the present or future value of the PREMISES, the Building and/or neighborhood in which the PREMISES is located;
- q) TENANT shall not store, display, sell or distribute any alcoholic beverages or any dangerous materials (including without limitation fireworks) unless specifically permitted in this LEASE. TENANT further shall not store, use, or permit the storage or use of any Hazardous Material or toxic substance within the meaning of any statute, ordinance, regulation or other law of any local, state or federal governmental authority having jurisdiction over the PREMISES which are, from time to time, in effect;
- r) TENANT will refer all contractors, contractor's representatives and installation technicians rendering any service on or to the PREMISES for TENANT to LANDLORD for LANDLORD's approval before performance of any contractual service, including any service requiring access to the roof. Tenant's contractors and installation technicians shall comply with LANDLORD's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the PREMISES or Building, including, but not limited to, maintenance to HVAC and air conditioning equipment, installation of telephones, telegraph equipment, satellite, internet, WIA, cable television, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment or any other physical portion of the PREMISES.
- s) TENANT may not use the PREMISES in any manner that discriminates against any person because of such person's race, color, sexual preference, national origin, regardless of whether such discrimination be affected by design or otherwise.
- t) TENANT shall comply with any and all other rules and regulations that LANDLORD promulgates from time to time upon written notice to TENANT. Section 3.4 SIGNS AWNINGS AND CANOPIES.

TENANT shall not, without LANDLORD's prior written consent: (i) make any changes to or paint the exterior of the PREMISES; (ii) install any exterior lighting, decorations or paintings; or (iii) place, erect, install, maintain, or in any manner display, any sign, monument sign, awnings, canopies, notice, picture, poster, banners, canopy, window or door lettering, placard, decoration, declaration or advertising media of any type anywhere in or about the PREMISES, including without limitation, on the doors, any exterior surface, in any vestibule, or any other place that is visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Building, except as permitted herein. All signs, decorations and advertising media shall conform in all respects to any sign criteria established by LANDLORD for the PREMISES from time to time and shall be subject to the prior written approval of LANDLORD as to construction, method of attachment, size, shape, height, lighting, color, and general appearance. TENANT must keep all such items in good condition and in proper operating order at all times. LANDLORD reserves the right to designate a uniform type of sign for the Building to be installed and paid for by TENANT. LANDLORD reserves the right to charge TENANT for any signage installed or provided by LANDLORD. In the event that the written consent of LANDLORD is secured and provided that installation of such signs is legally permitted, TENANT shall pay all permit and license fees that may be required to be paid for the erection and maintenance of any and all such signs. TENANT shall release, waive, defend, indemnify, protect and hold harmless LANDLORD and LANDLORD's partners, agents, employees, officers and/or directors from all losses, damages, claims, suits or actions, costs and liabilities arising in connection with or related to any damage or injury to persons or property caused by the construction, installation, maintenance, use or removal of TENANT's signs or parts

thereof, and insurance coverage for any such sign shall be included in the public liability policy which TENANT is required to keep in force pursuant to this LEASE. Signage becomes property of Landlord upon Lease termination under any and all circumstances of such termination.

During the period that is six (6) months prior to the end of the Lease Term, and at any time TENANT is in default hereunder, LANDLORD may erect on the PREMISES and/or the Building signs indicating that the PREMISES are available for lease.

Section 3.5      COMPLIANCE WITH LAW.

TENANT shall procure, at its sole expense, all permits and licenses required for its operations and the transaction of business in the PREMISES and shall otherwise comply with all laws applicable to the PREMISES. Any failure of LANDLORD to comply with any law applicable to the PREMISES or the Building shall not relieve TENANT from any of its obligations under this LEASE or constitute or be construed as a constructive or other eviction of TENANT or disturbance of TENANT's use and possession of the PREMISES or any part of the Building. TENANT, within ten (10) days after receipt, shall provide LANDLORD with copies of any notices it receives regarding a violation or alleged violation of any laws.

Section 3.6      HAZARDOUS WASTE.

TENANT shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the PREMISES or the Building by TENANT or a TENANT PARTY at any time, except for such Hazardous Material as is necessary to TENANT'S business; provided that TENANT has notified LANDLORD in writing it will be bringing upon, keeping or using such Hazardous Material on or about the PREMISES.

Any Hazardous Material permitted on the PREMISES as provided in this Section, and all containers therefore, shall be used, kept, stored, and disposed of by TENANT and any TENANT PARTIES, at TENANT's sole cost and expense, in a manner that complies with all federal, state, and local laws or regulations applicable to this Hazardous Material.

TENANT shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by LANDLORD, or any government authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the PREMISES or elsewhere, or (b) the condition, use, or enjoyment of the building or any other real or personal property. Furthermore, TENANT, at its sole cost and expense, shall comply and shall cause all TENANT PARTIES to comply, with all Hazardous Materials Laws conducted on the PREMISES. TENANT's breach of any of its covenants or obligations under this Section 4.6 shall constitute a material default under the LEASE. The obligations of TENANT under this Section 4.6 shall survive the expiration or earlier termination of the LEASE without any limitation.

At the commencement of each Lease Year, TENANT shall disclose to LANDLORD the names and approximate amounts of all Hazardous Materials that TENANT intends to store, use, or dispose of on the PREMISES in the coming Lease Year. In addition, at the commencement of each Lease Year, beginning with the second Lease Year, TENANT shall disclose to LANDLORD the names and amounts of all Hazardous Materials that were actually used, stored, or disposed of on the PREMISES if those materials were not previously identified to LANDLORD at the commencement of the previous Lease Year. TENANT shall promptly complete and return to LANDLORD all environmental questionnaires and hazardous materials disclosures submitted by LANDLORD to TENANT from time to time. At any time TENANT becomes aware of any violation of any Hazardous Materials Laws or of any claim made pursuant to any Hazardous Materials Laws that has occurred or that TENANT reasonably believes may have occurred with respect to the PREMISES or the Building, TENANT shall immediately (but in no event later than forty eight (48) hours) advise LANDLORD in writing and provide LANDLORD with a copy of any notices,

correspondence, and other materials received by TENANT relating to (i) any violation or potential or alleged violation of any Hazardous Materials Laws that are received by TENANT from any governmental agency concerned with Tenant or any other TENANT PARTY; (ii) any and all inquiry, investigation, enforcement, clean-up, removal or other governmental or regulatory actions instituted or threatened relating to Tenant, the PREMISES, or the Building; (iii) all claims made or threatened by any third party against TENANT, the PREMISES, or the Building relating to any Hazardous Materials; and (iv) any release of Hazardous Materials on or about the PREMISES or the Building that TENANT knows of or reasonably believes may have occurred.

As used herein, the term "**Hazardous Material**" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Hazardous Materials Law, as currently in effect, or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) infectious materials, (vii) radioactive materials, (viii) investigated, regulated, monitored, or remediated under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law, (ix) toxic, explosive, corrosive, flammable, carcinogenic, mutagenic, or otherwise hazardous or environmentally sensitive and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality, or (x) causing or threatening to cause, in LANDLORD's sole and absolute opinion, a hazard to the health, safety, or welfare of persons on or about the PREMISES. An "**Environmental Activity**" is any use, generation, storage, transportation, handling and/or disposal of Hazardous Materials. As used herein, the term "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances and regulations and all rules, licenses, permits, orders, decrees and judgments relating to the environment and/or any Environmental Activity.

TENANT hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Materials kept on the PREMISES by the TENANT, and the TENANT shall give immediate notice to the LANDLORD of any violation or potential violation of the provisions of this Section. TENANT shall exonerate, release, waive, indemnify, protect, defend (with counsel satisfactory to LANDLORD) and hold harmless LANDLORD, its affiliates, partners, directors, shareholders, officers, employees, agents, representatives, assigns and any successors to LANDLORD's interest in the Building, from and against any and all foreseeable and unforeseeable speculative, special, direct, indirect, consequential, or other punitive damages or loss (including without limitation, any loss in fair market value, damages for the loss or restriction on use and damages arising from any adverse impact on marketing of the PREMISES, and sums paid in settlement of all claims), cost, damage, expense (including reasonable attorneys' fees and litigation costs, consultant fees and expert fees), claim, cause of action, demand, obligation, judgment, penalty, fine or liability directly or indirectly relating to or arising from (i) any Environmental Activity undertaken by TENANT or any other TENANT PARTY at the PREMISES, (ii) any remedial or clean-up work undertaken by or for TENANT in connection with TENANT's or any other TENANT PARTY'S Environmental Activities or its compliance with Hazardous Materials Laws, (iii) the breach by TENANT of any of its obligations and covenants set forth in this Section 4.6, (iv) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to that Hazardous Material; (v) any lawsuit brought or threatened, settlement reached, or government order relating to that Hazardous Material; or (vi) any violation or any laws applicable thereto, including the Hazardous Materials Laws. The provisions of this Section shall be in addition to any other obligations and liabilities TENANT may have to LANDLORD at law or equity and shall survive the transactions contemplated herein and shall survive the expiration or earlier termination of this LEASE.

If any Environmental Activities undertaken by TENANT or any other TENANT PARTY result in contamination of any portion of the PREMISES or the soil or ground water thereunder, subject to LANDLORD's prior written approval and any conditions imposed by LANDLORD, TENANT shall promptly take all actions, at its sole expense and without abatement of Rent, as are necessary to return the affected portion to the condition existing prior to the introduction of the contaminating Hazardous Material. LANDLORD shall also have the right to approve any and all contractors hired by TENANT to perform such remedial work. All such remedial work shall be performed

in compliance with all applicable laws and in such a manner as to minimize any interference with the use and enjoyment of the PREMISES. Appearance of a Hazardous Material in or about the PREMISES shall not be deemed an occurrence of damage or destruction that is subject to the terms of the LEASE respecting damage or destruction. Prior to or after the expiration or termination of the Lease Term and prior to surrendering possession of the PREMISES, TENANT shall cause all Hazardous Materials previously owned, stored or used by TENANT to be removed from the PREMISES and disposed of in accordance with applicable provisions of Hazardous Materials Laws. LANDLORD may have an Environmental Assessment (as defined herein) of the Premises performed. TENANT shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the Consultant (as defined herein) that is necessary to remove, mitigate, or remediate any Hazardous Materials contamination of the PREMISES in connection with TENANT's or any other TENANT PARTY's or their agent's Environmental Activities.

#### ARTICLE IV INSURANCE

##### Section 4.1 INSURANCE REQUIRED OF TENANT.

TENANT shall obtain and provide to LANDLORD, on or before LANDLORD's delivery of the PREMISES to TENANT or TENANT'S entering the PREMISES for any purpose, and keep in force at all times thereafter, the following insurance coverage with respect to the PREMISES: a policy of commercial general liability insurance, including naming LANDLORD (and all persons, firms and other entities designated by LANDLORD) as an additional insured, against all claims, demands or actions arising out of or in connection with occurrences within the PREMISES, TENANT's use or occupancy of the PREMISES, the acts or omissions of TENANT, its employees, agents, contractors, sublessees, and/or others occupying the PREMISES by, through, or under TENANT in the PREMISES, and for liabilities assumed under this LEASE, the limits of such policy or policies to be in an amount not less than \$1,000,000.00 per occurrence including umbrella coverage plus damage to rented premises coverage in an amount not less than \$1,000,000.00; so called "special form" property insurance (similar or equivalent to current ISO Form CP 10 30) covering the full replacement value of all alterations, additions, partitions, improvements, equipment, furniture, fixtures and inventory made or placed by TENANT on the PREMISES, against the perils commonly insured under special form coverage, and insurance covering loss of income or business interruption losses for a period of at least one year; insurance covering the full replacement value of any glass breakage in and on the PREMISES; and worker's compensation insurance covering its employees with limits no less than that required by applicable law or maintain such alternate coverage or arrangements as legally permissible employer's liability insurance with a limit of \$1,000,000.00; and any other insurance required by Tenant to be maintained under applicable law. Such insurance must be in a form acceptable to LANDLORD. If TENANT does not comply, as an alternative, LANDLORD may elect to carry such rental insurance as part of its insurance for the PREMISES and, if LANDLORD does so, TENANT shall pay the cost incurred by LANDLORD as additional rent due hereunder.

All policies of insurance required to be maintained by TENANT shall be written by one or more insurance companies licensed or approved to sell insurance in Texas and rated A-IX or better in the current Best's Rating Guide at the time such policies are issued or renewed. TENANT shall obtain a written endorsement on the part of each insurance company to notify LANDLORD at least thirty (30) days prior to cancellation of such insurance, and the liability policy shall contain contractual liability coverage. TENANT's insurance requirements shall also include coverage, including naming LANDLORD (and all persons, firms and other entities designated by LANDLORD) as an additional insured, for premises and operations and completed operations, blanket contractual, personal injury, operation, ownership, and use of owned, non-owned and hired automobiles, bodily injury and property damage, as aforesaid. All insurance policies required under this Article IV shall contain a cross-liability endorsement (i.e. will not contain an "insured versus insured" cross suits exclusion). contain a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by LANDLORD and that any coverage carried by LANDLORD shall be excess insurance, insure the performance by TENANT of its indemnity

agreement under this LEASE (provided, however, such insurance shall not limit the liability or extent of liability of TENANT under this LEASE), be written on an "occurrence" basis and not on a "claims-made" basis, contain a waiver by the insurer of any right of subrogation against LANDLORD, its agents, employees or representatives. Such policies or duly executed certificates of insurance shall promptly be delivered to LANDLORD, and in all events, prior to the Commencement Date, and renewals thereof shall be delivered to LANDLORD at least thirty (30) days prior to the expiration of the respective policy terms. Additionally, such policies or duly executed certificates of insurance must contain an endorsement or provision requiring at least thirty (30) days written notice to LANDLORD and all other named insured prior to the cancellation, diminution in the perils insured against, or reduction of the amount of coverage of, the particular policy or duly executed certificate of insurance in question. TENANT's failure to comply with the foregoing requirements relating to insurance shall constitute an event of default hereunder. In addition to the remedies provided in this Lease, upon such failure by TENANT, LANDLORD may, but is not obligated to, obtain such insurance on behalf of TENANT, whereupon TENANT shall pay to LANDLORD upon demand as additional rent the premium cost thereof plus interest thereon at the rate of 18% per annum or the maximum rate permitted by Law from the date of payment by LANDLORD until repaid by TENANT.

#### Section 4.2 WAIVER OF SUBROGATION.

LANDLORD and TENANT each waives any claim it might have against the other for any damage, theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy maintained by it that covers the Building, the PREMISES, LANDLORD's or TENANT's fixtures, personal property, leasehold improvements, or business, or is required to be insured by it under the terms of this LEASE, **regardless of whether the negligence or fault of the other party caused such loss; however, LANDLORD's waiver shall not include any deductible amounts on insurance policies carried by LANDLORD.** Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. Additionally, all property kept, stored or maintained within the PREMISES by TENANT shall be at TENANT's sole risk. TENANT's waiver, on behalf of TENANT and any insurance carrier of TENANT, extends to any claim which TENANT might otherwise have against any ground lessor (if any), and LANDLORD's affiliates, partners, directors, shareholders, officers, employees, agents, assigns and any successors to LANDLORD's interest in the Building. TENANT further agrees that all other occupants of the PREMISES claiming by, under or through TENANT shall similarly waive any and all rights of recovery and deliver to LANDLORD either appropriate provisions from its insurance policies indicating that it has the right to waive rights of recovery and subrogation or appropriate waivers of subrogation.

#### Section 4.3 FIRE SAFETY REQUIREMENTS.

If TENANT installs any electrical equipment that overloads the lines in the PREMISES or the building in which the PREMISES is located, TENANT shall, at its own cost and expense, promptly make whatever changes are necessary to remedy such condition and to comply with all requirements of the LANDLORD and any governmental authority having jurisdiction thereof.

In the event that this LEASE so permits and TENANT engages in the preparation of food or packaged foods, or engages in the use, sale or storage of inflammable or combustible material, TENANT shall install chemical extinguishing devices approved by the Fire Insurance Rating Organization and shall keep such devices under service as required by such organization. If gas is used in the PREMISES, TENANT shall install at its expense gas cut-off devices (manual and automatic).

#### Section 4.4 LANDLORD'S INSURANCE.

LANDLORD may, at its sole and absolute discretion, at all times during the term of this LEASE insure the PREMISES against all risks of direct physical loss or personal injury in an amount and with such deductibles as LANDLORD considers appropriate; provided, LANDLORD shall not be obligated in any way or manner to insure any personal property (including, but not limited to, any furniture, machinery, goods or supplies) of TENANT upon

or within the PREMISES, any fixtures installed or paid for by TENANT upon or within the PREMISES, or any improvements constructed on the PREMISES. TENANT shall have no right in or claim to the proceeds of any policy of insurance maintained by LANDLORD even if the cost of such insurance is borne by TENANT as set forth herein. LANDLORD shall have the right to self-insure against the above-described risk.

## ARTICLE V REPAIRS AND MAINTENANCE

### Section 5.1      REPAIRS BY LANDLORD. **NONE**

### Section 5.2      REPAIRS AND MAINTENANCE BY TENANT.

TENANT shall, at TENANT'S cost, maintain, repair, replace and keep in good condition and/or operating order the PREMISES, all equipment and systems servicing the PREMISES exclusively, and shall replace all things which are necessary to keep the same in such condition, including but not limited to, (a) structural repairs to the exterior walls, the roof, foundation, plumbing and/or pipes and/or conduits of the Building or remaining portion of the PREMISES (b) the interior of the Building, including fixtures, equipment, walls, floor, and ceilings; (c) all windows and doors (including exterior entrances and walls), frames, glass, molding and hardware; (d) all electrical systems and plumbing on the PREMISES which serve the PREMISES; (e) all signs, HVAC, refrigeration units, mechanical doors and other mechanical equipment situated on or in the PREMISES or serving the PREMISES, including, but not limited to, preventative maintenance for all of the foregoing items (e.g. obtaining third party service contacts, with copies of such contracts being provided to LANDLORD within ten (10) days of TENANT entering into such agreements, for the preventative maintenance for the mechanical units and equipment and for the quarterly changing of air conditioning filters and quarterly preventative maintenance for the HVAC); and (t) utility facilities affecting the PREMISES, including sprinkler systems. TENANT shall, at TENANT'S cost, make such repairs, replacements, or modifications to the PREMISES, equipment and systems serving the PREMISES, as are necessary to cause the same to comply with all applicable governmental laws and regulations including all local, state and/or federal laws, regulations, codes and ordinances as may be adopted or enacted from time to time during the Lease Term.

If(i) TENANT does not repair properly as required hereunder and to the reasonable satisfaction of LANDLORD, (ii) LANDLORD, in the exercise of its sole discretion, determines that emergency repairs are necessary, or (iii) repairs or replacements to the PREMISES are made necessary by any act or omission or negligence of TENANT or of a TENANT PARTY, then in any of such events LANDLORD may make such repairs without liability to TENANT for any loss or damage that may accrue to TENANT'S merchandise, fixtures, or other property or to TENANT'S business by reason thereof, and upon completion thereof, TENANT shall pay LANDLORD'S costs for making such repairs plus fifteen percent (15%) for overhead, upon presentation of a bill therefore, as additional rent, plus interest thereon at the lesser of eighteen percent ( 18%) per annum or the maximum rate permitted by law. All repairs made by TENANT shall utilize materials of quality at least equal to the original materials repaired and all repairs shall be made by contractors or installers licensed to do business in Texas in accordance with code and satisfying LANDLORD'S bonding requirements on repairs. Notwithstanding anything in the section to the contrary, TENANT's responsibility for acts, omissions or negligence of invitees or visitors shall be limited to acts, omissions or negligence within the PREMISES.

### Section 5.3      INSPECTION.

LANDLORD or its officers, agents and representatives shall have the right to enter into and upon any and all parts of the PREMISES at all reasonable hours (or, in any emergency, at any hour) to (a) inspect same or clean or make repairs or alterations or additions as LANDLORD may deem necessary (but without any obligation to do so, except as expressly provided for herein) or (b) show the PREMISES to prospective tenants, purchasers or lenders; and TENANT shall not be entitled to any abatement or reduction of Rent by reason thereof, nor shall such be deemed

to be an actual or constructive eviction. LANDLORD is released from liability for any interference with TENANT's business caused by LANDLORD's work in or about the PREMISES, excepting only LANDLORD's gross negligence or willful misconduct. Without limiting the generality of the foregoing, TENANT will permit LANDLORD and LANDLORD's agents, servants, and employees, including, but not limited to, legal counsel and environmental consultants and engineers, access to the PREMISES for the purposes of environmental inspections and sampling during normal business hours, or during other hours either by agreement of the parties or in the event of any environmental emergency. TENANT shall not restrict access to any part of the PREMISES, and TENANT shall not impose any conditions to access. From time to time, LANDLORD may retain a registered environmental consultant (the "Consultant") to conduct an investigation of the PREMISES ("Environmental Assessment") (i) for Hazardous Materials contamination in, about, or beneath the PREMISES and (ii) to assess all activities at the PREMISES for compliance with all applicable laws, ordinances and regulations and for the use of procedures intended to reasonably reduce the risk of a release of Hazardous Materials. If LANDLORD obtains the Environmental Assessment and it recommends remediation or other action that is the responsibility of TENANT, then TENANT shall pay LANDLORD on demand the cost of the Environmental Assessment as additional rent. If LANDLORD so requires, TENANT shall comply, at its sole cost and expense, with all recommendations contained in the Environmental Assessment which should be taken with respect to Environmental Activities on the PREMISES or any recommendations for additional testing and studies to detect the presence of Hazardous Materials. TENANT covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the PREMISES for the purpose of Consultant's investigation.

Section 5.4      OBSTRUCTIONS.

TENANT agrees to keep the PREMISES free from trash, litter or obstructions.

ARTICLE VI  
ADDITIONS AND ALTERATIONS, RENOVATIONS AND IMPROVEMENTS

Section 6.1      BY LANDLORD.

In the event LANDLORD shall hereafter determine during the Lease Term to erect additional structures, add stories to the Building or have the Building be enlarged or reduced (or alter any portions of the PREMISES as may be designated by LANDLORD), at the sole option of LANDLORD, TENANT hereby consents thereto and to the performance of work necessary to effect the same and any inconvenience caused thereby. The design, material and performance of necessary work therefore shall be in the sole unrestricted discretion of LANDLORD. In the event LANDLORD constructs such improvements, TENANT agrees that LANDLORD shall have the option, at LANDLORD'S expense to redesign and alter TENANT'S frontage to conform to the improvements made by LANDLORD (such new frontage to be subject to LANDLORD'S design), and TENANT agrees to pay in the manner specified in Section 2.3 the Operation Costs, which are imposed by reason of said improvements. TENANT acknowledges that the charges and payments required in this paragraph are in addition to any other payments required in this LEASE, for default of which LANDLORD shall be entitled to all remedies granted by this LEASE or at law.

Section 6.2      BY TENANT.

TENANT may from time to time (if TENANT shall not then be in default), at its own expense, alter, renovate or improve the PREMISES; provided the same be performed in a good and workmanlike manner; in general accordance with this LEASE and the provisions of EXHIBIT B attached hereto and made a part hereof: and in accordance with accepted building practices and applicable laws including, but not limited to, building codes and zoning ordinances; and so as not to weaken or impair the strength or lessen the value of the PREMISES. All fixtures installed by TENANT shall be new, and all other improvements made to the interior of the PREMISES by TENANT shall consist of new materials. If TENANT fails to submit plans and specifications to LANDLORD prior to commencement of any such work and/or fails to obtain LANDLORD'S approval, then upon LANDLORD'S demand, TENANT shall immediately restore the PREMISES to its original condition. TENANT shall obtain LANDLORD'S

prior written approval of the plans and specifications therefor and shall cause LANDLORD'S bonding, insurance and other contractor requirements to be satisfied.

To the extent that TENANT performs any such alterations, renovations, or improvements to the PREMISES that confer a permanent benefit to the LANDLORD, TENANT may, with LANDLORD's prior written approval of the scope and estimated cost of such alteration, apply to LANDLORD for a one-time offset of its current monthly RENT payment in an amount equal to TENANT's actual costs for materials and, if necessary, skilled professional contracting labor, provided that all expenses have already been paid by TENANTS, and that such costs do not exceed the approved estimated cost, or a fixed reimbursable amount agreed to by LANDLORD and TENANT prior to performance of such alteration. LANDLORD reserves the right to reject in its sole absolute discretion any application for offset or reimbursement based upon work that is not performed in accordance with this LEASE and the provisions of EXHIBIT B.

## ARTICLE VII DAMAGE, DESTRUCTION OR CONDEMNATION OF PREMISES

### Section 7.1      DAMAGE OR DESTRUCTION.

If all or any part of the PREMISES shall be damaged or destroyed by fire or other casualty covered by LANDLORD'S insurance policy, then this LEASE shall continue in full force and effect, unless terminated as hereinafter provided, and LANDLORD shall repair, restore or rebuild the PREMISES to its condition at the time of the occurrence of the loss and in such event TENANT shall pay TENANT's share of the deductible applicable under LANDLORD maintained insurance with respect to any casualty occurring at or on the PREMISES, unless TENANT (or a TENANT PARTY) or another tenant is responsible for such casualty by way of negligence or willful misconduct, in which event the responsible tenant(s) shall pay the entire amount of the deductible upon demand; provided, however, LANDLORD shall not be obligated to commence such repair, restoration or rebuilding until insurance proceeds are received by LANDLORD, and LANDLORD'S obligation hereunder shall be limited to the proceeds received and retained by LANDLORD under its insurance policy which are allocable to the PREMISES. LANDLORD agrees to notify TENANT in writing within ninety (90) days from date of damage or destruction of LANDLORD'S intent to repair, restore, or rebuild the PREMISES and date LANDLORD estimates to complete.

TENANT agrees to notify LANDLORD in writing of the actual costs of all permanent leasehold improvements and betterments installed or to be installed by TENANT in the PREMISES (whether same have been paid for entirely or partially by TENANT), but exclusive of TENANT'S personal property, movable trade fixtures and contents. Similar notifications shall be given to LANDLORD not less than thirty (30) days after the completion of any proposed alterations, additions or improvements to the PREMISES by TENANT (if same are permitted under the terms of this LEASE) subsequent to the initial construction of the PREMISES. If TENANT fails to comply with the foregoing provisions, any loss or damage LANDLORD shall sustain by reason thereof shall be borne by TENANT and shall be paid immediately by TENANT upon receipt of a bill therefor and evidence of such loss, and in addition to any other rights or remedies reserved by LANDLORD under this LEASE, LANDLORD'S obligations under this Article VII to repair, replace and/or rebuild the PREMISES, shall be deemed inapplicable, and in lieu thereof LANDLORD may, at its election, either restore or require TENANT to restore the PREMISES to the condition in which it existed prior to such loss, and in either case TENANT shall pay the cost of such restoration.

TENANT covenants and agrees to reopen for business in the PREMISES within forty-five (45) days after notice from LANDLORD that the PREMISES is ready for re-occupancy. TENANT shall repair, redecorate, re-fixture and restock the PREMISES in a manner at least equal to that existing prior to such damage or destruction, and the proceeds of all insurance carried by TENANT shall be held by TENANT in trust for such purposes.

No damage or destruction to the PREMISES shall allow TENANT to surrender possession of the PREMISES or affect TENANT'S liability for the payment of Rent or any other covenant or condition herein contained.

Notwithstanding anything else to the contrary contained in this Section 7.1 or elsewhere in this LEASE, LANDLORD, at its option, may terminate this LEASE in writing within thirty (30) days of occurrence of damage or destruction to TENANT if:

- a) The PREMISES and/or building in which the PREMISES is located shall be damaged or destroyed as a result of an occurrence that is not covered by LANDLORD'S insurance; or
- b) The PREMISES and/or the building in which the PREMISES is located shall be damaged or destroyed to such extent that the remaining Lease Term is not sufficient to amortize the cost of reconstruction or to the extent that LANDLORD determines, in LANDLORD's sole discretion, it would be otherwise uneconomical or impossible, or not in the best interests of LANDLORD, to rebuild or repair the same; or
- c) Any or all of the buildings of the PREMISES are damaged (whether or not the PREMISES is damaged) to such an extent that, in the sole judgment of LANDLORD, the Building cannot be operated as an economically viable unit;
- d) The PREMISES, or any portion thereof, shall be damaged or destroyed due to the willful misconduct of any TENANT PARTY.

TENANT shall give to LANDLORD prompt written notice of any damage to or destruction of any portion of the PREMISES resulting from fire or other casualty. Notwithstanding anything herein to the contrary, LANDLORD shall have the right to terminate this LEASE by delivering written notice of termination to TENANT within thirty (30) after the date of the event giving rise to the issuance of such notice.

#### Section 7.2 CONDEMNATION.

If the entire PREMISES shall be appropriated or taken under the power of eminent domain by any public or quasi- public authority, or conveyance shall be made in lieu thereof, this LEASE shall terminate and expire as of the date of such taking, and the parties shall thereupon be released from any further liability hereunder.

Notwithstanding anything contained in this LEASE to the contrary, in the event more than forty percent (40%) of the PREMISES shall be appropriated or taken, or conveyance made in lieu thereof, either party shall have the right to cancel and terminate this LEASE as of the date of such taking upon giving notice to the other of such election, within thirty (30) days after notice to TENANT from LANDLORD or the condemning authority that the PREMISES is to be appropriated or taken. In the event of such cancellation, the parties shall thereupon be released from any further liability under this LEASE (except for obligations existing on the effective date of such termination and any obligations that survive the termination of this LEASE).

If a portion of the PREMISES is taken, or conveyance made in lieu thereof, and if this LEASE shall not be terminated as provided in the preceding paragraph, then the Minimum Annual Rent and the Operation Costs shall be ratably apportioned according to the space so taken, and LANDLORD shall, at its own expense, restore the remaining portion of the Building to a single architectural unit. Notwithstanding the foregoing sentence, the cost of LANDLORD'S obligation hereunder shall be limited to the net proceeds of the condemnation award actually received and retained by LANDLORD which are allocable to the PREMISES minus any condemnation award actually received and retained by TENANT. Any additional amounts needed to restore the remaining portion of the

PREMISES will be TENANT's responsibility and sole cost.

If more than twenty percent (20%) of the gross leasable floor area within the Building shall be so taken, regardless of whether or not the PREMISES shall have been partially taken, then LANDLORD shall have the right to terminate this LEASE on thirty (30) days written notice.

All compensation awarded for any taking for public purposes, whether permanent or temporary (or the proceeds of private sale in lieu thereof), of the PREMISES, as between LANDLORD and TENANT, shall be the property of LANDLORD, and TENANT hereby assigns its interest in any such award to LANDLORD; provided, however, LANDLORD shall have no interest in any award made to TENANT for loss of business or for the taking of TENANT's fixtures and other personal property of TENANT if a separate award for such items is made to TENANT. TENANT shall not be entitled to any award made for the value of the unexpired Lease Term and TENANT shall have no claim against LANDLORD.

It is mutually agreed that (i) any reduction in the parking area, number of parking spaces in the PREMISES, and/or restriction on the number of motor vehicles that may enter the PREMISES by action or order of any governmental authority, quasi-governmental authority, and/or by any court having jurisdiction in the premises shall not constitute such a taking or condemnation under this LEASE that would entitle TENANT to terminate this LEASE, and (ii) any such environmental condemnation and/or compliance by LANDLORD with any order, rule or regulation of any such authority, with any such judicial decree, and/or any such existing or future law shall not constitute a default under this LEASE by LANDLORD, and this LEASE shall remain in full force and effect. Any such parking for Tenants use shall comply with all applicable laws and regulations and may be subject to Landlords rules and regulations as promulgated from time to time.

#### ARTICLE VIII. SECURITY

TENANT, at its own expense, shall be solely responsible for providing security for the PREMISES, and LANDLORD shall have no responsibility therefor. Any burglar alarm system installed in the PREMISES shall be installed at TENANT's sole expense with LANDLORD's prior written approval. LANDLORD may institute security controls, including, but not limited to, the hiring of security personnel to patrol the PREMISES and installation of electronic and mechanical security devices, and the costs of such services and equipment shall be a part of the Operation Costs. The fact that such security controls may be provided, and the extent and manner in which they are provided, is no guarantee that acts of crime and injury, theft or damage to person or property will not occur at the PREMISES or elsewhere in the Building. Notwithstanding any provision to the contrary, LANDLORD is disclaiming any guarantee, warranty or representation of any kind to TENANT and TENANT'S PARTIES concerning the provision of, and adequacy of, security controls to be provided at the PREMISES, and security for any possessions of TENANT or TENANT'S PARTIES.

**FURTHERMORE, NOTWITHSTANDING THE FACT THAT THE SECURITY CONTROLS MAY BE PROVIDED, LANDLORD IS NOT LIABLE OR RESPONSIBLE FOR, AND TENANT HEREBY EXONERATES, RELEASES, WAIVES AND FOREVER ACQUITS LANDLORD FROM ANY LIABILITY FOR ANY AND ALL LOSS OR DAMAGE ARISING OUT OF ANY ILLEGAL ACTS OF THIRD PERSONS (OTHER THAN LANDLORD'S AGENTS OR EMPLOYEES WHEN SUCH PERSONS ARE SOLELY ACTING WITHIN THE SCOPE OF THEIR AGENCY OR EMPLOYMENT), INCLUDING, WITHOUT LIMITATION, ACTS OF ROBBERY, BURGLARY, THEFT, MALICIOUS MISCHIEF OR OTHER CRIMES AGAINST PERSON OR PROPERTY OF ANY NATURE WHATSOEVER. ADDITIONALLY, TENANT HEREBY AGREES TO EXONERATE, RELEASE, WAIVE, INDEMNIFY, PROTECT, DEFEND AND HOLD LANDLORD AND ITS AGENTS, REPRESENTATIVES, OFFICERS AND EMPLOYEES**

**HARMLESS FROM ANY LIABILITY, WSS,EXPENSE OR CLAIM (INCLUDING, BUT NOT LIMITED TO, ACTUAL ATTORNEY'S FEES) ARISING OUT OF SUCH LOSS OR DAMAGE REGARDLESS OF THE CAUSE OFSUCH LOSS OR DAMAGE, INCLUDING IN THOSE INSTANCES IN WHICH THE NEGLIGENCE, GROSS NEGLIGENCE, NEGLIGENCE PER SE, STRICT LIABILITY OR ANY OTHER TORTIOUS ACTS OR OMISSIONS OF LANDLORD AND/OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS CAUSED SUCH DAMAGE OR LOSS, IN WHOLE OR IN PART.**

ARTICLE IX  
DEFAULT

Section 9.1 EVENTS OF TENANT'S DEFAULT.

It shall, at LANDLORD'S option, be deemed a breach of this LEASE and an event of default and LANDLORD may declare a breach and event of default if:

- a) TENANT fails to (i) make any payment of Rent when due, or (ii) perform any other term, covenant, condition, provision or agreement of this LEASE and if said non-monetary default continues to exist at the expiration of thirty (30) days; provided, however, that if any said non-monetary default cannot reasonably be cured within such thirty (30) day period, by the exercise of due diligence, the same shall not constitute a default hereunder if within such thirty (30) day period TENANT commences the curing of such non-monetary default and diligently prosecutes same to completion; provided that such non-monetary default is cured within (30) days after the expiration of said thirty (30) day period;
- b) or the PREMISES becomes abandoned, or vacated for a period of ten (10) consecutive days or is destroyed by TENANT or a TENANT PARTY; or
- c) a trustee or receiver shall be appointed (and TENANT does not regain possession within thirty [30] business days after such appointment) to take possession of substantially all of TENANT'S assets in, on or about the PREMISES or of TENANT'S interest in this LEASE; or
- d) TENANT makes an assignment for the benefit of creditors; or
- e) substantially all of TENANT'S assets in, on or about the PREMISES or TENANT'S interest in this LEASE are attached or levied upon under execution (and TENANT does not discharge the same within sixty [60] days thereafter); or
- f) a petition (voluntary or involuntary) in bankruptcy, insolvency, or for reorganization or arrangement is filed by or against TENANT or any Guarantor hereunder pursuant to any federal or state statute (and, with respect to any petition filed against it, TENANT (or Guarantor) fails to secure a stay or discharge thereof within ten ( 10] business days after the filing of the same); or
- g) TENANT or any Guarantor hereunder should be adjudicated bankrupt; or
- h) the interest of TENANT in the PREMISES shall be sold under execution or other legal process; or
- i) TENANT fails to timely comply with the provisions of Section 4.1; or
- j) Any TENANT PARTY shall commit any act of fraud, malfeasance or crime against LANDLORD, the PREMISES, and/or the Building; or

- k) TENANT does or causes to be done any unauthorized construction in the Building or the PREMISES, or TENANT deviates from the plans and specifications for the TENANT's Work without the prior written approval of LANDLORD, or there exists any defective workmanship or materials in the TENANT's Work, which deviations or defects are not corrected within ten (10) days after written notice thereof; or
- l) there exists any false or misleading written representation or warranty contained herein or any false or misleading written representation to LANDLORD concerning the financial condition or credit standing of either TENANT or any Guarantor obligated to LANDLORD under any agreements guaranteeing performance of any of the obligations of TENANT detailed herein; or
- m) the taking of any action by TENANT'S, without limitation, principals, managers, members, officers, or owners, to dissolve or liquidate TENANT; or
- n) there is an attachment, execution or other judicial seizure of substantially all of TENANT'S assets or of those assets on the PREMISES; or
- o) any Guarantor of this LEASE shall default under any guaranty of this LEASE, or shall repudiate or revoke such guaranty or any obligation under such guaranty.

If LANDLORD shall not be permitted to terminate this LEASE as hereinabove provided because of the provisions of Title XI, of the United States Code relating to Bankruptcy as amended ("**Bankruptcy Code**"), then TENANT or any trustee for TENANT agrees promptly, within no more than fifteen (15) business days upon request by LANDLORD to the Bankruptcy Court, to assume or reject this LEASE, and TENANT agrees not to seek or request any extension or adjustment of any application to assume or reject this LEASE filed by LANDLORD with such court. In such event, TENANT or any trustee for TENANT may only assume this LEASE if it (i) cures or provides adequate assurance that the trustee will promptly cure any default hereunder, (ii) compensates or provides adequate assurance that TENANT will promptly compensate LANDLORD for any actual pecuniary loss to LANDLORD resulting from TENANT'S default, and (iii) provides adequate assurance of future performance under this LEASE by TENANT, including, without limitation, Section 1.1(h). In no event after the assumption of this LEASE by TENANT or any trustee for TENANT shall any then existing default remain uncured for a period in excess of ten (10) days. Adequate assurance of future performance of this LEASE shall include, without limitation, adequate assurance (A) of the source of Minimum Annual Rent and (B) that any assignment of this LEASE will not breach any provision hereunder. Furthermore, to the fullest extent permitted by law, TENANT and any Guarantor hereto, stipulate, acknowledge and agree LANDLORD will be deemed and classified as a secured creditor of the highest priority in any bankruptcy proceeding as relates to the obligations under this LEASE, with TENANT and any guarantor hereby waiving, releasing and waiving any claims that LANDLORD is anything but a secured creditor of the highest priority.

## Section 9.2 LANDLORD'S RIGHTS ON DEFAULT.

Upon the occurrence of any event of default specified in this LEASE, LANDLORD shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever. The failure or refusal of LANDLORD to relet the PREMISES shall not affect TENANT's liability. Each right and remedy provided for in this LEASE is cumulative and is in addition to every other right or remedy provided for in this LEASE and now or after the Effective Date existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by LANDLORD of any one or more of the rights or remedies provided for in this LEASE or now or after the Effective Date existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by LANDLORD of any or all other rights or remedies provided for in this LEASE or now or after the Effective Date existing at law or in equity or by statute or otherwise. All costs incurred by LANDLORD in collecting any amounts and damages owing by TENANT pursuant to the provisions of this LEASE or to enforce any provisions

of this LEASE, including attorney's fees, from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by LANDLORD, will also be recoverable by LANDLORD from TENANT.

- a) Terminate this LEASE in which event TENANT shall immediately surrender the PREMISES to LANDLORD, and if TENANT fails to do so, LANDLORD may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession and expel or remove TENANT and any other person who may be occupying said PREMISES or any part thereof, without being liable for prosecution or any claim for damages therefor; and TENANT agrees to pay to LANDLORD on demand the amount of all loss and damage which LANDLORD may suffer by reason of such termination, whether through inability to relet the PREMISES on satisfactory terms or otherwise, including the loss of Rent for the remainder of the Lease Term. Notwithstanding anything to the contrary contained herein and to the fullest extent by law, TENANT shall remain liable for all obligations arising during the balance of the then current Lease Term as if this LEASE had remained in full force and effect and LANDLORD may recover from TENANT all damages it may incur by reason of such event of default, including the cost of recovering the PREMISES, reasonable attorneys' fees, and the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this LEASE for the remainder of the then- current Lease Term over the then reasonable rental value of the PREMISES for the remainder of the then- current Lease Term, all of which amounts shall be immediately due and payable from TENANT to LANDLORD.

In the event that LANDLORD elects to terminate this LEASE as permitted in this subparagraph, then TENANT shall pay to LANDLORD the sums set forth herein. LANDLORD and TENANT agree that it is difficult to determine, with any degree of certainty, the loss LANDLORD will incur if the LEASE is terminated as a result of an event of default; accordingly, LANDLORD and TENANT agree that the total sum of money determined in accordance with the following formula represents a reasonable estimate of such loss and is intended as a liquidated damages provision:

- i. The cost of recovering the PREMISES, *plus*.
  - ii. The unpaid Rent earned at the time of termination, including interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law, from the due date, *plus*.
  - iii. The amount equal to the then present value of the Minimum Annual Rent and other amounts that would have been owing by TENANT for the balance of the Lease Term had this LEASE not been terminated, less the present value of the PREMISES for the same period (taking into account all relevant factors, including market rent concessions and the likelihood and probable timing of the reletting) and using a discount rate of five and one-half percent (5.50%) on such amount
  - iv. All other expenses (including attorney's fees) incurred by LANDLORD in connection with TENANT's default and all other sums of money and damages due to LANDLORD.
- b. Alter any locks and other security devices at the PREMISES, and if it does so LANDLORD shall not be required to provide a new key or other access right to TENANT unless TENANT has cured all events of default; provided, however, that in any such instance, during LANDLORD's normal business hours and at the convenience of LANDLORD, and upon the written request of TENANT accompanied by such written waivers and releases as LANDLORD may require, LANDLORD will escort TENANT or its authorized personnel to the PREMISES to retrieve any personal belongings of TENANT's employees. The provisions of this subparagraph (b) are intended to override and control any conflicting provisions of the Texas Property

Code to which TENANT expressly agrees.

- c. Enter upon and take possession of the PREMISES and expel or remove TENANT and any other person who may be occupying the PREMISES or any part thereof, without being liable for prosecution or any claim for damages therefor, and if LANDLORD so elects, relet the PREMISES on such terms as LANDLORD shall deem advisable and receive the rent therefor; and TENANT agrees to pay to LANDLORD on demand any deficiency that may arise by reason of such reletting for the remainder of the Lease Term. To the extent permitted by law, TENANT waives notice of re-entry or institution of legal proceedings to that end and any right of redemption, re-entry or repossession.
- d. Perform any act TENANT is obligated to perform under the terms of this LEASE in TENANT's name and on TENANT's behalf, without being liable for any claim for damages therefor, and TENANT shall reimburse LANDLORD on demand for any expenses that LANDLORD may incur in effecting compliance with TENANT's obligations under this LEASE (including, but not limited to, collection costs and legal expenses), plus interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law.
- e. Charge to and recover from TENANT any Rent, other charge, bonus, inducement, or consideration abated, given, or paid by LANDLORD pursuant to an Inducement Provision (as defined herein), which amount shall be due and payable by TENANT to LANDLORD and recoverable by LANDLORD as additional rent no more than ten (10) days after TENANT's receipt of an invoice or notice therefor, notwithstanding any subsequent cure by TENANT. The term "**Inducement Provision**" shall mean any agreement by LANDLORD for possession of the PREMISES without the payment or reduced payment of Rent or other charges or for the giving or paying by LANDLORD to or for TENANT of any cash or other bonus, inducement, or consideration for TENANT's entering into this LEASE including, but not limited to tenant improvement allowances and abated Rent, which are conditioned on TENANT's full and faithful performance of all of the terms, covenants, and conditions of this LEASE to be performed or observed by TENANT.

No re-entry or taking possession of the PREMISES by LANDLORD shall be construed as an election on its part to terminate this LEASE, unless a written notice of such intention be given to TENANT by LANDLORD. Notwithstanding any such reletting or re-entry or taking possession, LANDLORD may at any time thereafter elect to terminate this LEASE for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to LANDLORD hereunder or of any damages occurring to LANDLORD by reason of the violation of any of the terms, provisions and covenants herein contained. LANDLORD's acceptance of Rent following an event of default hereunder shall not be construed as LANDLORD's waiver of such event of default. No waiver by LANDLORD of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. The loss or damage that LANDLORD may suffer by reason of termination of this LEASE or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken by LANDLORD following repossession. Should LANDLORD at any time terminate this LEASE for any default, in addition to any other remedy LANDLORD may have, LANDLORD may recover from TENANT all damages LANDLORD may incur by reason of such default, including the cost of recovering the PREMISES and the loss of Rent for the remainder of the Lease Term.

LANDLORD shall use reasonable efforts under the circumstances to relet the PREMISES on such terms and conditions as LANDLORD in its sole discretion may determine (including a term different than the Lease Term, rental concessions, alterations and repair of the PREMISES); provided, however, LANDLORD hereby reserves the

right (i) to lease any other comparable leasable space prior to offering the PREMISES for lease, and (ii) to refuse to lease the PREMISES to any potential tenant that does not meet LANDLORD' s standards and criteria for leasing other comparable space owned by LANDLORD. LANDLORD shall not be liable, nor shall TENANT's obligations hereunder be diminished because of, LANDLORD's failure or refusal to relet the PREMISES or collect Rent due in respect of such reletting. In any proceedings to enforce this LEASE under this paragraph, LANDLORD shall be presumed to have used its reasonable efforts to relet the PREMISES, and TENANT shall bear the burden of proof to establish that such reasonable efforts were not used. Furthermore, TENANT hereby stipulates and agrees that any duty of LANDLORD to mitigate its damages will be limited to listing the PREMISES for lease with either (i) LANDLORD's property manager (which may be an affiliate of LANDLORD) or (ii) a licensed real estate broker of LANDLORD's choosing (which may be an affiliate of LANDLORD). If no party acceptable to LANDLORD executes a lease with LANDLORD on terms acceptable to LANDLORD (in LANDLORD's sole discretion), TENANT agrees and stipulates LANDLORD shall have conclusively satisfied any such duty to relet or mitigate.

In the event that LANDLORD enters upon and takes possession of the PREMISES due to the TENANT's default in payment of Rent, then LANDLORD is expressly authorized to change the lock on the door to the PREMISES, and shall not be required to place written notice on the TENANT's front door nor to furnish a new key to the TENANT. It is further agreed that all rights and remedies of both LANDLORD and TENANT shall be governed by this LEASE, and not by Section 93.002(a)-(g) of the Texas Property Code, as amended, which shall have no applicability to this LEASE.

If LANDLORD takes possession of the PREMISES pursuant to the authority herein granted, then LANDLORD shall have the right to keep in place and use all of the furniture, fixtures and equipment at the PREMISES, including that which is owned by or leased to TENANT at all times prior to any foreclosure thereon by LANDLORD or repossession thereof by any lessor thereof or third party having a lien thereon. LANDLORD shall also have the right to remove from the PREMISES (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process, and without being liable for prosecution or any claim for damages therefor) all or any portion of such furniture, fixtures, equipment and other property located thereon, and place the same in storage at any place in the county in which the PREMISES is located or dispose of the same; and in such event, TENANT shall be liable to LANDLORD for costs incurred by LANDLORD in connection with such removal, storage and/or disposal and shall exonerate, release, waive, protect, defend, indemnify and hold harmless LANDLORD and LANDLORD's partners, agents, employees, officers and/or directors from all loss, damage, cost, expense and liability in connection with such removal, storage and/or disposal. LANDLORD shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to LANDLORD a copy of any instrument purporting to have been executed by TENANT (or any predecessor of TENANT) or otherwise authorized by law or a court, granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of LANDLORD to inquire into the authenticity of such instrument and without the necessity of LANDLORD's making any investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and TENANT agrees to exonerate, release, waive, protect, indemnify, defend and hold harmless LANDLORD and LANDLORD's partners, agents, employees, officers and/or directors from all cost, expense, loss, damage and liability incident to LANDLORD' s relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant. Should TENANT abandon the PREMISES and leave property therein, LANDLORD may elect whether or not to accept the property, liquidate such property and apply the proceeds against any sums due and owing by TENANT, or to dispose of such property, and TENANT waives any claim to such property after any such abandonment. For purposes of the foregoing, TENANT shall be deemed to have abandoned its interest in such property if the same is not removed from the PREMISES by TENANT within ten (10) days after LANDLORD's demand that TENANT remove same, or within ten ( 10) days after expiration or earlier termination of this LEASE, whichever first occurs.

To the extent permitted by law, if LANDLORD shall commence any proceeding for nonpayment of Rent, or any other payment of any other kind to which LANDLORD may be entitled, or which it may claim hereunder, TENANT will not interpose any counterclaim or setoff of whatever nature or description (other than compulsory counterclaim) in such proceedings nor seek to consolidate LANDLORD's action with any other action which would delay or prevent LANDLORD's action from proceeding. This restriction shall not, however, be construed to prohibit TENANT's assertion of compulsory counterclaims or TENANT's right to assert any claim against LANDLORD in a separate action or actions. The parties hereto specifically agree that TENANT's covenants to pay Rent or any other payments required of it hereunder are independent of all other covenants and agreements herein contained. The foregoing shall not be construed as a waiver of TENANT's right to assert any such claim in a separate action brought by TENANT against LANDLORD.

If it is necessary for LANDLORD to bring suit in order to collect any deficiency, LANDLORD has the right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit cannot prejudice in any way the right of LANDLORD to bring a similar action for any subsequent deficiency or deficiencies.

Section 9.3      NON-WAIVER PROVISIONS.

The maintenance of any action or proceeding to recover possession of the PREMISES, or any installments of Rent or any other moneys that may be due or become due from TENANT to LANDLORD, shall not preclude LANDLORD from thereafter (i) instituting and maintaining subsequent actions or proceedings for the recovery of possession of the PREMISES or of any other moneys that may be due or become due from TENANT, or (ii) the election of any other remedy available to LANDLORD under this LEASE. Any entry or re-entry of the PREMISES by LANDLORD shall not be deemed to absolve or discharge TENANT from liability as a result of a default hereunder. One or more waivers of any covenant, term or condition of this LEASE by LANDLORD shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by LANDLORD shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by LANDLORD to or of any act by TENANT requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

LANDLORD'S failure to take advantage of any default or breach of covenant on the part of TENANT shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this LEASE be construed to waive or to lessen the right of LANDLORD to insist upon the performance by TENANT of any term, covenant or condition hereof, or to exercise any rights given him on account of any such default. A waiver by LANDLORD of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed, a waiver of any breach or any term, covenant or condition of this LEASE.

Section 9.4      INABILITY TO PERFORM.

If LANDLORD is delayed or prevented from any of its obligations under this LEASE by reason of strikes, riots, lockout, civil commotion, invasion, rebellion, hostilities, military or usurped power, war, acts of terrorists, computer crimes, sabotage, inability to obtain any material, service or financing, governmental laws beyond the reasonable control of LANDLORD, through act of God or any other causes of any kind whatsoever which are beyond the reasonable control of LANDLORD, then LANDLORD shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time for the performance of any such obligation by LANDLORD, the period of such delay or such prevention.

Section 9.5      ADDITIONAL RENT.

Any charge, fine or other monetary obligation assessed against TENANT by reason of its failure to perform its obligations hereunder as provided in this LEASE shall also constitute additional rental and shall be deemed to be

material consideration for the PREMISES. Notwithstanding anything contained herein to the contrary, any such charge, fine or other monetary obligation assessed against TENANT shall not constitute liquidated damages and shall be deemed to be cumulative with all other remedies available at law or in equity to LANDLORD as provided herein.

Section 9.6      **DEFAULT AND LIABILITY OF LANDLORD.**

If LANDLORD defaults in the performance of any term, covenant or condition required to be performed by LANDLORD under this LEASE, then LANDLORD shall have thirty (30) days following the receipt of written notice from TENANT specifying such default to cure such default, provided that if LANDLORD has commenced actions to cure such default within said thirty (30) day period, LANDLORD shall have all reasonable and necessary time to complete such cure. Whenever in this LEASE there is imposed upon LANDLORD the obligation to use its good faith efforts, reasonable efforts or diligence, LANDLORD shall be required to do so only to the extent the same is economically feasible and otherwise will not impose upon LANDLORD extreme financial or other business burdens. Upon the occurrence of any default set forth in this LEASE and subsequent failure by LANDLORD to cure or commence actions to cure as provided herein, Tenant's sole and exclusive remedy under this LEASE shall be the right to maintain an action against LANDLORD for actual damages suffered as a result of LANDLORD's default and TENANT hereby stipulates and agrees to its release and waiver of any and all other remedies under law, statute or otherwise, including, without limitation, any speculative, special, indirect, consequential, or other punitive damages, losses, liabilities and/or expenses.

**ARTICLE X  
OTHER PROVISIONS**

Section 10.1      **DEFINITION AND LIABILITY OF LANDLORD.**

The term "LANDLORD" as used in this LEASE means only the owner or mortgagee in possession for the time being of the PREMISES, or the owner of a leasehold interest in the Building and/or the land thereunder so that in the event of sale of the PREMISES or leasehold interest or an assignment of this LEASE, or a demise of the PREMISES, LANDLORD shall be and hereby is entirely freed and relieved of all obligations of LANDLORD subsequently accruing.

It is specifically understood and agreed that LANDLORD shall have no personal liability in respect to any of the covenants, conditions or provisions of this LEASE. In the event that TENANT shall obtain a judgment against LANDLORD arising out of this LEASE, then TENANT shall look solely to the equity of LANDLORD in the PREMISES for the satisfaction of such judgment, with (i) such judgment nevertheless being subject to the rights of Landlord's Mortgagee and (ii) neither LANDLORD nor any of the persons or entities comprising LANDLORD being liable for any deficiency. The foregoing limitations of TENANT's right of recovery against LANDLORD related to this LEASE shall survive the expiration or earlier termination of this LEASE.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, TENANT ACKNOWLEDGES, STIPULATES AND AGREES THAT NOTHING IN THIS LEASE SHALL BE CONSTRUED AS A WAIVER OF ANY STATUTORY OR GOVERNMENTAL IMMUNITY AVAILABLE TO LANDLORD UNDER APPLICABLE LAW.**

**TENANT FURTHER STIPULATES THAT IT IS AWARE AND UNDERSTANDS THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF LANDLORD (A PUBLIC ENTITY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF AN AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIBNS ON LANDLORD'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS**

**TO BRING LEGAL ACTION; GRANTING CONTROL OBLIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEY'S FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON LANDLORD EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.**

**Section 10.2      COUNTERPARTS.**

This LEASE may be executed and delivered (including by facsimile or Portable Document Format (PDF) transmission) in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile and other electronic copies of manually signed originals shall have the same effect as manually signed originals and shall be binding on the undersigned parties.

**Section 10.3      INDEMNITY.**

**LANDLORD AND LANDLORD'S AGENTS, REPRESENTATIVES, EMPLOYEES, OFFICERS AND DIRECTORS SHALL NOT BE LIABLE TO TENANT OR TO ANY TENANT PARTY OR TO ANY PERSON OR ENTITY WHOMSOEVER, FOR INJURY TO PERSON OR DAMAGE TO OR THEFT OR LOSS OF PROPERTY OCCURRING IN, ON OR ABOUT THE PREMISES, REGARDLESS OF THE CAUSE; (B) ARISING OUT OF THE USE OF THE PREMISES BY TENANT AND/OR ANY TENANT PARTY AND THE CONDUCT OF ITS BUSINESS THEREIN; (C) ARISING OUT OF ANY BREACH OR DEFAULT BY TENANT IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; (D) ARISING OUT OF ANY PERIL OR PERILS (INCLUDING NEGLIGENT ACTS) ENUMERATED IN EACH FORM OF INSURANCE POLICY OR CERTIFICATE OF INSURANCE REQUIRED TO BE MAINTAINED BY TENANT HEREUNDER, REGARDLESS OF THE CAUSE THEREOF; OR (E) ANY NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF TENANT OR ANY TENANT PARTY; AND, IN ANY OF SUCH EVENTS, TENANT, AS A MATERIAL PART OF THE CONSIDERATION TO LANDLORD FOR THIS LEASE, HEREBY SHALL, AT TENANT'S SOLE EXPENSE, RELEASE, WAIVE, EXONERATE, INDEMNIFY, PROTECT, DEFEND (BY COUNSEL SATISFACTORY TO LANDLORD) AND HOLD HARMLESS LANDLORD AND LANDLORD'S PARTNERS, AGENTS, EMPLOYEES, OFFICERS AND/OR DIRECTORS, FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, CLAIM, ACTION OR EXPENSE (INCLUDING ALL COURT COSTS AND ATTORNEYS' FEES) ARISING OUT OF SUCH DAMAGE OR INJURY DUE TO ANY OF THE CAUSES DESCRIBED ABOVE (EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY OR ATTRIBUTABLE TO THE NEGLIGENCE OR FAULT OF LANDLORD OR ITS AGENTS, AND EVEN THOUGH ANY SUCH CLAIM, CAUSE OF ACTION OR SUIT IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF LANDLORD OR ITS AGENTS). IF ANY THIRD PARTY BRINGS AN ACTION AGAINST THE LANDLORD BECAUSE OF ANY OCCURRENCE OR FACTS DESCRIBED IN THIS PARAGRAPH, TENANT SHALL, UPON LANDLORD'S REQUEST THEREFOR, PROVIDE LEGAL COUNSEL CHOSEN BY LANDLORD, IN LANDLORD'S SOLE DISCRETION, AT TENANT'S SOLE EXPENSE. IF THE TENANT FAILS TO PROVIDE SUCH LEGAL COUNSEL, THEN LANDLORD SHALL HAVE THE RIGHT TO PROVIDE ITS OWN COUNSEL, IN WHICH EVENT, TENANT SHALL REIMBURSE LANDLORD FOR ALL OF LANDLORD'S REASONABLE EXPENSES INCURRED IN CONNECTION THEREWITH. LANDLORD AND TENANT STIPULATE, AGREE AND ACKNOWLEDGE THAT THE STATEMENTS DESCRIBED IN THIS PARAGRAPH COMPLY WITH THE EXPRESS NEGLIGENCE RULE AND ARE CONSPICUOUS. FURTHERMORE, THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS LEASE AND THAT, IF TENANT ASSIGNS OR SUBLETS THIS LEASE AS PER THE TERMS DESCRIBED HEREIN, THEN ALL SUBSEQUENT TENANTS OR SUBTENANTS SHALL BE REQUIRED TO EXPRESSLY ASSUME THIS INDEMNIFICATION,**

**PROVIDED, HOWEVER, THAT TENANT SHALL AT ALL TIMES IN THE FUTURE BE RESPONSIBLE AND ACCOUNTABLE TO LANDLORD FOR THIS INDEMNIFICATION.**

Section 10.4      ASSIGNMENT OR SUBLETTING.

- a) TENANT shall not assign or transfer all or any portion of its legal or equitable interest in this LEASE or in the PREMISES, nor sublet all or any portion of the PREMISES, nor enter into any management or similar contact which provides for a direct or indirect transfer of operating control over the business operated in the PREMISES, without the prior written consent of LANDLORD, with such consent to be within LANDLORD'S sole and absolute discretion.
- b) If TENANT desires to assign this LEASE, or to sublet all or any portion of the PREMISES, to any person, firm, corporation or entity, TENANT shall deliver at least sixty (60) days written notice by registered mail, return receipt requested, to LANDLORD identifying the proposed assignee or sublessee (the "Proposal Notice"), which Proposal Notice shall include, among other things, current financial and other information with respect to the financial ability, operating experience and business reputation of the proposed assignee or sublessee sufficient for LANDLORD to evaluate the proposal; a form of assignment and assumption agreement, or sublease agreement, for LANDLORD's review and approval; and a check made payable to Land LANDLORD lord in the amount of \$750.00 to defray LANDLORD's expenses in reviewing such request. TENANT shall also reimburse LANDLORD immediately upon request for its attorneys' fees incurred in connection with considering any request for consent to a Proposal Notice. LANDLORD shall have no obligation to respond to any proposed assignment or sublease if TENANT fails to deliver a Proposal Notice to LANDLORD completed in accordance with this paragraph. Within thirty (30) days after receipt of the Proposal Notice, LANDLORD shall, in its sole discretion, elect by written notice to TENANT either to consent to such proposed assignment or sublease; (b) terminate this LEASE; or (c) deny its consent to such proposed assignment or sublease. If LANDLORD elects to terminate this LEASE under this section: (1) this LEASE and the Lease Term hereof shall terminate as of a date designated by LANDLORD, which shall be not less than 60 nor more than 180 days after the date of LANDLORD's notice of its election to terminate; (2) TENANT shall be released from all liability under this LEASE with respect to the period after the date of termination (other than indemnities and obligations of TENANT which expressly survive termination of this LEASE, as set forth herein); (3) all Rent shall be prorated to the date of such termination; and (4) upon such termination date, TENANT shall surrender the PREMISES to LANDLORD in accordance with the surrender provisions of this LEASE. Fo1 lowing LANDLORD's election to terminate this LEASE, LANDLORD may lease the PREMISES to any party in its sole discretion, including TENANT's proposed transferee, without any liability to TENANT whatsoever.
- c) TENANT further agrees, if there shall be a consent to a proposed assignment or subletting under the provisions of this Section 10.4, and if TENANT shall receive from its assignee any consideration for the assignment, howsoever designated, or shall receive from its subtenant any sublet rental which exceeds the rental provided for hereunder, either on a monthly basis or in the aggregate, or both, TENANT shall promptly pay to LANDLORD, as additional rent, one hundred (1 00%) percent of such assignment consideration or excess sublet rental, it being the express understanding of the parties that, notwithstanding TENANT's ongoing liability under this LEASE, all benefits derived from any such assignment or subletting by TENANT shall belong to the LANDLORD.
- d) Notwithstanding any assignment or subletting, TENANT and any Guarantor(s) shall at all times remain fully and primarily responsible and liable for the payment of all Rent and other monetary obligations herein specified and for the compliance with and performance of all of its other obligations under this

LEASE.

- e) TENANT shall not mortgage, pledge or otherwise encumber its interest in this LEASE or in the PREMISES without LANDLORD's prior written consent, and any such mortgage, pledge or encumbrance without LANDLORD's prior written consent shall be void and of no force and effect.

Section 10.5      SURRENDER OF PREMISES AND HOLDING OVER.

At the expiration or earlier termination of the tenancy hereby created or upon the exercise by LANDLORD of its right to re-enter the PREMISES without terminating this LEASE, TENANT shall immediately deliver and surrender the PREMISES in the same condition as the PREMISES was in upon TENANT's opening for business, reasonable wear and tear excepted, and TENANT shall surrender all keys for the PREMISES to LANDLORD at the Building and shall inform LANDLORD of all combinations of locks, safes, and vaults, if any, in the PREMISES.

Prior to the expiration or sooner termination of this LEASE, TENANT shall remove any and all trade fixtures, equipment and other unattached items which TENANT may have installed, stored or left in the PREMISES, including, but not limited to, counters, shelving, show cases, chairs and unattached movable machinery purchased or provided by TENANT and which can be removed without damage to the Building. TENANT shall also remove any and all religious iconography from the PREMISES. TENANT shall repair any damage to the PREMISES caused by its removal of such fixtures and movables in a manner satisfactory to LANDLORD. In the event TENANT does not make such repairs, TENANT shall be liable for and agrees to pay LANDLORD'S costs and expenses in making such repairs, together with a sum equal to fifteen percent (15%) of such costs and expenses to cover LANDLORD'S overhead in making such repairs for TENANT. TENANT shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, power wiring or power panels, floor coverings (including, but not limited to, wall to wall carpeting), walls or ceilings, all of which shall not be deemed to constitute a part of the freehold and/or leasehold interest of TENANT, nor shall TENANT remove any fixtures or machinery that were furnished or paid for by LANDLORD (whether initially installed or replaced). The PREMISES shall be left in a broom-clean condition. If TENANT shall fail to remove its trade fixtures or other property as provided in this Section 12.7 by the expiration or earlier termination of this LEASE, then such fixtures and other property not removed by TENANT shall be deemed immediately abandoned by TENANT and, at the option of LANDLORD, shall become the property of LANDLORD, or at LANDLORD'S option may be removed by LANDLORD at TENANT's expense plus twenty percent (20%) as herein above provided, or placed in storage at TENANT's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other imposition shall belong to LANDLORD.

If during the last month of the Lease Term, TENANT shall have removed all or substantially all of TENANT's property therefrom, LANDLORD may immediately enter, alter, renovate and redecorate the PREMISES without elimination or abatement of rent or other compensation or charges and such acts shall have no effect upon this LEASE.

No act or thing done by LANDLORD or its agents during the Lease Term shall be deemed an acceptance of a surrender of the PREMISES, and no agreement to accept a surrender of the PREMISES shall be valid unless the same be made in writing and signed by LANDLORD.

If any TENANT PARTY remains in possession of the PREMISES after the expiration of this LEASE, TENANT shall be a tenant at will on a month-to-month basis, and no new tenancy shall be deemed to result; (b) pay, in addition to all other Rent, Minimum Monthly Rent equal to one hundred fifty percent (150%) of the Minimum Annual Rent payable during the last Lease Year; (c) be subject to all of the conditions, provisions and obligations of this LEASE, including, but not limited to, TENANT's obligation to pay the Operation Costs under this LEASE and all other obligations constituting Rent as set forth herein,

TENANT'S obligations and requirements in this Section 10.5 will survive the expiration or other termination of the Lease Term.

Section 10.6 STATUTORY COMPLIANCE.

TENANT covenants that the use of the PREMISES will not violate (a) the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department or any enabling legislation or order relating thereto. Without limiting the foregoing, neither TENANT nor any Guarantor (i) is, or will become a person described in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or as described by Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism (31 CFR Part 595 et seq.), as amended or (ii) to its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such person. TENANT covenants that TENANT is in compliance, in all material respects, with the USA Patriot Act, to the extent applicable. TENANT will exonerate, waive, release, protect, indemnify, defend, and hold harmless LANDLORD from any claims, costs, expenses, demands, fees (including reasonable attorneys' fees), penalties, and amounts related to TENANT's violation of the provisions of this Section, or the failure of any of the provisions in this Section to be true or accurate at any time during the Lease Term. The indemnification provisions of this paragraph shall survive termination or expiration of the LEASE.

Pursuant to Section 2270.001 of Texas Government Code, the Contractor affirms that it:

1. Does not currently boycott Israel; and
2. Will not boycott Israel during the term of the contract

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

Section 10.7 LIENS.

TENANT shall have no authority, express or implied, to create, place or suffer the creation or placement of any lien or encumbrance of any kind or nature whatsoever upon the PREMISES, or in any manner to bind the interest of LANDLORD or TENANT in the PREMISES, or to charge the Rent payable hereunder, for any claim in favor of persons and/or entities dealing with TENANT, including those who may furnish materials or perform labor for any construction or repairs. TENANT shall pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the PREMISES with respect to which any lien is or can otherwise be validly and legally asserted against its leasehold interest in the PREMISES or the improvements thereon. As a condition precedent to TENANT's payments of sums owed by TENANT to its contractors and materialmen, TENANT shall require such contractors, their subcontractors and materialmen to submit unconditional lien releases to TENANT in form and content satisfactory to LANDLORD. TENANT agrees to exonerate, waive, release, defend, protect, indemnify and hold harmless LANDLORD from and against any and all claims for mechanic's, materialmen's or other liens in connection with any TENANT's Work. TENANT shall discharge any such lien or claim for payment filed against the PREMISES, or any part thereof, within ten (10) business days after such lien is filed. If TENANT fails to comply with this provision, then, in addition to any other remedies available to LANDLORD under this LEASE or otherwise, LANDLORD may at its option (but is not required to) discharge such lien or claim, in which event TENANT agrees to pay LANDLORD a sum equal (i) to the amount of the lien or claim thus discharged by LANDLORD, (ii) interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law, and (iii) LANDLORD's expenses, attorney's fees and damages thereby caused by TENANT's failure to comply with this provision. It is agreed and understood that any work done on behalf of or materials furnished to TENANT with respect to the PREMISES is not authorized or otherwise approved by LANDLORD (although LANDLORD preserves any right contained herein to approve, consent to, or inspect such

repairs or improvements). It is further agreed and understood that any lien or claim for payment arising out of such work or materials shall solely encumber TENANT'S leasehold estate in the PREMISES, not LANDLORD'S interest in the PREMISES, and upon the expiration or termination of this LEASE, said lien or claim shall be extinguished, without further force or effect, as to the Building, the PREMISES, and/or LANDLORD.

Section 10.8      LANDLORD'S LIEN.

In addition to the statutory landlord's lien, LANDLORD shall have, at all times, and TENANT hereby grants to LANDLORD, a contractual landlord's lien and a valid security interest to secure payment of all Rent and other sums of money becoming due hereunder from TENANT, and to secure payment loss which LANDLORD may suffer by reason of the breach by TENANT of any damages or covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of TENANT presently or which may hereafter be situated on the PREMISES, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of LANDLORD until all arrearages in Rent as well as all other sums of money then due to LANDLORD hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by TENANT. Upon the occurrence of an event of default by TENANT, LANDLORD may, in addition to any other remedies provided herein, enter upon the PREMISES and take possession of any goods, wares, equipment, fixtures, furniture, improvements and other personal property of TENANT situated on the PREMISES, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving TENANT reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale LANDLORD or its assigns may, pursuant to its contractual landlord's lien or its security interest, purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving TENANT reasonable notice, the requirements of reasonable notice shall be met if such notice is given in the manner prescribed in this LEASE for notice, at least five (5) days before the time of sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus shall be paid to TENANT or as otherwise required by law; and TENANT shall pay any deficiencies forthwith. The statutory lien for Rent is not hereby waived, the contractual landlord's lien and the security interest herein granted being in addition and supplementary thereto.

This LEASE is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code of the state in which the PREMISES are situated. LANDLORD, in addition to the rights prescribed in this LEASE, shall have all the rights, titles, liens and interests in and to TENANT's property, now or hereafter located upon the PREMISES, which may be granted a secured party (as that term is defined under such Uniform Commercial Code), under this LEASE. TENANT authorizes LANDLORD to file a financing statement (or continuation statement) for the purpose of perfecting LANDLORD's security interest under this LEASE or LANDLORD may file this LEASE, a carbon, photographic or other reproduction of this LEASE, or a memorandum of this LEASE in LANDLORD's prescribed form.

Section 10.9      NOTICES.

Wherever any notice, communication, request, demand, reply or advice (severally and collectively referred to as "**Notice**") is required or permitted hereunder such notice shall be in writing. Any Notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received if delivered by (i) hand or overnight delivery service (E.g., FedEx) to such Party, or an agent of such Party or (ii) facsimile transmission (with electronic confirmation) or email communication. Notice sent by United States mail, postage prepaid, Certified or Registered Mail, Return Receipt Requested, addressed to the respective parties at the addresses detailed herein or at such other addresses as they may have hereafter specified by written notice shall be effective on the earlier of the second (2nd) business day after such deposit or the actual receipt thereof. Notice given in any other manner shall be effective only if and when received by the party to be notified. The parties hereto shall have the right from time to

time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America, by not less than ten (10) days' prior written notice to the other party.

Section 10.10 ENTIRE AND BINDING AGREEMENT.

The submission of the LEASE to TENANT shall not be construed as an offer, nor shall TENANT have any rights with respect thereto unless and until LANDLORD shall, or shall cause its managing agent to, execute a copy of this LEASE. This LEASE contains the entire agreement between the parties with respect to the matters detailed herein and cannot be amended or modified except by written agreement of all the parties. Any statement, promise, representation or inducement, including, without limitation, any related to tenant mix or co-tenant occupancy or any prior offer to lease between LANDLORD and TENANT, made by any party or any employee, contractor or agent of any party not set forth expressly herein shall be null and void, without further force and effect. Any modification to this LEASE must be written and executed by both parties. Unless otherwise expressly provided for in this LEASE, LANDLORD shall have no obligation to extend or renew this LEASE, or to enter into another lease of the PREMISES with TENANT upon expiration of this LEASE. Upon expiration of this LEASE, LANDLORD may lease the PREMISES to whomever it chooses for the operation therein of a business that is the same as or different from that operated by TENANT in the PREMISES.

Section 10.11 PROVISIONS SEVERABLE.

Each provision of this LEASE shall be construed in such manner as to give such provision the fullest legal force and effect possible. To the extent any provision herein (or part of such provision) is held to be unenforceable or invalid when applied to a particular set of facts, or otherwise, the unenforceability or invalidity of such provision (or part thereof shall not affect the enforceability or validity of the remaining provisions hereof (or of the remaining parts of such provision), which shall remain in full force and effect, nor shall such unenforceability or invalidity render such provision (or part thereof inapplicable to other facts in the context of which such provision (or part thereof would be held legally enforceable and/or valid. In addition, it is also the intent of the parties to this LEASE that in lieu of each clause or provision of this LEASE that is illegal, invalid or unenforceable, there be added as a part of this LEASE a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 10.12 AMENDMENTS; BINDING EFFECT.

This LEASE may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this LEASE shall be deemed to have been waived by LANDLORD unless such waiver be in writing signed by LANDLORD and addressed to TENANT, nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of LANDLORD to insist upon the performance by TENANT in strict accordance with the terms hereof. The terms and conditions contained in this LEASE shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

Section 10.13 GOVERNING LAW.

The laws of the State of Texas shall govern the validity, enforcement and interpretation of this LEASE, without regard to conflicts principles. The obligations of the parties are performable and venue for any legal action arising out of this LEASE shall solely lie in Bexar County, Texas. LANDLORD and TENANT hereby expressly waive, to the maximum extent permitted by law, trial by jury in any action, proceeding or counterclaim, brought by either party against the other, on any claim or matter whatsoever arising out of or in any way connected with this LEASE, their relationship as LANDLORD and TENANT, TENANT's use and occupancy of the PREMISES and/or any claim of injury or damage.

Section 10.14 AMERICANS WITH DISABILITIES ACT AND TEXAS ARCHITECTURAL BARRIERS ACT.

TENANT covenants and agrees the PREMISES and the improvements thereon or to be built shall be in compliance with all current federal, state and local disability codes, the Americans with Disabilities Act (Public Law 101-336 (July 36, 1990) (the "ADA") and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. (1991)) (the "TADA"), and all interior and exterior design guidelines/requirements, as any such law may be amended or replaced from time to time, applicable to the PREMISES and applicable to the Building to accommodate TENANT's employees, customers and invitees and for making any additional accommodations or alterations which need to be made to the PREMISES to accommodate TENANT's employees, invitees and customers. TENANT agrees to exonerate, waive, release, protect, defend, indemnify and hold harmless LANDLORD from any and all expenses, liabilities, costs or damages suffered by LANDLORD as a result of TENANT's failure to fulfill its aforesaid responsibilities regarding making such accommodations and alterations referenced in the preceding sentence. No provision in this LEASE should be construed in any manner as permitting consenting to or authorizing TENANT to violate requirements under either such act and any provision of the LEASE which could arguably be construed as authorizing a violation of either act shall be interpreted in a manner which permits compliance with such act and is hereby amended to permit such compliance.

IN WITNESS WHEREOF, LANDLORD and TENANT have duly executed this LEASE as of the Effective Date, each acknowledging receipt of an executed copy hereof.

LANDLORD:

**SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

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

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

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

TENANT:

\_\_\_\_\_  
\_\_\_\_\_

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

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

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