

**AMENDED AND RESTATED LEASE AGREEMENT
(CONFERENCE AND EDUCATION CENTER, 1ST FLOOR)**

This Lease Agreement ("Lease") is made and entered into by and between TRAVIS COUNTY EMERGENCY SERVICES DISTRICT NO. 2, a political subdivision of the State of Texas operating under Texas Health and Safety Code Chapter 775 ("Landlord") and the City of Pflugerville, a political subdivision of the State of Texas and home-rule municipality operating under the laws of the State of Texas ("Tenant"), and is as follows:

ARTICLE ONE: BASIC TERMS

This Article One contains the basic terms (the "Basic Terms") of this Lease. Other Articles, Sections, and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01 **Effective Date.** The date upon which this Lease has been fully executed by Landlord and Tenant.

Section 1.02 **Rent Commencement Date.** The "Rent Commencement Date" shall be October 1, 2016.

Section 1.03 **Lease Term.** The Lease Term shall commence on October 1, 2016 and shall expire on the date which is five (5) years after the Rent Commencement Date, unless renewed per Section 1.04; except, however, that if the Lease Term would otherwise expire on a day other than the last day of a calendar month, then the Lease Term shall be extended through the last day of the calendar month in which the Lease Term would otherwise expire.

Section 1.04 **Renewal Option.** Tenant shall have the right to renew and extend the Lease Term for five (5) one-year periods. Unless otherwise agreed by the parties in writing, the renewal will be on the same terms as set forth in the Lease, except that the Rent may be adjusted to the fair rental value of the Leased Premises, as reasonably determined by Landlord. Landlord shall provide written notice of any adjustment in the Rent to Tenant at least four months prior to the end of the Lease Term, as extended. Tenant may exercise this option at any time within the last two years of the Lease Term, as extended, provided that Tenant is not in default under the Lease.

Section 1.05 **Project.** The Project comprises the building located at 201 B East Pecan, Pflugerville, Travis County, Texas (the "Building") and all other structures, fixtures and improvements of any kind or nature which are now located or which may hereafter be located on the tract of land which is described on Exhibit "A" attached hereto and incorporated herein by reference ("Property").

Section 1.06 **Leased Premises.** The Leased Premises comprises that portion of the Project which is located on the first floor of the Building and which is designated as the "Leased Premises" on Exhibit "B" attached hereto and incorporated herein by reference.

Section 1.07 **Rentable Area.** Landlord and Tenant agree and stipulate that, for all purposes under this Lease, the "Rentable Area" of the Leased Premises shall be deemed and considered to be 6,044 square feet. Landlord and Tenant agree that the Base Rent and the Additional Rent will be calculated based upon the foregoing stipulated number of square feet of Rentable Area and that neither the Base Rent nor the Additional Rent will be adjusted based on any re-measurement of the Leased Premises or on any re-calculation of the Rentable Area of the Leased Premises.

Section 1.08 **Rent.** For purposes of this Lease, the term “Rent” shall mean and include the “Base Rent” (as defined below in this Section 1.08), the “Additional Rent” (as defined below in this Section 1.08), and all other charges payable by Tenant under this Lease.

(a) **BASE RENT.** For purposes of this Lease, the term “Base Rent” shall mean monthly installments of rent which will be payable at the rate or rates for the applicable months of the Lease Term specified in the “Lease Months” column herein below. The Base Rent will be determined by multiplying the applicable dollar amounts set out in the “Annual Rate” column herein below by the number of square feet of Rentable Area of the Leased Premises. The Base Rent will be payable in monthly installments in the amounts set out in the “Monthly Installments” column herein below.

LEASE MONTHS	ANNUAL RATE	MONTHLY INSTALLMENTS
1-24	\$21.68 per square foot	\$10,919.49
25-48	\$23.20 per square foot	\$11,685.07
49-60	\$24.71 per square foot	\$12,445.60
61+	To be determined	

(b) **ADDITIONAL RENT.** As used in this Lease, the term “Additional Rent” shall have the meaning which is given to such term in Section 3.02 of this Lease. For the purposes of calculating the Additional Rent under this Lease, Landlord and Tenant agree that the “Tenant’s Proportionate Share” (as such term is defined in Section 3.02), as of the Effective Date of this Lease, is 50%.

(c) **PAYMENT OF RENT.** Tenant shall pay to Landlord Base Rent according to the schedule above with the first payment due on October 1, 2016

Section 1.09 **Additional Security Deposit.** As used in this Lease, the term “Security Deposit” shall mean the sum of \$10,919.49. Landlord acknowledges that it possesses a security deposit of \$9,670.40 from Tenant and that this amount will be a credit against the required security deposit of \$10,919.49. Tenant shall pay Landlord the difference of \$1,249.09 in conjunction with the first rent payment after the the Rent Commencement Date.

Section 1.10 **Addresses.**

Landlord’s Address:	Tenant’s Address
Travis County ESD No. 2	City of Pflugerville
203 East Pecan Street	P.O. Box 589
Pflugerville, Texas 78660	Pflugerville, Texas 78691
Attn: Monica Reed, Executive Director of Staff Services	Attn: Brandon Wade, City Manager

Landlord and Tenant, by written notice to the others, may change the foregoing addresses from time to time.

Section 1.11 **Permitted Uses.** The term “Permitted Uses” as used in this Lease shall mean standard office uses typically found in business, governmental, administrative, and professional offices. Tenant acknowledges and agrees that it shall be the sole responsibility of Tenant to determine and ensure that any modifications made to the

Leased Premises by Tenant meet all applicable standards, regulations and requirements, including the terms of this Lease.

Section 1.12 **Tenant Parties.** As used in this Lease, the term “Tenant Parties” shall mean and include Tenant and all of Tenant’s elected officials, managers, directors, supervisors, representatives, employees, agents, consultants, contractors, subcontractors, laborers, materialmen, invitees, and licensees.

ARTICLE TWO: **LEASE TERM**

Section 2.01 **Lease for Lease Term.** Landlord leases the Leased Premises to Tenant and Tenant leases the Leased Premises from Landlord for the Lease Term. The Lease Term is for the period stated in the Basic Terms and shall begin and end on the dates specified in the Basic Terms, unless the beginning or end of the Lease Term is changed under any provision of this Lease.

Section 2.02 **Holdover.** Tenant shall vacate the Leased Premises upon the expiration of the Lease Term or earlier termination of this Lease. Tenant shall reimburse Landlord for and, to the extent permitted by law, indemnify Landlord against all damages which Landlord incurs from Tenant’s delay in vacating the Leased Premises. If Tenant does not vacate the Leased Premises upon the expiration of the Lease Term or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant’s occupancy of the Leased Premises shall be a “month-to-month” tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

ARTICLE THREE: **RENT**

Section 3.01 **Time and Manner of Payment.** The Base Rent and Additional Rent are payable by Tenant to Landlord in monthly installments beginning on the Rent Commencement Date (subject to the terms of Section 3.03) and continuing thereafter throughout the entire remainder of the Lease Term. The first installment of Base Rent and Additional Rent are due on the Rent Commencement Date (subject to the terms of Section 3.03). After the Rent Commencement Date, Tenant shall pay the Base Rent and Additional Rent on the first day of each calendar month. All payments of Base Rent and Additional Rent under this Lease shall be made in advance, without offset, deduction or prior demand. If the Rent Commencement Date falls on a date other than the first day of a calendar month, then the monthly installments of Base Rent and Additional Rent for the first partial month shall be prorated to the end of the applicable calendar month (subject to the terms of Section 3.03). All of the Rent shall be payable at Landlord’s address or at such other place as Landlord may designate in writing.

Section 3.02 **Definitions Related to Additional Rent.** As used in this Lease, the following terms shall have the meanings which are given to such terms herein below:

(a) The term “Additional Rent” shall mean “Tenant’s Proportionate Share” (hereinafter defined) of the “Operating Costs” (hereinafter defined).

(b) The term “Tenant’s Proportionate Share” shall mean 50%, or other amount agreed to in writing between Tenant and Landlord.

(c) The term “Operating Costs” shall have the following meaning:

(i) As used in this Lease, the term “Operating Costs” shall mean all expenses of Landlord with respect to the maintenance, servicing, repairing and/or operation of the Project (including the Leased Premises),

including, but not limited to the following: (1) maintenance, repair and replacement costs; (2) electricity, fuel, water, sewer, gas and other utility charges; (3) security, window washing and janitorial services for Common Areas; (4) landscaping and pest control; (5) maintenance of signs (other than tenants' signs); (6) straight line depreciation on personal property owned by Landlord which is consumed in the operation or maintenance of the Common Areas; (7) rental or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Common Areas; (8) management fees; (9) wages and benefits payable to employees whose duties are directly connected with the operation and/or maintenance of the Project (including the Leased Premises); (10) all services, supplies, repairs, replacements or other expenses for maintaining and/or operating the Project (including the Leased Premises); (11) the cost, including interest, amortized over its useful life, of any capital improvement made to the Project by Landlord after the date of this Lease which is required under any governmental law or regulation that was not applicable to the Project at the time it was constructed; (12) the cost, including interest, amortized over its useful life, of installation of any device or other equipment which improves the operating efficiency of any system within the Project and thereby reduces operating expenses; (13) all other expenses which generally would be regarded as operating and maintenance expenses; (14) all ad valorem taxes and other governmental assessments, levies or charges of any kind or nature assessed or imposed on the Project, whether by state, county, city or any political subdivision thereof, if any ("Real Estate Taxes"); and (15) all insurance premiums Landlord is required to pay or reasonably deems necessary to pay, including public liability insurance and workers compensation insurance related to the Project.

(ii) As used in this Lease, the term Operating Costs does not include the following: (1) expenses for repairs, restoration or other work occasioned by fire, wind, the elements, or other casualty that are covered by insurance; (2) income and franchise taxes of Landlord; (3) expenses incurred in leasing to or procuring of tenants, including leasing commissions, advertising expenses and expenses for the renovating of space for new tenants; (4) interest or principal payments on any mortgage or other indebtedness of Landlord; (5) compensation paid to any employee of Landlord above the grade of property manager; (6) any depreciation allowance or expense; (7) any utilities or other expenses which are separately metered or calculated and charged to Tenant or any other tenant in the Project; (8) costs incurred by Landlord for alterations which are considered capital improvements and replacements under generally accepted accounting principles consistently applied; (9) costs incurred and reimbursed to Landlord due to violation by any tenant of the terms and conditions of any lease or other rental arrangement covering space in the Project or any portion thereof; (10) any costs, fines and penalties incurred due to violations by Landlord of any governmental rule or authority in existence on the date of the execution hereof; and (11) any bonuses or compensation in addition to salary paid to any employee of Landlord.

(iii) With respect to any calendar year or partial calendar year in which the Project is not occupied to the extent of 100% of the Rentable Area thereof, those expenses which are "Occupancy Dependent Costs" (hereinafter defined) shall, for the purposes of calculating the Operating Costs under this Lease, be increased to the amount which would have been incurred had the Project been occupied to the extent of 100% of the Rentable Area thereof. This increase in the Occupancy Dependent Costs will be effectuated by multiplying the Occupancy Dependent Costs by a fraction, the numerator of which is the number of square feet of Rentable Area in the Project and the denominator of which is the number of square feet of Rentable Area in the Project which were actually occupied during the calendar year or partial calendar year in question. For purposes hereof, the term "Occupancy Dependent Costs" shall mean and refer to those Operating Costs which materially increase or decrease depending on the occupancy rate of the Project. By way of example (and not by way of limitation), it is agreed and understood that expenses such as management fees, janitorial costs for Common Areas, and utility charges are Occupancy Dependent Costs, but that expenses such as ad valorem taxes and insurance premiums are not Occupancy Dependent Costs.

Section 3.03 **Estimated Payments of Additional Rent.** Prior to the sixth full calendar month of the Lease Term, and from time to time thereafter, Landlord may deliver to Tenant its estimate of the Additional Rent to be paid by Tenant during the then current calendar year. Landlord may adjust the estimate from time to time during the year to which it relates. On the first day of each calendar month during the Lease Term, Tenant shall pay to Landlord, without offset or deduction, Tenant's estimated Additional Rent for such month, as calculated by Landlord (prorated for any partial month). Within one hundred twenty (120) days following the end of each calendar year, Landlord shall furnish to Tenant a statement showing Tenant's actual Additional Rent for the calendar year. If the actual Additional Rent payable by Tenant for such calendar year exceeds the aggregate of Tenant's monthly payments of estimated Additional Rent made during such calendar year, then Tenant shall pay to Landlord the deficiency within thirty (30) days after receipt of said statement. If Tenant's payments of estimated Additional Rent for such calendar year exceeded the actual Additional Rent payable by Tenant for such calendar year, as shown on such statement, then Tenant shall be entitled to offset the excess against the next installment or installments of Additional Rent payable by Tenant under the terms of this Lease. No portion of any payments of estimated or actual Additional Rent shall be credited against the Base Rent or any other monetary obligations of this Lease. Notwithstanding the foregoing, if Landlord does not deliver an estimate of Additional Rent for any of the first five months of the Lease Term prior to the first day of any such month, Tenant shall not be responsible for paying Additional Rent for each of those months for which an estimate is not delivered.

Section 3.04 **Security Deposit.** With prior notice to Tenant, Landlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within thirty (30) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. If Tenant terminates this agreement for any reason, including non-appropriation, before October 1, 2021, Landlord may keep the full amount of Tenant's Security Deposit as consideration for Tenant's early termination.

Section 3.05 **Interest on Past Due Obligations.** Interest shall accrue on undisputed amounts not paid when due at the rate and in accordance with the provisions of Chapter 2251.021 et seq. of the Texas Government Code.

ARTICLE FOUR: **UTILITIES AND SERVICES; INSURANCE; COMMON AREAS; PARKING**

Section 4.01 **Utilities and Services.**

(a) Landlord will, so long as Tenant is not in default beyond any cure period provided in this Lease or permitted by Landlord under this Lease, furnish to the Leased Premises: (i) air conditioning, both heating and cooling (as required by the seasons), at such temperatures and in such amounts as may, in the reasonable judgment of Landlord, be required for comfortable use and occupancy under normal business operating conditions; (ii) power for lighting and for personal computers and other standard office machines of similar low electrical consumption; (iii) hot and cold water supply from the regular supply of water to the Building at points of supply provided for general use of tenants of the Building; (iv) janitorial service for Common Areas; (v) exterior window cleaning; (vi) pest control; and (vii) parking as herein provided. All expenses incurred by Landlord for the utilities and services provided under this Section 4.01(a) will be included in the Operating Costs.

(b) Tenant shall provide janitorial services for the Leased Premises and maintain the Leased Premises in a neat and clean condition. Landlord shall provide a dumpster for Tenant's trash removal.

(c) Notwithstanding any provision in this Lease to the contrary, Landlord will not be considered to be in default of any of Landlord's obligations under this Lease if Landlord is unable to meet the requirements of this Lease due to any "Non-Default Interruption" which, for purposes of this Lease shall mean and refer to any matter which is caused in whole or in part by: (i) the negligence or deliberate or willful misconduct of Tenant and/or any of the Tenant Parties; (ii) any failure or non-performance by a public utility or other provider of services to the Project; (iii) the occurrence of any fire or other event of casualty; (iv) any exercise of the power of eminent domain; and/or (v) any other event or occurrence which is outside of Landlord's control. If any essential building services (*i.e.*, only potable water, sewer, electricity, HVAC or emergency life safety systems) are interrupted or materially diminished for a period of 2 or more consecutive business days, and such interruption or diminution is not due to any Non-Default Interruption, and if Tenant's use and enjoyment of the Leased Premises, or any material portion thereof, for the conduct of its business therein is materially adversely affected as a result of such interruption or diminution in such essential building service(s), then Tenant shall provide to Landlord a written notice stating with specificity the essential building services which have been interrupted or materially diminished and if Landlord does not reinstate the required essential building services within three (3) business days after Landlord's receipt of such notice, then Tenant shall receive an equitable abatement of Rent based on the extent of the diminished usefulness of the Leased Premises for the conduct of Tenant's normal business beginning on the day after the expiration of the said three (3) business day period until such services and/or access (as the case may be) are restored. The remedies provided to Tenant under this Section 4.01(c) shall be the sole and exclusive remedies of Tenant in the event of any failure or interruption of utilities or services to be provided by Landlord to Tenant under this Lease.

Section 4.02 **Insurance Requirements**

(a) **Insurance.** Beginning on the date of occupancy by Tenant of all or a portion of the Leased Premises, and continuing through the Lease Term, Tenant shall maintain at Tenant's sole cost and expense a policy or policies of insurance, meeting, at a minimum, the following requirements:

General Liability Insurance with a combined personal injury and property damage limit of \$1,000,000 per occurrence and \$1,000,000 aggregate,

Fire and extended coverage insurance covering the replacement cost of (i) all alterations, additions, partitions and improvements installed or placed on the Leased Premises by Tenant and (ii) all of Tenant's personal property contained within the Lease Premises;

Business Automobile Liability Insurance with a combined single limit of \$500,000;

Workers' Compensation and Employer's Liability with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$500,000.

Tenant shall provide Landlord with a Certificate of Insurance showing the required coverage on or before the date the insurance is required to be in place, as provided above, upon any renewal or replacement of coverage, and upon request. Such certificates must name Landlord as an additional insured on the policies. If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(b) **Landlord Insurance.** Landlord shall maintain at its sole cost and expense a policy or policies of insurance, meeting at a minimum, the following requirements:

All risk Property Insurance covering the Building in the full replacement value of the Building;

General Liability Insurance with a combined personal injury and property damage limit of \$1,000,000 per occurrence and \$1,000,000 aggregate, with coverage to include the Common Areas;

Business Automobile Liability Insurance with a combined single limit of \$500,000;

Workers' Compensation and Employer's Liability Insurance with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$500,000.

(c) **Waiver of Subrogation.** Landlord and Tenant shall each have included in all policies of fire, extended coverage, business interruption and loss of rents insurance respectively obtained by them covering the Leased Premises, the Project, including the Building and contents therein, a waiver by the insurer of all right of subrogation against the other party hereto, and its officers, directors, shareholder, partners, members, and employees in connection with any liability, risk, peril, loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the named insured. To the full extent permitted by law, Landlord and Tenant each (each respectively a "releasing party") waive all right of recovery against the other, and each party's successors and assigns, such person's respective officers, directors, employees, shareholders and partners, and Tenant's sub-lessees (the "released persons"), for, and agrees to release the other from liability for, loss or damage to the extent (a) of insurance proceeds actually received by the releasing party or paid for its benefit on policies of fire, extended coverage, business interruption and loss of rents insurance and (b) such loss or damage which would have been covered by policies of fire, extended coverage, business interruption and loss of rents insurance required to be maintained under this Lease by the party seeking recovery had it maintained the insurance but did not, and in either case even though such loss or damage arises, in whole or in part, out of the negligence or strict liability of the released persons. The forgoing waiver of recovery does not waive either party's rights against the other for the portion of the covered loss that is within the amount of the deductible or any self-insured retention or self-insurance. If by reason of the foregoing waiver, either party shall be unable to obtain any such insurance, such waiver shall be deemed not to have been made by such party. Each party represents that its current insurance policies allow such waiver.

Section 4.03 **Common Areas.**

(a) **Common Areas.** As used in this Lease, "Common Areas" shall mean all areas within the Project which are available for the common use of tenants of the Project and which are not leased or held for the exclusive use of Tenant or other tenants, including, but not limited to: lobbies, elevator foyers and other areas within the Building that are available for common use by the tenants within the Building; the parking lot; and all surface parking areas, driveways, sidewalks, loading areas, access roads, landscaping, planted areas, and all other areas within the Project that are located outside of the Building. Landlord, from time to time, may change the size, location, nature and use of any of the Common Areas, convert Common Areas into leasable areas, and construct additional parking facilities (including parking structures) in the Common Areas, and increase or decrease Common Area land and/or facilities. Tenant acknowledges that such activities may result in inconvenience to Tenant. Such activities and changes are permitted if they do not materially affect Tenant's use of the Leased Premises.

(b) **Use of Common Areas.** Tenant shall have the nonexclusive right (in common with other tenants and all others to whom Landlord has granted or may grant such rights) to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may establish from time to time. Tenant shall abide by such rules and regulations and shall use its best effort to cause others who use the Common Areas with Tenant's express or implied permission to abide by Landlord's rules and regulations. At any time, Landlord may close any Common Areas to perform any acts in the Common Areas as, in Landlord's judgment, are desirable to improve the Project, and Tenant's Additional Rent will be adjusted, as necessary. Tenant shall not interfere with the rights of Landlord, other tenants or any other person entitled to use the Common Areas.

(c) **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. All costs incurred by Landlord for the operation and maintenance of the Common Areas will be included in the Operating Costs.

Section 4.04 **Parking.** Tenant shall have the non-exclusive right (in common with other tenants and all others to whom Landlord has granted or may grant such rights) to use the parking lots included within the Common Areas. Tenant's parking shall not be reserved and shall be limited to vehicles no larger than standard size automobiles or pickup utility vehicles. Tenant shall not cause large trucks or other large vehicles to be parked within the Project or on the adjacent public streets. Temporary parking of large delivery vehicles in the Project may be permitted by the rules and regulations established by Landlord. Vehicles shall be parked only in striped parking spaces and not in driveways, loading areas or other locations not specifically designated for parking. Handicapped spaces shall only be used by those legally permitted to use them.

(a) Tenant and each party utilizing the Tenant Parking Spaces shall comply with the parking rules attached to this Lease as Exhibit "C", as the same may be changed from time to time (the "Parking Rules"). Landlord may at any time and from time to time change the Parking Rules or promulgate other Parking Rules as Landlord deems advisable for the safety, care, cleanliness or orderliness of the parking lots. No changes will be effective until a copy of the changes is delivered to Tenant. Tenant is responsible for the compliance with the Parking Rules by each party utilizing the Tenant Parking Spaces. Landlord shall use reasonable efforts to enforce compliance by other tenants with the Parking Rules, but Landlord shall not be responsible or liable to Tenant for any failure by any person to comply with the Parking Rules.

(b) Landlord shall not be responsible for money, jewelry, automobiles or other personal property lost in or stolen from the parking facilities. Except as caused by the gross negligence or willful misconduct of Landlord, Landlord shall not be liable for any loss, injury or damage to persons using the parking facilities or automobiles or other property therein, it being agreed that, to the fullest extent permitted by law, the use of the parking facilities and the spaces shall be at the sole risk of Tenant and its employees.

(c) Tenant shall not store overnight or permit its employees to store overnight any automobiles in the parking lot without the prior written consent of Landlord. Except for emergency repairs, Tenant and its employees shall not perform any work on any automobiles while located in the parking lot or on the Property. If it is necessary for Tenant or its employees to leave an automobile in the parking lot overnight, Tenant shall provide Landlord with prior notice thereof designating the license plate number and model of such automobile.

(d) With prior written notice to Tenant, Landlord shall have the right to temporarily close the parking lot or certain areas therein in order to perform necessary repairs, maintenance and improvements to the parking lot, so long as closure does not interrupt Tenant's business operations.

(e) Tenant shall not assign or sublease any of the Tenant Parking Spaces without the prior written consent of Landlord, which consent may be withheld, denied or conditioned by Landlord for any reason or no reason, in Landlord's sole and absolute discretion.

ARTICLE FIVE: **USE OF LEASED PREMISES**

Section 5.01 **Permitted Uses.** Tenant may use the Leased Premises only for the Permitted Uses set forth in the Basic Terms.

Section 5.02 **Manner of Use.** Tenant shall not cause or permit the Leased Premises to be used in any way which constitutes a violation of any law, ordinance, governmental regulation or order, or written policy of Landlord, which annoys or interferes with the rights of tenants of the Project, or which constitutes a nuisance or waste. Tenant shall not permit any operation which emits any odor or matter which intrudes into other portions of the Project (including smoking tobacco products), use any apparatus or machine which makes undue noise or causes vibration in any portion of the Project or otherwise interferes with, annoys or disturbs any other tenant in its normal business operations, or Landlord in its management of the Project. Tenant shall neither permit any waste to be on the Leased Premises, nor allow the Leased Premises to be used in any way which would, in the opinion of Landlord, be extra hazardous on account of fire or which would in any way increase or render void the fire insurance on the Project. Tenant shall obtain and pay for all permits, including a certificate of occupancy, required for Tenant's occupancy of the Leased Premises and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Leased Premises, including the Occupational Safety and Health Act, and the Americans With Disabilities Act.

Section 5.03 **Hazardous Materials.** Throughout the Lease Term, Tenant shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises other than in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. For purposes of this provision, the term "Hazardous Materials" shall mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any applicable local, state, or federal law, rule, regulation, or order. To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against the following, to the extent any of the following are covered by or related to Tenant's use or occupancy of the Leased Premises: (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by, or incurred by Landlord or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state or local law, rule, regulation or order, or by any governmental agency, authority, or political subdivision having jurisdiction over the Leased Premises; and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Materials on, under, in, above, to, or from the Leased Premises. In the event any Remedial Work is so required under any applicable federal, state, or local law, rule, regulation or order, Tenant shall promptly perform or cause to be performed such Remedial Work in compliance with such law, rule, regulation, or order. In the event Tenant shall fail to commence the Remedial Work in a timely fashion, or shall fail to prosecute diligently the Remedial Work to completion, such failure shall constitute an event of default on the part of Tenant under the terms of this Lease, and Landlord, in addition to any other rights or remedies afforded it hereunder, may, but shall not be obligated to, cause the Remedial Work to be performed, and Tenant shall promptly reimburse Landlord for the cost and expense thereof upon demand. To the extent permitted by law, Landlord shall indemnify, defend and hold Tenant harmless from and against the following, to the extent any of the following are covered by or related to Landlord's use or occupancy of the Project (except for the Leased Premises): any claims of third parties

for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Materials on, under, in, above, to, or from the Project (except for the Leased Premises). In the event Landlord shall fail to commence any necessary Remedial Work in connection with the Project (except for the Leased Premises) in a timely fashion, or shall fail to prosecute diligently the Remedial Work to completion, such failure shall constitute an event of default on the part of Landlord under the terms of this Lease.

Section 5.04 **Signs.** Tenant may place one sign on the exterior of the Leased Premises or elsewhere within the Project, the location and type of sign being subject to Landlord's prior approval, which may be withheld or conditioned in Landlord's sole and absolute discretion. Tenant may not place any additional signs on the exterior of the Leased Premises or elsewhere the Project without Landlord's prior written consent, which may be withheld or conditioned in Landlord's sole and absolute discretion. All expenses incurred in connection with any signage for Tenant's benefit will be borne solely by Tenant.

Section 5.05 **Indemnity and Waiver of Claims.** To the extent permitted by law, Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) the use of the Leased Premises or any other portion of the Project by Tenant or any of the other Tenant Parties ; (b) the conduct of Tenant's business or anything else done or permitted by Tenant or any of the other Tenant Parties to be done in or about the Leased Premises or any other portion of the Project; (c) any activities of Tenant or any of the other Tenant Parties in or about the Leased Premises or any other portion of the Project; (d) any breach or default in the performance of Tenant's obligations under this Lease; (e) any misrepresentation or breach of warranty by Tenant under this Lease; or (f) any negligence, gross negligence, or intentional misconduct of Tenant or any of the other Tenant Parties. To the extent permitted by law, Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any reasonable legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Leased Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's negligence or willful misconduct. Without limitation on any of the foregoing terms or provisions, Tenant expressly agrees and acknowledges that Landlord may provide security guard services, but that Landlord does not currently intend to and is not required to provide such service. Tenant acknowledges and agrees that Landlord shall have no responsibility to prevent third party criminal acts, unless caused by Landlord's negligence or intentional misconduct. Landlord shall not be liable to Tenant or to any of the other Tenant Parties for (and, to the extent allowed by law, Tenant shall indemnify and hold and save Landlord harmless against), any and all liability or loss to Tenant or any of the other Tenant Parties arising out of or in connection with any criminal activity or damage or injury to persons or property caused by persons gaining access to the Project, unless caused by Landlord's negligence or intentional misconduct, and Tenant hereby releases Landlord from all liability relating thereto.

Section 5.06 **Landlord's Access.** Landlord or its agents may enter the Leased Premises at reasonable times by providing at least 24 hours prior notice to Tenant and accompanied by a Tenant Representative to show the Leased Premises to potential buyers, investors or tenants or other parties; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or to do any other acts necessary or desirable for the use and operation of the Project; provided, however, that Landlord shall use reasonable efforts not to unreasonably disturb Tenant's use of the Leased Premises, Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Sale" or "For Lease" signs on the Leased Premises.

Section 5.07 **Quiet Possession.** If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Leased Premises for the full Lease Term, subject to the provisions of this Lease.

Section 5.08 **Building Rules.** Tenant and each of the other Tenant Parties shall comply with the building rules attached to this Lease as Exhibit “D”, as the same may be changed from time to time (the “Building Rules”). Landlord may, at its sole and absolute discretion, at any time and from time to time make reasonable changes to the Building Rules or promulgate other reasonable Building Rules as Landlord deems advisable for the safety, care, cleanliness or orderliness of the Project. No changes will be effective until a copy of the changes is delivered to Tenant. Tenant is responsible for the compliance with the Building Rules by each of the Tenant Parties. Landlord shall use reasonable efforts to enforce compliance by all other tenants with the Building Rules, but Landlord shall not be responsible or liable to Tenant for any failure by any person to comply with the Building Rules.

ARTICLE SIX: **CONDITION OF LEASED PREMISES; MAINTENANCE, REPAIRS AND ALTERATIONS**

Section 6.01 **Existing Conditions.** Tenant accepts the Leased Premises in its condition as of the date upon which Tenant occupies all or any portion of the Leased Premises, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Leased Premises or the suitability of the Leased Premises for Tenant’s intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Leased Premises and is not relying on any representations of Landlord or any broker or any other party acting for or on behalf of Landlord with respect thereto.

Section 6.02 **Landlord’s Obligations.**

(a) Landlord shall be responsible for keeping all portions of the Project in good order, condition and repair. In this regard, Landlord will repair and maintain all plumbing, electrical and heating, ventilating and air conditioning equipment serving the Leased Premises. Landlord shall make repairs under this Section 6.02 within a reasonable time after receipt of written notice from Tenant of the need for such repairs.

(b) All costs Landlord incurs under Section 6.02(a) above will be included in the Operating Costs. However, Landlord and Tenant agree that the costs defined in Section 6.02(a) above do not include costs to repair or maintain the Project caused by the acts or omissions of Landlord’s other tenants, Landlord, and Landlord’s invitees and licensees.

(c) Notwithstanding any provision in this Lease to the contrary, it is agreed and understood that Landlord’s maintenance obligations are subject to and modified by the provisions set forth in Article 7 (Damage or Destruction) and Article 8 (Condemnation).

Section 6.03 **Tenant’s Obligations.**

(a) Tenant shall keep the Leased Premises in good order, condition and repair. In this regard, Tenant will repaint, re-carpet and refinish the interior of the Leased Premises periodically, as needed. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Leased Premises which Tenant is obligated to maintain in an attractive and fully operative condition.

(b) Tenant shall fulfill all of Tenant’s obligations under this Section 6.03 at Tenant’s sole expense. If Tenant fails to maintain the Leased Premises as required by this Section 6.03, Landlord may, upon ten (10) days’ prior notice to Tenant (except that no notice shall be required in the case of an emergency) enter the

Leased Premises with a representative of Tenant and perform such maintenance on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all reasonable costs incurred in performing such maintenance or repair immediately upon demand.

(c) Notwithstanding any provision in this Lease to the contrary, it is agreed and understood that Tenant's maintenance obligations are subject to and modified by the provisions set forth in Article 7 (Damage or Destruction) and Article 8 (Condemnation).

Section 6.04 **Alterations, Additions, and Improvements.**

(a) Tenant shall not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent (which shall not be unreasonably delayed, withheld or conditioned). Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount reasonably satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Section 6.04(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to the Leased Premises. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Leased Premises, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Leased Premises. Tenant shall not allow any liens to attach to the Leased Premises or any other portion of the Project. If any liens are filed against the Leased Premises or any other portion of the Project as a result of any work by Tenant, Tenant shall immediately cause all such liens to be released.

Section 6.05 **Condition upon Termination.** Upon the termination of the Lease, Tenant shall surrender the Leased Premises to Landlord, broom clean and in the same condition as received except for fire, casualty, and ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article Seven (Damage or Destruction). In addition, Landlord may require Tenant to remove any alterations, additions or improvements prior to the expiration of the Lease and to restore the Leased Premises to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Leased Premises. Tenant shall repair, at Tenant's expense, any damage to the Leased Premises caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment.

ARTICLE SEVEN: **DAMAGE OR DESTRUCTION**

Section 7.01 **Partial Damage to Leased Premises.**

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Leased Premises. If the Leased Premises is only partially damaged (i.e., less than twenty-five percent (25%) of

the Leased Premises is untenable as a result of such damage or less than twenty-five percent (25%) of Tenant's operations are materially impaired) and if the proceeds received by Landlord from insurance policies carried by Landlord are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Section 4.02(b), Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, Tenant shall pay the difference between any reasonable actual cost of repair and any insurance proceeds received by Landlord.

(c) If the damage to the Leased Premises occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02 Substantial or Total Destruction. If the Leased Premises is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Leased Premises is greater than partial damage as described in Section 7.01), this Lease shall terminate as of the date the destruction occurred; provided, however, that if the Leased Premises can be rebuilt within ninety (90) days after the date of Landlord's receipt of insurance proceeds in connection with the casualty, Landlord may elect (but will not be required) to rebuild the Leased Premises at Landlord's own expense, in which case, Landlord shall notify Tenant of such election within thirty (30) days after Landlord's receipt of insurance proceeds. Within ten (10) days after receipt of such notice, Tenant may elect to terminate the Lease (to be effective as of the date the destruction occurred) by providing written notice to Landlord. If Landlord elect to rebuild the Leased Premises and Tenant has not terminated the Lease in accordance with this Section, this Lease shall remain in full force, except as provided in Section 7.03, and Landlord shall rebuild the Leased Premises at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03 Temporary Reduction of Rent. If the Leased Premises is destroyed or damaged and Landlord repairs or restores the Leased Premises pursuant to the provisions of this Article Seven, any Base Rent, Operating Expenses, and/or other lease-related costs payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Leased Premises is impaired. Except for such possible reduction set forth herein, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Leased Premises.

ARTICLE EIGHT: **CONDEMNATION**

If all or any portion of the Leased Premises is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the Leased Premises is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Leased Premises not taken, except that the Base Rent shall be reduced in proportion to the reduction in the floor area of the Leased Premises. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Leased Premises, the amount of its interest in the Leased Premises; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Leased Premises caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair and include the expense thereof in the Operating Costs.

ARTICLE NINE: **ASSIGNMENT**

Section 9.01 **Assignment of Lease.** Tenant shall not assign this Lease or Tenant's interest in and to the Leased Premises without obtaining the prior written consent of Landlord, in Landlord's sole and absolute discretion. Any attempted assignment without such consent shall be void, and shall constitute a default by Tenant under this Lease. For purposes of this Article, the terms "assign" and "assignment" shall include: (a) any act attempting to, or document purporting to, assign, transfer, mortgage or hypothecate any interest in or to this Lease or the Leased Premises or any portion thereof; and (b) any change in the ownership of the Tenant or the power to control Tenant.

Section 9.02 **Subletting. Intentionally Deleted.**

Section 9.03 **No Release of Tenant.** No assignment shall release Tenant from any of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and perform the other obligations of Tenant under this Lease. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. In the event of default by any assignee of Tenant or any successor Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee. Landlord may consent to subsequent assignments of this Lease or amendments or modifications to this Lease with assignees of Tenant, upon notice to Tenant, or any successor of Tenant, and after obtaining Tenant's or such successor's consent thereto, and such action shall not relieve Tenant of liability under this Lease.

Section 9.04 **Payment of Rent Premium.** Tenant shall pay to Landlord 10% of any rent or other consideration in excess of the Rent (prorated in the event of an assignment of less than the entirety of the Leased Premises) which Tenant receives by reason of any permitted assignment. Tenant shall make each payment required hereunder to Landlord within five (5) business days following the date that such payment is received by Tenant.

ARTICLE TEN: **DEFAULTS AND REMEDIES**

Section 10.01 **Default by Tenant.** The following shall be deemed to be events of default by Tenant under this Lease: (a) Tenant shall fail to pay when due any installment of Rent or any other payment required pursuant to this Lease (provided, however, that if Tenant has not been late in making any required payment of Rent or other sum of money due hereunder on more than two (2) occasions during the immediately preceding twelve-month period, then Landlord will provide to Tenant written notice of the required payment and no event of default will be deemed to have occurred if Tenant delivers the required payment to Landlord within five (5) days after the date of such notice); (b) Tenant or any guarantor of Tenant's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder and the same is not dismissed within sixty (60) days; (c) Tenant or any guarantor of Tenant's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; (d) Tenant shall do or permit to be done any act which results in a lien being filed against the Leased Premises or the Project, and the same is not released or bonded around in manner satisfactory to Landlord within thirty (30) days; (e) the liquidation, termination, dissolution or (if the Tenant is a natural person) the death of Tenant or any guarantor of Tenant's obligations hereunder; or (f) Tenant shall be in default of any other term, provision or covenant of this Lease, other than those specified in subparts (a) through (e), above, and such default is not cured within thirty (30) days after written notice thereof to Tenant.

Section 10.02 **Remedies for Tenant's Default.** Upon the occurrence of any event of default set forth in this Lease, Landlord shall have the option to pursue any one or more of the remedies set forth in this Section without any additional notice or demand:

(a) Landlord may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover forthwith as damages a sum of money equal to the total of: (i) the cost of recovering the Leased Premises (including reasonable attorneys' fees and costs of suit); (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the highest rate allowed by applicable law; (iii) the present value (discounted at the rate of eight percent (8%) per annum) of the balance of all of the Rent under this Lease for the remainder of the Lease Term, less the present value (discounted at the same rate) of the fair market rental value of the Leased Premises for said period; and (iv) any other sum of money and damages owed by Tenant to Landlord.

(b) Landlord may terminate Tenant's right of possession (but not this Lease) and may repossess the Leased Premises by forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, in which event Landlord may re-let the Leased Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord, in Landlord's sole and absolute discretion. For the purpose of such reletting, Landlord is authorized to make any repairs, changes, alterations, or additions in or to Leased Premises which Landlord may consider to be necessary, in Landlord's reasonable judgment. If Landlord does not re-let the Leased Premises, then Tenant shall pay to Landlord as damages a sum equal to the amount of the Rent and all other sums due hereunder, plus the cost of recovering possession of the Leased Premises, plus interest on all of the foregoing at the Past Due Rate. If the Leased Premises are re-let and a sufficient sum is not realized from such reletting (after paying the cost of recovering possession of the Leased Premises, plus all of the costs and expenses of repairs, changes, alterations, and additions to the Leased Premises, plus all expenses of reletting the Leased Premises, plus interest on all of the foregoing at the Past Due Rate) to satisfy the Rent provided for in this Lease to be paid, plus all other sums owed by Tenant to Landlord, plus interest on all of the foregoing at the Past Due Rate, then Tenant shall satisfy and pay any such deficiency to Landlord upon demand therefor from time to time, and Tenant agrees that Landlord may file suit to recover any sums falling due

under the terms of this paragraph from time to time, and that no delivery or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord, nor shall such reletting be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention be given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

(c) Landlord may make such payments and/or take such actions (including, without limitation, entering upon or within the Leased Premises, by force if necessary) and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant covenants and agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the Past Due Rate from the date paid by Landlord.

(d) At any time after an event of default by Tenant has occurred hereunder, Landlord shall have the right to change or modify door locks on entry doors to the Leased Premises, and/or terminate all utility services to the Leased Premises, and such right to modify or change locks and/or terminate utility services shall continue so long as Tenant is in default hereunder. Landlord shall not be obligated to furnish Tenant with a new key or to allow Tenant to enter the Leased Premises, or to reinstate any terminated utility services until and unless Tenant has cured any default hereunder. Landlord may take such action as is required to cure any breach or default by Tenant hereunder and bill Tenant for any expenses incurred by Landlord in curing such breach, and Tenant shall be obligated to pay such bill immediately upon its receipt by Tenant.

(e) After terminating this Lease or Tenant's right to possession of the Leased Premises, Landlord may, without notice to Tenant or any other party, remove any and all personal property located in the Leased Premises and either dispose of or store such personal property at Tenant's expense.

(f) In addition to the other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation, of any of the provisions of this Lease, or to a decree compelling performance of any other provisions of this lease, or to any other remedy allowed at law or in equity.

(g) In addition to the other remedies provided in this Lease, if Rent is not received by the Landlord by the 5th day of the month, or by the date required in the Texas Prompt Payment Act ("Act" in this subsection), whichever is later, a late payment charge at a rate pursuant to the Act of such past due amount shall become due and payable in addition to all other amounts owed under this Lease. Further, in addition to the other remedies provided in this Lease, if any other payment hereunder due Landlord by Tenant is not received by Landlord on or before the 30th day after the date of delivery by Landlord to Tenant of an invoice or statement for such payment, or by the date required in the Act, whichever is later, a late payment charge at a rate pursuant to the Act of such past due amount shall become due and payable in addition to all other amounts owed under this Lease.

Notwithstanding any other remedy or provision set forth in this Lease: (i) if Landlord has made rent concessions of any type or character, or waived any rent, and Tenant defaults at any time during the term of this Lease, the rent concessions, including any waived rent, shall be canceled and the amount of the rent concessions shall be due and payable immediately as if no rent concessions or waiver of any rent had ever been granted; (ii) this Lease may be terminated by Landlord only by written notice of such termination to Tenant given in accordance with the notice provisions of this Lease, and no other act or omission of Landlord shall be construed as a termination of this Lease; (iii) all rights and remedies of Landlord herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other; (iv) Tenant

agrees that acceptance of full or partial payments by Landlord after notice of termination or forfeiture will not constitute a waiver of the default, termination, or forfeiture unless Landlord agrees to a waiver in writing, nor affect any legal proceedings taken or to be taken by Landlord except to reduce Tenant's obligation to Landlord by the amount of such payment; and (v) waiver by Landlord of any defaults or breaches by Tenant of any provisions of this Lease shall not bar Landlord thereafter from requiring prompt performance by Tenant of the obligations of this Lease, nor shall Landlord be barred thereafter from immediate exercise of any of Landlord's rights or remedies in case of continuing or subsequent default or violation by Tenant.

Section 10.03 **Default by Landlord.** Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice to Landlord from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in law or at equity; provided, however: (a) Tenant shall have no right to offset or abate Rent in the event of any default by Landlord under this Lease, except to the extent of the Default being of a material nature and offset rights are specifically provided to Tenant in this Lease; (b) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies.

Section 10.04 **Mitigation of Damages**

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

(b) Landlord and Tenant agree to the following criteria in connection with Landlord's obligation to mitigate damages after a default by Tenant under this Lease:

(i) Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Leased Premises until and unless Landlord obtains full and complete possession of the Leased Premises, including without limitation, the final and unappealable legal right to re-let the Leased Premises free of any claim of Tenant.

(ii) Landlord will not be obligated to offer the Leased Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in the Building or in any other building which is located in the vicinity of the Building and which is owned by Landlord. For all purposes under this Lease, affiliates of Landlord shall mean and include: (i) any person or entity owning or holding (directly or indirectly) any interest in Landlord; and (ii) any entity in which Landlord or any person or entity owning or holding any interest (directly or indirectly) in Landlord, owns or holds any interest (directly or indirectly).

(iii) Landlord will not have any obligation to lease the Leased Premises for any rental less than the current rate then prevailing for similar space in the Building (or if no similar space is available in the Building, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Building) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

(iv) Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's sole judgment and opinion, or whose presence or

operations in the Building would, in Landlord's sole judgment and opinion: (i) disrupt the tenant mix or balance of the Building; (ii) violate any restriction, covenant or requirement contained in the lease of another tenant in the Building; (iii) adversely affect the reputation of the Building; or (iv) be incompatible with the operation of the Building in a manner comparable to the operation of buildings in the same market area as the Building.

(v) Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Leased Premises in a manner comparable to the operation of buildings in the same market area as the Building and meet its financial obligations; (ii) whose proposed use of the Leased Premises is not a permitted use under the terms of this Lease.

(vi) Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Leased Premises suitable for use by any prospective tenant.

(vii) Landlord will have no obligation to advertise or expend any sums of money to market the Leased Premises.

(viii) If Landlord makes the Leased Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and Tenant hereby waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord acts maliciously or in bad faith.

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

ARTICLE ELEVEN: **PROVISIONS RELATING TO FINANCING OR SALE OF THE PROJECT**

Section 11.01 **Subordination.** Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Leased Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Leased Premises or the Lease. Tenant shall execute such further documents and assurances as such lender may require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Leased Premises during the Lease Term shall not be disturbed if Tenant pays the Rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Section 11.02 **Attornment.** If Landlord's interest in the Leased Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee

of or successor to Landlord's interest in the Leased Premises and recognize such transferee or successor as Landlord under this Lease.

Section 11.03 **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so.

Section 11.04 **Estoppel Certificates.** Tenant shall, from time to time, upon Landlord's written request, execute, acknowledge and deliver to Landlord written estoppel certificates in the form reasonably acceptable to Landlord (with such changes and additions as are necessary to complete the form and such qualifications and revisions as may be necessary to make all statements therein factually accurate). Tenant shall deliver each requested certificate to Landlord within ten (10) days after Landlord's request for same. If Tenant does not deliver any requested certificate to Landlord within such ten-day period, Landlord and any prospective purchaser or encumbrancer may conclusively presume that the matters stated in the requested certificate are true and correct.

ARTICLE TWELVE: **LEGAL COSTS**

Section 12.01 **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Non-defaulting Party") upon demand for any reasonable costs or expenses that the Non-defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include reasonable legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. The Defaulting Party shall reimburse the Non-defaulting Party for any such reasonable costs or expenses upon thirty (30) days written notice from the Non-defaulting Party. In the event that the parties cannot agree on which party is the Defaulting Party, the parties agree to submit that dispute to mediation. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action, upon final adjudication, shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such reasonable attorneys' fees and costs. To the extent permitted by law, Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Leased Premises by license of or agreement with Tenant, unless such claim or action is caused by or results from Landlord's negligence or willful misconduct. To the extent permitted by law, Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action. To the extent permitted by law, Landlord shall indemnify Tenant against and hold Tenant harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action instituted by Landlord against any third party, or by any third party against Landlord, or by or against any person holding any interest under or using the Project (except for the Leased Premises) by license of or agreement with Landlord, unless such claim or action is caused by or results from Tenant's negligence or willful misconduct, and to the extent any such claim or action are related to the portions of the Project outside of the Leased Premises. To the extent permitted by law, Landlord shall defend Tenant against any such claim or action at Landlord's expense with counsel reasonably acceptable to Tenant or, at Tenant's election, Landlord shall reimburse Tenant for any legal fees or costs Tenant incurs in any such claim or action.

Section 12.02 **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment), or in connection with any other material act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: **MISCELLANEOUS PROVISIONS**

Section 13.01 **Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Leased Premises or Project or the leasehold estate under a ground lease of the Leased Premises or Project at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Leased Premises whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Leased Premises and the Project, and the Landlord's Board of Commissioners shall have no personal liability under this Lease.

Section 13.02 **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.03 **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Leased Premises with Tenant's expressed or implied permission.

Section 13.04 **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Leased Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.05 **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested and postage prepaid. Notices to Tenant shall be delivered to the address specified in the Basic Terms, except that upon Tenant's taking possession of the Leased Premises, the Leased Premises shall be Tenant's address for notice purposes. Notices to Landlord shall be delivered to the address specified in the Basic Terms. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.06 **Definition of Business Days and Holidays.** For purposes of this Lease, the term “business day” or “business days” shall mean and refer to all calendar days, other than Saturdays, Sundays and “holidays”. For purposes of this Lease the term “holiday” and “holidays” shall mean and refer to all days on which banks in the State of Texas are required or permitted to close.

Section 13.07 **Waivers.** All waivers must be in writing and signed by the waiving party. A party’s failure to enforce any provision of this Lease shall not be a waiver and shall not prevent the party from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08 **No Recordation.** Tenant shall not record this Lease or any memorandum of this Lease without prior written consent from Landlord.

Section 13.09 **Binding Effect; Choice of Law.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant’s successor unless the rights or interests of Tenant’s successor are acquired in accordance with the terms of this Lease. The laws of the State of Texas shall govern this Lease.

Section 13.10 **Tenant’s Authority.** Tenant represents that it has full authority to execute this Lease.

Section 13.11 **Force Majeure.** If either party cannot perform any of its obligations due to events beyond such party’s control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party’s control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. Notwithstanding any provision herein to the contrary, events beyond Tenant’s control shall not excuse Tenant from the requirement to pay all Rent hereunder on a timely basis.

Section 13.12 **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord’s delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.13 **Representations and Warranties.** To induce Landlord to enter into this Lease, Tenant represents and warrants to Landlord as follows:

(a) This Lease is an enforceable obligation of Tenant.

(b) Tenant is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as such terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder).

(c) Tenant has all required approvals, permits and licenses required by any governmental authority and necessary or advisable to operate, occupy or use the Leased Premises for the Permitted Use, all of which are unexpired, permanent and unconditional, and, without cost or risk to Landlord, are hereby assigned, to the extent assignable, to Landlord.

Section 13.14 **Representations.** To induce Tenant to enter into this Lease, Landlord represents to Tenant as follows:

(a) This Lease is an enforceable obligation of Landlord.

(b) Landlord is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as such terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder).

(c) Landlord has all required approvals, permits and licenses required by any governmental authority and necessary or advisable to operate, occupy or use the Project and Lease the Leased Premises to Tenant, all or which are unexpired, permanent and unconditional, and, without cost or risk to Tenant, are hereby assigned, to the extent assignable, to Tenant.

Section 13.15 **Non-Appropriation.** Landlord agrees that Tenant has the right to terminate this agreement by providing written notice to Landlord within thirty (30) days after Tenant proposes an annual budget for its upcoming fiscal year in which funds for this Lease are not appropriated. In such case of termination for non-appropriation, Tenant shall, on the last day of the fiscal period for which appropriations were received, without any penalty to Tenant excepting deposit, remove Tenant's property from the Leased Premises and return the Leased Premises to Landlord in accordance with Section 6.05.

ARTICLE FOURTEEN: **SPECIAL PROVISIONS**

Section 14.01 **As-Is Condition.** Landlord has no obligation to refurbish the Leased Premises or construct any improvements to the Leased Premises, and Tenant accepts the Leased Premises "AS IS", "WHERE IS", and "WITH ALL FAULTS".

Section 14.02 **Broker's Fee.** Tenant represents that it has not been represented by any broker or agent in connection with the execution of this Lease. To the extent permitted by Texas law, Tenant shall indemnify and hold harmless Landlord and its designated property management, construction and marketing firms, and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, directors, shareholders, employees, servants, partners, members, representatives, insurers and agents from and against all claims (including costs of defense and investigation) of any broker or agent or similar party claiming by, through or under Tenant in connection with this Lease. To the extent permitted by Texas law, Landlord represents and warrants that it has not been represented by any broker or agent in connection with the execution of this Lease. Landlord shall indemnify and hold harmless Tenant and its employees, agents and affiliates from and against any and all claims (including costs of defense and investigation) of any other broker or agent or similar party claiming, through or under Landlord in connection with this Lease.

Section 14.03 **Fiber Optics.** Tenant will have the right to use and install fiber optics (including wiring and cables) in the Leased Premises, at its sole cost and expense.

Section 14.04 **Rental of Pfluger Hall.** Tenant may rent Pfluger Hall, a facility located at 203B East Pecan, Pflugerville, Travis County, Texas, for 1-2 day periods at a discount of at least 25% off current rental rates, subject to availability. Tenant will enter into a separate rental agreement with Landlord for each rental use period and will follow all of Landlord's rules applicable to the rental of Pfluger Hall.

Section 14.05 **Rental of Second Floor of Project.** Tenant may rent the all or a portion of the second floor of the Project, for 1-2 day periods at a discount of at least 25% off current rental rates, subject to availability. Tenant will enter into a separate rental agreement with Landlord for each rental use period and will follow all of Landlord's rules applicable to the rental of the Second Floor or Community Meeting Space of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below.

LANDLORD:

**TRAVIS COUNTY EMERGENCY SERVICES
DISTRICT NO. 2**, a political subdivision of the
State of Texas operating under Texas Health and
Safety Code Chapter 775

By:

Name:

Title:

Date:

TENANT:

CITY OF PFLUGERVILLE, a Texas home-
rule municipality

By:

Name:

Title:

Date:

EXHIBIT “A”

[ATTACH PROPERTY DESCRIPTION]

EXHIBIT "A"

PROPERTY DESCRIPTION

DESCRIPTION

OF A 1.963 ACRE TRACT OF LAND BEING OUT OF AND A PART OF THE ALEXANDER WALTERS SURVEY NO. 67 ABSTRACT NO. 791, TRAVIS COUNTY, TEXAS, ALSO BEING A PORTION OF THE REMAINDER OF THAT 6 ACRE TRACT AS CONVEYED TO PFLUGERVILLE VOLUNTEER FIRE DEPARTMENT AS RECORDED IN VOLUME 1636, PAGE 354 OF THE TRAVIS COUNTY DEED RECORDS, SAID 1.963 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

Commencing at a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086", being in the South Right-of-Way of Pecan Street (F.M. 1825), (60' Right-of-Way), Highway Station 167+77.26, 30.00' Right, Also being in the West Right-of-Way of Wren Avenue Additional Right-of-Way as conveyed to the City of Pflugerville as recorded in Volume 9980, Page 793, Travis County Deed Records, also being the Northeast corner of a 2.431 Acre Tract as conveyed to Travis County Emergency Services District No. 2 as recorded in Document #2002176482, From Which a 1/2" Iron Rod Found at Highway Station 173+12.79, 32.60' Right, Bears S59°58'01"E, 535.55' feet, and S30°01'59"W, 2.60' feet;

Thence, S30°00'00"W, with the West Right-of-Way of the said Wren Avenue and the East line of the said 2.431 Acre Tract, for a distance of 326.69' feet, to a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086", at the Southeast corner of the said 2.431 Acre Tract, for the Northeast corner of the herein described tract and the Point of Beginning;

Thence, S30°00'00"W, with the West Right-of-Way of the said Wren Avenue, for a distance of 264.72' feet, to a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086", in the North Right-of-Way of Pfluger Street East (60' Right-of-Way), for the Southeast corner of the herein described tract, From Which a 3/4" Spike Found, Bears S29°36'39"W, 60.00' feet;

Thence, N60°23'21"W, with the North Right-of-Way of Pfluger Street East, for a distance of 322.99' feet to a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086", in the East Right-of-Way of Railroad Avenue (60' Right-of-Way), for the Southwest corner of the herein described tract, From Which a 100D Nail Found at the Northwest corner of Lot 5, Block "G", The Wrenbar Addition, Bears S30°00'00"W, 60.00' feet;

Thence, N30°00'00"E, with the East Right-of-Way of Railroad Avenue, for a distance of 264.72' feet to a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086", at the Southwest corner of the said 2.431 Acre Tract, for the Northwest corner of the herein described tract, From Which a 1/2" Iron Rod Found with aluminum cap "Dean Woodley RPLS #5086" in the South Right-of-Way of Pecan Street (F.M. 1825), (60' Right-of-Way), Bears N30°00'00"E 329.07'.

Thence, S60°23'21"E, with the South line of a 2.431 Acre Tract as conveyed to Travis County Emergency Services District No. 2 as recorded in Document #2002176482, for a distance of 322.99' feet to the Place of Beginning, containing 1.963 Acres of Land Area.

The bearings for the above description area based upon the 6 Acre Tract as conveyed to the Pflugerville Volunteer Fire Department as recorded in Volume 1636, Page 354 of the Travis County Deed Records.

STATE OF TEXAS)

COUNTY OF TRAVIS)

I hereby certify that this field note description was prepared from the results of an actual survey made on the ground under my supervision and that it is true and correct to the best of my knowledge.

LIVE OAK SURVEYING

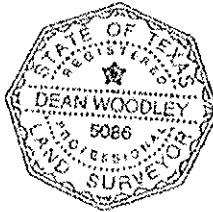
12421 Wycliff Lane

Austin, Texas 78727-5220

DEAN A. WOODLEY DATE: 12-30-2004

REGISTERED PROFESSIONAL

LAND SURVEYOR NO. 5086



3070302-2.wps

EXHIBIT “B”

[ATTACH DIAGRAM OF PROJECT, SHOWING LEASED PREMISES]

DEPICTION OF LAND

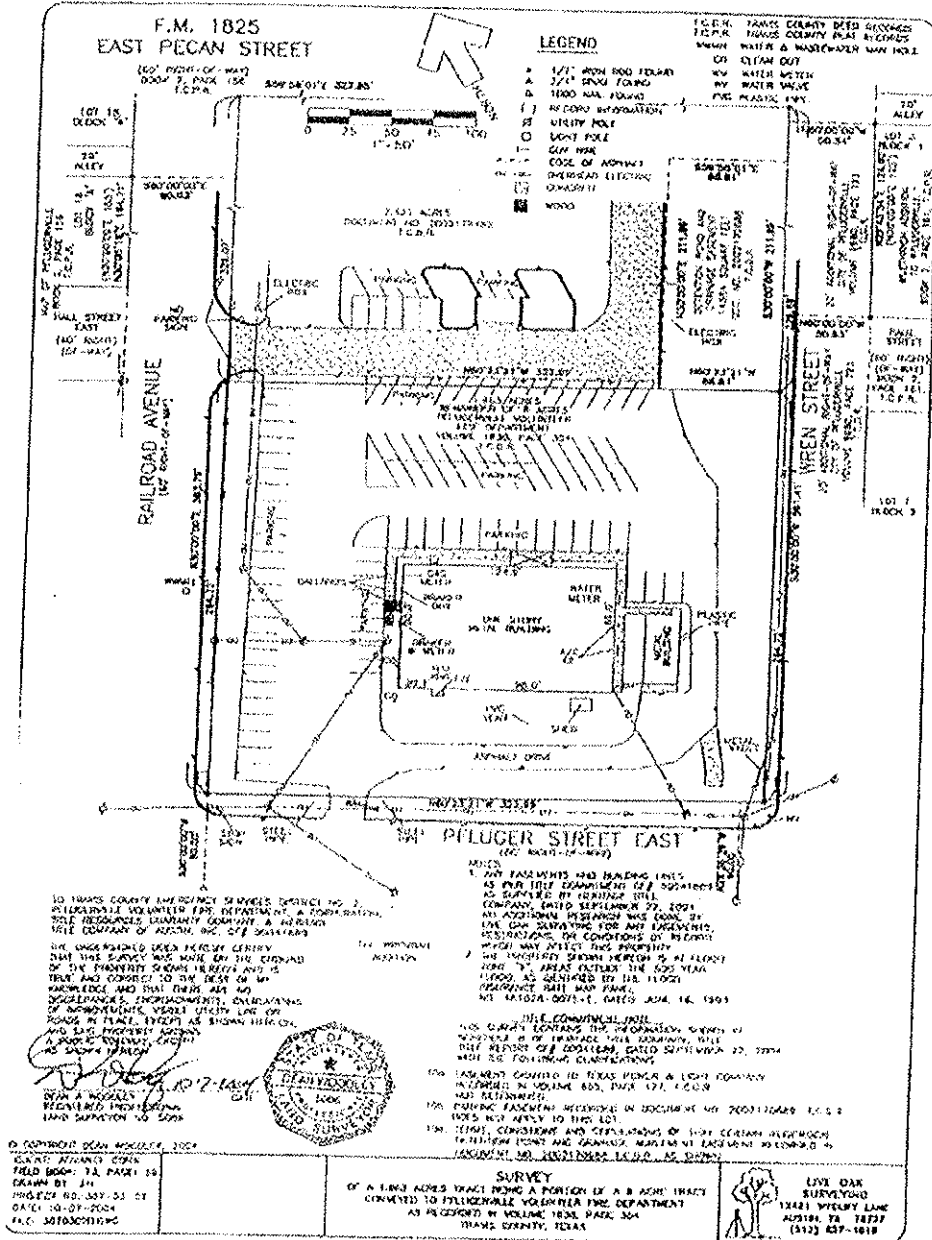


EXHIBIT "B"

[ATTACH DIAGRAM OF PROJECT, SHOWING LEASED PREMISES]

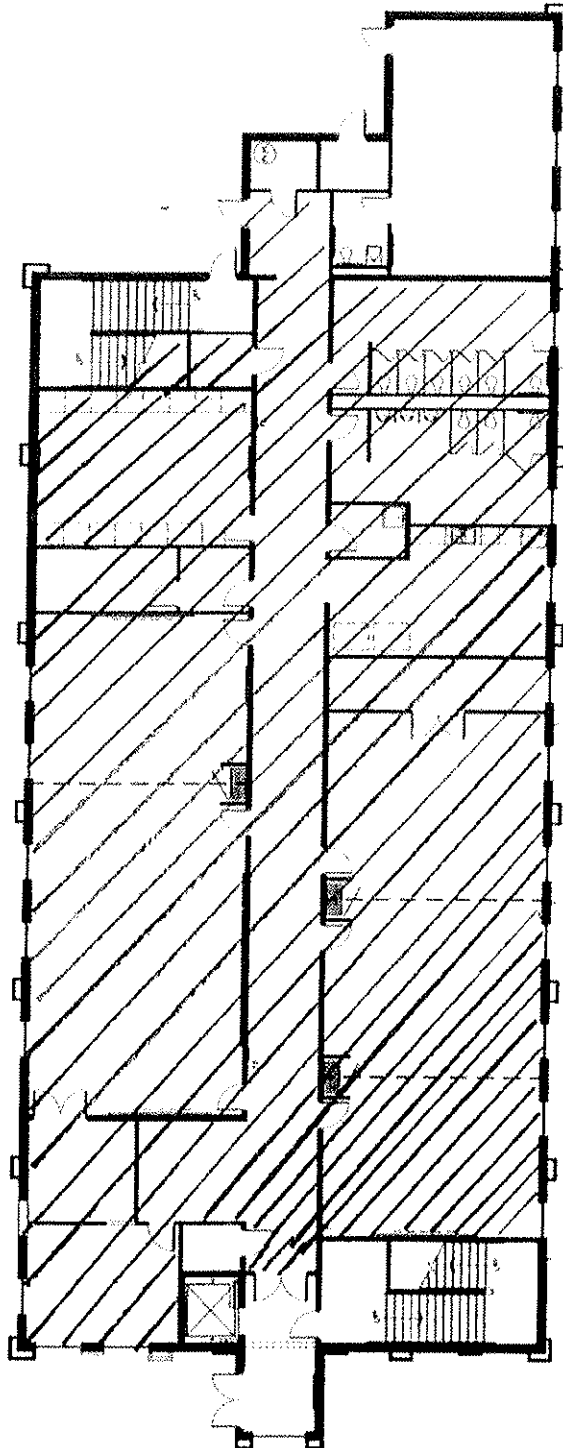


EXHIBIT "C"

PARKING RULES

It is the desire of Landlord to maintain and operate the parking lot in an orderly manner. The following rules and regulations apply to all tenants in the Project and their agents, employees, family members, licensees, invitees, visitors and contractors unless otherwise stated. Landlord reserves the right to rescind these rules, make reasonable changes or make other reasonable rules and regulations for the safety, care and cleanliness of the parking lot.

1. **TRAFFIC SIGNS.** All persons parking in the Parking lot shall observe posted signs and markings regularly regarding speed, traffic, directional flow, stop signs, traffic lanes, reserved parking, no parking, parking stripes, identifying decals, etc.
2. **TRASH.** All persons parking in the Parking lot shall refrain from throwing trash, ashtray contents, or other debris in the Parking lot.
3. **FLAT TIRES.** All vehicle owners and all persons parking in the Parking lot shall be responsible for promptly repairing flat tires or other conditions of the vehicle which cause unsightliness in the reasonable judgment of Landlord.
4. **REMOVAL OF UNAUTHORIZED VEHICLES.** If vehicles are blocking driveways or passageways, parked in a fire zone, or parked in violation of these rules and regulations or state statutes, Landlord may exercise vehicle removal remedies upon compliance with any applicable statutory notice requirements.
5. **SECURITY.** Landlord shall use reasonable diligence in the maintenance of existing lighting in the Parking lot. Landlord shall have no duty for additional lighting or any security measures in the Parking lot.
6. **PARKING OF EMPLOYEE VEHICLES.** Landlord may, at Landlord's option and election, from time to time designate specific areas in which vehicles owned by Tenant and Tenant's employees shall be parked. Tenant shall use best efforts to see that such vehicles are parked in such areas. Upon request by Landlord, Tenant shall furnish Landlord a complete list of license numbers of all vehicles operated by Tenant and the above-listed persons.
7. **PARKING OF TRUCKS AND DELIVERY VEHICLES.** Without Landlord's prior written approval, no trailers or large trucks may be parked in the Parking lot. Service and delivery vehicles may be parked in loading zones only when loading or unloading.
8. **CONTROL DEVICES.** Landlord reserves the right to install or utilize any reasonable system of entry and exit control devices in marked loading areas.

EXHIBIT "D"

BUILDING RULES

It is the desire of Landlord to maintain in the Project the highest standard of dignity and good taste consistent with comfort and convenience for all tenants. Any action or condition not meeting this high standard should be reported directly to Landlord. Cooperation by all tenants will be sincerely appreciated. The following rules and regulations apply to all tenants in the Project and their agents, employees, family, licensees, invitees, visitors, and contractors unless otherwise stated. Landlord reserves the right to rescind these rules, make reasonable modification thereto, and make other reasonable rules and regulations for the safety, care, and cleanliness of the Project and for the preservation of good order.

1. **DELIVERIES AND MOVEMENT OF FURNITURE.** Movement into or out of the Project of furniture, equipment shall be restricted to hours, stairways, and elevators designated by Landlord. Landlord may require that movement of furniture or equipment which interferes with normal Project traffic shall be made at hours other than normal business hours. No moving companies shall be used for the purpose of moving furnishings in or out of the premises unless they are licensed commercial movers and are both bonded and insured.
2. **OBSTRUCTION OF PASSAGEWAYS.** None of the passageways, outside entries, exterior doors, elevators, hallways, or stairways shall be locked or obstructed. No rubbish, trash, litter, or materials of any nature may be emptied or thrown into these areas. These areas may be used only for ingress and egress.
3. **DOORS AND DOORLOCKS.** When Tenant's corridor doors are not in use, Tenant shall use its best efforts to keep them closed on all floors where Tenant is a partial tenant on the floor. No additional locks shall be placed on any doors in Tenant's office space without written consent of Landlord. Tenant shall not change, alter, or replace locks provided by Landlord on doors in the Project, except with written permission of Landlord. All necessary keys shall be furnished by Landlord, and Landlord shall be entitled to have a key for every door in Tenant's office space. Tenant and its employees shall surrender all keys and access cards upon termination of Tenant's right of occupancy or upon termination of Tenant's employees; and at such time, Tenant shall give Landlord the combination to all vaults or combination locks remaining in Tenant's office space after surrender by Tenant.
4. **SAFES.** Safes and other heavy Articles shall be carried onto the Leased Premises only at such times and in such manner as prescribed by Landlord. Landlord shall have the right to specify weight limitations and positioning of safes or other heavy Articles. Any damage done to the Project by installation, presence, or removal of a safe or other Article owned or controlled by Tenant on the Leased Premises, shall be paid for by Tenant. In no event can these items exceed a weight of 50 pounds per square foot of floor space utilized.
5. **INSTALLATION AND REPAIR WORK.** Tenant shall refer all contractors, contractors' representatives, and installation technicians who render any service on or to Tenant's office space, to Landlord for approval and supervision before performance of any service. This provision shall apply to all work performed in the Project, including installation of telephones, electrical lines, and other electrical devices where such installation affects the floors, walls, woodwork, trim, windows, ceilings, mechanical equipment, or any other part of the Project. If Tenant desires telephone or other electronic connections, Tenant shall notify Landlord,

and Landlord shall then direct installation servicemen as to where and how wires may be introduced. Without such directions, no such installations shall be permitted.

6. **HAZARDOUS MATERIALS.** Tenant shall not place or install, on the Leased Premises or any part of the Project, any explosive, gasoline, kerosene, oil, acids, caustics, or any other inflammable, explosive, or hazardous materials without written consent of Landlord. Tenant shall not operate electric space heaters, stoves, engines, or other equipment not typical of an office building without written consent of Landlord.
7. **ENTRY BY LANDLORD.** Landlord shall have the right with twenty-four (24) hours written notice to Tenant to enter the Leased Premises with Tenant present for any purposes permitted under the Lease.
8. **PLUMBING.** Plumbing fixtures and appliances shall be used only for the purposes for which they were constructed. No sweeping, rubbish, rags, or other unsuitable materials may be thrown or placed in plumbing fixtures or appliances. The cost of any stoppage or damage resulting from negligence or improper use of these fixtures and appliances by Tenant or Tenant's agents, employees, family, invitees, licensees, or visitors shall be paid for by the Tenant.
9. **WINDOWS.** Tenant shall not allow windows within Tenant's office space to be opened at any time, except in emergencies. Nothing shall be thrown out of the windows of the Project or down the stairwells or other passages. Landlord reserves the right to cause any or all windows of the Project to be locked, sealed, closed, or otherwise made inoperable, or to install permanent or temporary screens thereon.
10. **THEFT AND DAMAGES.** Landlord shall not be responsible for lost or stolen personal property, equipment, money, or jewelry from Tenant's office space or from the public areas of the Project regardless of whether such loss occurs when the area is locked against entry. Landlord will not be liable to Tenant, or Tenant's employees, customers, or invitees for any damages or losses to persons or property caused by other Tenants in the Project or for damages or losses caused by theft, burglary, assault, vandalism, or other crimes, except to the extent any such damages are caused by or result from Landlord's willful misconduct or gross negligence and the damage is not covered by Tenant's insurance. Owner shall not be liable for personal injury or loss of Tenant's property from flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosions, or interruption of utilities unless such injury or damage is caused by the negligence of Landlord. **LANDLORD STRONGLY RECOMMENDS THAT TENANT SECURE TENANT'S OWN INSURANCE TO PROTECT AGAINST THE ABOVE OCCURRENCES.**
11. **ANIMALS.** No birds, fowl, or animals (except guide dogs for handicapped persons) shall be brought into or kept in or about the Project.
12. **BICYCLES AND OTHER VEHICLES.** No bicycles, motorcycles, or similar vehicles shall be allowed in the Building. No trailers or large trucks may be parked in the Project parking areas except for temporary loading or unloading.
13. **RESIDENTIAL USE.** No sleeping, cooking, clothes cleaning, or laundering is permitted within the Leased Premises without written consent of Landlord.
14. **INTOXICATION.** Landlord reserves the right to exclude or expel from the Project any person who in the reasonable judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any rules of the Project.

15. **DISTURBANCES.** Tenant shall not obstruct, disturb, or interfere with the rights of other tenants or occupants or in any way injure or annoy them. Tenant shall not make any noises by any means which, in the reasonable judgment of Landlord, are likely to disturb other tenants or occupants of the Project.
16. **COMPLIANCE WITH SAFETY AND SANITATION LAWS.** Tenant shall comply with all laws relating to fire, safety, and sanitation, and shall comply with any requirements of Landlord's insurance company with respect to the prevention, safety standards, and sanitation.
17. **CLEANING.** Tenant shall employ a person or persons for the purpose of cleaning or maintaining the Leased Premises. Tenant shall cooperate with Landlord's employees, agents, and cleaning personnel in keeping Tenant's premises neat and clean. Any special cleaning requested by Tenant and performed by Landlord or Landlord's employees, agents, or contractors shall be paid for by Tenant.
18. **SOLICITING.** Canvassing, soliciting, or peddling in the Project is prohibited without written permission of Landlord, and Tenant shall cooperate to prevent same.
19. **SIGNS.** No signs, fixtures, or notices of any kind may be displayed outside the Leased Premises except by written consent of Landlord. All such signs shall conform to the requirements of the Lease.
20. **NOTICE OF PERSONAL INJURIES OR UTILITY OR MECHANICAL PROBLEMS.** Tenant shall give prompt notice to Landlord, to the best of Tenant's knowledge, of any significant accidents involving injury to persons or property, including plumbing, electrical, heating, air conditioning, stairwell, corridor, and elevator problems and/or personal injury and property damage caused thereby.
21. **REQUESTS BY TENANT.** Except in emergencies, requests by Tenant shall be attended to only after written request by Tenant to Landlord. Landlord's employees are not allowed to perform work or do anything outside their regular duties unless pursuant to special orders from Landlord. Tenant may not contract with Landlord's employees for the performance of paid or free services to Tenant. If, at the request of Tenant, Landlord or Landlord's agents furnish services, goods, labor, or material to Tenant which are not required to be furnished by Landlord under this Lease, Tenant shall pay for same upon delivery of a written statement therefor to Tenant.
22. **BUILDING ACCESS.** Landlord shall not be liable for damages for any good faith error with regard to admission or exclusion from the Project of any person. In case of fire, destruction, invasion, mob, riot, or other commotion, Landlord reserves the right to prevent access to the Project by closing the doors or otherwise. Access to the Project or to the halls, corridors, elevators, stairwells or other portions thereof may be controlled by Landlord through the use of security guards or through other control devices. All security guards (if any) will have the right to demand proper identification from any and all persons seeking access to the Project. Landlord shall not in any event be liable for damages arising out of any inability by Tenant or any of the other Tenant Parties to obtain access to the Leased Premises during any periods of time not falling within the normal operating hours of the Project.
23. **ICE, SLEET, SNOW, OR WATER** Landlord shall have no duty to remove, in whole or in part, ice, sleet, snow, or water from parking lots, walkways, sidewalks, or stairs, regardless whether they are covered, uncovered, inside, or outside of buildings. At Landlord's option, Landlord may remove such ice, sleet, snow, or water at any time, in whole or in part, with or without notice to anyone.

24. **NO COMMERCIAL ACTIVITIES.** Except with the prior written consent of the Landlord, no Tenant shall sell or cause to be sold any items or services at retail in or from the Leased Premises, nor shall any Tenant carry on or permit or allow any employee or person to carry on the business of machine copying, stenography, typewriting or similar business in or from the Leased Premises for the service or accommodation of occupants of any portion of the Project without written consent of the Landlord.
25. **ELECTRICAL WIRING.** Any electric wiring that the Tenant desires to introduce into the Leased Premises must be connected as directed by Landlord. No boring or cutting for wires will be allowed except with a specific consent of the Landlord. The location of telephones, electrical appliances, call boxes, intercoms and other such equipment shall be prescribed by the Landlord.
26. **NO SALE OR STORAGE OF GOODS.** The Tenant shall not conduct any action nor permit any fire or bankruptcy sale to be held within the Leased Premises, nor store goods, wares or merchandise within the Leased Premises.
27. **BUILDING SERVICES.** Requirements of the Tenant for building services, maintenance or repairs shall be amended only upon application to Landlord. Employees of the Landlord are not permitted to perform any work nor to do anything outside of their regular duties unless under special instructions from Landlord.
28. **NO SMOKING OR TOBACCO PRODUCTS.** Smoking or carrying a lighted cigar or cigarette, or using tobacco products in any portion of the Project including, but not limited to, Common Areas and the Parking lot, is prohibited. *See also* the Landlord's Tobacco Free Workplace Policy, Policy #225, and any additions or amendments thereto. Tenant is expected to fully comply with this policy. Public rights-of-way adjacent to the Project are excluded from this prohibition.
29. **NO COOKING.** No cooking, except for coffee pot and microwave, shall be done or permitted within the Leased Premises nor shall any part of the Leased Premises be permitted to be used for lodging.
30. **FLOOR COVERINGS.** Tenant shall not lay floor covering so that the same shall be affixed to the Leased Premises in any manner by paste or other material, except that which may easily be removed with water. The use of cement or other similar adhesive materials is expressly prohibited. Landlord shall have no obligation to repair, re-stretch, or replace carpeting.
31. **DOORS.** Tenants shall see that doors of the Leased Premises are closed and securely locked before leaving the Project and must observe strict care not to leave such doors and other openings open and exposed to the weather or other elements, and Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before the Tenant or the Tenant's employees leave the Project, and that all electricity, gas and air conditioning shall likewise be carefully shut off, so as to prevent waste or damage, where controlled by Tenant. All doors opening onto public corridors are to be closed and remain closed at all times.
32. **NO SOLICITING.** Canvassing, soliciting and peddling in the Project are prohibited. Tenants shall cooperate to prevent the same.