

RESOLUTION NO. 22-342

**A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A LEASE WITH ROMAR & REED MEDIA FOR SUITE 206A AT 549 4<sup>TH</sup> STREET (THE PRESS BUILDING).**

**WHEREAS**, the City Council authorized the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to retrofit the property located at 549 4<sup>th</sup> Street in downtown Port Arthur for co-working, office rental space and entrepreneurship endeavors; and

**WHEREAS**, Romar & Reed Media desires to enter into a lease with the City of Port Arthur Economic Development Corporation for 549 4<sup>th</sup> Street, Suite 206A, Port Arthur, Texas (Suite 206A at The Press Building); and

**WHEREAS**, the lease attached hereto as Exhibit "A" was approved by the Port Arthur Economic Development Corporation board of directors at its meeting on July 11, 2022.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:**

**Section 1.** That the facts and opinions in the preamble are true and correct.

**Section 2.** That the City Council approves the lease between the Port Arthur Economic Development Corporation and Romar & Reed Media as delineated in Exhibit "A" attached hereto.

**Section 3.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 2<sup>nd</sup> day of Aug A.D., 2022,

at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Bartie; Mayor Pro Tem Holmes;

Councilmembers Jones, Kinlaw, Marks  
and Moss.

NOES:

None

ATTEST


  
Sherri Bellard, City Secretary

  
Thurman Bartie, Mayor

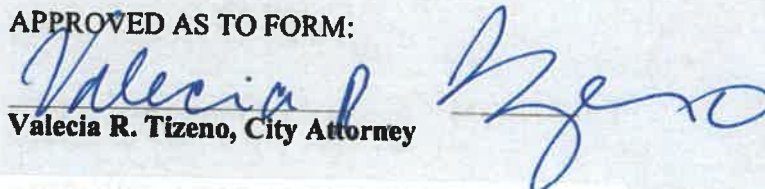
APPROVED:

  
Krystle Mueller, Interim CEO

APPROVED AS TO FORM:

  
Frank Garza, PAEDC Attorney

APPROVED AS TO FORM:

  
Valecia R. Tizeno, City Attorney

P.R. 22694

## EXHIBIT "A"

**LEASE AGREEMENT**

**Between**

**PORT ARTHUR SECTION 4A ECONOMIC  
DEVELOPMENT CORPORATION**

**Landlord**

**and**

**Romar & Reed Media**

**Tenant**

**located at  
549 4<sup>th</sup> Street  
Port Arthur, Texas**

## **APPENDIX 1**

### **BASIC TERMS**

**Lease Date:** August 1, 2022

**Tenant:** Romar & Reed Media

**Address of Tenant:**

**549 4<sup>th</sup> Street, Suite 206 A  
Port Arthur, TX 77640**

**Contact:** Jessie Romar

**Telephone:** 409-617-8308

**Landlord:**

PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION

**Address:**

501 Proctor Street  
Port Arthur, Texas 77640

**Contact:**

Jana Barnes

**Telephone:** 409-282-1334

**Building:**

The Press Building, located at 549 4<sup>th</sup> Street, Port Arthur, Texas 77640

**Premises:**

Suite 206A, consisting of 225 square feet, in The Press Building together with certain improvements located therein (the "Premises"), together with non-exclusive ingress/egress thereto; the Premises being more particularly described/depicted on **APPENDIX A**.

**Term:**

12 full months, plus any partial months

**Commencement Date:**

August 1, 2022

**Rent Commencement Date:**

August 1, 2022

**Termination Date:**

July 31, 2023

**Extended Term:**

[To be negotiated]  
(See Section 6.1)

**Beneficial Occupancy:**

Tenant has the right to access the Premises prior to the Commencement Date for the following purposes only: **NONE**

and such access will be governed by this Lease and all of its terms will be applicable as if the Lease had commenced

**Base Rental:** **\$3,648.00** per annum / **\$304.00** per month  
[to be increased by 8% annually]  
(See Section 5.1)

**Common Area Maintenance:  
(First Year Estimate)** **\$378.00** per annum / **\$32.00** per month  
(See Section 7.2)

**Total Rent:** **\$4,026.00** per annum / **\$336.00** per month

**Tenant's  
Liability Insurance:** Tenant will maintain a commercial general liability policy of not less than **\$2 million** each for general aggregate limit and products/completed operations aggregate limit; and **\$1 million** each for personal/advertising injury limit and per occurrence limit; **\$100,000** for fire damage in any one fire and **\$5,000** medical expense limit for any one person.  
(See Section 15.2(A))

**Security Deposit:** **\$304.00 (Equal to one month's rent)**  
(See Section 5.2)

**Permitted Use:** Tenant will occupy the Premises for general office use and for no other use or purpose without the prior written consent of Landlord, which may be withheld for any reason. (See Section 18.)

**Parking Ratio:** Tenant will have non-exclusive use parking spots located across the street from the Building. There are no reserved parking spaces included in the Premises. (See Section 11)

This **APPENDIX 1** containing the Basic Terms is incorporated into and made a part of the lease attached hereto (the "Lease").

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between **PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION, a 4a sales tax corporation organized under the laws of the State of Texas** ("Landlord") as lessor, and Romar & Reed Media, a company ("Tenant"), as lessee.

1. **RECITALS.** Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord a portion of the Building, as more particularly described in **APPENDIX 1** (the "Premises"), at the rental and subject to the terms, covenants and conditions set forth in this Lease.

2. **GRANT OF LEASE.** In consideration of the mutual obligations of Landlord and Tenant set forth in this Lease, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises to have and to hold, subject to the terms, covenants and conditions in this Lease.

3. **RESERVED.**

4. **TERM AND PREMISES.**

4.1 **Lease Term.** The Term of this Lease is set out on **APPENDIX 1**. If the Extended Term (defined in Section 6.1) is exercised as permitted, then all references to the "Term" in this Lease will also include the period of time covered by the Extended Term.

4.2 **Premises.** The Premises are set out on **APPENDIX 1**. Tenant will also have non-exclusive use of the common area break room. Tenant may also reserve use of the common area conference room for up to 4 hours per month. Use of the conference will be reserved through Landlord on a first come, first served basis. Tenant may reserve additional conference room use for an additional charge.

4.2.1 **Building Size.** Landlord has the on-going right to change the square footage of the Building and to change the add-on percentage of the Building.

4.3 **Acceptance of the Premises.** Except as expressly provided in this Lease, Landlord makes no warranty or representation, express or implied or arising by operation of law, with respect to the Premises including, but in no way limited to, any warranty of condition, suitability or fitness for a particular purpose. Tenant will pay for the cost of the Certificate of Occupancy, a copy of which will be provided to Landlord, and any required inspection related to Tenant's occupancy of the Premises.

4.4 **Fire Protection System.** Tenant hereby accepts the existing fire protection system as sufficient for Tenant's purposes and agrees to maintain same within the Premises in good working order at all times. Any modification to the fire protection system within the Premises required by governmental authorities as a result of Tenant's particular use will be at Tenant's cost and expense.

4.5 **Landlord's Easement.** Landlord retains an easement to itself and its successors and assigns, on, over, under and across the Premises for utilities, storm water drainage and any other similar land use or feature, whether to the benefit of the of Premises or not.

4.6 Landlord's Access to Roof. Landlord reserves the right to exclusive possession of the Building's rooftop and Landlord may grant access to third parties to use the Building's rooftop and may charge a fee to do so.

## 5. RENT.

5.1 Base Rental. Tenant agrees to pay to Landlord the Base Rental as set out on **APPENDIX 1**. The Base Rental will be prepaid monthly, on the first day of every month thereafter until the end of the Term. All payments due for any fractional month will be pro-rated. The amount set for Base Rental is fixed and will not be adjusted in the event a discrepancy is found in the actual square footage of the Premises. During the Extended Term, the Base Rental will increase as provided in Section 6.1 below. As "Additional Rent," Tenant will pay the charges set forth on **APPENDIX 1**, which is Tenant's Proportionate Share of the Common Area Maintenance Charge, insurance premiums, and property taxes. Landlord will not send an invoice to Tenant for the Base Rental or Additional Rent; which Tenant is expected to timely pay as set out in this Lease.

5.1.1 Rent Escalation. Tenant agrees that the Base Rental will be adjusted upward by the percentage set out on **APPENDIX 1** on the first day of the first full month after each 12-month anniversary of the Commencement Date for the duration of the Term and if the Commencement Date is the first day of the month, then the adjustment will be made on the anniversary of the Commencement Date.

5.2 Security Deposit. Tenant has deposited the Security Deposit set out on **APPENDIX 1** with Landlord as security for Tenant's full performance of all the provisions of this Lease. If at any time during the Term hereof Tenant is in default as defined in this Lease, Landlord may apply all or a part of the Security Deposit for such payment without notice to Tenant. In the event that all or a part of the Security Deposit is used, Tenant, upon demand from Landlord, will immediately replenish the funds so expended to maintain the Security Deposit at the amount stated above. Landlord may also apply all or a part of the Security Deposit to clean or repair damages to the Premises. If Tenant is not in default at the termination of the Lease, Landlord will return the remaining balance of the Security Deposit to Tenant.

## 6. EXTENDED TERM AND TENANT IMPROVEMENTS.

6.1 Extended Term. If authorized on **APPENDIX 1**, and as long as Tenant is not in default, Tenant may extend the Term as set out on **APPENDIX 1**, at the Base Rental adjusted to then negotiated rates based on fair market values, provided, however, Tenant may extend only if Tenant gives written notice of such extension to Landlord no later than 180 days prior to the date on which the Term would otherwise expire.

6.2 Initial Tenant Improvements. Landlord has agreed to allow Tenant to make, the Tenant Improvements set forth on the attached **APPENDIX B**.

6.3 Future Tenant Improvements. Tenant may, during the Term, construct improvements to the Premises in accordance with plans and specifications approved in advance by Landlord to be completed at the sole cost of Tenant and made in accordance with all the conditions set out in Section 12. Any improvements paid by Tenant will be subject to Texas state sales taxes. **Contact Landlord's Property Manager at (409) 282-1334 before conducting any work on the Premises.**



#### 6.4 Relocation Space.

(A) Landlord maintains the right during the Term to relocate Tenant, from time to time, to other space (containing approximately the same amount of rentable square feet as the Premises) in the Building, such other space referred to as the "Relocation Space."

(B) If Landlord desires to exercise its relocation right, it will give Tenant at least 90 days prior notice, specifying the effective date of such relocation, whereupon, as of such effective date: (1) the description of the Premises set forth in this Lease will, without further act on the part of Landlord or Tenant, be deemed amended so that the Relocation Space will, be deemed the Premises under this Lease, and all of the terms of this Lease will continue in full force and effect and will apply to the Relocation Space, except if the Relocation Space contains more or less square footage than the original Premises, the Base Rental provided for in Section 5 of this Lease will be increased or decreased proportionately (provided that such rental increase or decrease as the case may be will not increase or decrease by more than 5% of the rental attributable to such original Premises immediately preceding such increase or decrease); and (2) Tenant will move from the original Premises into the Relocation Space and will vacate and surrender possession to Landlord the original Premises, and if Tenant continues to occupy the original Premises after such effective date, then thereafter, during the period of such occupancy, Tenant will pay rent for the original Premises at the rate set forth in this Lease, in addition to the rent for the Relocation Space at the above-described rate, subject to the provisions of subparagraph (D) below.

(C) Tenant will have the option either to accept possession of the Relocation Space in its "as is" condition as of the effective date or to require Landlord to alter the Relocation Space to be comparable to that in which the original Premises were in as of the date of the relocation notice. This option will be exercised by notice from Tenant to Landlord within 10 days after notice from Landlord to Tenant of the proposed relocation. If Tenant fails to deliver to Landlord within the 10-day period notice of its election, or if Tenant is in default under any of the terms of this Lease, Tenant will be deemed to have elected to accept possession of the Relocation Space in its "as is" condition. In either event, Tenant will continue to occupy the original Premises, (upon all of the terms of this Lease, including the covenant for the payment of rent) until the date on which the Relocation Space is substantially completed (the "Relocation Date"), and Tenant will move from the original Premises into the Relocation Space immediately upon the date of substantial completion and will vacate and surrender possession to Landlord of the original Premises on that date and if Tenant continues to occupy the original Premises after that date, then thereafter, during the period of such occupancy, Tenant will pay rent for the original Premises to be relocated at the rate set forth in this Lease in addition to the rent for the Relocation Space at the above-described rate, subject to the provisions of subparagraph (D), below.

(D) If Landlord exercises this relocation right, Landlord will reimburse Tenant for all of Tenant's out-of-pocket expenses for relocating including, but not limited to, the cost of moving Tenant's furniture, equipment and personal property from the original Premises to the Relocation Space. During the 30 day period commencing on the Relocation Date, Tenant will be allowed to occupy both the original Premises and the Relocation Premises in order to affect a smooth relocation and to minimize the impact on the Tenant's operation. During this 30 day transition period, Tenant will pay rent for the original Premises only and no rent will be paid for the Relocation Space.

## **7. COMMON AREA MAINTENANCE.**

7.1 Common Area Maintenance Charges. As Additional Rental, Tenant agrees to pay Landlord on the same dates as payment of Base Rental an amount for common area maintenance ("CAM Charge"), which amount will be estimated annually by Landlord. The initial annual CAM Charge is estimated to be in the amount as set out on **APPENDIX 1**. The amount actually incurred for common area maintenance will be reconciled annually at Landlord's fiscal year-end and Tenant will either pay upon demand any shortfall or will receive a rebate of any overcharge. At the same time as reconciliation, Landlord will provide Tenant with a new estimate of the annual amount of CAM Charge, which Tenant will pay (in 1/12 increments) on the same dates as Base Rental. CAM Charges includes all costs and expenses incurred by Landlord for the operation, maintenance and repair, and replacement of the Building and Common Area, as they are reasonably determined in the sole discretion of Landlord including, without limitation, a reserve fee for roof and structural repair and replacement for the Building. The CAM charge will cover, but not be limited to, the following services: exterior facility cleaning; exterior window cleaning; fire alarm monitoring service; fire system/sprinkler repair; graffiti cleanup, exterior wall repair and paint as needed; irrigation system repair/maintenance; landscape maintenance; roof maintenance, repair and replacement; litter pickup services; miscellaneous repairs; parking lot and building lights; parking lot repairs; parking lot sweeping; exterior pest control; refuse collection (if applicable); and an allocation of costs for maintaining areas intended for the common use of all tenants of the Building such as street sweeping, street lights, litter patrol, irrigation, landscape maintenance, irrigation system installation, street signs maintenance, sign structures, street repair, signage, plumbing, general maintenance, power washing; cleaning, security contract services, and security management.

7.1.1. Common Area. "Common Area" means those parts of the Building intended for the common use of tenants of the Building; including but not limited to: Building common area, common parking areas, driveways, sidewalks, landscaping, loading areas, private streets and alleys and exterior lighting facilities.

7.1.2 Audit of CAM. If Tenant fails to request an audit, in writing, within 90 days after Tenant's receipt from Landlord of the statement for CAM Charge for the previous year, then the statement will be deemed correct and acceptable to Tenant. However, if Tenant delivers written notice to Landlord within 90 days, then Tenant (and its agents) will be provided reasonable access, for the following 60 days (the "Examination"), to examine CAM Charge records. The Examination will be made during normal business hours at Landlord's principal offices. Tenant's request for an audit does not relieve Tenant of its obligation to timely pay the CAM Charge. If Tenant fails to make the Examination then, the CAM Charge as set out in Landlord's statement will be deemed correct and acceptable to Tenant. If the Examination reveals that the CAM Charge is overstated, then the CAM Charge for that calendar year will be adjusted accordingly.

## **8. REAL PROPERTY TAXES AND PERSONAL PROPERTY TAXES.**

### **8.1 Landlord's Ad Valorem Taxes.**

(A) At the Commencement Date hereof, no real property taxes are being assessed against the Premises due to Landlord's status as a local governmental agency. In the event that Landlord's Ad Valorem Taxes accrues against the Premises, Tenant will be liable for and pay Tenant's "Proportionate Share," the Proportionate Share being a fraction, the numerator of which will be the

number of gross rentable square feet of Premises leased by Tenant and the denominator of which is the total gross rentable square feet of the whole Building, multiplied by the tax due on the whole Building (land and improvements valuation); and Tenant's Proportionate Share of the costs associated with contesting the taxes; and 100% of Landlord's Ad Valorem Taxes that accrue, if ever, against the Premises to the extent due to improvements constructed thereon by Tenant.

(B) If, at any time during the Term of this Lease, there is levied, assessed or imposed on Landlord a tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon rents from the Premises, in lieu of ad valorem taxes (collectively, the "Other Taxes"), then Other Taxes will be paid by Tenant to the appropriate authority in a timely manner or to Landlord upon demand.

8.2 Tenant's Leasehold Taxes. Tenant will promptly pay when due any taxes assessed by local, state or federal governments on Tenant's real property leasehold interest.

8.3 Personal Property Taxes. Tenant will be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises by Tenant. If any taxes are levied or assessed against the Premises and (i) Landlord pays them or (ii) the assessed value of the Premises are increased by inclusion of personal property and fixtures installed by or on behalf of Tenant, and Landlord pays the increased taxes, then Tenant will reimburse Landlord, upon demand.

9. **LANDLORD'S REPAIRS AND MAINTENANCE.** Landlord, at its own cost and expense, will maintain the structural soundness of the: (i) roof structure; (ii) foundation; (iii) concrete floors; (iv) interior structural columns; and (v) exterior walls of the Building, in good repair, REASONABLE WEAR AND TEAR AND DAMAGE CAUSED BY TENANT, ITS EMPLOYEES, CONTRACTORS OR AGENTS EXCLUDED. The term "walls" will not include windows, glass or plate glass, any doors, special store fronts or office entries, and the term "foundation" will not include loading docks and the term "concrete floors" will not include floor coverings, such as vinyl or carpeting. Tenant will promptly give Landlord written notice of any known defect or need for repairs, after which Landlord will have reasonable opportunity to make the repairs or cure the defect.

## 10. **TENANT'S REPAIRS AND MAINTENANCE.**

10.1 Maintenance of Premises and Appurtenances. Tenant, at its own cost and expense, will maintain, repair and, if necessary, replace all parts of the Premises, and promptly make all such necessary repairs and replacements to the Premises, except for those elements of the Premises to be maintained by Landlord under Section 7.2 (CAM Charge) or Section 9 above. Tenant's obligation to maintain, repair and make replacements to the Premises will cover, but not be limited to: maintenance, repair and replacement of all HVAC, electrical, plumbing, and other mechanical systems within and exclusively serving the Premises; the maintenance, repair and replacement of the interior and exterior walls, windows and doors. Tenant will not make, or permit to be made, any penetration in the roof of the Premises without prior approval from Landlord. In the event that any such roof penetration is required in connection with any repairs, maintenance, or replacement required to be made by Tenant hereunder, Tenant will use Landlord's approved roof contractor to perform the work.

10.2 Preventative System Maintenance. Tenant, at its own cost and expense, will with its own staff service or will enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all hot water, heating and air

conditioning, electrical, plumbing, sprinkler and other mechanical systems and equipment within and exclusively serving the Premises. The service contracts must include all services suggested by the equipment manufacturer and must become effective within 30 days of the date Tenant takes possession of the Premises and continue in effect throughout the Term. Landlord will cooperate with Tenant in making all warranties on any such items applicable to the Premises available for the benefit of Tenant.

10.3 Landlord's Option to Maintain Premises. If Tenant fails to maintain the Premises in accordance with the terms of this Section 10 and, after 30 days written notice Landlord will have the right to perform, in whole or in part, maintenance, repairs and replacements to the Premises that are otherwise Tenant's obligations under this Section 10; in which event Tenant will be liable for the cost and expense of these repairs, replacements, maintenance and other similar items and will reimburse Landlord upon demand.

11. **PARKING.** Tenant or its invitees will have non-exclusive use of the parking areas located across the street from the Building. No parking spaces will be designated for Tenant's exclusive use, unless otherwise indicated by Landlord. Tenant and its employees, customers and licensees have the right to use, without fee, or charge the common parking area located across the street from the Building, as designated in writing by Landlord, subject to (i) all rules and regulations promulgated by Landlord, and (ii) rights of ingress and egress of other lessees or sublessees of Landlord. Landlord will not be responsible for enforcing Tenant's parking rights against any third parties. Tenant agrees not to park on any public or private streets adjacent to or in the vicinity of the Premises.

## 12. **ALTERATIONS, TRADE FIXTURES AND RETURN CONDITION.**

12.1 Approvals for Alterations. Tenant will not make any alterations, additions or improvements ("Alterations") to the Premises that require permitting without the prior written approval of Landlord. Landlord's approval will require the submission of a complete set of plans and specifications ("Submissions"). Tenant will be responsible for compliance with The Americans with Disabilities Act of 1990, as amended, within the Premises only. Tenant will, during the construction of any Alterations, withhold a retainage equal to at least 10% of the cost of the Alterations until the expiration of 30 days following the completion thereof in order to protect the Premises and the Building against liens and encumbrances. All Alterations will be performed in compliance with all applicable governmental laws, regulations, codes, standards and any other requirements of Landlord and in a good and workmanlike manner so as not to damage or alter the primary structure or structural qualities of the Improvements or other improvements situated on the Premises.

12.2 Trade Fixtures. Tenant, at its own cost and expense, may erect shelves, bins, machinery and trade fixtures and special improvements necessary for its use as it desires, provided that: these items do not alter the basic character of the Premises or the Building; these items do not overload or damage same; these items may be removed without material injury to the Premises; and the construction, erection or installation thereof complies with all applicable governmental laws, ordinances and regulations.

12.3 Removal of Trade Fixtures/Return Condition of Premises. Without implying any consent of Landlord thereto, all Alterations erected by Tenant will be and remain the property of Tenant during the Term of this Lease; and upon termination or expiration, they become the property of Landlord. All shelves, bins, machinery, special improvements, trade fixtures and personal property installed by Tenant will be removed on or before the earlier to occur of the day of termination or

expiration of this Lease or vacating of the Premises, at which time Tenant will restore the Premises to a useable condition, except for normal wear and tear; damage or destruction of the Premises or any part thereof which Landlord is required to repair or restore; and changes resulting from condemnation.

**13. SIGNS.** Signs, including the size, location, design and content, will comply with the criteria provided by Landlord and will be subject to City code. Tenant may not place any other signs on the exterior of the Premises without Landlord's prior written approval. Tenant must apply for and receive a dig permit from Landlord prior to any digging or posting of signage. Tenant will, at Tenant's sole expense, repair, paint or replace the Building fascia surface to which its signs are or become attached upon Tenant's vacating the Premises or upon the removal or alteration of its signage. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises must conform in all respects to the criteria established by Landlord. Tenant will not, without Landlord's prior written consent: make any changes to the exterior of the Premises, such as painting; install any exterior lights, decorations, flags, or banners; or erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type that can be viewed from the exterior of the Premises.

#### **14. UTILITIES AND SERVICES.**

**14.1 Utilities and Services.** As part of the Base Rent, Landlord agrees to furnish, through third party utility and service providers:

- a. Landlord shall furnish hot and cold water, as commercially reasonable and appropriate, to all common areas of the Building;
- b. heating, ventilating and air conditioning ("HVAC") in season, during Normal Building Hours (Monday through Friday, 8:00 a.m. to 5:00 p.m., but excluding holidays), and except during periods for routine maintenance, and at such temperatures and in such amounts as reasonably considered necessary by Landlord;
- c. janitorial services to the Premises on Monday through Thursday other than Holidays in accordance with the schedule of janitorial services, which shall be separately provided to Tenant;
- d. passenger elevators for ingress to and egress from the Premises, in common with other tenants;
- e. Landlord shall maintain the Building's fire protection system and the portions thereof that serve the Premises; provided, however, Landlord shall not be required to make, and Tenant shall be liable for, any repairs, modifications, or updates thereto required by reason of (1) Tenant's occupancy, density or use of the Premises, (2) any Alteration performed by or on behalf of Tenant, and/or (3) any damage caused by Tenant and/or Tenant's Parties; and
- f. Subject to paragraph (b) below, electricity for outlets and overhead lights used in the Premises. Landlord shall pay for such electricity servicing the Premises. In the event Tenant requires additional electricity services, then Tenant shall pay Tenant's proportionate share of such cost, such allocation determined in relation to the other Common Areas in the Building that are not separately metered. Landlord shall maintain the light fixtures and repair lamps, bulbs, ballasts and starters in the Premises and Common Areas.
- g. Landlord shall furnish electrical current sufficient to operate laptop and desktop computers, photocopying machines on other typical office equipment and machines of similar low electrical consumption (120/208 volts); provided, however, total rated power consumption by said machines of low electrical consumption shall not exceed four and one-half (4½)

watts per square foot of the net rentable area in the Premises; and (ii) equipment of high electrical consumption (277/280 volts); provided, however, total rated power consumption by said equipment of high electrical consumption shall not exceed six (6) watts per square foot of net rentable area in the Premises. Tenant shall pay to Landlord, monthly as billed, such charges as may be separately metered or as Landlord's engineer shall reasonably compute for any electrical service usage in excess of that stated above. If any electrical equipment requires excess air conditioning, the same shall be installed at Tenant's expense and Tenant shall pay all operating costs relating thereto.

14.2 **Interruption of Utility Service.** Failure to furnish, stoppage, or interruption of these services resulting from repairs, replacements or alterations to the service system, or stoppage or interruption of services caused by the primary service provider not within Landlord's reasonable control shall not render Landlord liable in any respect for damages to either person, property or business, or be construed as an eviction of Tenant, work an abatement of rent, or relieve Tenant from performance of its obligations. Should any equipment furnished by Landlord cease to function properly, Landlord shall use reasonable diligence to repair the same promptly. Landlord shall not be obligated to furnish these services if Tenant is in default under this Lease.

14.3 **Additional Electrical Costs.** To the extent Tenant conducts business at the Premises outside Normal Business Hours, Tenant shall pay the additional electrical costs incurred by Landlord in connection with such use. Tenant shall provide Landlord with at least twenty-four (24) hours prior written notice of its need for such services after Normal Business Hours.

14.5 **Utilities Exclusive to Landlord.** All utility providers, including, but not limited to, water, chilled water, sanitary sewer, electricity, gas, telephone (except long distance, Internet access and cell phones), cable television and all future technologies related to the delivery of those utilities, will be only those chosen by Landlord and Tenant has no right to contract with or otherwise engage anyone to provide these utilities.

14.6 **Telephone Services.** Local exchange carriers such as AT&T and Spectrum provide dial tone and data service to the Building. Any communications service above standard voice-grade service, such as standard business lines, dial-up modem lines or single channel ISDN, may entail an additional cost to the Tenant. Tenant may contact Landlord's Property Manager for information on obtaining special services, such as T-1 service and dedicated data circuits, prior to entering into any contracts or agreements to obtain such service with local exchange carriers or other third-party providers. Tenant is responsible for installation of communication lines and systems from the main communications room, one or more of which is located in or around every building, to Tenant's desktops.

## **15. INSURANCE.**

15.1 **Landlord's Property Insurance.** Landlord will maintain "All-Risk" (broad form) insurance coverage for the full replacement cost of the Building (including the Premises) ("Landlord's Property Insurance"), but excluding Tenant's trade fixtures, equipment, inventory and personal property located therein (even that personal property owned by Landlord and leased or supplied to Tenant). Tenant will pay to Landlord Tenant's Proportionate Share of the premium for Landlord's Property Insurance for the Building. Tenant agrees to pay to Landlord as Additional Rental, on the same dates as payment of Base Rental, the amount set out on **APPENDIX 1**, which is an estimate of



the annual premium. The insurance premium will be reconciled when the CAM Charge is reconciled, in accordance with Section 7.2, and Tenant will either pay, upon demand, any shortfall or will receive a rebate of any overage. At the same time as reconciliation, Landlord will provide Tenant with a new estimate of the annual insurance premium, which Tenant will pay (in 1/12 increments) on the same dates as Base Rental. Upon request of Tenant, Landlord will provide Tenant evidence that the insurance is in force.

15.2 Tenant's Insurance. During the Term of this Lease, Tenant, at its expense, will maintain in effect:

(A) A policy of commercial general liability insurance, on an "occurrence basis," covering against all claims on account of death, bodily injury, personal injury and property damage, occurring in connection with Tenant's use or occupancy of the Premises with policy limits as set out on **APPENDIX 1** ("Tenant's Liability Insurance").

(B) Workers' compensation or similar insurance affording not less than statutory coverage and providing not less than statutory limits of benefits ("Tenant's Workers' Compensation Insurance"); and

(C) "All-Risk" (broad form) insurance covering Tenant's furniture, trade fixtures, equipment, inventory and personal property located in, on or about the Premises (including that which is provided by Government or leased from Landlord) in an amount satisfactory to Tenant ("Tenant's Property Insurance"), provided, however, that Tenant may provide for this coverage through self-insurance.

15.3 Landlord as Additional Insured. Tenant's Liability Insurance will name Landlord as an additional insured. Such insurance will be issued by an insurance company which is reasonably acceptable to the Landlord and will not be canceled or materially changed unless 30 days prior written notice has been given to Landlord. Within 20 days of the Lease Date, Tenant will provide Landlord with a copy of the Tenant's Liability Insurance policy and the additional insured endorsement thereto.

15.4 Prohibited Uses. If any increase in the cost of any insurance on the Premises or the Buildings is caused by Tenant's use of the Premises or because Tenant vacates the Premises, then Tenant will pay the amount of such increase to Landlord upon demand. Tenant will not permit the Premises to be used for any purpose or in any manner not permitted by this Lease that would: void the insurance thereon; increase by any material amount the insurance risk or cost thereof unless Tenant makes the payment required pursuant to the last sentence of this Section 15.4; or cause the disallowance of any sprinkler credits; including without limitation, use of the Premises for the receipt, storage, handling or use of any product, material or merchandise that is explosive or highly inflammable, except as used by Tenant in the ordinary course of its business and in accordance with all applicable state and federal law.

## **16. FIRE AND CASUALTY DAMAGE.**

16.1 Damage or Destruction. If 50% or less of the Premises is damaged by any peril covered by Landlord's Property Insurance maintained by Landlord under Section 15.1, then this Lease will not terminate and Landlord will receive the proceeds from Landlord's Property Insurance and will use those proceeds to substantially restore the Premises to its previous condition, except that Landlord will not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other

improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant except for those constructed as initial tenant improvements. The rent will be abated on only the part of the Premises damaged beyond Tenant's then use in accordance with this Lease and only so long as the damage was not caused by the acts or omissions of Tenant, its agents or invitees. If the damaged part of the Premises cannot be repaired within 180 days or if more than 50% of the Premises then in use by Tenant is damaged, then either Landlord or Tenant may terminate this Lease.

16.2 **Lienholders' Rights in Proceeds.** Notwithstanding anything herein to the contrary, if the damaged Premises cannot be restored within 12 months and, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or this Lease requires that Landlord's Property Insurance proceeds be applied to such indebtedness, then Landlord has the right to: (i) use other resources to rebuild the Premises as set out in Section 16.1; or (ii) terminate this Lease by delivering 30 days written notice of termination to Tenant.

## **17. LIABILITY AND INDEMNIFICATION.**

### **17.1 Tenant's Indemnification of Landlord, et al.**

Tenant will indemnify, defend, and hold harmless Landlord together with its board of directors, agents, employees and officers, individually or collectively (the "Indemnitees"), from and against all suits, actions, losses, damages, demands, judgments, claims, or liability of any character, type or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and reasonable attorneys' and experts' fees, for injury or death to any person, or loss or damage to any property, received or sustained by any person, or persons or property (the "losses"), to the extent arising out of, or occasioned by, acts or omissions of the Tenant arising out of Tenant's use of the Premises, or elsewhere on the Property, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant, in or about the Premises or elsewhere on the Property.

17.2 **Limits on Liability of Landlord, et al.** Neither Landlord, nor its board of directors, agents, employees, officers or representatives, individually and collectively ("Landlord, Et Al") will be liable in any event for personal injury or loss of Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities or other occurrences. Tenant will give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord, Et Al, will not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of the Property, regardless of whether such loss occurs when the area is locked against entry. Landlord, Et Al will not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any sublessee or their agents or invitees anywhere on the Property, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Tenant will give Landlord prompt notice of any criminal conduct it actually observes within or about the Premises, or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent these are obtained at Landlord's sole discretion, Landlord,



**Et Al, will not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord will use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises, and Landlord will not be responsible for additional lighting or any security measures on the Property, the Premises, or the parking areas.**

**18. PERMITTED USE.** The Premises will be used for the purpose set out on **APPENDIX 1** and for no other use or purpose without the prior written consent of Landlord, which may be withheld for any reason. Tenant will comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant will not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other lessees or sublessees anywhere on the Property.

**19. HAZARDOUS WASTE AND ENVIRONMENTAL LAW VIOLATIONS.**

**19.1 Definitions.** The term "Hazardous Substances," as used in this Lease, means pollutants, contaminants, pesticides, toxic or hazardous wastes, radioactive materials or any other substances, the use or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law(s)," which term means any federal, state or local statute, ordinance, regulation or other law of a governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances.

**19.2 Tenant's Activities Related to Hazardous Waste.** Tenant agrees that:

(A) No activity will be conducted on the Premises that will produce any Hazardous Substances, except for activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided that the Permitted Activities are conducted in accordance with all Environmental Laws and timely written notice of compliance is provided to Landlord. Tenant is responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency and Tenant will provide Landlord with copies of all permits, authorization, notices of non-compliance and administrative actions;

(B) The Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of materials required to conduct Permitted Activities ("Permitted Materials") provided that the Permitted Materials are properly stored in a manner and location meeting the requirements of all Environmental Laws. Tenant is responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency, and Tenant must provide Landlord, upon request, documentation as reasonably required to satisfy Landlord of Tenant's compliance;

(C) Except for the Permitted Materials, Tenant will not permit any Hazardous Substances to be brought onto the Premises, and if so brought, they will be immediately removed, properly disposed of and, if spilled, all required clean-up procedures will be diligently undertaken by

Tenant in accordance with all Environmental Laws and at Tenant's cost. Tenant will also develop Hazardous Substances management and spill response plans.

**19.3 Inspection and Correction.** Landlord and its agents and representatives have the right, but not the obligation, to enter the Premises upon notice for the purpose of inspecting the storage, use and disposal of any Permitted Materials or for any other reason to ensure compliance with all Environmental Laws. If it is determined, in Landlord's sole opinion, after review of applicable environmental laws and receipt of opinion from legal counsel or other qualified expert, that any Permitted Materials are being improperly stored, used or disposed of, then Tenant will make timely and appropriate corrective action as reasonably requested by Landlord. If Tenant fails to begin corrective action within 24 hours, Landlord may report the violation to the Texas Commission on Environmental Quality or perform any work as Landlord deems necessary to correct the situation or both and Tenant will reimburse Landlord, on demand, for any and all costs associated with any work that is necessary to bring the Premises into compliance with Environmental Laws. If at any time during or after the Term of this Lease, the Premises are found to have been contaminated by Tenant or any of its agents or invitees with Hazardous Substances, Tenant will diligently institute clean-up procedures in accordance with the applicable requirements of governmental authorities, at Tenant's sole cost.

**19.4 Indemnity.** Tenant agrees to indemnify and hold Landlord, together with its board of directors, employees, officers and contractors, individually and collectively, harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties and obligations of any nature arising from or as a result of any release, discharge, emission, spill, storage, disposal or contamination of the Premises with Hazardous Substances, as a result of the violation of any Environmental Laws by Tenant, or otherwise arising from any act or omission by Tenant, its officers, agents, employees, contractors or licensees, or the invitees of any of them. The foregoing indemnification and the responsibilities of Tenant will survive the termination or expiration of this Lease. Notwithstanding anything to the contrary contained in this Section 19.4, Tenant has no obligation to indemnify or remediate with respect to any contamination existing on the Premises as of the Commencement Date or with respect to any contamination not caused by Tenant, its officers, agents, employees, contractors or licensees.

## **20. RIGHT OF ENTRY AND CLOSEOUT INSPECTION.**

**20.1 Right of Entry.** Landlord's agents and representatives have the right to enter the Premises at any reasonable time during business hours, with notice (or at any time in case of emergency): to inspect the Premises for any reason; to maintain, repair, connect, extend, and modify utilities; to make any other repairs as may be required or permitted pursuant to this Lease; and during the last 6 months of the Term, for the purpose of showing the Premises and to install signs stating the Premises are available for lease.

**20.2 Closeout Inspection.** Tenant will notify Landlord in writing at least 90 days prior to vacating the Premises and Tenant will arrange to meet with Landlord for a joint operational close-out inspection by Landlord's property manager and, if required by Landlord, an environmental due diligence report to be paid for by Tenant. Tenant will pay to close-out all of Tenant's regulatory permits. If Tenant fails to give notice or to arrange for inspection, then Landlord's close-out inspection of the Premises will be deemed correct for the purpose of determining Tenant's responsibility for repairs and restoration of the Premises, and Tenant's liability for environmental contamination.

## **21. ASSIGNMENT AND SUBLETTING.**

21.1 **Approval Required.** Tenant will have the right to substitute any of its subsidiaries or affiliates, including any parent or successor entity, as occupants of the Premises without the Landlord's prior consent; provided that, Tenant is not in Default and Tenant remains liable for this Lease and Tenant has provided Landlord with the contact information for the Tenant-requested substituted entity; otherwise, Tenant will not have the right to sublet the Premises, assign or otherwise transfer or encumber this Lease, or any interest in this Lease, or transfer control (10% or more of the stock or controlling interest) of Tenant, without the prior written consent of Landlord. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of the terms and covenants of this Section 21 will be void.

21.2 **Existing Tenants or Prospects.** Landlord expressly reserves the right to refuse to give its consent to any assignment or subletting to an assignee or subtenant (or any party that, directly or indirectly, controls or is controlled by or is under common control with the proposed assignee or subtenant) that is an existing tenant of Landlord or a party with whom Landlord is then actively negotiating to lease space to. Without in any way limiting Landlord's right to refuse the consent to any assignment or subletting of this Lease, Landlord reserves the right to refuse to give such consent if in Landlord's opinion: (i) the Premises are or may be adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; or (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder.

21.3 **Transferees.** Any assignee, lessee or transferee of Tenant's interest in this Lease (collectively referred to as "Transferees"), by assuming Tenant's obligations hereunder, will assume liability to Landlord for the payment of all amounts payable by Tenant and the performance of all obligations of Tenant hereunder. No assignment, subletting or other transfer, whether or not consented to by Landlord or permitted hereunder, will relieve Tenant of its liability under this Lease. If an Event of Default occurs while the Premises or any part thereof are assigned or sublet, then, in addition to any other remedies provided in Section 26 or provided by law, Landlord may collect directly from Transferee all rents payable to the Tenant or Landlord and apply the collected rent against any amounts due Landlord under this Lease. This collection will not be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations under this Lease. If Landlord consents to any subletting or assignment by Tenant and any category of rent subsequently received by Tenant under any lease is in excess of the same category of rent payable under this Lease, or any additional consideration is paid to Tenant by the assignee under any assignment, then Landlord may declare such excess rents under any lease or additional consideration for any assignment, following deduction for the costs associated with obtaining such lease, to be due and payable to Landlord as additional rent under this Lease.

**22. CONDEMNATION.** If 50% or more of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease will terminate and the rent will be abated during the unexpired portion of this Lease, effective on the date of taking. If less than 50% of the Premises are taken for any public or quasi-public use under any governmental laws, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, or if the taking does not prevent or materially interfere with the use of the remainder of the Premises for the

purpose for which they were leased to Tenant, then this Lease will not terminate, but the rent payable during the unexpired portion of this Lease will be reduced to the extent as may be fair and reasonable under the circumstances. All compensation awarded in connection with or as a result of any of the foregoing proceedings will be the property of Landlord, and Tenant hereby assigns any interest in any award to Landlord; except Landlord will have no interest in any award made to Tenant for the loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property or for relocation expense, whether or not a separate award for such items is made to Tenant. If the condemnation procedures of the relevant jurisdiction do not permit separate claims by landlords and tenants, Landlord's award will be equitably divided between Landlord and Tenant to compensate Tenant for lost tenant improvements installed by Tenant (not including Initial Tenant Improvements), business disruption, and the cost of moving Tenant's business and goods to an alternate location.

**23. HOLDING OVER.** At the termination of this Lease by its expiration or otherwise, Tenant will immediately deliver possession of the Premises to Landlord with all repairs and maintenance required in this Lease to be performed by Tenant completed. If, for any reason, Tenant retains possession of the Premises after the expiration or termination of this Lease, or unless the parties hereto otherwise agree in writing, Tenant's possession will be deemed to be a tenancy at will only, and all of the other terms and provisions of this Lease, including without limitation the indemnity provisions set out in Sections 17 and 19 of this Lease, will be applicable during this hold-over period, except that Tenant will pay Landlord from time to time, upon demand, as rental an amount equal to 150% of the Base Rental, this amount computed on a daily basis for each day of such period. No holding over by Tenant, whether with or without consent of Landlord, will operate to extend this Lease except as otherwise expressly provided. The preceding provisions of this Section 23 will not be construed as consent for Tenant to retain possession of the Premises in the absence of written consent thereto by Landlord.

**24. QUIET ENJOYMENT.** Upon payment by Tenant of the Base Rental and all other sums due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant will peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord.

**25. EVENTS OF DEFAULT.** Each of the following events ("Event of Default") will be deemed to be a default in or breach of Tenant's obligations under this Lease:

25.1 Failure to Pay. If Tenant fails to pay any installment of the rent required herein when due, or any other payment or reimbursement to Landlord required in this Lease when due, and Tenant's failure continues for a period of 30 days after the date of written notice from Landlord, except Tenant is entitled to only two 3-day notices per each 12-month period, after which failure to pay is an immediate default.

25.2 Vacation or Abandonment. If Tenant vacates or abandons all or a substantial portion of the Premises for more than 6 months whether or not Tenant is in default of the rental payments due under this Lease.

25.3 Liens on Premises. If Tenant fails to discharge any lien placed upon the Premises in violation of Sections 27 and 28 hereof within 30 days after any such lien or encumbrance is filed against the Premises.

25.4 All Other Lease Violations. If Tenant fails to comply with any term, provision or covenant of this Lease (other than those listed above in this Section 25 and has not cured such failure within 30 days after the date of written notice from Landlord. If, however, the time required to return to compliance exceeds the 30-day period, Tenant will not be in default if Tenant, within the 30-day period, begins the actions necessary to bring it into compliance with this Lease in accordance with a compliance schedule submitted to, and accepted by Landlord.

25.5 Cross Default. In the event Tenant has any other lease or leases with Landlord, then an event of default under such other lease or leases will be an event of default of this Lease and an event of default under this Lease will be an event of default in the other lease or leases.

25.6 Chronic Violations. If Tenant fails more than twice within any 12-month period to observe or perform any covenant, condition or agreement of this Lease (including without limitation, the payment of rent), regardless of whether such defaults have been cured by Tenant, any subsequent default will at the election of Landlord, in its sole and absolute discretion, be deemed a non-curable Event of Default.

25.7 Falsification of Information. If Tenant or any agent of Tenant intentionally falsifies any report or misrepresents other material information required to be furnished to Landlord pursuant to this Lease.

25.8 Tenant's or Guarantor's Dissolution or Liquidation. The commencement of steps or proceedings toward the dissolution, winding up or other termination of the existence of the Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

25.9 Bankruptcy. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within 60 days after the date of its filing.

25.10 Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's Lease obligations for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including without limitation, by attachment, execution or similar legal process, which is not discharged or vacated with 60 days.

25.11 Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's Lease obligations, unless such appointment is vacated within 30 days of its entry.

25.12 Evidence of Inability to Pay. Evidence of inability of Tenant or of any guarantor of Tenant's Lease obligations to pay its debts as they come due. Such evidence will include, but will not be limited to, an admission in writing by Tenant or any such guarantor of its inability to pay its

debts when due or if one or more judgments are docketed against Tenant or any such guarantor and not paid, bonded or otherwise discharged with 60 days.

## **26. REMEDIES UPON DEFAULT.**

26.1 Right to Terminate or Repossess. Upon each occurrence of an Event of Default, Landlord has the option to pursue any one or more of the following remedies without any additional notice or demand:

- (A) Terminate this Lease;
- (B) Enter upon and take possession of the Premises without terminating this Lease;
- (C) Make payments or take actions to fulfill whatever Tenant is obligated to pay or perform under the terms of this Lease to third parties, and Tenant agrees that Landlord will not be liable for any damages resulting to Tenant from such actions;
- (D) And in the event that Landlord elects to terminate or repossess, Tenant will immediately vacate the Premises, and if Tenant fails to do so, Landlord, without waiving any other remedy it may have, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefore. Landlord may change the locks for any Event of Default and in the event of any violation of Section 93.002 of the Texas Property Code by Landlord or by any agent or employee of Landlord, Tenant hereby expressly waives any and all rights Tenant may have under Paragraph (g) of Section 93.002.

26.2 Damages Upon Termination. If Landlord terminates this Lease pursuant to Section 26.1, Tenant will be liable for and will pay to Landlord the sum of all rental and other payments owed to Landlord under this Lease accrued to the date of termination, plus as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Section 4.1 (as extended, if applicable), less (ii) the present value of the then fair market rental for the Premises for such period, provided that, because of the difficulty of ascertaining the fair market value and in order to achieve a reasonable estimate of liquidated damages, Landlord and Tenant stipulate and agree that the fair market rental does not exceed 75% of the rental amount for such period as set forth in Section 5.

26.3 Damages Upon Repossession. If Landlord repossesses the Premises pursuant to Section 26.1 without terminating this Lease, Tenant will be liable for and will pay Landlord on demand all rental and other payments owed to Landlord under this Lease, accrued to the date of repossession, plus all rental and other payments owed under this Lease for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Section 4.1 (as extended, if applicable), diminished by all amounts actually received by Landlord through reletting the Premises during the remaining Term. Actions to collect amounts due by Tenant to Landlord under this paragraph may be brought from time to time without the necessity of Landlord's waiting until expiration of the Term.

26.4 Costs of Reletting, Removing, Repairs and Enforcement. Upon an Event of Default, in addition to any amount required to be paid under this Section 26, Tenant also will be liable for and will pay to Landlord (i) reasonable brokers' fees, and all other costs and expenses incurred by Landlord in

connection with reletting the whole or any part of the Premises; (ii) the costs of removing, storing or disposing of Tenant's or any other occupant's property; (iii) the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new lessee; (iv) any and all costs and expenses incurred by Landlord in effecting compliance with Tenant's obligations under this Lease; and (v) all reasonable expenses incurred in connection with such enforcement or defense, including, but not limited to, reasonable attorneys' fees. All costs incurred by Landlord pursuant to (i) and (iii) above, will be amortized over the term of the lease with the new tenant, and Tenant will only be liable for those costs allocated to the Term of this Lease.

26.5 Late Charge. In the event Tenant fails to make any payment due under this Lease within 5 days after such payment is due, including, without limitation, any rental payment, in order to help defray the additional cost to Landlord for processing late payments and not as interest, Tenant will pay to Landlord on demand a \$50 late charge fee, plus \$10 per day thereafter until payment is made in full. The late charge will be in addition to all of Landlord's other rights and remedies under this Lease or at law, and will not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

26.6 Interest on Past Due Amounts. If Tenant fails to pay to Landlord when due any sum under any provision of this Lease and Tenant's failure to pay continues for 10 days after the due date, then Tenant will pay to Landlord interest on the overdue amounts from the date due until paid at an annual rate which equals the lesser of 18% or the highest rate then permitted by law.

26.7 No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder or otherwise available will not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that Tenant's surrender can be effected only by the written agreement of Landlord. Tenant and Landlord further agree that forbearance by Landlord to enforce any of its rights under this Lease or at law or in equity will not be a waiver of Landlord's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by Landlord will be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant, and, notwithstanding any reletting or re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any remedies provided in this Section 26 will not preclude the pursuit of any other remedy provided under this Lease or any other remedies provided by law, nor will pursuit of any remedy provided under this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of any rent following an Event of Default under this Lease will not be construed as Landlord's waiver of the Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease will be deemed or construed to constitute a waiver of any other violation or default.

26.8 Reletting of Premises. In the event of any termination of this Lease and/or repossession of the Premises due to an Event of Default, Landlord will use reasonable efforts to relet the Premises and to collect rental after reletting, with no obligation to accept any lessee that Landlord deems undesirable or to expend any funds in connection with reletting or collection of rents therefrom. Tenant will not be entitled to credit for or reimbursement of any proceeds of reletting in excess of the rental owed under this Lease for the period of reletting. Landlord may re-



let the whole or any portion of the Premises, for any period, to any lessee and for any use or purpose.

26.9 **Landlord's Default.** If Landlord fails to perform any of its obligations under this Lease Tenant's exclusive remedy will be an action for damages, but only after Tenant has given Landlord 30 days written notice and unless and until Landlord fails to cure the default, Tenant will not have any remedy or cause of action by reason thereof. All obligations of Landlord under this Lease will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the Premises and not thereafter. The term "Landlord" will mean only the party identified in on **APPENDIX 1** and only until Landlord transfers its interest in the Premises, after which Landlord will be released and discharged from all covenants and obligations of Landlord thereafter accruing. Notwithstanding any other provision of this Lease, Landlord will not have any personal liability under this Lease and Tenant agrees to look solely to the equity or interest, (including rents), then owned by Landlord in the Premises or the Building. In no event will any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord's directors, employees or agents.

26.10 **Tenant's Personal Property.** If Landlord repossesses the Premises, or if Tenant vacates or abandons all or any part of the Premises for more than 6 months, then Tenant will remove its personal property from the Premises and if Tenant does not remove its personal property within 30 days of Landlord's demand then, in addition to Landlord's rights under this Section 26, Landlord has the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, at all times prior to repossession by any lessor thereof or third party having a lien thereon. Landlord may dispose of the stored property if Tenant does not claim the property within 10 days after the date the property is stored. Landlord will give Tenant at least 10 days prior written notice of the intended disposition. Landlord will also have the right to relinquish possession of all or any portion of Tenant's furniture, fixtures, equipment and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of Tenant's furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord stated in this Section 26.10 are in addition to any and all other rights that Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted Landlord under this paragraph are commercially reasonable.

27. **MORTGAGES.** Tenant may not encumber its leasehold interest whether by mortgage or otherwise without obtaining Landlord's prior written consent. Tenant agrees that this Lease will be subordinate to any ground lease or underlying lease, first-lien mortgage or deed of trust or other first or second lien covering the Premises, upon and subject to the following terms and conditions. Tenant will not pursue any remedy available to Tenant under this Lease for any default on the part of Landlord without first giving written notice by certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any mortgage or deed of trust, the name and post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording the mortgagee, trustee or holder a reasonable opportunity (not less than 30 days) to make performance, at its election, for and on behalf of Landlord.



**28. MECHANIC'S LIENS.** The Premises are publicly owned property and are not subject to mechanic's and materialmen's liens under Texas law. Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises. Tenant will not cause or allow a mechanics and materialman's lien to be placed on the Premises or the Building. Tenant will indemnify, save and hold the Landlord, together with its board of directors, agents, employees, officers and representatives, individually and collectively, harmless from any and all loss, cost or expense, including without limitation attorney's fees, based on or arising out of asserted claims or liens created or to the extent caused by Tenant against the leasehold estate or against the right, title and interest of Landlord in the Premises or the Building or under the terms of this Lease.

**29. MISCELLANEOUS.**

29.1 Consent by Landlord/Tenant. Whenever in this Lease, Landlord's or Tenant's consent, permission or approval is required and has been properly requested, such consent, permission or approval will not be unreasonably withheld, delayed or conditioned, unless such right has been specifically reserved elsewhere in this Lease.

29.2. Interpretation. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

29.3 Binding Effect. Except as otherwise expressly provided in this Lease, the terms, provisions and covenants and conditions in this Lease apply to, inure to the benefit of and are binding upon the parties hereto and upon their respective successors and assigns. Landlord has the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Buildings and other property that are the subject of this Lease.

29.4 Evidence of Authority. Tenant represents, covenants and warrants to Landlord that (i) it is a duly formed entity in accordance with the applicable requirements of the jurisdiction in which it has been formed and, if such jurisdiction is other than the jurisdiction in which the Premises is located it is duly qualified in such jurisdiction to transact business, (ii) it has the full right, power and authority to enter into this Lease, (iii) any and all corporate or other such action necessary to approve and ratify the entering into of this Lease by Tenant has been taken (and Tenant agrees to provide evidence thereof to Landlord upon Landlord's request) and (iv) the person executing this Lease on behalf of Tenant has been empowered with all necessary authority to do so and thereby to bind Tenant fully to all of the terms and conditions hereof.

29.5 Force Majeure. Neither the Landlord nor Tenant, together with their respective agents, employees, officers and representatives, individually and collectively, will be held responsible for delays in the performance of its obligations under this Lease (except for Base Rental and Additional Rent and other payments owed by Tenant to Landlord) when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord or Tenant, as the case may be.

29.6 Payments Constitute Rent. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, will constitute rent.

29.7 **Estoppel Certificates.** Tenant agrees, from time to time, within 10 days after written request of Landlord, to deliver to Landlord, or its designee, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease, any defaults existing under this Lease (or the absence thereof) and any other factual or legal matters pertaining to this Lease as may be requested by Landlord. It is understood and agreed that Tenant's obligations to furnish estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease.

29.8 **Entire Agreement.** This Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained in this Lease, and any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. THE PREMISES ARE HEREBY PROVIDED TO TENANT AND TENANT HEREBY ACCEPTS THE PREMISES AS-IS, WHERE-IS. Landlord's agents and employees do not and will not have authority to make oral exceptions, changes, or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances will Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto. The foregoing warranty waiver provisions are not intended to relieve the United States Government from any liability for any environmental contamination released by the United States Government, nor to require Tenant to be responsible for clean-up, remediation, or third-party liability resulting from environmental contamination, except to the extent released or aggravated by Tenant.

29.9 **Survival of Obligations.** All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease will survive the expiration or earlier termination of the Term hereof, including, without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises for a period of 4 years following the expiration or the termination of the Lease. Upon the expiration or earlier termination of the Term hereof, and prior to Tenant vacating the Premises, Tenant will either repair or will pay to Landlord any amount reasonably estimated by Landlord as necessary to put the Premises in good condition and repair, reasonable wear and tear excluded as required of Tenant by Section 10. Tenant will also, prior to vacating the Premises, pay to Landlord the amount, as estimated by Landlord, of Tenant's obligation hereunder for taxes and insurance premiums for the year in which this Lease expires or terminates. These amounts will be used by Landlord for payment of Tenant's obligations, with Tenant being liable for any additional costs therefore upon demand by Landlord, or with any excess to be promptly returned to Tenant after all of Tenant's obligations have been determined and satisfied, as the case may be.

29.10 **Severability of Terms.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term, then, in such event, it is the

intention of the parties hereto that the remainder of this Lease will not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is determined to be illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to the illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

29.11 **Effective Date.** All references in this Lease to "the date hereof" or similar references refer to the Lease Date.

29.12 **Broker's Commission.** Tenant represents and warrants it has dealt with and will deal with no broker, agent or other person in connection with this Lease or extensions or amendments to this Lease other than the Tenant broker set out on **APPENDIX 1** and that no other broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord, together with its board of directors, agents, employees, officers and representatives, individually and collectively, harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. Landlord has not used the services of a broker in connection with this Lease unless set out in **APPENDIX 1**. Notwithstanding the foregoing, the brokers set out in **APPENDIX 1** are to be paid a commission by the Landlord per a separate agreement.

29.13 **Ambiguity.** Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by Landlord and Tenant and their respective legal counsel and, accordingly, in the event of any ambiguity in this Lease, Tenant waives the rule of construction that the ambiguity will be resolved against the party who prepared this Lease.

29.14 **Joint and Several Liability.** If the "Tenant" is comprised of more than one person, the obligations thereunder imposed upon Tenant will be joint and several. If there is a guarantor of Tenant's obligations, the obligations in this Lease imposed upon Tenant will be joint and several obligations of Tenant and the guarantor, and Landlord need not first proceed against Tenant before proceeding against the guarantor, nor will the guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give the guarantor any notices under this Lease.

29.15 **Third Party Rights.** Nothing herein expressed or implied is intended, nor will be construed, to confer upon or give to any person or entity, other than Landlord and Tenant, together with their respective agents, employees, officers and representatives, individually and collectively, any right or remedy under or by reason of this Lease.

29.16 **Exhibits and Attachments.** All exhibits, attachments, riders and addenda referred to in this Lease, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out in this Lease. All capitalized terms used in such documents will, unless otherwise defined therein, have the same meanings as are set forth in this Lease.

29.17 **Applicable Law/Venue.** This Lease has been executed in San Antonio, Texas, and will be governed in all respects by the laws of the State of Texas. Venue for any action brought under this Lease will be in Jefferson County, Texas, and nowhere else. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or

oral, are hereby expressly limited so that in no contingency or event whatsoever will the amount contracted for, charged or received by Landlord for the use, forbearance or retention of money hereunder or otherwise exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof would result in exceeding the legal maximum, then the obligation to be fulfilled will be automatically reduced to the legal maximum and, if from any circumstance, Landlord ever receives as interest or otherwise an amount in excess of the legal maximum, then that amount that would be excessive interest will be applied to the reduction of rent under this Lease and, if that amount that would be excessive interest exceeds the rent due, then that additional amount will be refunded to Tenant.

29.18 Time of Essence. Time is of the essence with respect to all of the rights and obligations of Tenant hereunder including, without limitation, Tenant's option rights contained in Section 6.1 hereof if any.

29.19 Recording. At the request of either party, the parties will execute in recordable form a memorandum of this Lease for the purpose of giving notice to third parties of the existence of this Lease, the identity of the Premises, and the length of the Term and Extended Term. Either party may record a memorandum (but not the whole Lease) for the purpose of giving such notice.

29.20 Payment on Demand. Whenever used in this Lease, the phrase "payment on demand" means within 10 days of receipt of a bona fide and reasonably documented invoice.

29.21 Days. Whenever used in this Lease, the term "days" means calendar days.

29.22 Attorney's Fees/Legal Documents. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such litigation will be entitled to reasonable attorney's fees to be fixed by the court in such action or proceeding. Tenant agrees to pay Landlord's reasonable attorney's fees in the event Tenant (or any subtenant) requests Landlord to execute any legal documentation related to Tenant's leasehold; including, without limitation, Landlord's Estoppel Certificates, Assignments of this Lease, Waivers of Landlord's Lien, Subordination Agreements, Access Agreements or the like (except for the non-disturbance agreement referenced in Section 27, which Landlord will provide at no cost to Tenant); provided, however, nothing contained in this Section 29.22 is to be construed as Landlord having agreed to execute any such agreement or to have approved any such request, except as specifically agreed to herein. At the time of request by Tenant for any of the foregoing documents (except for the Landlord's lender's non-disturbance agreement), Tenant will provide payment of \$1,000 as a deposit to reimburse Landlord for its attorney's fees. Landlord will send Tenant an invoice for any balance of such fees. Landlord's estoppels and lien waivers will be provided on Landlord's standard forms only.

29.23 General Terms. As used in this Lease, the terms "herein," "herewith," and "hereof" are references to this Lease, taken as a whole, the term "includes" or "including" means "including, without limitation," and references to a "Section," "subsection," "Paragraph," "subparagraph," or "Appendix" means a Section, subsection, Paragraph, subparagraph or Appendix of this Lease, as the case may be, unless in any such case the context requires otherwise. All references to Landlord or Tenant include their successors and permitted assigns. All references to a given agreement, instrument or other document will be a reference to that agreement, instrument or other document as

modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a Law includes any amendment or modification thereof. The singular includes the plural and the masculine includes the feminine and neuter, and vice versa.

29.24 Financial Statements. At any time and within 30 days of written request of Landlord, Tenant will deliver to Landlord Tenant's financial statements dated not more than 60 days prior to the date of such request, plus Tenant's annual fiscal year-end financial statements (with the accompanying external CPA report) for the immediately preceding fiscal year. "Financial statements" means income statement, balance sheet, statement of cash flows, any accompanying notes and federal and state tax returns.

29.25 Multiple Counterparts/Electronic Signature. This Lease may be executed in two or more counterpart copies, including by wet ink, facsimile, electronic mail in PDF format, and by electronic signature software (e.g. DocuSign, Adobe Sign, etc.), all of which counterparts will have the same force and effect as if all parties hereto had executed a single copy of this Lease.

30. **NOTICES.** Procedure for Notices. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord will be deemed to be complied with when and if the following steps are taken:

(A) All rent and other payments required to be made by Tenant to Landlord under this Lease will be payable to Landlord at the address for Landlord set forth on **APPENDIX 1** or at any other address as Landlord may specify from time to time by written notice delivered in accordance with this Section 30. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease will not be deemed satisfied until the rent and other amounts have been actually received (as opposed to deemed received as under Section 30.(C) below) by Landlord.

(B) All payments required to be made by Landlord to Tenant under this Lease will be payable to Tenant at the address set forth on **APPENDIX 1**, or at any other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance with this Section 30.

(C) Except as expressly provided elsewhere in this Lease, any written notice, document or payment required or permitted to be delivered under this Lease will be deemed to be delivered when received or, whether actually received or not, when deposited with Federal Express or 3 days after being mailed in the United States mail, postage prepaid, certified or registered mail, return receipt requested addressed as shown on **APPENDIX 1**.

31. **RULES AND REGULATIONS.** Tenant will abide by Landlord's Rules and Regulations for the Building, as set out on **APPENDIX C**.

*[Signatures on following page.]*

**DATED** as of the date shown in **APPENDIX 1**.

**LANDLORD:**

**TENANT:**

PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION ROMAR & REED MEDIA

By:  
Name:  
Its:

By:  
Name:  
Its:

## **APPENDIX A**

### **PREMISES**

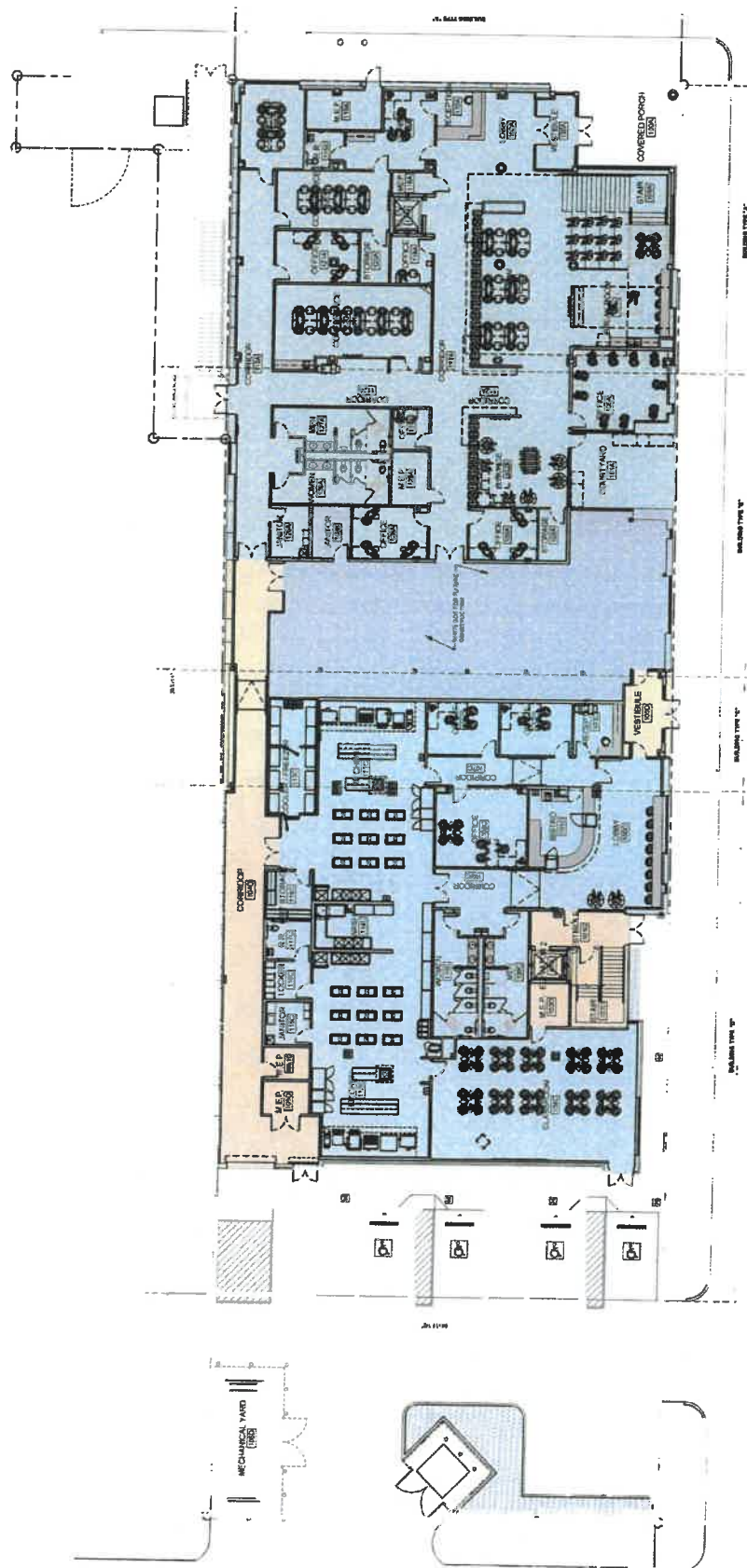
The Building is located at 549 4<sup>th</sup> Street, Port Arthur, Texas,  
and the Premises is described and/or shown, as follows:

TR 13-B REPLAT S95' LTS 13 - 24 BLK 140 CITY OF PORT ARTHUR .6548AC

Suite 206A

**APPENDIX A**  
**FLOOR PLAN**





PAVED EXTERIOR SPACE	8,742 SF
LOCKER/CHANGING ROOM	7,201 SF
COMMON SPACE	2,247 SF
FIRST FLOOR WHITE BOX	2,700 SF
<b>TOTAL</b>	<b>20,890 SF</b>

1 THE PRESS BUILDING - OVERALL FIRST FLOOR PLAN  
SCALE: 3/32"=1'-0"



## **APPENDIX B TENANT IMPROVEMENTS**

### ***[Tenant Constructs the Improvements]***

1. Within 5 days after Tenant's receipt of the Space Plans it will submit to Landlord in writing any requested changes, and Landlord and Tenant will thereafter work together in good faith to agree upon final Space Plans. After final approval of the Space Plans by Landlord and Tenant and execution of the Lease Agreement, Landlord will submit to Tenant construction drawings and specifications (the "Tenant Improvement Plans") for all Tenant Improvements. Within 5 days after Tenant's receipt of the Tenant Improvement Plans, Landlord will submit to Tenant in writing any requested changes, and Landlord and Tenant will work together in good faith to agree upon final Tenant Improvement Plans.
2. Landlord will construct the Tenant Improvements as [ADD NARRATIVE OF TENANT FINISH OUT] as set out on **APPENDIX A**, attached to this Lease.

## APPENDIX B

### TENANT IMPROVEMENTS

#### *[Against an Allowance]*

1. **The Work.** Under the Lease, Tenant has agreed to accept the Premises "As Is," without any obligations for the performance of improvements or other work by Landlord and Tenant desires to perform certain improvements thereto (the "Work"). Such Work will be in accordance with the provisions of this APPENDIX B and, to the extent not expressly inconsistent herewith, in accordance with the provisions of the Lease. Performance of the Work will not serve to abate or extend the time for the commencement of Rent under the Lease, except to the extent Landlord delays or approvals extend beyond the times permitted below or Landlord otherwise delays Tenant's work.

2. **Cost of the Work.**

a. Except as provided hereinafter, Tenant will pay all costs (the "Costs of the Work") associated with the Work, including without limitation, all permits, inspection fees, fees of space planners, architects, engineers, and contractors, utility connections, the cost of all labor and materials, bonds, insurance, and any structural or mechanical work, additional HVAC equipment or sprinkler heads, or modifications to any building mechanical, electrical, plumbing or other systems and equipment or relocation of any existing sprinkler heads, within the Premises required as a result of the layout, design, or construction of the Work.

b. Of the Costs of the Work, Landlord will reimburse Tenant the negotiated amount of ("Tenant Improvement Allowance"). The Tenant Improvement Allowance will be funded by Landlord within 30 days after: (i) the Work has been substantially completed in accordance with the "Space Plan" and "Working Drawings" (hereinafter defined) approved by Landlord in writing in accordance with the provisions hereof, and (ii) Tenant has submitted all invoices, lien waivers, affidavits of payment, and such other evidence as Landlord may reasonably require that the cost of the Work has been paid for and that no mechanic's, material men's or other such liens have been or may be filed against the Property or the Premises arising out of the design or performance of the Work. Tenant will expend the Tenant Improvement Allowance within 180 days of the Lease Date or the Tenant Improvement Allowance will be forfeited by Tenant. In the alternative, at Landlord's sole option, Landlord may elect to fund the Tenant Improvement Allowance in installments, not more frequently than monthly, based on applications for payment and releases of lien rights, submitted by Tenant on Landlord's standard form for use by contractors requesting progress payments, together with such lien releases and affidavits of payments by Tenant's general contractor and subcontractors, and such other documentation as Landlord may reasonably require. Landlord may issue checks to fund the Tenant Improvement Allowance jointly to Tenant, its general contractor, and, at Landlord's option, to any subcontractors or suppliers.

3. **Space Plan and Specifications.**

a. Tenant will submit 2 sets of a "Space Plan" to Landlord for approval. "Space Plan" means a floor plan drawn to scale showing all details of the floor plan including,

without limitation, demising walls, doors, restrooms, kitchens, file rooms, and communication systems.

b. Landlord will, within 10 days after receipt thereof, either approve the Space Plan, or disapprove the same advising Tenant of the reasons for such disapproval. In the event Landlord disapproves the Space Plan, Tenant will modify the Space Plan, taking into account the reasons given by Landlord for the disapproval, and will submit two sets of the revised Space Plan to Landlord within 5 days after receipt of Landlord's initial disapproval.

4. **Working Drawings and Engineering Report.**

a. No later than 5 days after receipt of Landlord's approval of the Space Plan, Tenant will submit to Landlord for approval 2 sets of "Working Drawings." "Working Drawings" means fully dimensioned architectural construction drawings and specifications, and any required engineering drawings (including mechanical, electrical, plumbing, air-conditioning, ventilation and heating). Tenant will also submit a report (the "Engineering Report") from Tenant's mechanical, structural and electrical engineers indicating any special heating, cooling, ventilation, electrical, heavy load or other special or unusual requirements of Tenant.

b. Landlord will, within 10 working days after receipt thereof, either approve the Working Drawings and Engineering Report, or advise Tenant of the reasons for disapproval. If Landlord disapproves of the Working Drawings or Engineering Report, Tenant will modify and submit revised Working Drawings, and a revised Engineering Report, taking into account the reasons given by Landlord for disapproval, within 5 days after receipt of Landlord's initial disapproval.

5. **Landlord's Approval.** Landlord will not unreasonably withhold approval of any Space Plans, Working Drawings, or Engineering Report if they provide for a customary office layout, with finishes and materials generally conforming to building standard finishes and materials currently being used by Landlord at the Property, are compatible with the Property's shell and core construction, and if no modifications will be required for the Property or the electrical, heating, air-conditioning, ventilation, plumbing, fire protection, life safety or other systems or equipment, and will not require any structural modifications to the Property, whether required by heavy loads or otherwise.

6. **Space Planners Architects, Engineers, and Contractors.** The Space Plan, Working Drawings, Engineering Report and the Work, will be prepared and performed by such space planners, architects, engineers and contractors as Landlord customarily engages or recommends for use at the Property; provided, Tenant may substitute another licensed, bonded, reputable and qualified space planner, architect, engineer or contractor that meet Landlord's vendor requirements, who will work in harmony with each other and those of Landlord.

7. **Changes to Approved Plans.** If any re-drawing or re-drafting of either the Space Plan or the construction plans is necessitated by Tenant's requested changes (all of which are subject to approval by Landlord and, if applicable, the Texas Department of Licensing and Regulation or any other governmental agency or authority to which the plans and specifications are required to be submitted), the expense of any such re-drawing or re-drafting required in connection therewith and the expense of any Work necessitated by re-drawing or re-drafting will be at Tenant's sole cost and expense.

8. **Compliance.** Tenant's Work will comply in all respects with the following: (a)

APPENDIX B

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the Building Codes of the City of San Antonio, Bexar County and the State of Texas and all other applicable state, county, city or other laws, codes, ordinances and regulations, (b) applicable standards of the National Board of Fire Underwriters and National Electrical Code, (c) building material manufacturer's specifications and (d) the Americans with Disabilities Act.

9. **Guarantees.** Each contractor, subcontractor and supplier participating in Tenant's Work will guarantee that the portion thereof for which it is responsible will be free from any defects in workmanship and materials for a period of not less than one year from the date of completion thereof. Every such contractor, subcontractor, and supplier will be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract which will become defective within one year after completion thereof. The correction of such work will include, without additional charge, all additional expenses and damages in connection with such removal or replacement of all or any part of Tenant's Work, and/or the Property and/or common areas or work that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of, or with respect to, Tenant's Work will be contained in the contract or subcontract which will be written such that the warranties or guarantees will inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give Landlord any assignment or other assurances necessary to affect such right of direct enforcement. Copies of all contracts and subcontracts will be furnished to Landlord promptly after they are entered.

10. **Performance.**

a. Tenant's Work will be commenced within 15 days after Landlord approves the Working Drawings and will thereafter be diligently prosecuted to completion, subject to delays for reasons beyond Tenant's control (except financial matters). All Work will substantially conform to the Working Drawings approved by Landlord in writing and Landlord may periodically inspect the Work for compliance. Tenant's Work will be coordinated under Landlord's direction with the work being done or to be performed for or by other tenants in the Property so that Tenant's Work will not materially interfere with or delay the completion of any other construction work on the Property.

b. Tenant's Work will be performed in a safe, first-class and workmanlike manner in conformity with the approved Space Plan and Working Drawings, and will be in good and usable condition at the date of completion.

c. Tenant will obtain and pay for all necessary permits and/or fees with respect to Tenant's Work.

d. Each contractor and subcontractor will obtain prior written approval from Landlord for any space outside the Premises within the Property, which such contractor or subcontractor desires to use for storage, handling, and moving of its materials and equipment, as well as for the location of any facilities for its personnel.

e. Tenant will obtain and furnish Landlord all approvals with respect to electrical, water and telephone work as may be required by the respective company supplying the service. Tenant will obtain utility service, including meters, from the utility company supplying service.

f. Landlord's acceptance of Tenant's Work as being substantially complete

APPENDIX B

Page 3 of 6

in accordance with the approved Space Plan and Working Drawings will be subject to Landlord's inspection and written approval, not to be unreasonably withheld conditioned or delayed. Tenant will give Landlord 5 days prior written notification of the anticipated completion date of Tenant's Work.

g. Within 10 days after completion of construction of Tenant's Work, Tenant will execute and file a Notice of Completion with respect thereto and furnish a copy thereof to Landlord, failing which, Landlord may itself execute and file the same on behalf of Tenant as Tenant's agent for such purpose.

h. Tenant will, at its cost and expense construct, purchase, install and perform any and all items of Tenant's Work, stock its merchandise and employ its personnel so as to obtain the required certificate of occupancy and to occupy the Premises as soon as reasonably possible, and in all cases on or before the date required under the Lease.

i. If an expansion joint occurs within the Premises, Tenant will install finish floor covering to or covering such joint in a workmanlike manner and Landlord will not accept responsibility for any finish floor covering applied to or installed over the expansion joint.

j. Copies of "as built" drawings will be provided to Landlord no later than 90 days after completion of the work.

k. Landlord's approval of Tenant's plans and specifications and Landlord's recommendations or approvals concerning contractors, subcontractors space planners, engineers or architects, will not be deemed a warranty as to the quality or adequacy of the Work, or the design thereof, or of its compliance with laws, codes and other legal requirements.

l. Landlord will not be responsible for any disturbance or deficiency created in the air conditioning or other mechanical electrical or structural facilities within the Building or Premises as a result of the Work. If such disturbances or deficiencies result, Tenant will immediately restore the services to Landlord's satisfaction.

m. If performance of the Work requires additional services or facilities (including without limitation extra or cleaning services) be provided, Tenant will pay Landlord's reasonable charges therefore.

n. Tenant's contractors will comply with the Rules and Regulation of the Property (See APPENDIX C) and Landlord's requirements respecting the hours of availability of elevators and manner of handling materials, equipment and debris. Demolition must be performed after 6:00 p.m. or on weekends. Delivery of materials, equipment and removal of debris (at least once a week) must be arranged to avoid any inconvenience or annoyance to other occupants. Should contractor/ subcontractor fail to remove any such debris within 2 days of notice to Tenant from Landlord, Landlord may cause the same to be removed by contract or otherwise as Landlord may determine expedient at a charge to be borne by Tenant as additional rent under the Lease. The Work and all cleaning in the Premises must be controlled to prevent dirt, dust or other matter from infiltrating into adjacent tenant or mechanical areas.

o. Landlord may impose reasonable additional requirements from time to time in order to ensure that the Work, and the construction thereof does not disturb or interfere with any other tenants of the Property, or their visitors, contractors or agents, nor interfere with the efficient, safe and secure operation of the Property.



11. **Insurance and Bonds.** All contractors and subcontractors will carry (i) Worker's Compensation Insurance covering all of their respective employees in the statutory amounts, (ii) Employer's Liability Insurance in the amount of at least \$500,000 per occurrence (iii) Comprehensive General Liability insurance in the same amounts set out on **APPENDIX 1** of the Lease and (iv) **payment and performance bonds** as set out in Section 12.1 of the Lease and (v) builder's risk insurance coverage respecting the construction and improvements to be made by Tenant, in the amount of the anticipated cost of construction of the Work (or any guaranteed maximum price). The payment and performance bonds, CGL and builder's risk insurance will cover Landlord as additional insured. Evidence of all such insurance will be given to Landlord before the construction is commenced or contractor's equipment is moved onto the Property. All policies of insurance must require that the carrier give Landlord 20 days' advance written notice of any cancellation or reduction in the amounts of insurance. In the event that during the course of Tenant's Work any damage occurs to the construction and improvements being made by Tenant, then Tenant will repair the same at Tenant's cost.

12. **Asbestos.** Before beginning any Alterations, Tenant will determine whether asbestos is present on the Premises. If Tenant intends to make Alterations that require the removal of asbestos, Tenant will submit an appropriate asbestos disposal plan to the Landlord.

13. **Indemnity.** Tenant will indemnify, defend and hold harmless Landlord (and Landlord's principals, partners, agents, trustees, beneficiaries, officers, employees and affiliates) from and against any claims, demands, losses, damages, injuries, liabilities, expenses, judgments, liens, encumbrances, orders, and awards, together with reasonable attorneys' fees and litigation expenses arising out of or in connection with the Work, or Tenant's failure to comply with the provisions hereof, or any failure by Tenant's contractors, subcontractors or their employees to comply with the provisions hereof.

14. **Incorporated into the Lease; Default.** The Parties agree that the provisions of this **APPENDIX B** are hereby incorporated by this reference into the Lease fully as though set forth therein. In the event of any express inconsistencies between the Lease and this **APPENDIX B**, the Lease will govern and control. If Tenant defaults under this **APPENDIX B** and such default continues uncured for a period of 10 days following written notice from Landlord, then Landlord may order that all Work being performed in the Premises be stopped immediately and that no further deliveries to the Premises be made, until such default is cured, without limitation as to Landlord's other remedies. Any amounts payable by Tenant to Landlord hereunder will be paid as additional Rent under the Lease. Any default by the other party hereunder will constitute a default under the Lease and will be subject to the remedies and other provisions applicable thereto under the Lease. If Tenant defaults under the Lease or this **APPENDIX B** and fails to cure the same within the time permitted for cure under the Lease, at Landlord's option, all amounts paid or incurred by Landlord towards the Tenant Improvement Allowance will become immediately due and payable as additional Rent under the Lease.

15. **Construction Management Fee.** If Tenant desires that Landlord procure the Tenant Improvements, then Landlord will charge a fee equal to 5% of the hard cost of all Tenant Improvements to reimburse Landlord for its construction management and administrative costs.

## APPENDIX B

### TENANT IMPROVEMENTS

#### ***[Landlord Constructs the Improvements Against an Allowance]***

1. Landlord will complete and deliver to Tenant the Premises and all improvements thereto (collectively, the "Tenant Improvements") required under this **APPENDIX B** according to the Tenant Improvement Plans (defined below) as agreed to herein and as shown in this **APPENDIX B**. Subject to Section 3 below, Tenant will bear the entire cost of the Tenant Improvements, including, without limitation, all architectural and engineering fees associated with the preparation of Tenant's plans and any changes thereto, labor, material and equipment costs, permit fees and overhead, and will pay such amounts to Landlord when the Lease Agreement is signed net of the Landlord's allowance provided in Section 3 below. Failure by Tenant to pay Landlord any payment when due will:

- (i) Cause the amounts to accrue at 12% per annum;
- (ii) Extend time requirements imposed on Landlord, if any, one day for each day the payment remains unpaid; and
- (iii) Allow Landlord to suspend work on all or a portion of, the Tenant Improvements until the payments are received, without any penalty or cost to Landlord, notwithstanding any other provision of this Lease to the contrary.

2. Landlord will submit to Tenant space plans (the "Space Plans") for the Premises. Within 5 days after Tenant's receipt of the Space Plans it will submit to Landlord in writing any requested changes, and Landlord and Tenant will thereafter work together in good faith to agree upon final Space Plans. After final approval of the Space Plans by Landlord and Tenant and execution of the Lease Agreement, Landlord will submit to Tenant construction drawings and specifications (the "Tenant Improvement Plans") for all Tenant Improvements. Within 5 days after Tenant's receipt of the Tenant Improvement Plans, Landlord will submit to Tenant in writing any requested changes, and Landlord and Tenant will work together in good faith to agree upon final Tenant Improvement Plans. In the event that Tenant approves a change order to the Space Plans, Tenant will pay, upon demand, to Landlord all costs associated with the change order. Prior to Landlord granting Contractor's Notice to Proceed, Tenant will pay \_\_\_% of the cost presented on the Final Tenant Construction Pricing Letter.

3. Landlord will provide Tenant with an allowance of \$ toward Tenant's costs in constructing the Tenant Improvements set out in Section 4, less a fee equal to 5% of the *hard cost of all Tenant Improvements* to reimburse Landlord for its construction management and administrative costs. The allowance must be expended within 180 days of the Lease Date or the Allowance will be forfeited by Tenant.



## **APPENDIX B**

### **TENANT IMPROVEMENTS**

#### **[Landlord Constructs the Improvements Turn Key at Landlord Expense]**

1. Landlord, at its cost, will complete and deliver to Tenant the Premises and all improvements thereto (collectively, the "Tenant Improvements") required under this **APPENDIX B** according to the Tenant Improvement Plans (defined below) as agreed to herein and as shown on **APPENDIX A**.
2. Landlord will submit to Tenant space plans (the "Space Plans") for the Premises. Within 5 days after Tenant's receipt of the Space Plans it will submit to Landlord in writing any requested changes, and Landlord and Tenant will thereafter work together in good faith to agree upon final Space Plans. After final approval of the Space Plans by Landlord and Tenant and execution of the Lease Agreement, Landlord will submit to Tenant construction drawings and specifications (the "Tenant Improvement Plans") for all Tenant Improvements. Within 5 days after Tenant's receipt of the Tenant Improvement Plans, Landlord will submit to Tenant in writing any requested changes, and Landlord and Tenant will work together in good faith to agree upon final Tenant Improvement Plans. In the event that Tenant requests a change order to the Space Plans that results in a significant cost increase, Tenant will pay, upon demand, to Landlord the additional cost associated with the change order.
3. Landlord will construct the Tenant Improvements as [ADD NARRATIVE OF TENANT FINISH OUT] as set out on **APPENDIX A**, attached to this Lease.

## **APPENDIX C**

### **RULES AND REGULATIONS**

The following rules and regulations will apply, where applicable, to the Property:

1. Sidewalks, doorways, vestibules, halls, stairways and other similar areas will not be obstructed by tenants or used by any tenant for any purpose other than ingress and egress to and from the premises and for going from one to another part of the Property.
2. Plumbing, fixtures and appliances will be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material will be thrown or placed therein. Damage resulting to fixtures or appliances from misuse by a tenant or such tenant's agents, employees or invitees will be paid by the tenant and Landlord will not in any case be responsible therefore.
3. No signs, advertisements or notices will be painted or affixed on or to any windows or doors or other exterior part of the Property (or be visible from any public or common area) unless their color, size, style and location are first approved in writing by Landlord. Landlord, at tenant's sole cost and expense, will install all letters or numerals by or on doors in tenant's leased premises that are in building standard graphics. No nails, hooks or screws will be driven or inserted in any part of the Building outside the premises except by the Building maintenance personnel nor will any part of the Building be defaced by tenants. No curtains or other window treatments will be placed between the glass and the Building standard window treatments.
4. Landlord will provide and maintain an alphabetical directory board for all tenants in the first floor (main lobby) of the Building and no other directory will be permitted without the prior, written consent of Landlord.
5. Two keys to the locks on the doors entering each tenant's Leased Premises will be furnished by Landlord free of charge, with any additional keys to be furnished by Landlord to each tenant, at tenant's cost. Landlord will provide all locks for other doors in each tenant's leased premises, at the cost of such tenant, and no tenant will place any additional lock or locks on any door in or to its leased premises without Landlord's prior written consent. All such keys will remain the property of Landlord.
6. With respect to work being performed by tenants in any leased premises with the approval of Landlord, tenants will refer all contractors, contractors' representatives and installation technicians to Landlord for Landlord's supervision, approval and control before the performance of any contractual services. This provision will apply to all work performed in the Building including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, doors, entranceways, and any and all installations of every nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment.

7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which requires use of elevators or stairways, or movement through the Building entrances or lobby will be restricted to such hours as Landlord will designate. All such movements will be under the supervision of Landlord and in the manner agreed between the tenants and Landlord by pre-arrangement before performance. Such pre-arrangement initiated by a tenant will include determination by Landlord, and subject to its decision and control, as to the time, method, and routing of movement and as to the limitations for safety or other concern, which may prohibit any article, equipment or any other item from being brought into the Building. The tenants are to assume all risks of damage to articles moved and injury to persons, including but not limited to, equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for a tenant from time of entering the property to completion of work. Landlord will not be liable for acts of any person engaged in, or any damage or loss to any property or persons resulting from, any act in connection with the service performed for a tenant.

8. Landlord has the right to prescribe the weight and position of safes and other heavy equipment or items, which will in all cases, stand on supporting devices approved by Landlord in order to distribute weight. All damage done to the Building by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, will be repaired at the expense of the tenant. Tenant will bear all costs incurred by Landlord or Tenant in determining the feasibility or actual installation of any heavy equipment.

9. A tenant will notify the Building manager when safes or other heavy equipment are to be taken in or out of the Building and the moving will be done under the supervision of the Building manager, after written permission from Landlord. Persons employed to move such property must be acceptable to Landlord.

9. Each tenant will cooperate with Landlord's employees in keeping its leased premises neat and clean.

10. Landlord will be in no way responsible to the tenants, their agents, employees or invitees for any loss of property from the leased premises or public areas or for any damages to any property thereon from any cause whatsoever.

11. To ensure orderly operation of the Building, no ice, mineral or other water, towels, newspapers, etc. will be delivered to any leased area except by persons appointed or approved by Landlord in writing.

12. If a tenant requires telegraphic, telephonic, annunciator or other communication service, Landlord will direct the electrician where and how wires are to be introduced and placed. Except as provided in each tenant's lease, electric current will not be used for heating or nonstandard power requirements without Landlord's prior written consent.

13. Tenant will not make or permit any improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them.

14. Nothing will be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals will be brought into or kept in, on or about any tenant's leased premises.

15. No machinery of any kind will be operated by tenant on its leased area without the prior written consent of Landlord, nor will any tenant use or keep in the Building any inflammable or explosive fluid or substance.

16. No portion of any tenant's leased premises will at any time be used or occupied as sleeping or lodging quarters.

17. Each tenant and its agents, employees and invitees will park only in those areas designated by Landlord for parking by such tenant and will not park on any public or private streets contiguous to, surrounding or in the vicinity of the Building without Landlord's prior written consent.

18. Landlord will not be responsible for lost or stolen property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.