

**LEASE AGREEMENT BETWEEN THE
CITY OF McALLEN, TEXAS AND
GERARDO CHAPA D/BA/ EL PURERTO DEL TIO JERRY**

This Lease Agreement (“Lease” or “Agreement”) is entered into on this the **To be determined** by and between the City of McAllen, a home-rule municipality of the State of Texas (“LANDLORD”), and **Gerardo Chapa** d/b/a El Puerto del Tio Jerry, (“TENANT”), for premises in the Food Court located within the McAllen Downtown Parking Garage (“Parking Garage” or “Building”) located at 221 S. 15th St, McAllen, TX 78501, shown in Exhibit A attached hereto and made a part hereof for all purposes.

**ARTICLE 1
THE PREMISES**

SECTION 1 Premises

- (a) LANDLORD hereby demises and leases to TENANT. and TENANT hereby hires and leases from LANDLORD, for the term and upon the terms, conditions, covenants and agreements herein provided, **Suite A-2** located on the first (1st) floor of the Parking Garage, which space consists of approximately **1169 square feet** of rentable area as determined by agreement of the parties (such space being hereinafter referred to as the “Premises”). The Premises on **Exhibit B**.
- (b) The lease of the Premises includes the right, together with other tenants of the Food Court located in the Parking Garage, and their employees and business invitees, to use the common public areas of the Food Court for their intended use and subject to the other provisions of this Lease but includes no other rights not specifically set forth herein.

**ARTICLE 2
LEASE TERM**

SECTION 2.1 Term

- (a) The initial term of this Lease (“Initial Lease Term”) shall commence on the Lease Commencement Date (as hereinafter defined) as determined pursuant to Section 2.2 hereof and, unless sooner terminated pursuant to the provisions of this Lease, shall end at 11:59 p.m., local time, on **December 31, 2026**.
- (b) As used herein, the “First Lease Year” shall mean the period commencing on the Lease Commencement Date and continuing through to **December 31, 2022**. Each subsequent Lease Year shall occur from January 1st and last for twelve (12) full calendar months thereafter through **December 31st**. Each successive twelve (12) month period thereafter during the Initial Term shall constitute a subsequent “Lease Year,” and the last Lease Year shall end on **December 31, 2026**.
- (c) If LANDLORD is unable to give possession of the Premises to TENANT because a certificate of occupancy or its equivalent has not been issued, or because of the holding over or non-vacating of any other tenant or occupant of the Premises, or because repairs to or improvements of the

Premises are not completed, or for any other reason, then, except as may be expressly stated elsewhere in this Lease, LANDLORD shall not be subject to any liability for the failure to give possession and no such failure to give possession shall in any respect affect the validity of this Lease or the obligations of TENANT hereunder, nor shall the same extend the Lease Term.

SECTION 2.2 Lease Commencement Date

- (a) The Lease Commencement Date shall be **January 1, 2022** or the date on which TENANT commences beneficial use of the Premises, whichever date occurs first (“Lease Commencement Date”). TENANT shall be deemed to have commenced beneficial use of the Premises when TENANT begins to move furniture and furnishings into the Premises and the commencement of such beneficial use shall be deemed to be an acceptance of the nature and sufficiency of the entire Premises.
- (b) It is presently anticipated that the Premises will be made available on or about **January 1, 2022** to TENANT for a Pre-Construction Coordination Conference with the LANDLORD and the LANDLORD’s General Contractor for the Improvements, whereby the TENANT may coordinate its build out schedule. Upon written approval from LANDLORD, TENANT may commence build out of the Premises prior to the anticipated Pre-Construction Coordination Conference.

SECTION 2.3 Extension Option

- (a) Provided that at the time it is exercised the TENANT is not in default under the terms of this Lease, TENANT may exercise the right and option to extend the Initial Term for a Renewal Term of Five (5) Years by giving written notice thereof to LANDLORD as provided in this Agreement at least Six (6) Months and no earlier than Twelve (12) Months prior to the expiration of the Initial Term, which Renewal Term may itself be extended at TENANT’s option for a Second Renewal Term of Five (5) Years under the same conditions as for the Renewal Term, provided further that at the expiration of the Term being extended TENANT is in occupancy of the entire Premises and not at that time in default. Upon Landlord’s receipt of such notice, this Lease shall automatically be extended for a Five (5) Year period and no instrument of extension need be executed.

In the event that TENANT fails to give such notice to LANDLORD as herein provided, this Lease shall automatically terminate at the end of the relevant Term, and TENANT shall have no further right or option to extend this Lease.

- (b) Any extended Term shall be upon the same covenants, agreements, provisions, terms and conditions as the preceding Term, except that TENANT shall have no further options to renew or extend the Initial Lease Term beyond the additional Two (2) Five (5) Year Terms referred to in this Section, and the LANDLORD shall have the option to revise the rents, fees and other charges.

**ARTICLE 3
RENT**

SECTION 3.1 Fixed Rent

- (a) TENANT shall pay to LANDLORD, for all leased areas as defined in **Exhibit C** attached hereto and made a part hereof, as “Fixed Annual Rent” for the Premises, without notice, set-off, counterclaim, deduction or demand as follows:

First Lease Year: Rent Waived;

Lease Year Two (2): SEVEN THOUSAND, EIGHT HUNDRED NINETY AND 75/100 DOLLARS (\$7,890.75).

Lease Year Three (3): FIFTEEN THOUSAND, SEVEN HUNDRED EIGHTY-ONE AND 50/100 DOLLARS (\$15,781.50);

Lease Year Four (4): TWENTY THREE THOUSAND, SIX HUNDRED SEVENTY-TWO AND 25/100 DOLLARS (\$23,672.25);

Lease Year Five (5): THIRTY ONE THOUSAND, FIVE HUNDRED SIXTY-THREE AND 00/100 DOLLARS (\$31,563.00).

- (b) Fixed Annual Rent shall be payable in twelve (12) equal monthly installments beginning on the Lease Commencement Date and thereafter monthly, in advance, on the first day of each month (“Due Date”) during the Lease Term (each such monthly installment being referred to herein as “Fixed Monthly Rent”). Concurrently with the signing of this Lease, TENANT shall pay to LANDLORD a sum equal to one (1) month’s Fixed Monthly Rent, which sum shall be credited by LANDLORD against the Fixed Monthly Rent due for the first (1st) full calendar month of the Lease Term for which Fixed Annual Rent is payable.
- (c) All remittances for rents, fees, and charges shall be made payable to the “City of McAllen” and remitted to the office of the Transit Director or his/her designee, McAllen Downtown Parking Garage, 221 South 15th Street, McAllen, Texas 78501.

Section 3.2 Security Deposit

- (a) Simultaneously with the execution of this Lease, TENANT shall deposit with LANDLORD the sum of **ONE THOUSAND, THREE HUNDRED FIFTEEN AND 13/100 DOLLARS (\$1,315.13)** representing Two (2) Months’ of the Fixed Annual Rent in Lease Year Two (2), as a security deposit. LANDLORD shall not be required to maintain the Security Deposit in a separate account. The Security Deposit shall be security for the performance by TENANT of all of TENANT’S obligations, covenants, conditions and agreements under this Lease.
- (b) In the event of any default by TENANT hereunder during the Lease Term, LANDLORD shall have the right to use, apply or retain all or any portion of the Security Deposit for (a) the payment of any rent, fees, charges or costs as to which TENANT is in default, or (b) the payment of any amount which TENANT may be obligated to pay to repair physical damage to the Premises or the Building pursuant to this Lease, or (c) the payment of any amount which TENANT may be obligated to pay for the compensation to LANDLORD for any losses incurred by reason of TENANT’S default, including, but not limited to, any damage or deficiency arising in connection

with the reletting of the Premises. If any portion of the Security Deposit is so used or applied, then within three (3) business days after written notice to TENANT of such use or application, TENANT shall deposit with LANDLORD cash in an amount sufficient to restore the Security Deposit to its original amount, and TENANT'S failure to do so shall constitute a default under this Lease. The Security Deposit is not a measure of damages, and Landlord's use of the Security Deposit is not a measure of waiver of its other rights and remedies. Provided TENANT is not in default hereunder, LANDLORD shall return the Security Deposit to Tenant, less such portion thereof as LANDLORD shall have applied or be entitled to apply to satisfy any default by TENANT hereunder, within forty five (45) days following the later to occur of the expiration of the Lease Term or the vacating and surrendering of the Premises by TENANT to LANDLORD.

SECTION 3.3 Late Payment

If TENANT fails to make any payment of rent on or before the tenth (10th) day following the established Due Date, TENANT shall pay to LANDLORD a Late Charge of Five Percent (5%) of the amount of such payment. Such Late Charges shall constitute additional rent due hereunder, shall be payable no later than by the next regularly scheduled monthly installment due, without any demand therefore by LANDLORD, and shall be in addition to all other rights and remedies provided to LANDLORD in this Lease or under law.

ARTICLE 4 USE

SECTION 4.1 Permitted Use

TENANT shall exclusively use and occupy the Premises solely for **Seafood style breakfast / lunch plates, soups, and other ancillary menu items**. TENANT shall not use or occupy the Premises for any unlawful purpose or in any manner that will constitute waste, nuisance or unreasonable annoyance to LANDLORD or other tenants of the Building. TENANT hereby covenants to continuously operate in the Premises and to do so in a manner befitting a first-class, restaurant and/or operation. Without limiting the foregoing, TENANT agrees to keep the Premises open for business between the hours of 8:00 a.m. and 7:00 p.m., Monday to Saturday, and 9:00 a.m. to 7:00 p.m. on Sunday, or such other hours as LANDLORD may designate or agree to from time to time. The Premises shall be well-stocked and fixtured and with an appropriate number and quality of personnel to maximize sales. All counters and display racks and equipment and furniture necessary to provide suitable service shall be professionally designed and installed. All equipment used shall be high quality, safe, fire-resistant (if reasonably possible), and attractive in appearance. The backs of TENANT's fixtures and racks shall not be visible from the exterior of the Premises.

TENANT shall be subject to and agrees to fully cooperate and participate in the purchase and sale of all beverage products during the performance of this Agreement in accordance with any applicable current or future exclusive beverage sales agreement (pouring rights) that the City maintains with any third party or as designated by the City.

SECTION 4.2 Compliance with Laws

- (a) TENANT shall comply with all applicable present and future laws, statutes, ordinances (including zoning ordinances and land use requirements), codes, rules, regulations, and orders of the United States of America and any other public or quasi-public authority having jurisdiction over the Premises concerning the use, occupancy, facilities in and condition of the Premises and all machinery, equipment, facilities, entrances thereto, exits there from and furnishings therein (including, without limitation, any requirements for structural changes). It is expressly understood that TENANT, at TENANT's cost and expense, will obtain an occupancy permit for the Premises prior to commencing operations. If any future law, statute, ordinance, code, rule, regulation, or order requires any other occupancy permit or other permit for the Premises or TENANT's operations, TENANT will obtain such permit at TENANT's sole expense. TENANT shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of TENANT to comply with the covenants of this Section.
- (b) TENANT shall be responsible at its own cost for complying with the provisions of the Americans with Disabilities Act or any similar Federal or State, county, municipal or other governing jurisdiction's statute, law, ordinance or code, as they may be amended from time to time, and the rules and regulations which may be adopted thereunder from time to time, as the same may be applicable to the Premises. LANDLORD's approval of any Alteration or other act by TENANT shall not be deemed to be a representation by LANDLORD that said Alteration or act complies with applicable law, and TENANT shall remain solely responsible for said compliance.

SECTION 4.3 Signage

TENANT shall have the right to install, operate and maintain interior signs on the leased space for the purposes of identifying their operation. The number, size location, general type, and design of said signs and the method of installation shall be subject to the prior written approval of the LANDLORD, and shall in all respects comply with all applicable sign ordinances and regulations.

**ARTICLE 5
PARKING**

TENANT shall have the option to participate in the downtown employee decal parking program. The LANDLORD does not guarantee any parking for tenants and/or tenants' customers and bears no responsibility or liability with respect thereto. The LANDLORD shall make available to TENANT available customer parking validation programs. Customer parking validation programs are subject to written notification by LANDLORD.

**ARTICLE 6
ASSIGNMENT AND SUBLETTING**

SECTION 6.1 Landlord's Consent Required

- (a) TENANT shall not assign this Agreement or sublet the Premises, either in whole or in part, except following a resolution adopted by the McAllen Board of Commissioners approving such assignment or sublease. No request for, or consent to, such assignment or sublease shall be considered unless

TENANT has paid all rents, fees, and charges which have accrued in favor of LANDLORD and TENANT shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Agreement or as this Agreement may be subsequently amended or modified. LANDLORD's consent to any such assignment shall not unreasonably be withheld. TENANT may assign all or part of this Agreement without the CITY's consent only if to (1) any party affiliated with COMPANY by reason of controlling, being controlled by or being under common control with the partners or ultimate beneficial owners of COMPANY or (2) any third-party as long as COMPANY, retains more than a 50% ownership interest. However, such an assignment or sublease shall not be effective unless TENANT has paid all rents, fees, and charges which have accrued in favor of LANDLORD and TENANT shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Agreement or as this Agreement may be subsequently amended or modified. It shall be a condition of any assignment or sublease under this subsection that the assignee or sublessee shall be directly bound to the terms hereof and the performance and duties hereunder.

- (b) Notwithstanding the above, and provided TENANT has paid all rents, fees, and charges which have accrued in favor of LANDLORD and TENANT shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Agreement or as this Agreement may be subsequently amended or modified, TENANT may, as required under a franchise agreement, assign this Agreement to the franchisor corporation in order to meet the requirements of such franchise agreement; provided further, that the franchisor shall be directly bound to the terms hereof and the performance and duties hereunder.

**ARTICLE 7
MAINTENANCE AND REPAIRS**

SECTION 7.1 Maintenance and Repairs

TENANT will keep and maintain the Premises and all fixtures and equipment located therein in a clean, safe and sanitary condition, will take good care thereof and make all required repairs and replacements thereto (whether structural or non-structural, foreseen or unforeseen), will suffer no waste or injury thereto, and will, at the expiration or other termination of the Lease Term, surrender the Premises, broom clean, in the same order and condition they were in on the Lease Commencement Date and ordinary wear and tear excepted. TENANT will take reasonable measure to keep the Premises free from vermin of any sort including, but not limited to insects or rodents. TENANT shall not permit the accumulation of debris or other litter of any type in or upon the Premises. TENANT shall not accumulate or store boxes, cartons, barrels, or other similar items in an unsafe manner in or about the Premises.

SECTION 7.2 Landlord's Maintenance and Repairs

LANDLORD shall endeavor to maintain and keep in repair the roof, foundation, structural components, and exterior walls of the Building and the Building's common areas including the common area heating, ventilating and air conditioning, plumbing, electrical and elevator systems and shall make such repairs as become necessary after obtaining actual knowledge of the need for such repairs or upon the receipt of written notice from Tenant requesting the necessary repairs. The LANDLORD shall be responsible for the construction and completion of restroom facilities in the Building.

SECTION 7.3 Damage Caused by Tenant

All injury, breakage and damage to the Premises and to any other part of the Building caused by any act or omission of TENANT or any agent, employee, subtenant, licensee, contractor, customer, client, family member or invitee of TENANT, shall be repaired by and at the sole expense of TENANT, except that LANDLORD shall have the right, at its sole option, to make such repairs and to charge TENANT for all costs and expenses (including a market rate project management fee) incurred in connection therewith as additional rent hereunder, payable no later than by the next regularly scheduled monthly installment due, without any demand thereof by LANDLORD. The liability of TENANT for such costs and expenses shall be reduced by the amount of any insurance proceeds received by LANDLORD resulting from such injury, breakage or damage.

**ARTICLE 8
ALTERATIONS AND TENANT IMPROVEMENTS**

SECTION 8.1 As-Is Condition of Premises

The Improvement Work, if any, to be made to the Premises by LANDLORD to make the Premises ready for TENANT’s use and occupancy shall be solely provided by Landlord to the extent and subject to the conditions set forth in **Exhibit E** (Landlord’s Improvement Work) and **Exhibit F** (the “Work Letter”) attached to this Lease. Except as so provided in **Exhibit E** and **Exhibit F**, TENANT agrees to and shall lease the Premises in its “AS IS” condition as of the date of this Lease, and it is understood and agreed that LANDLORD will not make or pay for, and is under no obligation to make or pay for, any structural or other alterations, decorations, additions or improvements in or to the Premises.

SECTION 8.2 Alterations

- (a) The Tenant’s Improvement Work is outlined in **Exhibit G** (Tenant’s Improvement Work). TENANT will not make or permit anyone to make any alterations, decorations, additions or improvements (herein referred to collectively as “Alterations”), structural or otherwise, in or to the Premises or the Building without the prior written consent of LANDLORD. Drawings for all work, facilities, and alterations, and time required to complete same, shall be subject to written approval from the Transit Director and/or LANDLORD Architect’s Office. First-class standards of design and construction comparable to the existing facility will be required in connection with all such work. When granting its consent, LANDLORD may impose any conditions it deems appropriate, including without limitation, the approval of plans and specifications, approval of the contractor or other persons to perform the work, and the obtaining of a performance and payment bond in an amount specified by LANDLORD and specified insurance. All Alterations permitted by LANDLORD must conform to all rules and regulations established from time to time by all laws, statutes, ordinances, codes, rules, regulations and requirements of the federal and/or state, county, municipal or other applicable governments. Without limiting the foregoing, all cable installed by or for TENANT, whether as part of the Tenant Improvement Work or as an Alteration, must be tagged every three (3) feet with an identification tag or other distinguishing mark to clearly identify it as relating to TENANT and/or the Premises, and LANDLORD must be given notice of the location of all such cable as and when it is installed.

- (b) As a condition precedent to such written consent of LANDLORD, TENANT agrees to obtain and deliver to LANDLORD written, unconditional waivers of mechanic's and materialmen's liens against the Building and the Land from all work, labor and services to be performed, and any materials supplied, in connection with any Alterations. It is further understood and agreed that any Alterations, other than those made by LANDLORD directly, shall be conducted on behalf of TENANT and not on behalf of LANDLORD, and that TENANT shall not be deemed to be the agent of LANDLORD. It is further understood and agreed that in the event LANDLORD shall give its written consent to the making of any Alterations, such written approval shall not be deemed to be an agreement or approval by LANDLORD to subject its interest in the Premises, or any leasehold or other interest of TENANT in the Premises, the Building or the Land, to any mechanic's or materialmen's liens which may be filed in connection therewith. If, notwithstanding the foregoing, any mechanic's or materialmen's lien is filed against the Premises, TENANT's interest therein, the Building and/or the Land for work claimed to have been done for, or materials claimed to have been furnished to, the Premises or to TENANT, such lien shall be discharged by TENANT within five (5) days after notice, at TENANT's sole cost and expense, by the payment thereof or by the filing of a bond. If TENANT shall fail to discharge any such mechanic's or materialmen's lien, LANDLORD may, at its sole option, discharge such lien and treat the cost thereof (including attorney's fees incurred in connection therewith) as additional rent payable with the next Fixed Monthly Rent installment payment falling due following written notice by LANDLORD. It is expressly agreed that such discharge by LANDLORD shall not be deemed to waive or release the default of TENANT in not discharging such lien.

SECTION 8.3 Indemnification for Tenant Improvement Work and Alterations

TENANT SHALL DEFEND, INDEMNIFY AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LIENS, LIABILITIES, JUDGMENTS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) BASED ON OR ARISING DIRECTLY OR INDIRECTLY BY REASON OF THE MAKING OF ANY TENANT IMPROVEMENT WORK BY TENANT OR ALTERATIONS. IF TENANT PERFORMS ANY TENANT IMPROVEMENT WORK OR ALTERATIONS WITHOUT THE PRIOR WRITTEN CONSENT OF LANDLORD, LANDLORD SHALL HAVE THE RIGHT TO REMOVE OR CORRECT THE SAME AND TO RESTORE THE PREMISES AND THE BUILDING TO THEIR CONDITION IMMEDIATELY PRIOR THERETO, AND TENANT SHALL BE LIABLE FOR ALL EXPENSES INCURRED BY LANDLORD IN CONNECTION THEREWITH AS ADDITIONAL RENT, PAYABLE NO LATER THAN BY THE NEXT REGULARLY SCHEDULED MONTHLY INSTALLMENT DUE FOLLOWING WRITTEN NOTICE BY LANDLORD.

SECTION 8.4 Ownership and Removal at End of Lease Term

Approved Tenant Improvement Work and Alterations to the Premises or the Building (except for un-fixed furniture, fixtures and equipment solely owned by TENANT), made by either party shall immediately become the property of LANDLORD and shall remain upon and be surrendered with the LANDLORD as part of the Premises at the end of the Lease Term except that if TENANT is not in default under this Lease, TENANT shall have the right to remove, prior to the expiration of the Lease Term, all movable furniture, furnishings and equipment installed in the Premises solely at the expense of TENANT. Unless LANDLORD otherwise specifically agrees in writing at or prior to the installation of the same, all data and communications cabling and equipment installed in the Premises for the exclusive use of TENANT, whether originally installed by LANDLORD or by TENANT, shall be removed by TENANT at its own cost and expense upon the expiration or termination of the Lease Term. All damage and injury to the Premises or to the Building caused by such removal shall be repaired by TENANT, at TENANT's sole expense. If such property of TENANT is not removed by TENANT prior to the expiration or termination of this Lease, the same shall be deemed to have been abandoned by TENANT and shall be surrendered with the Premises as a part thereof, which property may be retained by LANDLORD or disposed of at TENANT's expense. TENANT's obligation to pay for any costs incurred by LANDLORD for the disposal of such abandoned property shall survive the expiration or earlier termination of this Lease.

ARTICLE 9 SIGNS

No sign, advertisement or notice shall be inscribed, painted, affixed or otherwise displayed by TENANT on any part of the exterior or the interior of the Premises or the Building except on the directories and the doors of offices and such other areas as are designated by LANDLORD. All signage, advertisements or notices must be only in such place, number, size, color and style as are approved by LANDLORD in its sole and absolute discretion. All of TENANT's signs that are approved by LANDLORD shall be obtained by TENANT at its sole cost and expense and/or installed by LANDLORD at TENANT's sole cost and expense. TENANT shall reimburse LANDLORD for such amount upon written demand from LANDLORD. If any sign, advertisement or notice that has not been approved by LANDLORD is exhibited or installed by TENANT, LANDLORD shall have the right to remove the same at TENANT's expense. LANDLORD shall have the right to prohibit any advertisement of or by TENANT which in LANDLORD's opinion tends to impair the reputation of the Building or its desirability as a high-quality office building, and, upon written notice from LANDLORD, TENANT shall immediately refrain from and discontinue any such advertisement. LANDLORD reserves the right to affix, install and display signs, advertisements and notices on any part of the exterior or interior of the Building except in the Premises.

ARTICLE 10 TENANT'S EQUIPMENT

SECTION 10.1 Electrical Capacity

TENANT will not install or operate in the Premises any electrically operated equipment or machinery that utilizes more than the amps described in **Exhibit H**.

SECTION 10.2 Other Infrastructure

TENANT shall not install any equipment of any type or nature that will or may necessitate any changes, replacement or additions to, or in the use of the water system, heating system, plumbing system, air-conditioning system or electrical system of the Premises or in the Building, without first obtaining the prior written consent of LANDLORD, which consent may be withheld in LANDLORD's sole and absolute discretion. Any machines and mechanical equipment belonging to TENANT which cause noise or vibrations that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to LANDLORD or to any tenant in the Building shall be installed and maintained by TENANT, at TENANT's expense, on vibration eliminators or other devices sufficient to reduce such noise and vibration to a level satisfactory to LANDLORD.

SECTION 10.3 Rooftop Communications Equipment

TENANT shall be entitled to place communications equipment on the Building's roof only upon receiving written consent from the LANDLORD. All of the terms of this Lease shall be applicable to TENANT's Communication Equipment as if the Communications Equipment were part of the Premises.

SECTION 10.4 Other Mechanical Equipment

TENANT shall be entitled to place mechanical equipment on the Building's parking decks only upon receiving written consent from the LANDLORD. All of the terms of this Lease shall be applicable to TENANT's Mechanical Equipment as if the Mechanical Equipment were part of the Premises.

ARTICLE 11 INSPECTIONS BY LANDLORD

- (a) TENANT shall permit LANDLORD or its agents or representatives to enter the Premises, at any time and from time to time, without charge therefore to LANDLORD and without diminution of the rent payable by TENANT, to examine, inspect and protect the Premises and the Building, to make such alterations and/or repairs as in LANDLORD's sole judgment may be deemed necessary, or to exhibit the same to prospective purchasers and Mortgagees and, during the last twelve (12) months of the Lease Term or at any time following the initiation of any eviction proceeding, to exhibit the same to prospective tenants. In connection with any such entry, LANDLORD shall endeavor to minimize the disruption to TENANT's use of the Premises, but LANDLORD shall not be required to perform any alterations or repairs or make any entry at a time other than normal working hours.
- (b) The LANDLORD shall have the right, at all times, to raise reasonable objections to the condition of the Premises and the character of the services rendered, and to require that all objectionable practices either be remedied or discontinued within a reasonable time period.

ARTICLE 12 INSURANCE

SECTION 12.1 Tenant's Insurance

TENANT covenants and agrees to procure at its expense on or before the Lease Commencement Date and to keep in force during the Lease Term and any extensions thereof the following insurance naming LANDLORD, its management agent for the Building (the "Building Manager"), any Mortgagee and/or ground lessor of the Building and/or the Land, and TENANT as insured parties: (a) a commercial general liability insurance policy or such successor comparable form of coverage in the broadest form then available (a "Liability Policy") written on an "occurrence basis" including, without limitation, blanket contractual liability coverage, business interruption, automobile, broad form property damage, independent contractor's coverage and personal injury coverage, protecting LANDLORD, the Building Manager, such Mortgagee and/or ground lessor, and TENANT against any liability whatsoever occasioned by any occurrence on or about the Premises or any appurtenances thereto; (b) a fire and other casualty policy (a "Fire Policy") insuring the full replacement value of all Tenant Improvement Work and Alterations, regardless by whom installed, and all of the furniture, trade fixtures and other personal property of TENANT located in the Premises against loss or damage by fire, theft and such other risks or hazard; and (c) a policy of insurance against loss or damage to the major components of the air-conditioning and heating system, flywheels, steam pipes, steam turbines, steam engine, steam boilers and other pressure vessels, high pressure piping and machinery, if any, such as are installed by or on behalf of TENANT in the Premises. Such policies shall also insure against physical damage to the Premises arising out of an accident covered thereunder; such policies are to be written by good and solvent insurance companies, satisfactory to LANDLORD, licensed to do business in the State of Texas, shall have not less than a Best's A+ 10 rating and shall be in such limits and with such maximum deductibles as LANDLORD may reasonably require from time to time. As of the date of this Lease, LANDLORD reasonably requires limits of liability under: (1) the Liability Policy of not less than \$3,000,000 combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, which coverage may a basic policy of not less than \$1,000,000 and an umbrella coverage of not less than \$2,000,000; (2) the Fire Policy equal to the value of Tenant Improvement Work, Alterations, furniture, trade fixtures and other personal property with a deductible of no more than \$1,000.00; and (3) machinery insurance for full replacement cost of equipment with a deductible of no more than \$1,000.00. TENANT will furnish LANDLORD with such information as LANDLORD may reasonably request from time to time as to the value of the items specified in clause (2) above within ten (10) business days after request therefore. Such insurance may be carried under a blanket policy covering the Premises and other locations of TENANT, if any, provided that each such policy shall in all respects comply with this Article and shall specify (i) that the portion of the total coverage of such policy that is allocated to the Premises is in the amounts required pursuant to this Section and (ii) any sublimits in such blanket policy and such policy shall also specify, or TENANT shall furnish LANDLORD a written statement from the insurer under such policy, that the protection afforded TENANT under any such blanket policy shall be no less than that which would have been afforded under a separate policy relating only to the Premises. Prior to the time insurance under this Section is first required to be carried by TENANT, and thereafter at least fifteen (15) days prior to the expiration date of any such policy, TENANT agrees to deliver to LANDLORD a certificate evidencing such insurance and payment of the premium therefore. Said certificate shall contain an endorsement that such insurance may not be canceled or amended except upon thirty (30) days' prior written notice to LANDLORD. Notwithstanding anything to the contrary contained in this Lease, the carrying of insurance by TENANT in compliance with this Section shall not modify, reduce, limit or impair TENANT's obligations and liabilities under any and every indemnity by TENANT to LANDLORD set forth in this Lease. TENANT shall name the City of McAllen as an Additional Insured on all required insurance.

SECTION 12.2 Indemnity by Tenant

TENANT SHALL INDEMNIFY, DEFEND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LIABILITIES, DAMAGES, COSTS OR EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING (I) FROM ANY ACT, OMISSION OR NEGLIGENCE OF TENANT OR ITS OFFICERS, CONTRACTORS, LICENSEES, AGENTS, EMPLOYEES, GUESTS, INVITEES OR VISITORS IN OR ABOUT THE BUILDING, (II) FROM TENANT'S USE OR OCCUPANCY OF THE PREMISES OR THE BUSINESS CONDUCTED BY TENANT THEREIN, (III) FROM ANY BREACH OR DEFAULT UNDER THIS LEASE BY TENANT, (IV) FROM, OR RELATING TO, THE ENFORCEMENT BY LANDLORD OF THE PROVISIONS OF THIS LEASE AS AGAINST TENANT, OR (V) FROM ANY ACCIDENT, INJURY, DEATH, OR DAMAGE, HOWSOEVER AND BY WHOMSOEVER CAUSED, TO ANY PERSON OR PROPERTY, OCCURRING IN OR ABOUT THE PREMISES OR THE BUILDING. THIS PROVISION SHALL NOT BE CONSTRUED TO MAKE TENANT RESPONSIBLE FOR LOSS, DAMAGE, LIABILITY OR EXPENSE RESULTING FROM INJURIES (OR DEATH) TO THIRD PARTIES TO THE EXTENT CAUSED SOLELY AND DIRECTLY BY THE INTENTIONAL MISCONDUCT OF LANDLORD OR ITS OFFICERS, CONTRACTORS, LICENSEES, AGENTS, EMPLOYEES OR INVITEES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

SECTION 12.3 Increases in Insurance Rates

TENANT shall not do or permit to be done any act or thing upon or about the Premises or the Building which will (i) result in the assertion of any defense by the insurer to any claim under, (ii) invalidate, or (iii) be in conflict with, the policies covering the Building, and fixtures and property therein, or which would increase the rate of fire insurance applicable to the Building to an amount higher than it otherwise would be; and TENANT shall neither do or permit to be done any act or thing, upon or about the Building which shall or might subject LANDLORD to any liability or responsibility for injury to any person or persons or to property; but nothing in this Section shall prevent TENANT's use of the Premises for the purposes stated in this Lease. If, as a result of any act or omission by or on the part of TENANT or violation of this Lease by TENANT, whether or not LANDLORD has consented to the same, the rate of "All Risk" or other type of insurance maintained by LANDLORD on the Building shall be increased to an amount higher than it otherwise would be, TENANT shall reimburse LANDLORD for all increases of LANDLORD's insurance premiums so caused; such reimbursement to be additional rent payable no later than by the next regularly scheduled monthly installment due, without any demand therefore by LANDLORD. If, due to abandonment of or failure to occupy the Premises by TENANT, any such insurance shall be canceled by the insurance carrier, then TENANT shall indemnify LANDLORD, defend and hold it harmless against liability which would have been covered by such insurance. In any action or proceeding wherein LANDLORD and TENANT are parties, a schedule or "make-up" of rates for the Building or Premises issued by the body making fire insurance rates or established by the insurance carrier providing coverage for the Building or Premises shall be presumptive evidence of the facts stated therein,

including the items and charges taken into consideration in fixing the “All Risk” insurance rate then applicable to the Building or Premises.

SECTION 12.4 Notice of Accidents

TENANT shall give LANDLORD notice in case of crimes, solicitations, fire, accidents or other adverse incidents in the Premises or the Building promptly after TENANT is aware of such event.

SECTION 12.5 Waiver of Subrogation

Notwithstanding anything to the contrary contained in this Lease, TENANT agrees that it will, at its sole cost and expense, include in its property insurance policies appropriate clauses pursuant to which the insurance companies (a) waive all right of subrogation against LANDLORD, and any TENANT of space in the Building, with respect to losses payable under such policies, and (b) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies. TENANT shall furnish LANDLORD evidence satisfactory to LANDLORD evidencing the inclusion of said clauses in TENANT’s property insurance policies. Provided that LANDLORD’s right of full recovery under its property insurance policies is not adversely affected or prejudiced thereby, LANDLORD hereby waives any and all right of recovery which it might otherwise have against TENANT, its servants, agents and employees, for loss or damage occurring to the Building and fixtures, appurtenances and equipment therein to the extent the same is covered by LANDLORD’s insurance, notwithstanding that such loss or damage may result from the negligence or fault of TENANT, its servants, employees or agents. TENANT hereby waives any and all claims, rights of recovery, actions and causes of action which it might otherwise have against LANDLORD, its agents, servants and employees, and against every other tenant in the Building which shall have executed a similar waiver as set forth in this Section, for damage to the Premises, any Tenant Improvement Work or any Alterations, or for loss or damage to TENANT’s furniture, furnishings, fixtures and other property, by reason of any cause required to be insured against under this Lease, regardless of cause or origin, including the negligence or fault of LANDLORD, its servants, agents or employees, or such other tenant or the servants, agents or employees thereof.

**ARTICLE 13
SERVICES AND UTILITIES**

SECTION 13.1 Common Area Services and Utilities

- (a) LANDLORD shall furnish designated Common Areas during normal hours of operation of the Building with air-conditioning and heat during the seasons when they are required, and to the extent determined in LANDLORD’s reasonable judgment. To maintain proper air balancing and pressurization, TENANT shall keep all of its suite entry doors closed except as actually used for ingress or egress. LANDLORD shall also provide water and electricity to the designated Common Areas, twenty-four (24) hours per day, to the extent determined by LANDLORD. LANDLORD shall have the right to remove elevators from service as may be required for moving freight or for servicing or maintaining the elevators and/or the Building.

- (b) The normal hours of operation of the Building will be 7:00 a.m. to 7:00 p.m. on Monday through Saturday (except legal holidays) and 12:00 p.m. to 5:00 p.m. on Sunday (except legal holidays). There will be no normal hours of operation of the Building on legal holidays, and LANDLORD shall not be obligated to maintain or operate the Building at such times unless special arrangements are made by TENANT. TENANT shall have access to the Building and the Premises twenty-four (24) hours per day, every day of the year, subject to exclusion during emergencies or repairs if, in LANDLORD's sole judgment, such exclusion is necessary. LANDLORD will furnish all services and utilities required by this Lease only during the normal hours of operation of the Building unless otherwise specified herein.
- (c) It is also agreed that if TENANT requires air conditioning or heat beyond the normal hours of operation set forth herein, LANDLORD will furnish such air conditioning or heat provided TENANT gives LANDLORD sufficient advance notice of such requirement, and TENANT hereby agrees to pay for such extra service in accordance with LANDLORD's then current schedule of costs and assessments for such extra service.
- (d) LANDLORD shall provide and maintain public restrooms for use of TENANT and TENANT's employees and patrons and the general public.

SECTION 13.2 Utility Services in Premises

- (a) The LANDLORD shall provide water, gas, electric and sewer connections to the Premises. TENANT shall be responsible for individually metering or submetering, at their sole cost, all utilities to the Premises.
- (b) The LANDLORD shall provide under-slab rough-in plumbing improvements, including drain lines for floor drains. Any costs to alter the existing plumbing improvements will be borne solely by the TENANT. The TENANT shall also be responsible for modifying existing fire sprinkler system and for providing heating, ventilation and air conditioning systems (HVAC) to the Premises.
- (c) TENANT shall design all additional piping and ductwork to obtain a neat and orderly appearance. Locate all above floor piping, ductwork, equipment, etc., in the ceiling space, between or adjacent to the bottom of the structural system above. All other piping and ductwork shall be concealed in walls. Any proposed exposed piping shall be reviewed and approved by LANDLORD prior to placement. Any such utilities shall demonstrate a discrete use and be finished in a manner appropriate to adjacent surfaces.
- (d) All utilities, improvements and construction work shall be in compliance with LANDLORD and all governing codes and regulations including applicable statues, ordinances, codes, etc. All electrical, HVAC, plumbing, telephone and other similar work shall be tested, inspected and approved as may be required by an agency or utility company having jurisdiction.

**ARTICLE 14
LIABILITY OF LANDLORD**

SECTION 14.1 No Liability of Landlord

LANDLORD shall not be liable to TENANT, its employees, agents, invitees, licensees, customers, clients, family members or guests for any damage, injury (including death), loss, compensation, claim, or any cause whatsoever, unless such damage to or loss of property shall be caused by negligence or willful misconduct on the part of the LANDLORD or its employees.

SECTION 14.2 Transfer by Landlord

In the event that at any time LANDLORD shall sell or transfer the Building, the LANDLORD shall not be liable to TENANT for any obligations or liabilities based on or arising out of events or conditions occurring on or after the date of such sale or transfer.

SECTION 14.3 Disputed Payments

In the event that at any time during the Lease Term TENANT shall have a claim against LANDLORD, TENANT shall not have the right to deduct the amount allegedly owed to TENANT from any rent payable to LANDLORD hereunder, it being understood that TENANT’s sole method for recovering upon such claim shall be to institute an independent action against LANDLORD.

**ARTICLE 15
RULES AND REGULATIONS**

SECTION 15.1 Abide by Rules and Regulations

TENANT and its agents, employees, invitees, licensees, customers, clients, family members, guests and subtenants shall at all times abide by and observe the rules and regulations promulgated by LANDLORD and attached hereto as **Exhibit I**, which rules and regulations may be reasonably modified or amended by Landlord upon written notice to Tenant. In addition, TENANT and its agents, employees, invitees, licensees, customers, clients, family members, guests and subtenants shall abide by and observe all other rules or regulations that LANDLORD may promulgate from time to time for the operation and maintenance of the Building, provided that notice thereof is given to TENANT and such rules and regulations are not inconsistent with the provisions of this Lease.

SECTION 15.2 Other Tenants

Nothing contained in this Lease shall be construed as imposing upon LANDLORD any duty or obligation to enforce such rules and regulations or the terms, conditions or covenants contained in any other lease as against any other tenant, and LANDLORD shall not be liable to TENANT for the violation of such rules or regulations or lease by any other tenant or its employees, agents, invitees, licensees, customers, clients, family members, guests or subtenants.

**ARTICLE 16
DAMAGE OR DESTRUCTION**

SECTION 16.1 Casualty

If during the Lease Term the Premises or the Building are totally or partially damaged or destroyed by a casualty, thereby rendering the Premises totally or partially inaccessible or unusable, LANDLORD shall diligently (taking into account the time necessary to effectuate a satisfactory settlement with any insurance company involved) restore and repair the Premises and the Building to substantially the same condition they were in prior to such damage. Provided that such damage was not caused by the act or omission of TENANT or any of its employees, agents, licensees, subtenants, customers, clients, family members or guests, until the repair and restoration of the Premises is completed TENANT shall be required to pay rent only for that part of the Premises that TENANT is able to use while repairs are being made, based on the ratio that the amount of usable rentable area bears to the total rentable area in the Premises. LANDLORD shall bear the costs and expenses of repairing and restoring the Premises (with the exception of the Tenant Improvement Work), except that if such damage or destruction was caused by the act or omission of TENANT or any of its employees, agents, licensees, subtenants, customers, clients, family members or guests, upon written demand from LANDLORD, TENANT shall pay to LANDLORD the amount by which such costs and expenses exceed the insurance proceeds, if any, received by LANDLORD on account of such damage or destruction. If causation cannot be mutually agreed on by the LANDLORD and TENANT, either a mutually agreeable third-party or a court of competent jurisdiction shall make the determination as to causation.

SECTION 16.2 Limitations on Landlord's Obligations

Notwithstanding anything in Section 17.1 or any other part of this Lease, (a) LANDLORD shall not be obligated to spend more than the net proceeds of insurance proceeds made available for such repair and restoration, and (b) if LANDLORD is obligated to repair and restore the Premises as provided in Section 17.1, LANDLORD shall not be required to repair or restore any Tenant Improvement Work or Alterations to the Premises (regardless of by whom they were made) or any trade fixtures, furnishings, equipment or personal property belonging to TENANT. It shall be TENANT's sole responsibility to repair and restore all such items. However, if requested by TENANT, LANDLORD shall repair any damage to the Tenant Improvement Work or Alterations to the extent TENANT's insurance proceeds are sufficient and are made available to LANDLORD for that purpose.

SECTION 16.3 Right to Terminate

Notwithstanding anything to the contrary contained herein, (a) if there is a destruction of the Building that exceeds twenty-five percent (25%) of the replacement value of the Building from any risk, whether or not the Premises are damaged or destroyed, or (b) if LANDLORD reasonably believes that the repairs and restoration cannot be completed despite reasonable efforts within ninety (90) days after the occurrence of such damage, or (c) if LANDLORD reasonably believes that there will be less than two (2) years remaining in the Lease Term upon the substantial completion of such repairs and restoration, or (d) if a Mortgagee fails or refuses to make sufficient insurance proceeds available for repairs and restoration, or (e) if zoning or other applicable laws or regulations do not permit such repairs and restoration, LANDLORD shall have the right, at its sole option, to terminate this Lease by giving written notice of termination to TENANT within sixty (60) days after the occurrence of such damage. If this Lease is terminated pursuant to the preceding sentence, all rent, additional rent, fees, charges, and costs payable hereunder shall be apportioned and paid by TENANT, up to the date of the occurrence of such damage.

**ARTICLE 17
CONDEMNATION**

If the whole or a substantial part (as hereinafter defined) of the Premises and/or the Building or the use or occupancy of the Premises shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including a sale thereof under threat of such taking), then this Lease shall terminate on the date title thereto vests in such governmental or quasi-governmental authority, and all rent payable hereunder shall be apportioned as of such date. If less than a substantial part of the Premises (or the use and occupancy thereof) is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including a sale thereof under threat of such a taking), this Lease shall continue in full force and effect, but the rent thereafter payable hereunder shall be equitably adjusted (on the basis of the ratio of the number of square feet of rentable area taken to the total rentable area in the Premises prior to such taking) as of the date title vests in the governmental or quasi-governmental authority. For purposes of this Section, a substantial part of the Premises or the Building shall be considered to have been taken if more than twenty-five percent (25%) of the Premises or Building is rendered unusable as a result of such taking.

**ARTICLE 18
DEFAULT BY TENANT**

SECTION 18.1 Events of Default

The occurrence of any of the following shall constitute an “Event of Default” by TENANT under this Lease:

- (a) If TENANT fails to make any payment of rent or additional when due or, within ten (10) days after notice is given if no due date otherwise specified in this Agreement.
- (b) If TENANT violates or fails to perform any obligation set forth in Article 7, Section 9.2 or Section 13.1 of this Lease beyond the expiration of any period for performance or request, notice or cure period set forth or referred to therein.
- (c) If (i) TENANT violates or fails to perform any other term, condition, covenant or agreement to be performed or observed by TENANT under this Lease (other than as specified in this Section) and (ii) TENANT has not been given notice of the same or a substantially similar violation or failure on three (3) or more other occasions within the twelve (12) month period preceding the most recent violation or failure, regardless of whether such earlier violations or failures were cured within the allowed cure period, and (iii) such violation or failure shall continue for thirty (30) days after notice from LANDLORD to TENANT of such violation or failure; provided, however, that if such violation or failure is capable of being cured but is not capable of being cured within such thirty (30) day period despite reasonable diligence, then such thirty (30) day period shall be extended for such reasonable period, not to exceed an additional sixty (60) days, in which TENANT may cure the violation or failure if TENANT commences its cure within the initial thirty (30) day period and prosecutes the cure diligently to completion thereafter. If TENANT has been given notice of the same or a substantially similar violation or failure on two (2) or more other occasions within the twelve (12) month period preceding the most recent violation or failure, regardless whether

such earlier violations or failures were cured within the allowed cure period, then any subsequent violation or failure of the same or substantially similar nature within that twelve (12) month period shall be an Event of Default, without any further notice or cure period being afforded.

- (d) If TENANT abandons the Premises.
- (e) If TENANT or any guarantor (i) is voluntarily adjudicated bankrupt or insolvent, (ii) seeks or consents to the appointment of a receiver or trustee for itself or for all or a part of its property, (iii) files a petition seeking relief under the bankruptcy or similar laws of the United States or any state or any other jurisdiction, (iv) makes a general assignment for the benefit of creditors, or (v) admits in writing its inability to pay its debts as they mature.
- (f) If a petition is filed against TENANT or any guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state law or other statute, law or regulation and shall remain undismissed or unstayed for thirty (30) days, or if any trustee, receiver or liquidator of TENANT or any guarantor, or of all or any substantial part of its properties, shall be appointed without the consent or acquiescence of TENANT or any guarantor and such appointment shall remain unvacated or unstayed for thirty (30) days.
- (g) If any attachment or execution of any type is issued against TENANT or any guarantor, or TENANT's property located on the Premises, or TENANT's rights or interest in the Lease, or guarantor's or TENANT's assets of any type or nature whatsoever, including but not limited to federal, state, or municipal tax liens, and such is not dismissed or released within ten (10) days thereafter, or such lesser time as may be necessary to avoid loss of such property, rights or assets.

SECTION 18.2 Landlord's Rights

If an Event of Default occurs under this Lease, LANDLORD shall have the following rights:

- (a) The right, at its sole option, to terminate this Lease. LANDLORD's exercise of this right, however, in no way represents a waiver of its right to recover from TENANT all rent, additional rent, charges, fees and costs accrued up to the time of termination or recovery of possession by LANDLORD, whichever is later.
- (b) With or without terminating this Lease, LANDLORD may re-enter and take possession of the Premises, and the provisions of this Article shall operate as a notice to quit; any other notice to quit or notice of LANDLORD's intention to reenter the Premises is hereby expressly waived by TENANT. If necessary, LANDLORD may proceed to recover possession of the Premises under and by virtue of applicable Texas laws, or by such other proceedings, including re-entry and possession, as may be applicable.
- (c) In addition, any abated rent provided in this Lease and the leasing commissions paid by LANDLORD in connection with this Lease shall immediately become due and payable by TENANT to LANDLORD.

- (d) Whether or not this Lease is terminated, the Premises may be re-let by LANDLORD for such rent and upon such terms as LANDLORD deems reasonable under the circumstances and, if the full rent provided herein plus the costs, expenses and damages described below shall not be realized by LANDLORD, TENANT shall be liable for all such damages sustained by LANDLORD, including, without limitation, deficiency in fixed and additional rent, return of any and all abated rent and brokerage commissions paid by LANDLORD hereunder, reasonable attorneys' fees, brokerage fees and the expenses of placing the Premises in first-class rentable condition. Any damages or loss of rent sustained by LANDLORD may be claimed and/or recovered by LANDLORD, at LANDLORD's option, at the time of the re-letting(s) or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive re-letting, or, at LANDLORD's option, may be deferred until the expiration of the TENANT's current Lease Term, in which event TENANT hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of the Lease Term. TENANT shall not be entitled to receive any excess of any such rents collected from a third party over the rent reserved herein.
- (e) Enforce any claim or right of action that LANDLORD may have against TENANT for any action or cause of action cognizable under law, including anticipatory breach of this Lease.

SECTION 18.3 Landlord's Right to Cure

If TENANT defaults in the making of any payment or in the doing of any act herein required to be made or done by TENANT, then LANDLORD may, but shall not be required to, make such payment or do such act. If LANDLORD elects to make such payment or do such act, all costs and expenses incurred by LANDLORD, plus interest thereon at the rate of eighteen percent (18%) per annum (or as high an interest rate as is then allowed by applicable law, whichever is higher) from the date paid by LANDLORD to the date of payment thereof by TENANT, payable as additional rent no later than by the next regularly scheduled monthly installment due following written notice by LANDLORD. The making of any payment or the taking of such action by LANDLORD shall not be considered as a cure of such default by TENANT or prevent LANDLORD from pursuing any remedy it is otherwise entitled to pursue in connection with such default.

SECTION 18.4 Attorney's Fees

If, as a result of any alleged breach or default in the performance of any of the provisions of this Lease, LANDLORD uses the services of an attorney in order to secure compliance with such provisions or recover damages therefore or possession of the Premises, or if LANDLORD is made a party to any action as a result of any alleged act or failure to act of TENANT, then TENANT shall reimburse LANDLORD upon written demand for any and all reasonable attorneys' fees and expenses so incurred by LANDLORD, payable payable no later than by the next regularly scheduled monthly installment due.

SECTION 18.5 Landlord's Rights Cumulative

All rights and remedies of LANDLORD set forth herein are in addition to all other rights and remedies available to LANDLORD at law or in equity. All rights and remedies available to LANDLORD hereunder or at law or in equity are expressly declared to be cumulative. The exercise by LANDLORD of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy.

**ARTICLE 19
DELIVERY AT END OF LEASE TERM**

On the date of the expiration or termination of the Lease Term, TENANT shall quit and surrender the Premises broom clean and in good condition and repair (ordinary wear and tear and insured damage by fire or other casualty excepted), together with all the Tenant Improvement Work and any Alterations that may have been made in or attached to the Premises, but otherwise empty, unless otherwise directed by LANDLORD pursuant to Section 9.4 hereof.

**ARTICLE 20
TENANT'S QUIET ENJOYMENT;
LANDLORD'S RESERVATION OF RIGHTS**

SECTION 20.1 Quiet Enjoyment

LANDLORD covenants that it has the right to make this Lease for the Lease Term and that if TENANT shall pay all rent when due and punctually perform all of the covenants, terms, conditions and agreements of this Lease to be performed by TENANT, TENANT shall have the right, during the Lease Term, to freely, peaceably and quietly occupy and enjoy the full possession of the Premises without molestation or hindrance by LANDLORD or any party claiming through or under LANDLORD, subject to the provisions of this Lease.

SECTION 20.2 Landlord's Reservation of Rights

LANDLORD hereby reserves to itself and its successors and assigns the following rights (all of which are hereby consented to by TENANT): (a) to change the street address and/or name of the Building and/or the arrangement and/or location of entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the Building and to change the design or configuration of the Building; (b) to erect, use, and maintain pipes and conduits in and through the Premises; and (c) to grant to anyone the exclusive right to conduct any particular business or undertaking in the Building. LANDLORD may exercise any or all of the foregoing rights without being deemed to be guilty of an eviction, actual or constructive, or a disturbance or interruption of the business of TENANT or of TENANT's use or occupancy of the Premises.

**ARTICLE 21
GENERAL PROVISIONS**

SECTION 21.1 No Representations

TENANT acknowledges that neither LANDLORD nor any broker, agent or employee of LANDLORD has made any representations or promises with respect to the Premises or the Building except as herein expressly set forth, and no rights, privileges, easements or licenses are acquired by TENANT except as herein expressly set forth.

SECTION 21.2 No Partnership

Nothing contained in this Lease shall be construed as creating a partnership or joint venture of or between LANDLORD and TENANT, or to create any other relationship between the parties hereto other than that of LANDLORD and TENANT.

SECTION 21.3 Notices

(a) Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be hand-delivered (which term includes delivery by overnight courier services) or sent by United States Mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth below:

Tenant's Address for Notices:

Gerardo Chapa
El Puerto del Tio Jerry
221 S. 15th St, Suite A-2
McAllen, TX 78501

Landlord's Address for Notices:

City of McAllen
Attn: City Manager
P.O. Box 220
McAllen, TX 78505-0220

City of McAllen
Attn: City Attorney
P.O. Box 220
McAllen, TX 78505-0220

- (b) Either LANDLORD or TENANT shall have the right from time to time to designate by written notice to the other party such other persons or places in the United States as LANDLORD or TENANT may desire written notice to be delivered or sent in accordance herewith; provided, however, at no time shall either party be required to send more than an original and two copies of any such notice, demand, or request required or permitted hereunder.
- (c) Any notice, demand, or request which shall be served upon either of the parties in the manner aforesaid shall be deemed sufficiently given for all purposes hereunder (i) at the time such notice, demand or request is hand-delivered or (ii) on the third (3rd) day after the mailing of such notice, demand or request in accordance with the preceding portions of this Section.

SECTION 21.4 Familiarity and Compliance with Terms

TENANT represents that it has carefully reviewed the terms and conditions of this agreement and is familiar with such terms and conditions and agrees to faithfully comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement.

SECTION 21.5 Successors and Assigns

The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective representatives, successors and assigns, subject to the provisions hereof prohibiting or restricting assignment or subletting by TENANT.

SECTION 21.6 Entire Agreement; Amendments

This Lease contains the entire agreement of the parties, and no representations, inducements or agreements, oral or otherwise, not contained in this Lease shall be of any force or effect. This Lease may not be modified or changed in whole or in part in any manner other than by an instrument in writing duly signed by both parties hereto.

SECTION 21.7 Governing Law; Jurisdiction and Venue

This Lease shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of laws. Venue shall be in the County of Hidalgo.

SECTION 21.8 Time of Essence

TIME IS OF THE ESSENCE WITH RESPECT TO THE CARRYING OUT BY TENANT OF EACH TERM OR PROVISION OF THIS LEASE TO BE PERFORMED BY TENANT.

SECTION 21.9 Conflict

In the event of any conflict between the main text of this Lease and any Exhibit hereto, the provisions of the main text of this Lease shall prevail unless otherwise stated.

SECTION 21.10 Force Majeure

In the event that either party shall be directly or indirectly delayed or hindered in or prevented from the performance of any act or obligation required of it under this Lease by reason of acts of God, labor strike, lockout, inability to procure materials, failure of power, riot, insurrection, war or warlike act, terrorist act, utility blackout or brownout, legal requirement or other reason not within the reasonable control of that party, then performance of such act or obligation by that party shall be excused for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this Section shall not apply to or affect any rental or other monetary obligation hereunder or TENANT’s obligation to vacate the Premises at the expiration or termination of the Lease Term.

IN WITNESS WHEREOF, LANDLORD and TENANT have executed this Lease as of the day and year first above written.

LANDLORD

TENEANT

CITY OF McALLEN

EL PUERTO DEL TIO JERRY

Roel "Roy" Rodriguez, P.E.
City Manager

Gerardo Chapa, Owner

Attest:

Perla Lara, TRMC/CMC, CPM
City Secretary

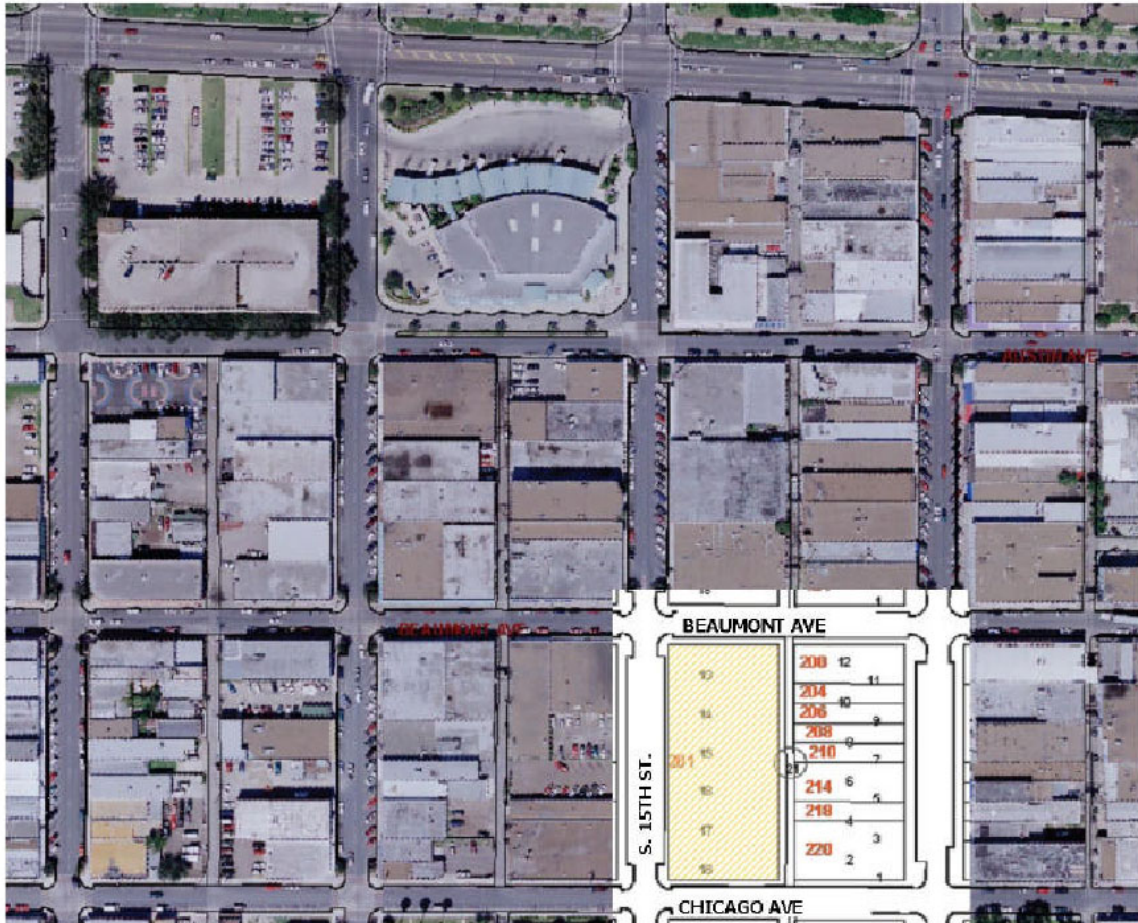
Approved as to Form Only:

Evaristo Garcia, Jr.
Asst. City Attorney

INDEX OF EXHIBITS

Exhibit "A"	Area Map
Exhibit "B"	Food Court Layout
Exhibit "C"	Rental Rates
Exhibit "D"	Annual Operating Charges
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Exhibit "F"	Work Letter
Exhibit "G"	Tenant's Improvement Work
Exhibit "H"	Electrical Service Entrance Diagram
Exhibit "I"	Building Rules and Regulations

**EXHIBIT A
AREA MAP**



McAllen Downtown Parking Garage AREA MAP

- Lots 13 - 18, Block 21 Original Townsite
- 201 S. 15th St.

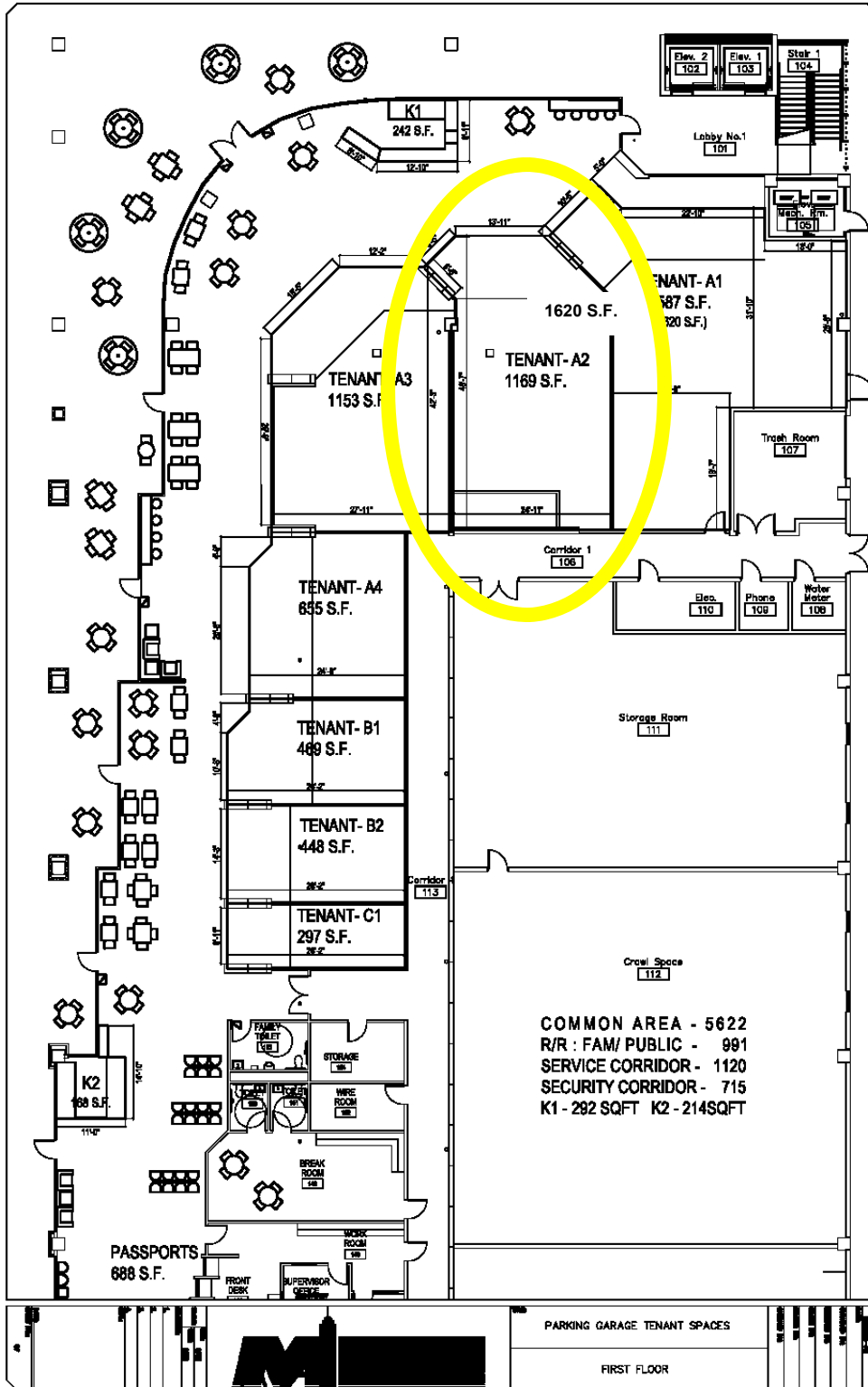
 The Project



Tenant's Initials _____

Landlord's Initials _____

EXHIBIT B FOOD COURT LAYOUT



Tenant's Initials _____

Landlord's Initials _____

EXHIBIT C
RENTAL RATES

Lease Year	Space	Leased Space (Square Feet)	Annual Base Rent	Annual CAM	Total Annual Rent	Monthly Rent
1	A-2	1169	\$0.00	\$0.00	\$0.00	\$0.00
2	A-2	1169	\$6,137.25	\$1,753.50	\$7,890.75	\$657.56
3	A-2	1169	\$12,274.50	\$3,507.00	\$15,781.50	\$1,315.13
4	A-2	1169	\$18,411.75	\$5,260.50	\$23,672.25	\$1,972.69
*5	A-2	1169	\$24,549.00	\$7,014.00	\$31,563.00	\$2,630.25

*** LANDLORD shall have the option to revise the rents, fees and other charges for the first and/or second Renewal Terms as outlined in Section 2.3(b).**

EXHIBIT D
ANNUAL OPERATING CHARGES
OCTOBER 01, 2018 THRU SEPTEMBER 30, 2019

ESTIMATED ANNUAL OPERATING CHARGES
OCTOBER 01, 2020 THRU SEPTEMBER 30, 2021

SQUARE FOOTAGE BREAKDOWN	
FT²	
Tenant Space	6,188
Vital & Passport Office	688
Downtown Services Offices	1,917
COMMON AREA	8,448
TOTAL	17,241

COMMON AREA MAINTENANCE FEES	
Non-Exempt	
1 FT Custodian	18,408
COMPENSATION	18,408
Operating	1,250
Janitorial	4,845
SUPPLIES	6,095
Utilities Electric	20,990
Utilities Water	2,637
OTHER SERVICES & CHARGES	23,626
Facilities	4,827
MAINTENANCE	4,827
Common Area Maintenance Costs	52,956

Annual CAM Fee Per Sq. Ft.	6
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EXHIBIT E
LANDLORD'S IMPROVEMENT WORK

A. Interior finish-out shall include:

1. Concrete slab and structural system ;
2. Ceiling system over required common areas;
3. HVAC system and fire sprinkler system within all common areas;
4. Rough-in utilities including electrical, water, gas, sanitary sewer, etc.;
5. Common area furniture, flooring and lighting;
6. Public Restrooms.

B. Exterior finish-out shall include:

1. Concrete slab and structural system with exterior masonry;
2. Exterior walls with storefront system including windows and doors;
3. Exterior canopy systems;
4. Lighting, sidewalks and landscaping;
5. Outdoor Ceiling Fans;

C. Landlord shall provide Design Criteria and/or Standards for Tenant Improvements intended to provide the Tenant with criteria necessary for design and construction of the improvements at the Premises;

D. Landlord shall approve all intended Tenant Improvements prior to commencement of any improvements at the Premises:

E. In every instance where responsibility is not specifically indicated to be provided by Landlord with respect to supplying or paying for the labor, materials, fees or any other item involved, it is to be assumed that said expense shall be entirely the responsibility therefore of the Tenant;

F. Landlord maintains the right to reject and or approve all proposed improvements at the Premises.

EXHIBIT F
WORK LETTER

1. Plans

Preparing the Plans. Prior to commencing any Tenant Improvement Work (as hereinafter defined) in the Premises, Tenant shall deliver to Landlord:

- (a) proposed space plans and preliminary drawings by no later than 7/19/2021;
- (b) proposed drawings, plans and specifications for all work to be performed, said drawings, plans and specifications to be initialed by Tenant to indicate Tenant's approval and otherwise to be in form and substance sufficient to be submitted to the government having jurisdiction over the Building as part of an application for a building permit, including (without limitation) being stamped as approved by an architect registered in the jurisdiction in which the Building is located; and
- (c) final drawings, plans and specifications for all work to be performed, which must be initialed by Tenant to indicate Tenant's approval.

Each of the foregoing shall in turn be subject to Landlord's approval before the next submission is made, such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall revise its drawings, plans and specifications and resubmit them to Landlord within (5) business days after Tenant's receipt of Landlord's comments. This procedure shall be repeated until Landlord's approval is granted. The foregoing drawings, plans and specifications, once approved in accordance with the foregoing procedure, are hereinafter referred to as the "Plans." Tenant shall use its own architect(s), engineer(s) and/or other design professionals to prepare the Plans on its behalf.

Adequacy and Legal Sufficiency. Notwithstanding its review of the drawings, plans and specifications, Landlord makes no representation or warranty as to the completeness or accuracy of the Plans or their legal sufficiency, and Landlord shall have no liability for or in connection with any other deficiency in the Plans. Tenant agrees to look solely to its architect, engineer and other design consultants in that regard.

Changes to the Plans. Tenant shall not be entitled to make any changes to the Plans without Landlord's approval. Landlord's consent to changes shall not be unreasonably withheld, conditioned or delayed. All changed shall be reviewed and constructed at Tenant's sole cost and expense.

Tenant Improvement Work. As used in this Work Letter, "Tenant Improvement Work" means all work shown on the Plans, as they may be amended from time to time in accordance with the terms of this Work Letter.

- 2. Construction Service.** All work requested by Tenant and approved by Landlord for the Tenant Improvement Work shall be performed by the general contractor selected by Tenant. Tenant shall enter into its own contract with the general contractor.

3. Allocation of Costs.

Tenant's Responsibility. The cost of all Tenant Improvement Work shall be Tenant's responsibility.

EXHIBIT G
TENANT'S IMPROVEMENT WORK

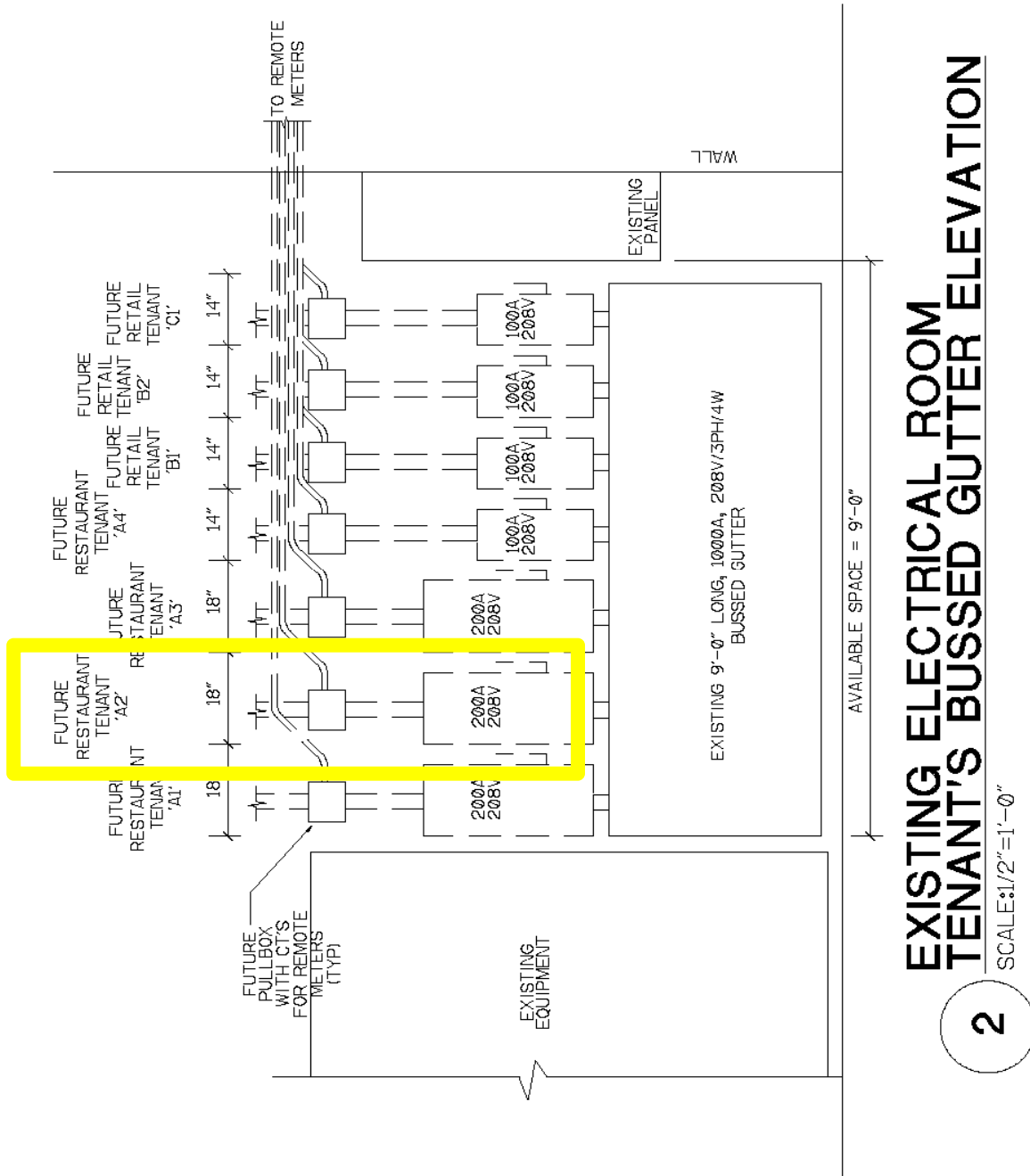
A. Design

1. Architectural Drawings, to include:
 - a. Plan indicating any selective demolition;
 - b. Floor Plan and Enlarged Floor Plan when appropriate;
 - c. Reflected Ceiling Plans ;
 - d. Room Finish Schedule including proposed flooring, wall and ceiling components with specifications and/or photographic representations;
 - e. Samples of finished materials;
 - f. Fixture, Furniture and Equipment Plan with cut-sheets, specifications and/or photographic representations;
 - g. Signage submittal with dimensions and colored photographic representation to scale for approval by City personnel;
 - h. Any other special equipment proposed within tenant space or on façade;
2. Sealed Mechanical, Electrical and Plumbing Drawings, to include:
 - a. HVAC Plan, Schedules and Details;
 - b. Electrical Power and Lighting Plan, Schedules and Details;
 - c. Plumbing Plan, Schedules and Details;
 - d. Cut-sheets, samples and/or photographic representations of Mechanical, Electrical and Plumbing fixtures and finish devices;
 - e. Engineered fire sprinkler system.
3. MEP components to be equal or better to City's installations at this facility;
4. Structural plans if necessary.

B. Finish-out

1. 5/8" fire-code or greater gypsum board (number of layers and UL system as required by local and state codes for proper rating at all partitions including demising partitions);
2. All gypsum board to be taped, floated/textured and painted;
3. Laminate clad, solid core wood doors with necessary hardware to be equal or better to City's installations at this facility;
4. Electrical and telecommunication components to be equal or better to City's installations at this facility;
5. Fire sprinkler heads, lines and components to be equal or better to City's installations at this facility;
6. Air conditioning ducts, tape, grills, registers and other components to be equal or better to City's installations at this facility.

EXHIBIT H
ELECTRICAL SERVICE ENTRANCE DIAGRAM



**EXISTING ELECTRICAL ROOM
TENANT'S BUSSED GUTTER ELEVATION**

2

SCALE: 1/2" = 1'-0"

EXHIBIT I
BUILDING RULES AND REGULATIONS

The following rules and regulations have been formulated for the safety and well-being of all tenants of the Property. Strict adherence to these rules and regulations and any successors or additions thereto is necessary to guarantee that every tenant will enjoy a safe and undisturbed occupancy of its premises. Landlord reserves the right to amend these rules and regulations and to promulgate additional rules and regulations, but all rules and regulations shall be subject to a tenant's own lease. Any violation of these rules and regulations and any successors or additions thereto by Tenant shall constitute a default by Tenant under the lease.

1. Throughout the Lease Term, Tenant covenants and agrees to the following:
 - A. Not to use any equipment, machinery or advertising medium which may be heard outside the Premises.
 - B. Not to use any plumbing facilities for any purpose other than that for which they were constructed.
 - C. Not to solicit business in the common or public areas of the Property, nor distribute or display any handbills or other advertising matters or devices in such common or public areas.
 - D. Except for packages delivered by small package couriers, not to receive or ship articles of any kind outside the designated lading area of the Building or other than during the designated loading times.
 - E. Not to employ any of Landlord's employees for any purpose whatsoever, or request such employees to do anything outside of their regular duties.
 - F. Not to obstruct or encumber any sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors, halls, or any other part of the Property.
 - G. Not to permit any signs, placards and the like, or any projections of any kind whatsoever to be attached to the outside walls of the Premises or affixed to the windows thereof without the prior written consent of Landlord.
 - H. Not to permit any showcases, mats or other articles to be placed or allowed to remain in front, in the proximity of or affixed to any part of the exterior of the Premises.
 - I. Not to permit or encourage any loitering in or about the Premises.
 - J. Not to permit or encourage any canvassing, soliciting, peddling or demonstrating in or about the Premises.
 - K. Not to install or permit the installation of any writing for any purpose on the exterior or the Premises or the Building.
 - L. Not to mark, paint, drill into or deface any part of the shell or core of the Building.
 - M. Not to bring in or keep any firearms in the Premises or the Building.
 - N. Not to purchase merchandise or service from a company or person whose repeated violations of building regulations have caused, in Landlord's sole opinion, a hazard or nuisance to the Building and/or its occupants.
 - O. Not to bring any bicycles, motor scooters or other vehicles into the Building (except as permitted by those provisions of the Lease allowing use of the garage).

- P. Not to install or permit the installation in the Premises of any coin-or token-operated vending machine or similar device in any areas of the Premises.
 - Q. Not to allow any animals in the Premises, except service animals assisting persons with disabilities or otherwise required by law.
2. Tenant acknowledges that it is Landlord's intention that the Property be operated in a manner which is consistent with the highest standards of cleanliness and customer service in the community which it serves. Toward that end, Tenant shall not sell, distribute, display or offer for sale any item which, in Landlord's judgment, is inconsistent with the quality of operations of the Property.
 3. Any and all damage or injury to the Premises or the Building caused by moving the property of Tenant into or out of the Building, or due to the same being in or upon the Premises, shall be repaired by and at the sole cost of Tenant. No furniture, equipment or other bulky matter of any description will be received into the Building or carried in the elevators except as approved by Landlord and all such furniture, equipment and other bulky matter shall be delivered only through the designated delivery entrance of the Building and the designated freight elevator. All moving or furniture, equipment and other materials shall be under the direct control and supervision of Landlord who shall not, however, be responsible for any damage to or charges for moving the same. Tenant agrees promptly to remove from the sidewalks adjacent to the Building any of Tenant's furniture, equipment or other materials delivered or deposited.
 4. Tenant shall, upon the expiration or termination of its tenancy, return to Landlord all keys used in connection with the Premises, including any keys to the Premises, to rooms and offices within the Premises, to storage rooms and closets, to cabinets and other built-in furniture, and to toilet rooms, whether such keys were furnished by Landlord or procured by Tenant and in the event of the loss of any such keys, Tenant shall pay to Landlord the cost of replacing the locks. On the expiration of this Lease, Tenant shall disclose to Landlord the combination of all locks for safes, safe cabinets and vault doors, if any, remaining in the Premises.
 5. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the Building Manager. Landlord may at its option require all persons admitted to or leaving the Building to register. Tenant shall be responsible for all persons for whom it authorizes entry into the Building and shall be liable to Landlord for all acts of such persons.
 6. Tenant shall notify Landlord in writing of any necessary maintenance or repairs as defined in Section 8.2.