

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (the "Lease") is made as of the **18** day of **November, 2021**, by and between the City of McAllen, a Home-Rule Municipality of the State of Texas ("Landlord"), and \_\_\_\_\_ ("Tenant"),

WHEREAS, the City of McAllen desires to promote the development of an intermodal transportation center for the needs of the McAllen area traveling public by attracting and granting equal access to international and intercity carriers in a friendly, cooperative and competitive environment; and

WHEREAS, \_\_\_\_\_, wishes to provide transit service in accordance with the City of McAllen's above mentioned goals and objectives.

NOW, THEREFORE, in consideration of the premises and of the mutual promises hereinafter contained, the parties hereto agree as follows:

**ARTICLE 1  
THE PREMISES**

**SECTION 1.1 Premises**

- (a) Landlord hereby demises and leases unto Tenant, and Tenant hereby takes from Landlord, for the term provided herein, at the monthly rental rate and upon the conditions set forth below, premises located at 1501 West Highway 83, in the City of McAllen, State of Texas, containing approximately     **square feet of commercial area**     together with a bus parking area containing approximately     **square feet**     (the "Premises"). Tenant acknowledges that said Premises, being more particularly described in the attached Exhibits A and A-1 incorporated herein by reference, is based upon an agreed one-to-one (1:1) ratio as described in the attached Exhibit A-2. The Premises are a part of that certain City of McAllen Intermodal Transit Terminal (the "Building"), which is more particularly described by legal description in Exhibit A.
- (b) The lease of the Premises includes the right, together with other tenants of the Building and their employees and business invitees, to use the common public areas of the Building for their intended use and subject to the other provisions of this Lease but includes no other rights not specifically set forth herein.
- (c) Landlord acknowledges that the Building is an effort to promote a high level of transit service to the public. Hence, Landlord agrees to, in good faith, enforce Section 138-118 subsections (a)(12), (b) and (c), of the City of McAllen's Code of Ordinances, as attached in Exhibit A-3.

**ARTICLE 2  
LEASE TERM**

**SECTION 2.1 Term**

- (a) The term of this Lease (“Lease Term”) shall commence on the Lease Commencement Date as determined pursuant to Section 2.2 hereof, and shall end at 11:59 p.m., local time, on (i) the day preceding the fifth (5th) anniversary of the Lease Commencement Date, if the Lease Commencement Date occurs on the first day of a month, or (ii) the last day of the month which includes the fifth (5th) anniversary of the Lease Commencement Date, if the Lease Commencement Date occurs on a day which is other than on the first day of a month, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease. If there is any renewal or extension of the Lease Term, then the defined term “Lease Term” shall include any renewal or extension term.
- (b) As used herein, the first “Lease Year” shall mean the period commencing on the Lease Commencement Date and for one (1) full calendar year thereafter. Each successive annual period thereafter during the Term shall constitute a subsequent “Lease Year”.
- (c) If Landlord is unable to give possession of the Premises 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 other respect affect the validity of this Lease or the obligations of Tenant, nor shall the same extend the Lease Term.

**SECTION 2.2 Lease Commencement Date**

- (a) The Lease Commencement Date shall be **January 01, 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 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 to Tenant for its build-out on or about **December 01, 2021**; provided, however, if Landlord is unable for any reason to deliver possession of the Premises by such date, Landlord shall not have any liability whatsoever to Tenant on account of Landlord’s inability to deliver possession of the Premises to Tenant, and this Lease shall not be rendered void or voidable as a result of such delay.
- (c) Promptly after the Lease Commencement Date, Landlord and Tenant shall execute a certificate in the form attached hereto as Exhibit B, setting forth the Lease Commencement Date and the date on which the Lease Term shall expire.

**SECTION 2.3 Extension Option**

- (a) Provided no default under this Lease has occurred at the time notice is given or at the expiration of the initial Term and that Tenant is in occupancy of the entire Premises at the expiration of the initial Term, Tenant shall have the right and option to extend the Term for one (1) period

of five (5) years. Tenant may exercise such option by giving written notice to Landlord at least two (2) months but not more than four (4) months prior to the expiration of the initial Term, Upon the giving of such notice, this Lease shall automatically be extended for such five (5) year period and no instrument of extension need be executed. However, either party shall, upon the request of the other, execute and deliver a document evidencing such extension. 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 initial Lease Term, and Tenant shall have no further right or option to extend this Lease.

- (b) The extended Lease Term shall be upon the same covenants, agreements, provisions, terms and conditions as the initial Lease Term, except that Tenant shall have no further options to renew or extend the Lease Term .
- (c) The extension option granted in this Section is personal to the original named Tenant and may be exercised only by it.

### ARTICLE 3 RENT

#### SECTION 3.1 Fixed Rent

- (a) Tenant shall pay to Landlord as “Fixed Annual Rent” for each Lease Year for the Premises, without notice, set-off, counterclaim, deduction or demand, **NINETEEN and 64/100 DOLLARS (\$19.64)** per square foot for all leased areas as defined in Exhibit C attached hereto and made a part hereof. The term “Fixed Annual Rent” shall include any annual rental increase determined pursuant to Section 3.2 hereof.
- (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) 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) If the Lease Commencement Date is a date other than the first day of a month, rent from such date until the first day of the following month shall be prorated at the rate of one-thirtieth (1/30th) of the Fixed Monthly Rent for each day and shall be payable on the Rent Commencement Date, together with the Fixed Monthly Rent payable under subsection (b) of this section..
- (d) 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 Central Station, 1501 W. Highway 83, Suite 100, McAllen, Texas 78501.

#### SECTION 3.2 Increases in Fixed Rent

- (a) Commencing on **January 1, 2023** and each January 1<sup>st</sup> during the term hereof, the Fixed Annual Rent set forth in Section 3.1 hereof for the Lease Year in question shall be increased

as of the commencement date of each Lease Year following each January 1<sup>st</sup> to reflect the increase in the cost of living in the following manner:

(i) The Consumer Price Index (CPI) for All Urban Consumers (US City Average for South Urban Cities, Size C-All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, which is published for the preceding twelve (12) month period ending December 1<sup>st</sup>, shall determine the percentage increase.

(ii) The percentage increase determined in Step (i) shall then be multiplied by the Fixed Annual Rent set forth in Section 3.1 hereof for the prior Lease Year to arrive at the amount of the increase in the Fixed Annual Rent.

(iii) The amount determined in Step (ii) above shall be added to the Fixed Annual Rent set forth in Section 3.1 for the Lease Year as to which the calculation is being made to arrive at the Fixed Annual Rent payable in monthly installments during the Lease Year for which such calculation is made.

(b) In no event shall the Fixed Annual Rent payable pursuant to clause (a) above be less than the Fixed Annual Rent payable hereunder during the Lease Year immediately preceding the Lease Year for which the calculation is being made.

(c) Promptly after the determination of an increase in the Fixed Annual Rent pursuant to this Section 3.2, Landlord shall submit to Tenant a statement setting forth the amount of such increase and the computations by which it was determined. Until the receipt of such a statement from Landlord, Tenant shall in the interim continue paying the same Fixed Monthly Rent as was payable during the preceding Lease Year. Upon receipt of such a statement from Landlord, Tenant shall pay to Landlord on or before the next rental payment date an amount equal to the additional Fixed Monthly Rent that would have been payable if such adjustment had been in effect for the period from the commencement of the new Lease Year until the end of the month in which such statement is given. Thereafter, the Fixed Monthly Rent payable each month during such Lease Year shall be the increased amount determined in accordance with this Section 3.2. Notwithstanding any dispute which may arise in connection with the computation of the adjustment provided in this Section 3.2, Tenant shall be obligated to pay the Fixed Annual Rent as adjusted according to the computation of Landlord, without set-off, deduction, recoupment, abatement, counterclaim or adjustment of any kind, pending the resolution of any dispute.

### **SECTION 3.3      Late Payment**

If Tenant fails to make any payment of rent on or before the tenth (10<sup>th</sup>) day following the established Due Date, Tenant shall pay to Landlord a Late Charge of Five Percent (5%) of the amount of such payment or THREE HUNDRED and 00/100 DOLLARS (\$300), whichever is greater. 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.

### **SECTION 3.4 Rent Generally**

As used in this Lease, “rent” includes all Fixed Annual Rent, Fixed Monthly Rent, adjustments thereto under Section 3.2, all sums payable under Article 4, and all additional rent and all other sums due to Landlord under this Lease, however called. All rent payable by Tenant shall be paid to Landlord in lawful money of the United States of America. All rent payable under this Lease shall be paid in full by Tenant, in advance, without notice or demand and without set-off, deduction, recoupment, abatement, counterclaim or adjustment of any kind.

## **ARTICLE 4 ADDITIONAL RENT**

### **SECTION 4.1 Annual Operating Charges**

During the term hereof, Tenant shall pay, on the same dates as Fixed Rent installments are due, a sum equal to one-twelfth of the Tenant's proportionate share of the estimated Annual Operating Charges incurred by LANDLORD in the operation of the Building Common Areas as stated in Exhibit D.

### **SECTION 4.2 Annual Operating Charges Defined**

The “Annual Operating Charges” are defined as the sum of all costs and expenses incurred by or on behalf of LANDLORD in operating, owning, managing, insuring, securing and maintaining the Building Common Areas or any part thereof including, without limitation, all costs and expenses of: operating, equipping, maintaining, repairing, replacing, policing, painting and cleaning the lighting, electrical, plumbing, hydraulic, mechanical, heating, ventilating and air-conditioning, signage, and access control equipment for or of the Building; alarm systems; insurance; all supplies and materials; maintenance, and repair; repair or replacement of awnings, paving, curbs, walkways, interior and exterior landscaping, drainage, pipes, ducts, conduits and similar items, lighting facilities and the roof; the cost of music program services and loudspeaker systems, and the maintenance and repair of such equipment; maintenance contracts, window cleaning, janitorial service; and any costs, charges and expenses, in addition to those set forth in this definition, which according to generally accepted accounting principles (GAAP) and practice would be regarded as costs to operate, own, manage, insure, secure or maintain the Building.

### **SECTION 4.3 Statement of Annual Operating Charges**

- (a) Additional Rent. For the First Lease Year, Tenant shall pay to LANDLORD as additional rent, without notice, set-off, counterclaim, deduction or demand, Common Areas maintenance fees as outlined in Exhibit C attached hereto and made a part hereof.
- (b) Annual Statement. LANDLORD shall submit to Tenant a statement setting forth the respective estimated amounts payable by Tenant pursuant to this Article for the preceding Lease Year for Annual Operating Charges by the end of each lease year.

- (c) Credit. At the end of each Lease Year, if the payments towards Tenant's share of estimated Annual Operating Charges exceeds the actual amount owed by the Tenant, a credit will be issued and applied towards the subsequent Lease Year's rent.
- (d) Deficiency. At the end of each Lease Year, if the payments towards Tenant's share of estimated Annual Operating Charges is less than the actual amount owed by the Tenant, a statement for any amounts owed by the Tenant will be issued. The Tenant shall pay the full amount owed no later than by the next regularly scheduled monthly installment due, as additional rent, without any further demand therefor by LANDLORD.

**ARTICLE 5  
USE**

**SECTION 5.1 Permitted Use**

- (a) Tenant shall use and occupy the Premises solely for an intercity and international bus operation and service facility (and services and concessions directly related to or normally associated with such a bus operation) and for no other purpose without the prior written consent of Landlord. Tenant specifically acknowledges and agrees that no part of the Premises shall be used for vehicle maintenance or refueling activities, except as provided for in section 5.1 (i). Tenant further acknowledges and agrees that no part of the Premises shall be used for intra city bus services, unless Tenant also possesses a mass transit license issued under the Code of Ordinances of the City of McAllen. However, Tenant shall be allowed to conduct intra city charter bus services provided that (a) such services are strictly limited to charter services and (b) such services are not conducted on a regularly scheduled basis and do not compete with intra city bus services provided or allowed by Landlord. Tenant shall not at any time during regularly scheduled business hours, leave the Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. 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, the general public, or other tenants of the Building.
- (b) Tenant shall maintain all display windows in a neat, attractive condition and shall keep all display windows and exterior electric signs lighted every day of the term hereof during the hours designated by Landlord.
- (c) Tenant shall not, without the Landlord's prior written consent, keep anything within the Premises nor use the Premises for any purposes which increases the insurance premium cost or invalidates any insurance policy carried on the Premises or other parts of the Project (provided that such insurance shall be for activities normally associated with the operation of a bus terminal). If Landlord should consent to such use and occupancy by Tenant, Tenant shall pay on demand, as additional rent, the additional insurance premiums resulting from such use and occupancy. All property kept, stored or maintained within the Premises by Tenant shall be at Tenant's sole risk.

- (d) Tenant agrees to conduct its business at all times in a reputable manner and in accordance with the highest standards of other bus terminal facilities of a similar size and caliber. Tenant shall not use the sidewalks adjacent to the Premises for business purposes except ingress and egress and shall not permit the use of any part of the Premises for sleeping areas or lodging of employees or other persons. Tenant shall not conduct business activities other than to facilitate ingress and egress of passengers to and from the bus services, nor shall tenant allow carts (except for baggage carts kept in a designated area) outside the defined exterior walls and permanent doorways of the Premises. In addition, Tenant will not solicit business or advertise in any manner in any of the automobile parking and Common Areas of the Building. Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, and inside the Project including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television.
- (e) Nothing is to be mounted, secured or placed on the roof, exterior surface, or anywhere outside of the Premises without prior written consent of Landlord. Any equipment or device so installed shall be subject to removal without notice at any time and any damage to the walls or roof caused by such removal shall be the responsibility of Tenant.
- (f) Tenant shall have the right to operate a public address system for the purpose of announcing departures and arrivals of buses to and from Premises. The public address system shall not be used to solicit business. Tenant shall guarantee that use of the public address system will be for the sole purpose outlined in this section.
- (g) All counters and displays racks shall be professionally designed. Tenant shall keep the display areas in the Premises clean and neat and free from clutter.
- (h) Delivery of goods shall be done only at such times, in the areas, and through the entrances designated for such purpose by Landlord, except for deliveries in connection with Tenant's express package service which can be conducted at all reasonably necessary times and only to or from the Premises, provided that such deliveries shall at all times be in accordance with all applicable governmental ordinances and codes. Tenant shall not use the counter top or floor of the commercial area leased to Tenant for the storage or accumulation of package service parcels. Should the operation of Tenant's express package service or similar service result in a violation of this subsection, then Tenant shall lease package area space from Landlord as an addendum to the Lease under the same terms and conditions. Tenant shall advise and cause its vendors to deliver all merchandise only at such times designated for such purpose. Tenant shall further advise its vendors that no parking or storing of tractor trailers will be permitted in or adjacent to the Project.
- (i) Tenant specifically acknowledges and agrees that no part of the Premises shall be used for bus maintenance, refueling activities, or washing vehicles. The only maintenance allowed on the Premises shall be emergency maintenance to facilitate removal of a bus to another location, (for purposes such as changing a flat tire, jump starting a dead battery, etc.). Tenant shall immediately advise the Landlord whenever this type of maintenance takes place and the estimated time of the removal of the bus.

(j) Rented bus slips referenced in A-1 shall be used by the associated Tenant only.

**SECTION 5.2 Hours of Operation**

- (a) Tenant hereby covenants to continuously operate in the Premises and to do so in a manner befitting a first-class, bus operation in a first-class building. Without limiting the foregoing, Tenant agrees to keep the Premises open for business between the hours of 5:00 a.m. and 12:00 a.m., Monday to Sunday. To ensure adequate services meet public demand, Tenant shall staff ticket counters for a minimum of ten (10) hours daily.
- (b) Common Areas shall remain open to patrons daily from 5:00 a.m. to 3:00 a.m. Hours of operation are subject to adjustment upon thirty (30) days written notice by Landlord. Adjustments will be made in the event that drastic changes occur, or as deemed necessary by the Landlord.
- (c) Tenant's hours of operation, along with a list of bus departures and arrivals, must be submitted in writing to Landlord's designee. Tenant's hours of operation, along with bus departures and arrivals, may be adjusted in accordance with terminal traffic. These changes must be submitted in writing to Landlord, at least forty-eight (48) hours prior to taking effect.

**SECTION 5.3 Common Areas**

- (a) Landlord shall substantially complete the Common Areas depicted on Exhibit A as such facilities are shown on Exhibit A. Landlord reserves the right to change from time-to-time the dimensions and location of the Common Areas, as well as the dimensions, identify and type of any buildings comprising the Project and to construct additional buildings or additional stories on existing buildings or other improvements on the Project. Landlord also reserves the right to dedicate portions of the Common Areas and other portions of the Project (excepting only the Premises) for street, park, utility and other public purposes. Provided, however, Landlord agrees that its exercise of the rights it has reserved to itself pursuant to this Article 5 shall not unreasonably interfere with the operation of the Tenant's business.
- (b) Tenant, and its employees, customers, subtenants, licensees and concessionaires, shall have the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with Landlord, other tenants of the Project and other persons entitled to use the same, and such right shall be subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. Tenant shall not solicit business or display merchandise within the Common Areas, or distribute handbills therein or take any action which would interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close any part of the Common Areas for such periods of time as may be necessary to make repairs or alterations. In addition, Landlord shall have the right to close all or a portion of such areas to such extent as may be necessary, in the opinion of Landlord's counsel, to prevent a dedication thereof or the acquisition of any rights therein by any person or by the public, such closing not to unreasonably interfere with the conduct of Tenant's business. All such rules and regulations shall be applied and enforced equally among all such users.



**SECTION 5.4 Compliance with Laws**

- (a) Tenant shall comply with all present and future laws, statutes, ordinances (including zoning ordinances and land use requirements), codes, rules, regulations, and orders of the United States of America, the City of McAllen, 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 therefrom 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. If any future law, statute, ordinance, code, rule, regulation, or order requires another occupancy permit or other permit for the Premises, 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 procure at its own expense any permits and licenses required for the transaction of business in the Premises. Tenant shall comply with all laws, ordinances, orders and reasonable regulations affecting the use and occupancy of the Premises including the cleanliness, safety or operation thereof. Tenant further agrees to comply with the regulations and reasonable requirements of any insurance underwriter or inspection bureau or similar agency insuring the Project with respect to that portion of the Premises installed and occupied by Tenant.

**ARTICLE 6  
PARKING**

Tenant shall have the right to four (4) unreserved employee parking spaces per leased ticket counter in the designated parking lot as shown in Exhibit E, attached hereto and made a part hereof. Tenant shall ensure that its employees obtain from Landlord a parking pass for the employee parking lot. Tenant agrees to abide by, and to cause anyone acquiring a parking pass through Tenant to abide by, all rules and regulations now or thereafter applicable to the parking lot. Tenant further agrees that, without limiting any other right or remedy provided by this Lease or by applicable law, its rights under this Article may be revoked in the event of any Event of Default under this Lease.

**ARTICLE 7  
ASSIGNMENT AND SUBLETTING**

**SECTION 7.1 Landlord’s Consent Required**

- (a) Tenant shall not sell, assign, transfer, mortgage or otherwise encumber this Lease or its interest herein (collectively “assign” or “assignment”) or sublet, rent or permit anyone to occupy the Premises, or any part thereof, or use any of the facilities it may use under this Lease (collectively “sublet” or “sublease”), without obtaining the prior written consent of Landlord, which consent may be granted or withheld in Landlord’s sole and absolute judgment as to any

assignment and which consent shall not be unreasonably withheld, conditioned or delayed as to any assignment or sublease. When Landlord's "consent" is referenced herein, it shall refer both to the approval of a proposed assignment/sublease and to any amendment thereof. Any attempted transfer, assignment, sublease, license or concession agreement, commissioned agent or hypothecation without Landlord's written consent shall be void and confer no right upon the third person.

- (b) The consent of Landlord to any assignment or sublease, or the implementation of any assignment or sublease that may be permitted hereunder without Landlord's consent, shall not be construed as a waiver or release of Tenant from liability for the performance of all covenants and obligations to be performed by Tenant under this Lease, nor shall the collection or acceptance of rent from any assignee or subtenant constitute a waiver or release of Tenant from any of its liabilities or obligations under this Lease, and the assignor Tenant shall remain jointly and severally liable for the continued performance of Tenant's obligations.
- (c) Tenant shall list any subsidiary carriers in Exhibit F that Tenant intends, with landlord's approval, to occupy and/or use the Premises. Changes made to this list during the term of this Lease are subject to approval by the Landlord and must be submitted in writing to the Transit Manager. Any such carrier shall be subject to all terms and conditions of this Lease. Failure of Tenant to list a subsidiary carrier at any time during the term of this Lease shall constitute a breach of the Lease.
- (d) Tenant agrees to reimburse Landlord for Landlord's reasonable attorney's fees and costs incurred in conjunction with the processing and documentation of any such requested transfer, assignment, sublease, license or concession agreement, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Premises. The consent in writing by Landlord to any transfer, assignment, sublease, license or concession agreement, change of ownership or hypothecation shall not constitute a waiver of the necessity for such consent to any subsequent attempted transfer, assignment, sublease, license or concession agreement, change of ownership or hypothecation.
- (e) Each transfer, assignment, sublease, license, concession agreement or hypothecation to which there has been consent shall be by instrument in writing, in form satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire, or mortgagee shall agree in writing for the benefit of Landlord to assume, to be bound by, and to perform the terms, covenants, and conditions of this Lease to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Article shall operate to prevent any such transfer, assignment, sublease, license, concession agreement or hypothecation from becoming effective, and the same shall be considered as void *ab initio*.
- (f) No transfer, assignment, sublease, license, concession agreement or hypothecation, to which there has been consent, shall affect or diminish the obligation of Tenant or Tenant's guarantor to perform all of the covenants required to be performed by Tenant under the terms of this Lease.

**ARTICLE 8  
MAINTENANCE AND REPAIRS**

**SECTION 8.1            Landlord's Maintenance and Repairs**

Landlord shall endeavor to maintain and keep in repair the roof, foundation and exterior walls of the Building and the Building heating, ventilating and air-conditioning, plumbing, mechanical, electrical and shall make such repairs as become necessary after obtaining actual knowledge of the need for such repairs.

**SECTION 8.2            Tenant's Maintenance and Repairs**

- (a) 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 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 unless otherwise directed by Landlord, ordinary wear and tear and insured damage by the elements excepted.
  
- (b) Tenant shall maintain and keep in good repair:
  - a. The interior of the Premises including walls, floors, and ceilings, and all repairs to the HVAC system caused by the acts or negligence of Tenants, its agents, employees, customers or invitees.
  - b. All windows and doors in or on the Premises, including frames, glass, molding and hardware associated with the Premises.
  - c. Tenant shall at all times keep the enclosed portion of the Premises in a clean and neat condition and shall perform all ordinary, day-to-day maintenance of Premises.
  - d. Tenant shall repair any damage to the Premises or the Project caused by Tenant or by any of the Tenant's employees, agents, or licensees, normal wear and tear excepted.
  - e. Tenant shall further make all other repairs to the Premises made necessary by Tenant's failure to comply with its obligations under the preceding subsections a, b, c and d.
  
- (c) If Tenant refuses or neglects to make repairs and/or maintain the Premises or any part thereof in accordance with above, Landlord shall have the right, but not the obligation, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant promptly upon receipt of a bill therefore as additional rental due with the next monthly rental payment.
  
- (d) Landlord shall not in any way be liable to Tenant for failure to make repairs as herein specifically permitted to be performed by Landlord on Tenant's behalf, unless Tenant has previously notified Landlord in writing of the need for such repairs, has authorized Landlord to perform them on its behalf, and Landlord had failed to commence and complete said repairs within a reasonable period of time following receipt of such notification.

- (e) Except for normal maintenance, Tenant shall not make and material alterations, additions or improvements to the Premises, or affix to the Premises anything which is not amenable to easy removal, without the prior written consent of Landlord, except for the installation of unattached movable trade fixtures which can be installed without drilling cutting or otherwise defacing, altering or modifying the Premises. All fixtures installed by Tenant shall be new or newly and completely reconditioned. All alterations, additions and improvements and fixtures (other than unattached, movable trade fixtures) which may be made or installed by either party hereto upon the Premises shall remain upon and be surrendered with the Premises and become the property of Landlord at the termination of this Lease unless Landlord requests their removal, in which event Tenant shall, before the end of the Lease Term (as the same may be extended) remove the same and restore the Premises to their original condition at Tenant's expense, normal wear and tear excepted. Any asphalt tile or other floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor of the Premises shall become the property of the Landlord, all without credit or compensation to Tenant.
  
- (f) Tenant, shall at its own cost and expense, provide custodial services within its Premises, including sweeping, cleaning and waxing floors (if applicable), and dusting or cleaning counter surfaces. Tenant shall be responsible, at its own cost, for the maintenance and repair of all lighting and fluorescent lamps, starters, ballasts, and other similar items, and this requirement shall extend to the built-in and other Landlord-owned ceiling lights. Tenants shall take reasonable measures to keep the Premises free from insects and rodents. Tenant shall not permit the accumulation of rubbish, trash, debris, or other litter in or upon the Premises. Tenant shall provide and use suitable receptacles for all garbage, trash and other refuse on or in connection with its portion of the Premises. Tenant shall not pile boxes, cartons, barrels, or other similar items in an unsafe manner in or about the Premises, the service dock, or other areas of the Project.
  
- (g) Tenant, at its expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, and upon expiration or earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation in the Premises as well as upon its personal property, trade fixtures and leasehold improvements. If any such items of property are assessed with property of Landlord, then such assessment shall be equitably divided between Landlord and Tenant.
  
- (h) All garbage and refuse shall be kept and collected at Tenant's expense and shall be kept in the kind of container specified by Landlord, and shall be placed outside of the Premises prepared for collection in the manner at the dates and times and places specified from time to time by Landlord. If Landlord shall provide or designate a service for collection of refuse and garbage, Tenant shall use same, at Tenant's expense, provided the cost thereof is competitive to any identical service available to Tenant. In any event, Tenant shall cause such garbage and refuse to be removed from the Premises as often as required to maintain a sanitary condition.

**ARTICLE 9**

**ALTERATIONS AND TENANT IMPROVEMENTS**

**SECTION 9.1           As-Is Condition of Premises**

Tenant 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 subject to the conditions set forth by Landlord. 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 9.2           Alterations**

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. 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 bond in an amount specified by Landlord and specified insurance.

**SECTION 9.3           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 any Tenant Improvement Work or Alterations are made without the prior written consent of Landlord, Landlord shall have the right to remove and correct such changes 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.

**SECTION 9.4           Ownership and Removal at End of Lease Term**

Tenant Improvement Work and Alterations to the Premises or the Building (except for personal property solely owned by Tenant), made by either party shall become the property of Landlord and shall remain upon and be surrendered with the Premises as part thereof at the end of the Lease Term except that (a) if Tenant is not in default under this Lease, Tenant shall have the right, solely Tenant’s expense, to remove, prior to the expiration of the Lease Term, all movable furniture, furnishings and equipment installed in the Premises, and (b) Landlord shall have the right to require Tenant to remove, and Tenant shall upon request remove all Tenant Improvement Work and Alterations at the end of the Lease Term, at the sole cost 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 or the Building 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 10 SIGNS**

No sign, advertisement or notice shall be inscribed, painted, affixed or otherwise displayed by Tenant on any part of the exterior of the Premises or the Building except as 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 and installed by Tenant at its sole cost and expense. 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.

## **ARTICLE 11 INDEMNITY, NON-LIABILITY AND INSURANCE**

(a) Landlord shall not be liable to Tenant or to Tenant's employees, agents, guests, or invitees or to any other person whomsoever, for any injury to persons or damage to property on or about the Premises or the Common Areas caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees, customers and concessionaires or of any other person entering the Premises under the express or implied invitation of Tenant or arising out of the use of the Premises by Tenant and the conduct of its business therein or arising out of any breach or default by Tenant in the performance of its obligations hereunder.

**(B) TENANT COVENANTS AND AGREES TO FULLY INDEMNIFY DEFEND AND HOLD HARMLESS, LANDLORD, ANY OWNER AND/OR OPERATOR OF THE PREMISES, AND THE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AND REPRESENTATIVE OF THE LANDLORD, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTIONS, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE LANDLORD DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO TENANT'S ACTIVITIES UNDER THIS LEASE AND/OR THE TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY ACTS OR OMISSIONS OF ANY SUBCONTRACTOR OR AGENT OF TENANT, AND**

**THEIR REPRESENTATIVES, EMPLOYEES, CONSULTANTS, AND TENANT'S RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS LEASE, ALL WITHOUT, HOWEVER, WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. TENANT SHALL PROMPTLY ADVISE THE LANDLORD IN WRITING OF ANY CLAIMS OR DEMAND AGAINST THE LANDLORD OR TENANT KNOWS TO THE TENANT RELATED TO OR RISING OUT OF THE TENANT'S ACTIVITIES UNDER THIS LEASE AND SHALL SEE THE INVESTIGATION OF AND DEFENSE OF SUCH CLAIM OR DEMAND AT TENANT'S COST. THE LANDLORD SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING TENANT OF ANY OF ITS OBLIGATIONS.**

- (c) From and after the date of the occupancy of the Premises by Tenant, and at all times during the term hereof, Tenant will maintain, at its expense, the following type of insurance:
- a. Liability Insurance. Tenant shall, at its sole cost and expense, procure and maintain throughout the term a policy or policies of general comprehensive liability insurance insuring Tenant and Landlord against any and all liability for injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use of occupancy of the Premises by Tenant or by the condition of the Premises. Such policy or policies shall contain a blanket contractual liability endorsement (including the contractual liability of Tenant to indemnify Landlord contained herein) and shall contain a combined single limit of not less than \$3,000,000.00 in respect of injuries to or death of any person(s), or property damaged or destroyed, or such other limits as may be reasonably required by Landlord, and shall be written by an Insurance company or companies satisfactory to Landlord and licensed to do business in the State of Texas, with the City of McAllen named as additional insured. Such policies or duly executed certificates of insurance relating thereto shall be promptly delivered to Landlord and renewals thereof shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. The liability insurance coverage shall be primary and non-contributing liability coverage for said coverage limits above. Upon receipt of notice from its insurer(s) Tenant shall provide the Landlord with thirty (30) days' written notice of cancellation of any required coverage. It is the specific intent of the Parties that all insurance held by the Landlord shall be excess, secondary and non-contributory. Additional Insured coverage of the Landlord shall be maintained for the greater of the term or any renewal of the Lease, the holding over or possession of the Premises by Tenant, or as long as Tenant is obligated to Landlord for bodily injuries, property damage or other liabilities.
  - b. Worker's Compensation. Tenant shall procure and maintain throughout the term standard form worker's compensation and employer's liability insurance maintain a qualified E.R.I.S.A. plan, as approved by Landlord covering all of Tenant's employees for injury or illness suffered in the course of or arising out of their employment,

providing statutory worker's compensation benefits and employer's liability limits of liability as required by law. Such insurance shall contain a waiver of subrogation clause satisfactory to Landlord.

- (d) Tenant will be solely responsible for personal property of Tenant located on or within the Premises, including, but not limited to, merchandise, trade fixtures, furnishings, wall coverings, carpeting, drapes, and equipment and may choose to carry standard broad form property damage insurance against fire, and such other risks as are, from time to time, included in standard fire and extended coverage insurance.
- (e) Landlord and Landlord's agents, officers and employees shall not be liable to Tenant for any injury to person or damage to property sustained by Tenant or any other person claiming through Tenant resulting from any accident or occurrence in the Premises or on the Project, including, but not limited to, injury or damage caused by the Premises or other portions of the Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring or by broken glass, or the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Premises (except where due to Landlord's willful failure to make repairs required to be made hereunder after the expiration of a reasonable time after written notice to Landlord of the need for such repairs) nor shall Landlord be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Project or of any other persons whomsoever, excepting only duly authorized employees and agents of Landlord.
- (f) All policies of insurance to be provided by Tenant hereunder shall be issued in the names of Landlord and Tenant for the mutual and joint benefit and protection of Landlord and Tenant. Executed certificates shall be delivered to Landlord within ten (10) days after receipt of written request therefore to Tenant. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give to Landlord thirty (30) days notice in writing in advance of any cancellation or lapse of the effective date or any reduction in the amounts of insurance. If Tenant shall fail to comply with any of the requirements contained herein relating to insurance, Landlord may, but is not required to obtain such insurance and Tenant shall pay to Landlord on demand as additional rent hereunder the premium cost thereof.
- (g) Landlord and Tenant and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard, to the extent covered by insurance on the Premises and/or the Project, and to that extent waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release shall not operate in any case where the effect is to invalidate such insurance coverage.
- (h) Notwithstanding the foregoing provisions, Tenant shall be allowed to self-insure for the public liability insurance requirements set forth above, subject, however, to the written approval of Landlord and the following specific limits and requirements:



- a. Tenant may self-insure for vehicle and general liability claims only to a maximum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) per occurrence; all liability in excess of such \$1.5 Million limit must be covered by insurance.
  - b. Tenant shall at all time maintain (i) a tangible net worth of at least Ten Million Dollars (\$10,000,000.00), and (ii) a trust fund in the amount of at least Fifteen Million Dollars (\$15,000,000.00) as security for the payment of claims.
  - c. Tenant shall at all times maintain an excess umbrella liability insurance policy in the amount of Ten Million Dollars (\$10,000,000.00) and the Landlord shall be named as an additional insured under such excess umbrella policy.
- (i) Tenant shall give Landlord notice in case of crimes, fire, accidents or other adverse incidents in the Premises or the Building promptly after Tenant is aware of such event.

**ARTICLE 12  
SERVICES AND UTILITIES**

**SECTION 12.1 Services and Utilities**

- (a) Landlord shall furnish to the Premises during normal hours of operation of the Building air-conditioning and heat during the seasons when they are required, as and to the extent determined in Landlord's reasonable judgment. Landlord shall also provide water and electricity to the Premises for standard office equipment, as and to the extent determined by Landlord.
- (b) The normal hours of operation of the Building will be 5:00 a.m. to 3:00 a.m. on Monday through Sunday. Tenant shall have access to the Building and the Premises during operating 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) Tenant shall be responsible for telephone service in the Premises.
- (e) Tenant shall also be responsible for and agrees to pay the cost of all above-standard or non-standard uses of the utilities and services provided to the Premises.

**SECTION 12.2 Interruption of Services and Utilities**

- (a) It is understood and agreed that Landlord shall not have any liability whatsoever to Tenant as a result of Landlord's failure or inability to furnish any of the utilities or services required to be furnished by Landlord hereunder, whether resulting from breakdown, removal from service for maintenance or repairs, strikes, scarcity of labor, Hazardous Materials, acts of God, governmental requirements or from any other cause whatsoever. It is further agreed that any such failure or inability to furnish the utilities or services required hereunder shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement or reduction of any rent payable hereunder.
- (b) Tenant shall promptly pay all bills, charges and deposits for telephone service, and shall keep the Premises clear of any lien or encumbrance of any kind whatsoever created by Tenant's act or omissions.

**ARTICLE 13  
RULES AND REGULATIONS**

**SECTION 13.1      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 G. 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 13.2      Other Tenants**

Nothing contained in this Lease shall be construed as imposing upon Landlord any duty or obligation to enforce Landlord 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 14  
DAMAGE OR DESTRUCTION**

**SECTION 14.1      Casualty**

If during the Lease Term the Premises or the Building are totally or partially damaged or destroyed by a casualty or other reason, 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, and until the repair and

restoration of the Premises is completed, Tenant shall be required to pay rent, which may be reduced by Landlord to such extent as may be fair and reasonable under the circumstances. Landlord shall bear the costs and expenses of repairing and restoring the Premises (with the exception of the Tenant Improvement Work), except to the extent such damage or destruction was caused by the act or omission of any tenant, and 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, then 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.

**SECTION 14.2      Limitations on Landlord’s Obligations**

Notwithstanding anything in Section 14.1 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) in no event shall Landlord 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, and it shall be Tenant’s sole responsibility to repair and restore all such items. However, if requested by Tenant, Landlord may repair any damage to the Tenant Improvement Work or Alterations to the extent Tenant’s insurance proceeds cover the damage, are sufficient and are made available to Landlord for that purpose.

**ARTICLE 15  
EMINENT DOMAIN**

- (a) If a portion of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain or by private purchase in lieu thereof, which results in a material interference with the operation of Tenant’s business, Tenant may terminate this Lease and the rent shall be abated during the unexpired portion of this Lease, effective on the date of the material interference with the operation of the Tenant’s business.
  
- (b) If less than ten percent (10%) of the Premise should be taken for any public or quasi-public use under the governmental law, ordinance, or regulation or by right of eminent domain, or by private purchase in lieu thereof, this lease shall not terminate; however, the Rent (but not any additional rental) payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority and Landlord shall make all necessary repairs or alterations within the scope of Landlord’s original work necessary to make the Premises an architectural whole.
  
- (c) If any part of the Common Areas should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall not terminate, nor shall the rent payable hereunder be reduced, nor shall Tenant be entitled to any part of the award made for such taking.

- (d) Any election to terminate this Lease following the condemnation shall be written notice within thirty (30) days after the date on which physical possession is taken by condemning authority, in accordance with the notice provision set forth in Article XXV, Section 25.4 herein.
- (e) All compensation awarded for any taking (or proceeds of private sale in lieu thereof) whether for the whole or a part of the Premises, shall be the property of the Landlord, whether such award is compensation for damages Landlord's or Tenant's interest in the Premises, and Tenant hereby assigns all of its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business for the taking of Tenant's fixtures and other property within the Premises if a separate award for such items is made to Tenant.

**ARTICLE 16  
DEFAULT BY TENANT**

**SECTION 16.1      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 when due or, if no due date is specified in this Lease, within ten (10) days after notice is given by Landlord.
- (b) 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) such violation or failure shall continue for thirty (30) days after notice from Landlord to Tenant of such violation or failure, and (iii) Tenant has been given notice of the same or a substantially similar violation or failure on three 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; provided, however, that if such violation or failure is capable of being cured but is not capable of being cured within thirty (30) days after notice from Landlord, despite reasonable diligence, then such thirty (30) day period shall be extended for a reasonable period, not to exceed an additional sixty (60) days, within which Tenant may cure the violation or failure provided Tenant commences its cure within the initial thirty (30) day period and prosecutes the cure diligently to completion thereafter.
- (c) If Tenant abandons the Premises or if Tenant permits anything to be done, which creates a lien upon the Premises.
- (d) 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.

- (e) 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.
- (f) 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 16.2      Landlord's Rights**

If an Event of Default occurs under this Lease, Landlord shall have all rights recognized at law and in equity, including and not limited to have the following rights:

- (a) The right, at its sole option, to terminate this Lease. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of the Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent 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 re-enter the Premises is hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Premises under and by virtue of the laws of the jurisdiction in which the Building is located, 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 by reason of Tenant's default, 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 is not be realized by Landlord, Tenant shall be liable for all 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 recovered by Landlord, at Landlord's option, at the time of the re-letting or in separate actions, from time to time, as



due Landlord under and by virtue of this Lease, Landlord shall have the right, after ten (10) days' written notice to Tenant, to sell such personal property so seized at public or private sale and upon such terms and conditions as may appear advantageous to Landlord, and Tenant agrees to indemnify and hold Landlord harmless against any claim to any such personal property by any third party. Landlord may be the purchaser at any such sale. After the payment of all proper charges incident to such sale, the proceeds thereof shall be applied to the payment of any and all sums due to Landlord pursuant to this Lease. In the event there shall be any surplus remaining after the payment of any sums due to Landlord, such surplus shall be paid over to Tenant.

**SECTION 16.5 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 therefor 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 demand for any and all reasonable attorneys' fees and expenses so incurred by Landlord as additional rent within five (5) days after Landlord's demand therefore.

**SECTION 16.6 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.

**SECTION 16.7 No Waiver By Landlord**

No delay in the enforcement or exercise of any right or remedy shall constitute a waiver of any default by Tenant hereunder or of any of Landlord's rights or remedies in connection therewith. Landlord shall not be deemed to have waived any default by Tenant hereunder unless such waiver is set forth in a written instrument signed by Landlord. If Landlord waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver. If Landlord institutes proceedings against Tenant and a compromise or settlement thereof is made, the same shall not constitute a waiver of the same or any other covenant, condition or agreement set forth herein or of any of Landlord's rights hereunder. Neither the payment by Tenant of a lesser amount than the rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy available to Landlord. No reentry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of this Lease.

**ARTICLE 17  
DELIVERY AT END OF LEASE TERM**

**SECTION 17.1 Surrender of Premises**

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.

**SECTION 17.2 Holding Over**

In the event that Tenant or any party claiming under Tenant shall not immediately surrender the Premises in the condition required by Section 17.1 on the date of the expiration or termination of the Lease Term, Tenant shall become a tenant by the month at two hundred percent (200%) of the Fixed Monthly Rent in effect during the last month of the Lease Term, plus one hundred percent (100%) of all additional rent in effect during the last month of the Lease Term (subject to increases thereafter as determined by Landlord in accordance with the provisions of this Lease). Said monthly tenancy shall commence on the first day following the expiration of the Lease Term. As a monthly tenant, Tenant shall be subject to all the terms, conditions, covenants and agreements of this Lease, except as to the amount of the monthly rent, which shall be in the amount specified in this Section. As a monthly tenant, Tenant shall give to Landlord at least thirty (30) days' written notice of any intention to quit the Premises, and Tenant shall be entitled to thirty (30) days' written notice to quit the Premises, unless an Event of Default exists hereunder, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being hereby expressly waived. Notwithstanding the foregoing provisions of this Section, in the event Tenant shall hold over after the expiration of the Lease Term and if Landlord shall desire to regain possession of the Premises promptly at the expiration of the Lease Term, then at any time prior to Landlord's acceptance of rent from Tenant as a monthly tenant hereunder Landlord, at its option, may forthwith re-enter and take possession of the Premises without process or by any legal process in force in the jurisdiction in which the Building is located. Landlord may accept rent in the holdover amount and concurrently commence legal proceedings to regain possession of the Premises. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including the loss of any proposed subsequent tenant for all or any portion of the Premises. Force majeure is not an excuse to holding over.

**ARTICLE 18  
LIENS**

Tenant shall not permit to be created nor to remain undercharged an lien, encumbrance or charge arising out of any work or work claim of any contractor, mechanic, laborer or nay material supplied or claimed to be supplied by any materialman which might be or become a lien or encumbrance or charge upon the Premises or the Project or the income therefrom and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises might be impaired. If any lien or notice of lien on account of an alleged debt or Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work in the Premises shall be filed against the Premises or the Project, Tenant shall, within ten (10) days after notice of the filing



thereof, cause the same to be discharged of record by payment, deposit, or bond in the amount equal to the amount of such claims, or by order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien or notice of lien to be discharged within the period provided, then Landlord, in addition to any other rights or remedies, may but shall not be obligated to, discharge the same by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings; and in any such event, Landlord shall be entitled, if Landlord so elects, to defend any prosecution of any action for foreclosure of such lien by the lien holder or to compel the prosecution of an action for the foreclosure of such lien by the lien holder and to pay the amount of judgment in favor of the lien costs holder with interest, costs and allowances. Any amount paid by the Landlord and all costs and expenses, including attorney's fees, incurred by Landlord in connection therewith, together with interest thereon at the maximum legal rate from the date of Landlord's making of the payment or the date such cost or expense was incurred shall be paid by Tenant to Landlord on demand. In the event Tenant contests any such claim, Tenant agrees to indemnify, defend, and hold harmless Landlord, and, if requested, upon demand immediately to deposit with Landlord cash or a surety bond in form and with a company satisfactory to Landlord in an amount equal to twice the amount of such contested claim.

**ARTICLE 19  
TAXES**

Tenant shall also be liable and pay for, prior to delinquency, all taxes levied upon all trade fixtures, furnishings, equipment and all other personal property placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which the Tenant is primarily liable hereunder. Landlord shall pay all real estate taxes (if any) assessed against the Premises excluding taxes of the leasehold interest owned by Tenant.

**ARTICLE 20  
SURRENDER OF PREMISES**

Tenant shall, upon expiration or termination of the term of this Lease, surrender the Premises in good condition and repair reasonable wear and tear and casualty loss or damage excepted. Tenant shall promptly surrender all keys for the Premises at the place then fixed for payments of rent and shall inform Landlord of combinations on any locks and safes on the Premises.

**ARTICLE 21  
LITIGATION, COURT COSTS, ATTORNEY'S FEES**

In the event that at any time either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the prevailing party in such action or proceedings shall be entitled to recover from the other party its reasonable costs, expenses and attorney's fees which shall be deemed to have accrued on the commencement of such action or proceeding and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 22  
NO DISCRIMINATION**

- (a) Tenant acknowledges and agrees that the federal government has provided funds for the construction of the Project. Therefore, Tenant agrees that any member of the public or federally licensed bus carrier that requests to use the Premises for bus service shall be considered and treated by Tenant on a non-discriminatory space available basis. Landlord shall have the right to approve all subsidiary or federally licensed bus carriers in advance.
- (b) Any discrimination by Tenant, its sub-licensees, agents or employees on account of race, color, sex, age, religion, disability, or national origin, in employment practices or in the use of or admission to the Premises is prohibited.
- (c) Tenant shall pay wages that are not less than the minimum wages required by federal and state statutes and city ordinances, to persons employed in its operations in the Premises.

**ARTICLE 23  
ENVIRONMENTAL**

- (a) Tenant agrees that all times during the term of this Lease, it shall not violate any applicable law, statute, ordinance, rule, regulation, order or determination pertaining to health or the environment ("Applicable Environmental Laws"). Tenant further agrees that it shall not store, release or discharges any hazardous toxic substance material or waste ("Hazardous Materials") on the Premises. Tenant shall have written policies in place for the accidental spillage or leaks of fuel or oil on the Premises, and shall have the proper training, equipment, and supplies to deal with such occurrence. Tenant shall not transport or ship hazardous materials for any reason, with only enclosed batteries on wheelchairs excepted.
- (b) Tenant hereby releases and fully discharges Landlord from and against any and all claims, demands, causes of action, loss, judgments, liabilities, damages, interest, cost, and expense by reason or arising out of (a) Tenant's violation of any Applicable Environmental Law or (b) the presence or release of any Hazardous Materials on the Premises during the term of this Lease which is caused by the acts or negligence of Tenant, its agents or employees.
- (c) Landlord hereby releases and fully discharges Tenant from and against any and all claims, demands, causes of actions, loss, judgments, liabilities, damages, interest, cost and expense arising out of the presence or release of any Hazardous Materials on Premises which (a) existed prior to the date of this Lease or (b) is caused by the acts or negligence of Landlord.

**ARTICLE 24  
GENERAL PROVISIONS**

**SECTION 24.1 Federal Transit Administration**

This Lease shall be subject to the Federal Transit Administration (FTA) Interlocal Agreement, by and between Landlord and the Lower Rio Grande Development Council on file with the City Secretary of the City of McAllen.

**SECTION 24.2 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 Property except as herein expressly set forth, and no rights, privileges, easements or licenses are acquired by Tenant except as herein expressly set forth.

**SECTION 24.3 No Partnership**

Nothing contained in the Lease shall be interpreted or construed as creating a partnership, joint venture, or fiduciary relationship of principal and agent between the Parties; it being understood that the sole relationship created is one of landlord and tenant. It is understood and agreed that the Parties shall not have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.

**SECTION 24.4 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LANDLORD: Transit Director  
City of McAllen  
1501 W. Highway 83  
Suite 100  
McAllen, TX 78501  
956-681-3500

WITH A COPY TO: City Attorney  
City of McAllen

P.O. Box 220  
McAllen, TX 78502  
956-681-1000

- (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. Any notice not received because of the intended recipient's failure to provide a correct address or affirmative refusal to accept delivery shall be deemed given upon attempted delivery.

**SECTION 24.5      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 24.6      Governing Law; Jurisdiction, Venue and Disputes**

- (a) The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Lease, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Texas or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of Texas.. If any provision of this Lease shall be held to be invalid or unenforceable, the validity and enforceability of the remaining portions of the Lease shall not be affected thereby.
- (b) Tenant consents to the -exclusive jurisdiction of any federal or State court having jurisdiction in Hidalgo County, Texas Tenant waives any objection to any such jurisdiction and venue, including any objection under the theory of forum non conveniens (inconvenient forum).
- (c) Should a dispute arise between Landlord and Tenant concerning the enforcement, interpretation or otherwise relating to this Lease, then prior to the initiation of any litigation relating thereto, the Landlord and Tenant agree to enter into and participate in mediation as provided under Section 154.023, et. al. of the Texas Civil Practices and Remedies Code.

**SECTION 24.7      Section Headings**

Article and Section headings are used herein for the convenience of reference and shall not be considered when construing or interpreting this Lease.

**SECTION 24.8 No Offer**

The submission of an unsigned copy of this document to Tenant for Tenant’s consideration does not constitute an offer to lease the Premises or an option to or for the Premises. This document shall become effective and binding only upon the execution and delivery of this Lease by both Landlord and Tenant.

**SECTION 24.9 Multiple Counterparts**

This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

**SECTION 24.10 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 24.11 Conflict**

In the event of any conflict within the main text of this Lease, or 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, and the more specific over the more general.

**SECTION 25.12 Execution by Tenant**

If Tenant is a corporation, a limited liability company, an association or a partnership, it shall, concurrently with the signing of this Lease, at Landlord’s option, furnish to Landlord certified copies of the resolutions of its board of directors (or of the executive committee of its board of directors) or consent of its members or partners authorizing Tenant to enter into this Lease. Moreover, each individual executing this Lease on behalf of Tenant hereby represents and warrants that he or she is duly authorized to execute and deliver this Lease and that Tenant is a duly organized corporation, limited liability company, association or partnership under the laws of the state of its incorporation or formation, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the laws of the state of its incorporation or formation and the laws of the jurisdiction in which the Building is located, has the power and authority to enter into this Lease, and that all corporate or partnership action requisite to authorize Tenant to enter into this Lease has been duly taken.

**SECTION 25.13 Joint and Several Liability**

If more than one person or entity shall ever be Tenant, the liability of each such person and entity shall be joint and several.

**SECTION 25.14 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.

**SECTION 25.15 No Waiver**

No waiver of any term, condition, or provision shall be valid unless it is in writing and signed by all Parties. Landlord's failure to complain of any act or omission, no matter how long the same may continue, or to insist upon or enforce strict performance of any term, condition, provision, representation, warranty, covenant or any other right or provision or to exercise any rights or remedies under this Lease shall not be construed or deemed as a waiver or relinquishment to any extent of Landlord's right to assert or rely upon any such term, condition, provision, representation, warranty, covenant, rights, or remedies in that or any other instance; rather, the same will be and shall remain in full force and effect. If any action by Tenant requires the Landlord's consent or approval, the Landlord's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action by Tenant on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Landlord's exercise of any of its rights or remedies under this Lease shall be without prejudice to its other rights and remedies under the Lease or otherwise permitted under law.

**SECTION 25.16 No Presumption Against Drafting Party**

The parties acknowledge and agree that each party has been represented by an attorney or have had the opportunity to retain counsel of its choice and have participated jointly in negotiating, contributing, and preparing the terms and conditions in this Lease. In any controversy, dispute or contest over the meaning, interpretation, validity, or enforceability of this Lease, or of any of its terms and conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against any party by virtue of that party having prepared the document or any portion thereof. The parties acknowledge and agree that any rule, law, opinion, or decision which interprets the rule of construction that ambiguities are resolved against the drafting party shall have no application and is expressly waived by each party. This Lease shall be interpreted to its fair meaning with no presumption or burden of proof arising strictly in favor or against either party.

EXECUTED on the day hereinabove first mentioned. This Lease was approved by the City Commission on the 13th day of December, 2021.

Approved as to form:

LANDLORD:

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

Roel Rodriguez, P.E., City Manager

\_\_\_\_\_  
Isaac Tawil, Deputy City Attorney

TENANT:

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

**EXHIBITS**

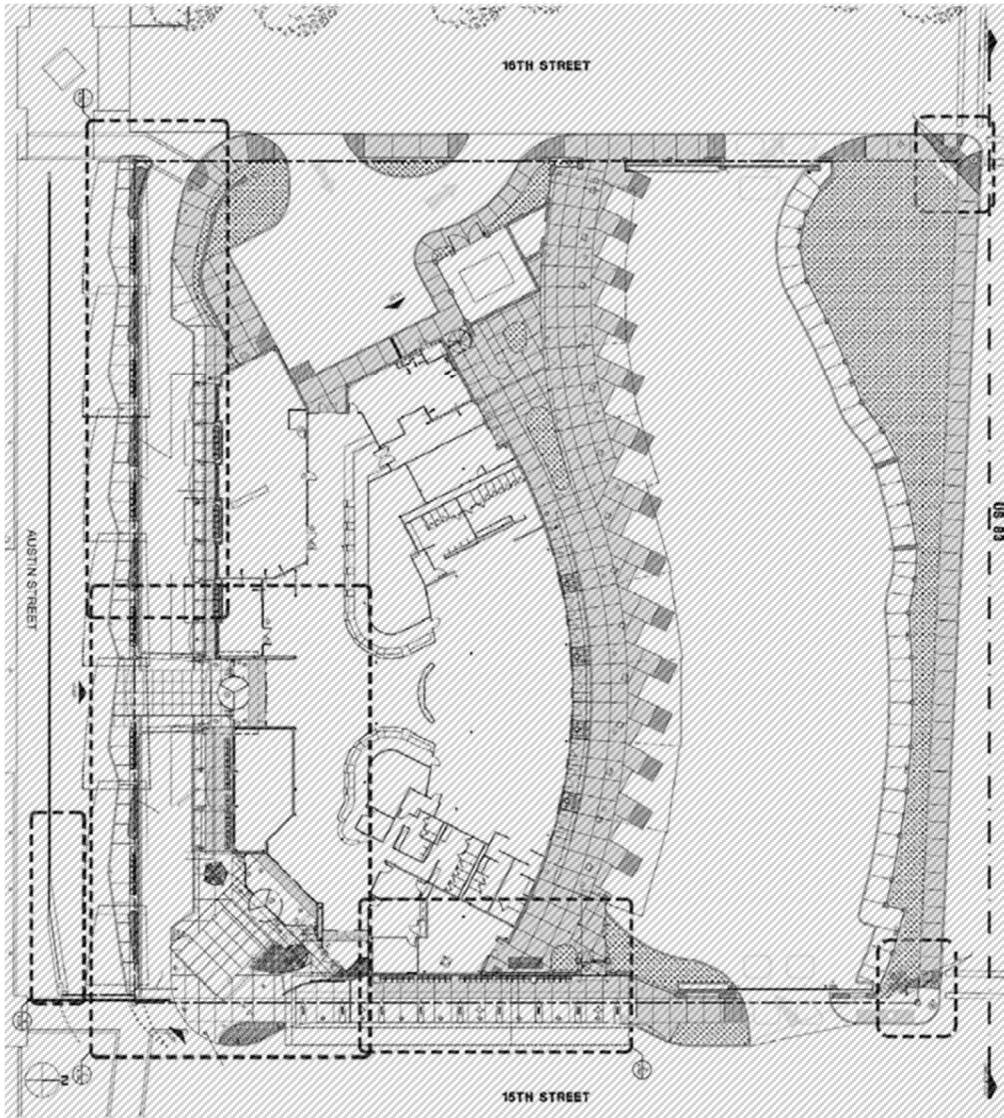
- A LEGAL DESCRIPTION AND FLOOR PLAN
- A-1 LEASED SPACE ASSIGNMENTS
- A-2 LEASE RATIO
- A-3 CITY OF McALLEN CODE OF ORDINANCES SECTION 138-111 – 138-117,  
PART 12 TRANSIT TERMINAL FACILITY
- B CERTIFICATE OF LEASE COMMENCEMENT DATE AND EXPIRATION  
OF LEASE TERM
- C TENANT RENT
- D ANNUAL OPERATING CHARGES
- E EMPLOYEE PARKING
- F LIST OF SUBSIDIARY CARRIERS
- G BUILDING RULES AND REGULATIONS



**EXHIBIT A**

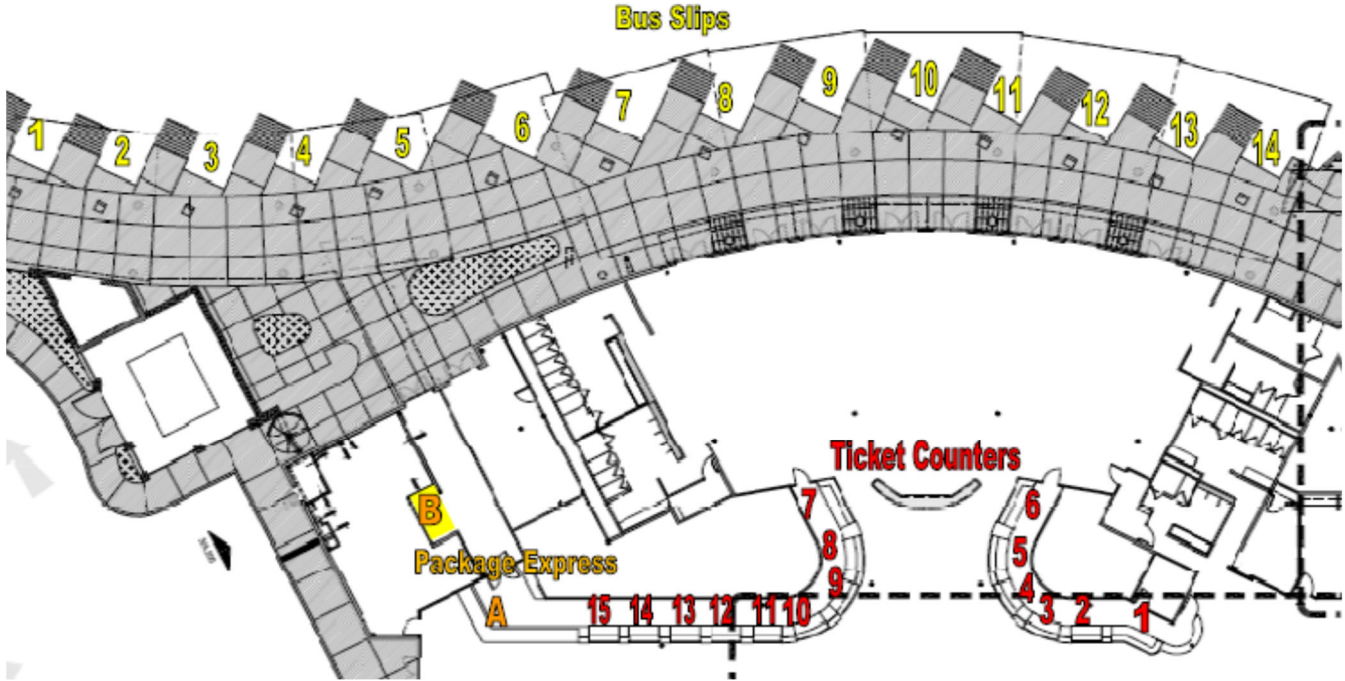
**LEGAL DESCRIPTION AND FLOOR PLAN**

That certain premises containing approximately 26,572 square feet of commercial lease space including ticket counters, offices and bus slips, being a portion of that Premises described as, situated in the City of McAllen Intermodal Transit Terminal, and being all in McAllen, Texas.



**EXHIBIT A-1**

**LEASED SPACE ASSIGNMENTS**



<b>Company</b>	<b>Ticket Counter Assignment</b>	<b>Bus Slip Assignment</b>	<b>Package Express Assignment</b>
Autobuses Ejecutivos	5, 6	5, 6	
El Expreso	15	1	
Tornado	7	14	
Transpais	12	4	
Dos Naciones	2, 3, 4	11, 12, 13	
Valley Transit Company	8, 9, 10, 11	7, 8, 9, 10	A, B
McAllen Express Transit	1		

**EXHIBIT A-2**

**LEASE RATIO**

In an effort to promote strong but fair competition, the following ratio has been established as a guideline for the lease of bus company operating space at the McAllen Intermodal Transit Terminal. The minimum lease requirement is 919 ft<sup>2</sup> comprised of 1 ticket counter, 1 bus slip and 66 ft<sup>2</sup> of office space.

<b>Ticket Counters</b> (66 ft <sup>2</sup> each)	<b>Bus Slips</b> (787 ft <sup>2</sup> each)	<b>Office Space</b> (66 ft <sup>2</sup> / ticket counter)
1	1	66 ft <sup>2</sup>
2	2	132 ft <sup>2</sup>
4	4	264 ft <sup>2</sup>

**EXHIBIT A-3**

**CITY OF McALLEN CODE OF ORDINANCES  
SECTION 138-118  
TRANSIT TERMINAL FACILITY**

Sec. 138-118. Requirements of conditional use.

(a) The requirements to be met for each conditional use shall be as follows:

(12) *Transit terminal facilities.* Applicable conditions for transit terminal facilities include, but are not limited to:

- a. Transit terminal facility shall be provided access by a street classified as an arterial or major collector with a minimum pavement width of 50 feet;
- b. Driveways used for transit vehicle ingress and egress shall have a minimum radius of 20 feet unless a greater radius is required as determined by the city engineer;
- c. Traffic control devices may be required as determined by the city engineer;
- d. A traffic impact analysis may be required by the city engineer to evaluate needed traffic control and highway capacity improvements;
- e. Transit vehicle routes to the terminal facility shall not traverse residential streets with a pavement width less than 44 feet unless designated as a public transit route;
- f. Transit vehicles shall not use public right-of-way for loading and unloading or layover parking unless a bus turnout lane is provided. Transit vehicle layover parking shall not utilize or obstruct required off-street parking spaces. Transit vehicle loading and unloading shall be restricted to bus bays or bus turnout lanes;
- g. Twelve parking spaces shall be provided for each bus bay;
- h. Transit terminal facility shall be accessed by a minimum of two public transit routes with appropriate onsite loading and unloading facilities;
- i. Canopies shall be provided for each bus bay to shelter passengers accessing transit vehicles;
- j. A minimum of 400 square feet of air conditioned passenger waiting and ticketing area shall be required for each bus bay;
- k. A minimum of two male and female bathroom fixtures shall be provided for each bus bay;
- l. Separate parking and loading areas shall be provided for automobiles and transit vehicles;
- m. Transit vehicle loading areas shall not require passengers to cross driveways or parking areas;
- n. A taxi queuing area shall be provided to accommodate a minimum of three taxi spaces. Additional taxi queuing area may be required as determined by the city engineer;
- o. Onsite maintenance of transit vehicles shall be limited to interior cleaning and non-mechanical repair;
- p. A buffer shall be required along a property line adjacent to a residential use or zone.

(b) No form of pollution shall emanate beyond the immediate property line of the permitted use.

(c) The planning and zoning commission may impose additional reasonable restrictions or conditions to carry out the spirit and intent of this section and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, suitable landscaping, and additional improvements such as curbing and sidewalks.

(Code 1966, § 32-56; Ord. No. 1996-8, § II, 1-22-96; Ord. No. 1996-70, § II, 11-18-96; Ord. No. 1997-78, § I, 9-8-97; Ord. No. 1999-69, § 2, 8-9-99; Ord. No. 2001-84, § 2, 11-26-01; Ord. No. 2003-29, §§ 1, 2, 4-14-03; Ord. No. 2006-43, § 1, 4-10-06)

**Cross references:** Alcoholic beverages, ch. 6; food establishments, § 54-26 et seq.; day care centers, group day care and registered family homes, § 54-66 et seq.; peddlers and solicitors, ch. 78; manufactured homes and recreational vehicles, ch. 122; supplementary district regulations, § 138-346 et seq.; offstreet parking and loading requirements, § 138-391 et seq. Secs. 138-119--138-140. Reserved.

**EXHIBIT B**  
**CERTIFICATE OF LEASE COMMENCEMENT DATE**  
**AND EXPIRATION OF LEASE TERM**

This Exhibit B is attached to and made a part of the Lease dated the **18<sup>th</sup>** day of **November 2022**, by and between the City of McAllen, a Home-Rule Municipality of the State of Texas, as Landlord, and **Autobuses Ejecutivos L.L.C.**, a Privately Owned Bus Company, as Tenant.

Landlord and Tenant do hereby declare that:

- (1) The Lease Commencement Date is **January 01, 2022**; and
- (2) The first Lease Year is the period from **January 01, 2022** to **December 31, 2022**; and
- (3) The Lease Term shall expire (unless the Lease is extended or sooner terminated in accordance with the provisions thereof) on **December 31, 2027**.

LANDLORD:  
City of McAllen

By: \_\_\_\_\_  
Roel Rodriguez P. E.

Its: City Manager\_\_\_\_\_

TENANT:  
\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXHIBIT C  
TENANT RENT**

<b>Tenant</b>	<b>Leased Space (Square Feet)</b>	<b>% of CAM Costs (Tenant Space / GLA)</b>	<b>Monthly CAM Fee</b>	<b>Monthly Fixed Rent</b>	<b>Total Monthly Rent</b>	<b>Total Annual Rent</b>
Tornado	947	4%	122.26	\$ 1,427.90	\$ 1,550.16	\$18,601.92
VTC	3769	14%	486.59	\$ 5,682.94	\$ 6,169.53	\$74,034.36
Dos Naciones	2,757	10%	\$ 468.99	\$ 4,044.00	\$ 4,512.99	\$54,155.89
Autobus Ejecutivos	1866	7%	240.91	\$ 2,813.57	\$ 3,054.48	\$36,653.76
El Expreso	919	3%	118.65	\$ 1,385.68	\$ 1,504.33	\$18,051.96

**EXHIBIT D  
ANNUAL OPERATING CHARGES**

<b>Supplies</b>	<b>\$</b>	<b>25,700</b>
	<i>Janitorial</i>	<i>\$ 25,700</i>
 <b>Other Services &amp; Charges</b>	 <b>\$</b>	 <b>83,742</b>
	<i>Utilities Electric</i>	<i>\$ 75,684</i>
	<i>Utilities Water</i>	<i>\$ 8,058</i>
 <b>Maintenance</b>	 <b>\$</b>	 <b>21,685</b>
	<i>Facilities</i>	<i>\$ 21,685</i>

<b>ANNUAL OPERATING &amp; MAINTENANCE</b>	<b>131,127</b>
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<b>TOTAL AREA FT<sup>2</sup></b>	<b>43,735</b>
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<b>COST / FT<sup>2</sup></b>	<b>\$</b>	<b>3.00</b>
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<b>COMMON AREA FT<sup>2</sup></b>	<b>17,163</b>
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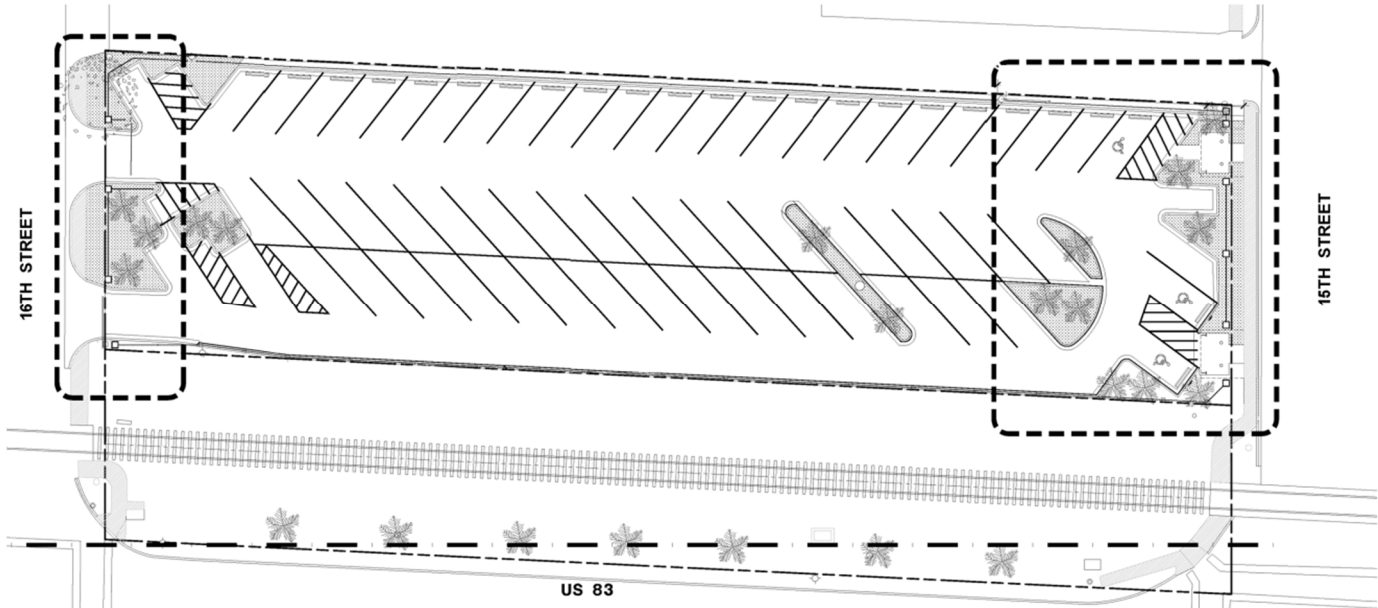
<b>ANNUAL COMMON AREA COSTS</b>	<b>\$</b>	<b>51,458</b>
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<b>20% CITY SHARE (DOWNTOWN VISITORS)</b>	<b>\$</b>	<b>10,292</b>
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<b>80% TENANT SHARE</b>	<b>\$</b>	<b>41,167</b>
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**EXHIBIT E**  
**EMPLOYEE PARKING**



**EXHIBIT F**

**LIST OF SUBSIDIARY CARRIERS**

The following companies are authorized to provide transportation services from the McAllen Intermodal Transit Terminal through the Premises and facilities reserved to \_\_\_\_\_ or authorized for such Tenant's use, provided they agree in writing to accept this authorization and to assume, be bound by, and perform the terms, covenants, and conditions which are required to be done, kept and performed by Tenant under the Lease to which this Exhibit F is attached:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

**EXHIBIT G**  
**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. Any violation of these rules and regulations and any successors or additions thereto by Tenant may constitute a default by Tenant under the Lease.

A. Throughout the Lease Term, Tenant covenants and agrees to the following:

**Operations**

1. Ensure that its agents and employees do not bring children into the Premises. Only authorized agents and employees of the Tenant are allowed on the Premises.
2. Ensure that the public address system is not utilized inappropriately by Tenant's agents, guests, invitees, and/or employees.
3. Ensure that no soliciting by agents, guests, invitees, and/or employees occurs within the Premises or within the Building.
4. Ensure that its agents, employees, invitees, customers, guests and sub-tenants do not sit on any portion of the ticket counters.
5. Implement a maximum baggage limit of two (2) checked bags and one (1) carry on bag per ticket sold.
6. Not to use any plumbing facilities for any purpose other than that for which they were installed. Emptying coffee grounds in restroom sinks is strictly prohibited.
7. Not to use or permit the use of any portion of the Premises as sleeping apartments, lodging rooms or for any unlawful purpose or purposes.
8. Not to use any equipment, machinery or advertising medium, except as may otherwise be permitted by this Agreement, or specifically approved in writing by Landlord.
9. Not to solicit business in the common or public areas of the Building, nor distribute or display any handbills or other advertising matters or devices in such common or public areas.
10. Not to permit or encourage any loitering in or about the Premises.
11. Not to permit or encourage any canvassing, soliciting, peddling or demonstrating in or about the Premises.
12. Not to employ any of Landlord's employees for any purpose whatsoever, or request such employees to do anything outside of their regular duties.
13. Ensure that its agents and employees abide by the hours of operation as described in Section 5.2 of the Lease Agreement.
14. Ensure that telephone service is not disrupted due to lack of payment.

**Premises**

1. Not to permit any signs, brochures or advertising materials on the ticket counters and/or on the ticket counter back wall. Signs hanging from the ceiling are also strictly prohibited. Tenant shall ensure compliance with Article 10 of the Lease Agreement.
2. Not to allow the display of any holiday decorations in the Premises.
3. Not to enter upon or use the roof of the Building.
4. If requested to do so by Landlord, to install a locking system for the Premises compatible with the locking system being used by Landlord at the Property.
5. Not to install or permit the installation of any wiring for any purpose without written consent of the Landlord.
6. Not to mark, paint, drill into or deface any part of the shell or core of the Building.
7. Not to cook in the Building or permit any cooking in the Premises without obtaining Landlord's prior written consent (and not to cause or permit any odor to emanate from the Premises in connection therewith if consent is given).
8. Not to permit space heaters or other energy-intensive equipment unnecessary to conduct tenant's business without written approval by Landlord.
9. Not to bring in or keep, or allow Tenant's agents, guests, invitees, and/or employees to bring in or keep any firearms in the Premises or the Building.
10. Not to purchase merchandise or services from any company or person whose repeated violations of building regulations, in Landlord's sole opinion, have caused a hazard or nuisance to the Building and/or its occupants.
11. Not to allow any animals in the Premises, except service animals assisting persons with disabilities or otherwise required by law.

**Reports**

1. Submit monthly ridership reports by the tenth (10<sup>th</sup>) day of each month for the previous month's activity. Such reports shall be turned in to the Administrative Office in Suite 100.
2. Report all incidents and or accidents occurring within the Premises and/or Building which involves Tenant's agents, employees, invitees, licensees, customers, clients, guests, and sub-tenants. Said occurrences shall be documented by Tenant and submitted to the Administrative Office in Suite 100 within twenty-four (24) hours of occurring.
3. Report any criminal activity occurring within the Premises and/or Building which involves Tenant's agents, employees, invitees, licensees, customers, clients, guests, and sub-tenants. Said occurrences shall be documented by Tenant and submitted to the Administrative Office in Suite 100 within twenty-four (24) hours of occurring.
4. Submit to Landlord a corporate point of contact and/or a corporate press release in the event that a bus departing from the Building is involved in a fatal accident. Said

information shall be disseminated to the media and/or public as deemed necessary by Landlord.

- B. 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, decency and morals in the community which it serves. 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 or may tend to impose or detract from the moral character or image of the Property.
- C. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism thereof. 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. Prior to 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.
- D. Landlord reserves the right to exclude from the Building, at any time any person who is not known to Landlord or does not provide proper identification 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.