

LEASE TERMINATION AGREEMENT AND RELEASE

This LEASE TERMINATION AGREEMENT AND RELEASE (this "**Agreement**") is made as of the 27th day of March, 2020 (the "**Effective Date**") by and between Aero Austin, LP, a Delaware limited partnership ("**Landlord**") and City of Austin Department of Aviation (the "**City**" or "**Tenant**") acting by and through its Executive Director of Aviation, each individually referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, on or about April 1, 2009 Tenant entered into that certain Net Lease with Landlord, as amended by that certain First Amendment to Net Lease dated February 21, 2014, as amended by that certain Second Amendment to Net Lease dated March 10, 2017 (collectively the "**Lease**"), for the purpose of leasing 24,000 square feet of space located at 9400 Freight Land, Suite 10, Austin, Texas 78719 (the "**Premises**"); and

WHEREAS, the term of the Lease will expire as per its terms on June 30, 2020; and

WHEREAS, upon the terms and conditions set forth herein, Tenant and Landlord have agreed to enter into this Agreement for the purposes of: (i) effecting an early termination of the Lease as of March 31, 2020 (the "**Early Termination Date**"); and (ii) except as otherwise set forth herein, releasing each other from all obligations and liabilities now, or hereafter, arising in connection with the Lease and with respect to the Premises.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby mutually acknowledged, Landlord and Tenant hereby agree as follows:

1. **RECITALS AND DEFINED TERMS.** The foregoing recitals are true and correct and are incorporated herein by this reference. All capitalized and undefined terms used herein shall have the meaning ascribed thereto in the Lease.
2. **EARLY TERMINATION OF THE LEASE.** Landlord and Tenant hereby agree to terminate the Lease as of the Early Termination Date and, in furtherance of the foregoing, the definition of "**Termination Date**" as set forth in the Lease shall be amended to be the Early Termination Date.
3. **SURRENDER OF THE LEASED PREMISES.** Tenant hereby acknowledges that it will vacate and deliver possession of the Premises to Landlord, together with the delivery to Landlord of all keys and combinations with respect to all locks in the Premises, if any, on or before the Early Termination Date.
4. **EXPENSES.** Tenant shall be responsible for Rent, utilities, and Tenant's Proportionate Share of Expenses through the Early Termination Date.
5. **LANDLORD ACCESS AND WORK.** Tenant shall provide Landlord reasonable access to the Premises for the purpose of completing certain improvements to the Premises for a prospective tenant, including but

not limited to the removal of a demising wall ("**Landlord's Work**"), which access shall be for a period of not less than fifteen (15) days prior to the Early Termination Date ("**Landlord Access Period**"). Landlord's Access Period and the performance of Landlord's Work shall be subject to and coordinated with Tenant and its operations within the Premises and Landlord shall use its commercially reasonable efforts to ensure that such access and the performance of Landlord's Work does not interfere with Tenants operations within the Premises. For the avoidance of doubt, Tenant shall remain responsible for the payment of Rent during the Landlord Access Period. Landlord shall provide Tenant with the notice required by Section 6 regarding Alterations as soon as possible, but no later than January 31, 2020. Landlord shall not make further requests regarding Alterations after the commencement of the Landlord Access Period. Tenant will use commercially reasonable efforts to remove the Alterations that Landlord requests removed prior to the Early Termination Date. In the event Tenant is not able to remove the requested Alterations prior to the Early Termination Date, Landlord and Tenant shall work to a mutually agreeable resolution to facilitate removal.

6. RELEASE BY LANDLORD. As consideration for Tenant's (i) providing the release below, and (ii) entering into this Agreement, and subject to the satisfaction by Tenant of each and all of its obligations under this Agreement, Landlord, on behalf of itself and its successors and assigns, hereby promises, releases, and forever discharges Tenant and all of its employees, agents, directors, officers, and partners, and each of its parent, subsidiaries, affiliates, successors and assigns from each and every obligation, covenant, liability, right, claim, debt or cause of action whatsoever, absolute or contingent, known or unknown, foreseen or unforeseen, accrued or not accrued, which Landlord now or hereafter has or may have by reason of any matter, cause or thing whatsoever, arising under, resulting from or relating in any way to any breach or alleged breach of the Lease by Tenant. Notwithstanding the foregoing, Tenant shall not be released from (i) any provision of the Lease that by its nature or its terms survives the termination of the Lease, (ii) any obligation under the Lease to reimburse Landlord for Tenant's proportionate share of operating expenses, or (iii) any obligation under the Lease of Tenant to have maintained the Premises prior to termination in good repair and condition and return the Premises to Landlord clean and in a state of good repair, including, without limitation, as provided in Sections 6, 7 and 29 of the Lease.

7. RELEASE BY TENANT. As consideration for Landlord's (i) providing the release above, and (ii) entering into this Agreement, and subject to the satisfaction by Landlord of each and all of its obligations under this Agreement, Tenant, on behalf of itself and its successors and assigns hereby promises, releases and forever discharges Landlord and all of its employees, agents, directors, officers and partners, and each of its parent, subsidiaries, affiliates, successors and assigns from each and every obligation, covenant, liability, right, claim, debt or cause of action whatsoever, absolute or contingent, known or unknown, foreseen or unforeseen, accrued or not accrued, which Tenant now or hereafter has or may have by reason of any matter, cause or thing whatsoever, arising under, resulting from or relating in any way to the Lease, any breach or alleged breach of the Lease by Landlord, or the Premises.

8. TENANT'S FAILURE TO SATISFY. If Tenant fails to satisfy each and all of its obligations contained in this Agreement in accordance with the terms hereof, then this Agreement, at Landlord's option, shall be null and void, and the Lease shall remain in full force and effect. If Tenant fails to satisfy each and all of its obligations contained in this Agreement and Landlord does not declare this Agreement null and void, Landlord may still pursue all of its rights and remedies under the Lease and applicable law, including, without limitation, seeking specific performance of this Agreement.

9. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the Landlord and Tenant and their respective successors and assigns.

10. COUNTERPARTS AND FORM OF SIGNATURE. This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one in the same instrument. Signatures to this Agreement which are transmitted by facsimile or other electronic transmission shall be deemed originals for all purposes.

11. AUTHORITY. Each individual executing this Agreement on behalf of Landlord or Tenant, respectively, represents and warrants that he/she is duly authorized to execute this Agreement on behalf of Landlord or Tenant, respectively.

12. ATTORNEYS' FEES. Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Agreement or any action or proceeding arising between Landlord and Tenant regarding this Agreement. Signatures transmitted by facsimile or other electronic means shall be effective as originals for all purposes.

13. ENTIRE AGREEMENT. This Agreement contains the entire understanding of Landlord and Tenant with respect to the matters addressed herein, and no prior agreements or understandings between Landlord and Tenant relative to the matters addressed herein shall be effective after the execution of this Agreement.

[SIGNATURE PAGE FOLLOWS...]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date of countersignature by the City.

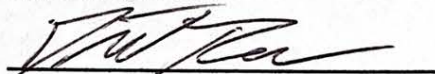
LANDLORD:

AERO AUSTIN, LP

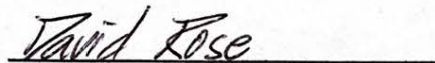
a Delaware limited partnership

19115 Lee Road, Suite 226

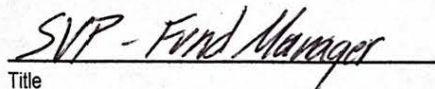
Humble, Texas 77338



Signature



Printed Name



Title

TENANT:

CITY OF AUSTIN

approved as to form
Assistant City Attorney

Signature

Printed Name

Title

Date

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date of countersignature by the City.

LANDLORD:

AERO AUSTIN, LP

a Delaware limited partnership

19115 Lee Road, Suite 226

Humble, Texas 77338

Signature

Printed Name

Title

Katherine A. Kuzmickas
approved as to form
Assistant City Attorney

TENANT:

CITY OF AUSTIN

Jacqueline Yaff
Signature

JACQUELINE YAFT
Printed Name

Executive Director
Title

4-2-2020
Date

**SECOND AMENDMENT TO NET LEASE BETWEEN THE CITY OF AUSTIN
DEPARTMENT OF AVIATION AND AERO AUSTIN, LP**

THIS 2ND AMENDMENT ("Second Amendment") to the Net Lease Agreement between the City of Austin Department of Aviation (the "City" or "Tenant") acting by and through its Executive Director of Aviation and Aero Austin, LP (the "Landlord").

I. RECITALS

1. The City and Landlord are parties to a Net Lease for warehouse space dated April 1, 2009, as amended by that certain First Amendment to Net Lease Agreement dated February 21, 2014 (the "Sublease").
2. In accordance with the First Amendment, City extended the Term of the Sublease through June 30, 2017.
3. The parties desire to amend the Sublease as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

II. AGREEMENT

1. Pursuant to Article 2, Paragraph B, of the Sublease, the City hereby exercises its second option to extend the Term of the Sublease for an additional three (3) year period (the "Second Extension Option") on the same terms and conditions as are in effect (including Net Rent, as adjusted annually) through June 30, 2020. The parties agree that the City hereby provided Landlord its written notice, through this Second Amendment, of City's election to exercise its second option to extend the Term at least 180 days prior to the current expiration of the Sublease on June 30, 2017.
2. Article 2 of the Sublease shall be amended by the adding the following Paragraph C.

Tenant, in Tenant's sole discretion, shall have the option to extend the Term of this Lease for one (1) additional option to further extend the Term of the Sublease for an additional 5-year period, provided Tenant gives Landlord written notice of Tenant's election to extend at least 180 days prior to the expiration of the Term on June 30, 2020 and Tenant is not in default hereunder on the date of such notice (the "Third Extension Option").

3. Article 3, Paragraph A, of the Sublease shall be amended by adding the following Section (i).

(i) Upon Tenant exercising its Third Extension Option, Tenant's Net Rent with respect to the Premises shall be \$7.50 per square foot, with annual adjustments as currently provided for in the Sublease.

4. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Sublease.
5. This Second Amendment contains the entire understanding and agreement between the parties hereto with respect to amending the Sublease. Except as expressly amended hereby, the Sublease shall remain unchanged, and in force and effect in accordance with its terms.
6. This Second Amendment shall be effective as of the date last shown below (the "Effective Date").

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment by their duly authorized representatives.

CITY OF AUSTIN



Approved as to form

Assistant City Attorney

Jim Smith

Executive Director of Aviation

Date: _____

AERO AUSTIN, L.P.

By its General

Partner CAA Austin

GP, LLC

By:  _____

Name: Ken Cook

Title: IN-CHAIRMAN

Date: FEB 24, 2017



City of Austin

Aviation Department

Austin-Bergstrom International Airport

3600 Presidential Blvd., Ste. 411, Austin, Texas 78719

512/530-ABLA(2242) Fax: 512/530-7686

www.abia.org

RECEIVED

JAN 02 2014

HOUSTON

December 27, 2013

W. Greg Murphy

(via email/gmurphy@aeroterm.com and FedEx)

Executive Vice President - US Operations

AEROTERM

19115 Lee Road, Suite 226

Humble, TX 77338

Subject: City of Austin option to extend term of lease of 24,000 square feet in building at 9400 Freight Lane, Suite 10, Austin Texas 78719 at Austin-Bergstrom International Airport

Dear Mr. Murphy:

Pursuant to Article 2, Paragraph B, of the Lease between City of Austin, Department of Aviation ("City") and Aero Austin, LP, the City, as Tenant, hereby exercises its option to extend the Term of the Lease for an additional three (3) years on the same terms and conditions as are in effect during the initial Term (including Net Rent, as adjusted annually). With this letter, the City is hereby providing Landlord its written notice of City's election to extend at least 180 days prior to the Renewal Term Commencement Date.

Please find attached 2 original amendments to the Lease confirming this first extension period. Please sign both original copies and return them to the attention of Dave Arthur, Chief Financial Officer, at 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719. If you have any questions, please contact me at susana.carbajal@austintexas.gov or (512) 530-6364.

Thank you for your attention to this matter.

Sincerely,

Susana Carbajal

Assistant City Attorney

Enclosures

**FIRST AMENDMENT TO NET LEASE BETWEEN
THE CITY OF AUSTIN DEPARTMENT OF AVIATION
AND AERO AUSTIN, LP**

THIS FIRST AMENDMENT ("First Amendment") to the Net Lease Agreement is made and entered into as of the last date specified on the signature page (the "Effective Date") by and between the City of Austin Department of Aviation (the "City" or "Tenant") acting by and through its Executive Director of Aviation and Aero Austin, LP (the "Landlord").

RECITALS

1. The City and Landlord are parties to a Net Lease concerning the rental by the City of 24,000 square feet of warehouse space in Landlord's building at Austin-Bergstrom International Airport effective April 1, 2009 (the "Agreement").
2. The City and Landlord desire to amend the Agreement to extend the Term pursuant to the renewal provision provided therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

AGREEMENT

1. Pursuant to Article 2, Paragraph B, of the Agreement, the City, as tenant, hereby exercises its option to extend the Term of the Lease for an additional three (3) years on the same terms and conditions as are in effect during the initial Term (including Net Rent, as adjusted annually).
2. The parties agree that the City provided Landlord its written notice of City's election to extend at least 180 days prior to the Renewal Term Commencement Date and the City is not in default hereunder on the date of such notice or the Effective Date.
3. Except as otherwise set forth herein, all terms and conditions of the Agreement shall remain in full force and effect. The Agreement, as amended by this First Amendment, is hereby ratified and confirmed. This First Amendment, together with the Agreement, constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein.

[SIGNATURE BLOCK ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed or caused to be executed this First Amendment to the Agreement through their duly authorized representatives as of the Effective Date.

CITY OF AUSTIN



Jim Smith

Executive Director of Aviation

Date: 2/24/14

AERO AUSTIN, LP



Mitchell Gordon

Partner

Date: 2/7/14

APPROVED AS TO FORM:



Susana Carbajal

Assistant City Attorney

**REFERENCE PAGE
NET LEASE**

Tenant: CITY OF AUSTIN DEPARTMENT OF AVIATION

Address of Premises: 9400 Freight Lane, Suite 10
Austin, Texas 78719

Rentable Area of Premises: 24,000 square feet

Commencement Date: April 1, 2009

Termination Date (Initial Term): June 30, 2014

Monthly Net Rent: * \$6,900

Monthly Additional Rent: \$8,600 (Subject to Annual Adjustment)

Monthly Total Rent: \$15,500

Annual Net Rent: \$82,800

Net Rent Adjustment: 3% per annum increases over Net Rent due in immediately prior year, commencing with Monthly Net Rent due April 1, 2010

Security Deposit: None

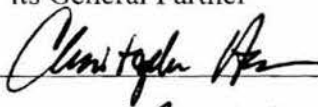
Broker: N/A

Tenant's Proportionate Share: 47.06%

This Reference Page information is incorporated into and made a part of the Lease. The Lease includes Exhibit A (Site Plan), Exhibit B (Environmental Requirements), Exhibit C (Rules and Regulations) and Exhibit D (Landlord's Work).

Landlord:

Aero Austin, LP
19115 Lee Road, Suite 226
Humble, Texas 77338
By: CAA Austin, LLC
its General Partner

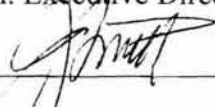
By: 
Printed Name: Christopher Harris

Title: Vice President

Dated: 4/14/09

Tenant:

City of Austin, Department of Aviation
Austin-Bergstrom International Airport
3600 Presidential Blvd. Suite 411
Austin, Texas 78719
Attn: Executive Director

By: 
Printed Name Jim Smith

Title: Executive Director of Aviation

Dated: 4/1/09

*** Tenant to receive 3 months abated Net Rent for the first 3 months of the Term of this Lease Agreement.**

1. **PREMISES AND USE.** Tenant leases the "Premises" shown on Exhibit A and described on the Reference Page from Landlord. The Premises and contiguous or related property which are managed jointly by Landlord are referred to as the "Property". The Premises shall be used and occupied solely for warehouse, storage, and related office uses in conformity with the location, design and structure thereof and the Master Lease (defined below) and shall not include any use that would cause the Premises to be "a place of public accommodation" under the Americans with Disabilities Act of 1990. Tenant shall not permit anything to interfere with the rights of other tenants or injure, annoy or disturb them. Tenant shall not permit any waste or illegal act nor anything that will increase the Property insurance rate. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any insurance policy carried by Landlord for the Property, and of which Landlord has given Tenant written notice. Tenant shall not use or allow the Premises to be used for any unlawful activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises.

2. **TERM.**

- A. The term (as extended, if applicable, "Term") of this Lease shall begin on the "Commencement Date" and end on the "Termination Date," as each is set forth on the Reference Page. If possession of the Premises cannot be delivered by Landlord on the Commencement Date, Landlord shall not be liable for damages and this Lease shall not be void or voidable, but the Commencement Date shall be delayed until possession of the Premises is delivered by Landlord. Such delay shall not otherwise affect the obligations of Tenant hereunder nor change the Termination Date. If the Premises are vacant and otherwise available for occupancy prior to the Commencement Date and Landlord otherwise provides written notice granting permission to Tenant (which permission may be granted in Landlord's sole discretion), Tenant shall have the right to occupy the Premises as of such date; provided, however, such occupancy shall be subject to all the provisions of this Lease, including without limitation, the obligation to pay Rent.
- B. Tenant, in Tenant's sole discretion, shall have the option to extend the Term of this Lease for two (2) three (3) year options ("Renewal Term Commencement Date"), on the same terms and conditions as were in effect during the initial Term (including Net Rent, as adjusted annually), provided Tenant gives Landlord written notice of Tenant's election to extend at least 180 days prior to the Renewal Term Commencement Date (time being of the essence) and Tenant is not in default hereunder on the date of such notice or the Renewal Term Commencement Date.

3. **RENT.**

- A. Tenant shall pay the "Monthly Net Rent" as set forth on the Reference Page, plus other sums due hereunder ("Additional Rent"), together known as "Rent", on or before the first day of each month. Rent shall be paid to Landlord in lawful

money of the United States of America, at the address listed under Landlord's signature or at such other place as Landlord may from time to time designate in writing, without offset, deduction or notice, except as expressly provided herein. Tenant shall pay any expenses or additional Rent which is not included in the Monthly Additional Rent set forth on the Reference Page, but is invoiced separately, within thirty days after receipt of invoice. Each Rent payment not received within ten (10) days after its due date shall bear interest from the due date until paid at the lesser of the rate of interest specified in Texas Government Code Section 2251.025, or the highest non-usurious rate permitted by law ("Contract Rate"), plus a one time bookkeeping charge of five percent of the amount due. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair reimbursement to Landlord. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant's failure to pay each installment of rent due under this Lease when due, including the right to terminate this Lease and recover all damages from Tenant. No payment by Tenant or receipt by Landlord of a lesser amount of Monthly Net Rent, Additional Rent or any other sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment 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 payment or pursue any other remedy available in this Lease, at law or in equity. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required by any law pertaining to eviction or summary remedy for regaining possession of real property in the event of tenant default. To facilitate prompt payment Landlord shall register online as a City of Austin vendor on the City's Vendor Self Service system at <http://www.ci.austin.tx.us/purchase/default.htm>. Tenant shall not be liable for any penalties or interest due to late payment of Rent, Additional Rent, or Expenses caused by the failure of Landlord to register.

- B.** Notwithstanding anything in this Lease to the contrary, Tenant's payment obligations hereunder are payable only and solely from current Airport funds appropriated or available for the purpose of this Lease. If sufficient funds are not appropriated or otherwise made available by the Austin City Council, this Lease shall automatically terminate on the last day of the month for which there are sufficient lawfully available funds to pay Tenant's obligations under this Lease. The failure of the Austin City Council to appropriate sufficient funds is not a Tenant Default hereunder, and a termination due to non-appropriation of funds shall not entitle Landlord to damages. Tenant shall provide Landlord written notice of the failure of the City of Austin to make an adequate appropriation for any fiscal year to pay the amounts due under the Lease, or the reduction of any appropriation to an amount insufficient to permit Tenant to pay its obligations under the Lease. The obligations of Tenant under this Lease, including its

obligation to pay Rent, do not constitute a general obligation or indebtedness of the City of Austin for which the City is obligated to levy or pledge any tax.

- C. Notice is hereby given Tenant of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City of Austin for taxes, and of §2-8-3 of the Austin City Code of 1992, as amended, concerning the right of the City of Austin to offset indebtedness owed the City of Austin.

4. **EXPENSES.** "Expenses" of the Property shall include any and all rent, charges and expenses due under the Master Lease, real estate taxes and fees, rents or assessments levied upon Landlord with respect to the Property from any governmental or taxing authority whether general or specific, ordinary or extraordinary, foreseen or unforeseen and any personal property, sales, rental, use and occupancy tax levied upon Landlord. Expenses shall also include the cost of operating, managing and maintaining the Property, including without limitation, janitorial, snow removal, insurance, maintenance of building exteriors, security, common area utilities, common fire protection mains and pumps, landscaping, clean-up, management fees, and fees incurred for tax appeal or insurance purposes.

Tenant shall pay its "Proportionate Share" of Expenses which (other than HVAC) is determined by dividing the Rentable Area of the Premises by the Rentable Area of the Property and rounding the quotient to the next highest thousandth. Tenant's "Proportionate Share" for HVAC is determined by dividing the rentable office area of the Premises by the total rentable office area of the Property and rounding the quotient to the next highest thousandth. Landlord and Tenant agree that, for purposes of this Lease, the Premises contains the number of square feet specified on the Reference Page and Tenant's Proportionate Share specified on the Reference Page is the ratio of such building area of the Premises to such building area of the Property. Each December Landlord shall estimate Tenant's Proportionate Share of Expenses for the next calendar year. Tenant shall pay such estimated amount to Landlord in advance in monthly installments as Additional Rent. After each calendar year, Landlord shall furnish a statement setting forth the actual Expenses and Landlord or Tenant shall make such payment necessary to adjust Tenant's estimated payments to the amount actually due within forty-five days of such statement. Landlord shall equitably adjust the Expenses to reflect: a) direct payments or reimbursements by any tenant to Landlord or a third party; and/or b) any tax abatement or similar offset or reduction to which Tenant or other tenants are entitled. Partial years shall be equitably prorated.

5. **SECURITY DEPOSIT.** – Intentionally Omitted
6. **ALTERATIONS.** Tenant shall not permit any alterations or improvements ("Alterations") without the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall submit to Landlord, for Landlord's written approval, complete plans and specifications for all Alterations to be done by Tenant and shall comply with all such other requirements as may be reasonably required by Landlord in connection with such Alterations. Landlord shall give Tenant written notice of its approval or disapproval of the proposed alterations within twenty (20) days after receipt

of the plans and specifications. If Landlord does not approve the Alterations, the notice shall include the grounds for disapproval.

Landlord shall have the right to use its own employees or contractors for all work done on the Premises under the Lease, including all Alterations requested by Tenant. Landlord shall notify Tenant in writing whether it elects to perform the work using its own employees or contractors, or requires that the Alterations be performed by Tenant or Tenant's contractors.

If Landlord authorizes the Alterations and requires its contractors to perform the work, Landlord shall provide Tenant a written itemized cost estimate for the Alterations, including labor, materials, and other costs and expenses. Landlord shall not however commence the work unless Tenant accepts the estimate and issues a written notice to proceed. Landlord shall promptly notify Tenant in writing of any delays or cost overruns. Any work performed by Landlord or its contractors shall be performed in a good and workmanlike manner.

Tenant shall pay for all Alterations (including the cost of all utilities, permits, fees, taxes, and property and liability insurance premiums in connection therewith). If the Alterations were constructed by Landlord for Tenant, Landlord shall send Tenant an itemized invoice for the work after completion and acceptance of the work, and if applicable, issuance of the appropriate certificate of occupancy or other permit. Tenant shall pay Landlord for Alterations performed by Landlord or its contractors as additional Rent within thirty days after receipt of a proper invoice.

Landlord shall not be liable to Tenant for any damage, loss, cost or expense incurred by Tenant on account of design of any work, construction of any work, or delay in completion of any Alterations, unless Landlord elected to perform the work using its own employees or contractors and such damage, loss, cost or expense was caused by negligence or willful misconduct of Landlord or its agents, employees or contractors. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Property from such liens, and to take any other action Landlord deems necessary to remove or discharge liens or encumbrances at the expense of Tenant. All Alterations, whether temporary or permanent in character, made in or to the Premises by Tenant, shall become part of the Property and Landlord's property. Upon termination of this Lease, Landlord shall have the right, at Landlord's option, by giving written notice to Tenant at any time before or within sixty (60) days after such termination, to retain all such Alterations in the Premises, without compensation to Tenant, or to direct Tenant to remove all such Alterations from the Premises, repair all damage caused by any such removal, and restore the Premises to the condition in which the Premises existed before such Alterations were made. If Tenant does not restore the Premises to its original condition, Tenant shall pay to Landlord, upon billing by Landlord, the cost of such removal, repair and restoration (including a reasonable charge for Landlord's overhead and profit). All Tenant's movable furniture, equipment, trade fixtures, computers, office machines, special equipment located in mechanical rooms, or on the roof, or in areas other than the Premises; Tenant's telephone or communications systems and equipment, including wiring and cabling; additional air conditioning

equipment installed by Tenant; antennas; wiring; movable partitions; computer and communication equipment of Tenant, and other personal property of Tenant (collectively "Tenant's Personal Property") shall remain the property of Tenant. Upon termination of this Lease, Tenant shall, at Tenant's expense, remove all of Tenant's Personal Property from the Property and repair all damage caused by any such removal. Termination of this Lease shall not affect the obligations of Tenant pursuant to this Section 5 to be performed after such termination.

7. **REPAIR.** By taking possession, Tenant acknowledges that Tenant has inspected the Premises or has had the Premises inspected by professional consultants retained by Tenant, Tenant is familiar with the condition of the Premises, the Premises is suitable for Tenant's purposes, and the condition of the Premises is acceptable to Tenant. Except as otherwise expressly provided in this Lease, Landlord shall have no obligation to construct or install any improvements in the Premises or the Property or to remodel, renovate, recondition, alter or improve the Premises or the Property in any manner, and Tenant shall accept the Premises "as is" on the Commencement Date, subject to all applicable easements, covenants, conditions, restrictions and other matters of record, and applicable zoning and other laws regulating the use of the Premises. Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness, for a particular purpose or of any other kind arising out of this Lease and there are no warranties which extend beyond those expressly set forth in this Lease. Tenant shall maintain the Premises in good condition, regularly servicing and promptly making all repairs and replacements, whether ordinary or extraordinary, with high quality materials and workmanship in compliance with all laws and regulations. The obligation to maintain shall include, without limitation, the windows, office entries, walls, floors, electrical systems, sprinkler systems, dock seals, dock bumpers, dock doors, plumbing fixtures and to the extent not maintained by Landlord, the heating, ventilation and air conditioning systems that serve the Premises. Landlord shall have the right but not the obligation to maintain the electrical, sprinkler, heating, ventilation and air conditioning systems and to the extent Landlord maintains such systems, the cost thereof shall be included in Expenses or billed directly to the Tenant, as appropriate. Landlord currently maintains such systems and includes the cost thereof in Expenses. Landlord shall give Tenant thirty days prior written notice if it will require Tenant to directly maintain any or all of such systems. Tenant shall also repair any Property damage caused by its agents, employees or visitors within thirty days. Tenant shall not take or allow any action that would void roof or other similar warranties or overload any building component, including mezzanines. In addition, Tenant shall, at Tenant's sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, with all requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with all directions and certificates of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or are required by the condition, use or occupancy of the Premises or the operation, use or maintenance of any personal property, fixtures, machinery, equipment or improvements in the Premises. Landlord shall have the right to inspect the Premises for Tenant's compliance with repair and maintenance obligations hereunder.

8. **LANDLORD'S OBLIGATIONS.**

- A. Landlord, at Landlord's expense, shall maintain, and repair any defects in, or damage to, the structural elements of the Premises, including, the foundation, exterior and load bearing walls, roof, and building systems and components, excluding only damage caused by the negligence or willful misconduct of Tenant. Landlord shall maintain in good condition and repair the paved portions and other common areas of the Property.
- B. Tenant shall give Landlord notice in writing of the need for repairs. If Landlord fails to timely complete the repairs, Tenant can request approval from Landlord to make the repairs. The request must be in writing and include a proposal from a contractor for the cost of the repairs. After Tenant receives Landlord's written notice, Tenant may proceed with contracting for such repair. Upon receipt of billing from Tenant that includes contractor's invoice, Landlord will promptly reimburse Tenant for repair costs.
- C. Landlord shall furnish to Tenant, free of charge, four (4) keys and other access devices as may be required for Tenant to access occupy the Premises. Landlord acknowledges that Tenant must restrict access to certain areas of the Premises for security reasons, and shall allow Tenant to install additional locks and security systems as it deems necessary to properly secure the Premises, so long as Landlord is provided with 24-hour, up to date, emergency contact phone numbers.
- D. Landlord, at Landlord's expense, shall enlarge the restroom on the Premises and install a new shower.
- E. Landlord shall not advertise the tenancy, business or activities of Tenant in any manner.

9. **LIENS.** Tenant shall keep the Premises and Property free from mechanics', materialmen's and all other liens arising out of any work performed, labor supplied, materials furnished or other obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based. If Tenant does not, within ten days following the filing of a lien, cause the lien to be released, Landlord may cause it to be released by such means as it shall deem proper, including payment of the claim. Such sums advanced shall be considered Additional Rent and payable by Tenant upon demand from Landlord.

10. **SUBLETTING.** Tenant shall not, directly or indirectly, assign this Lease or any interest herein or sublease the Premises or any part thereof, or permit the use or occupancy of the Premises by any person or entity other than Tenant. Tenant shall not, directly or indirectly, without the prior written consent of Landlord, pledge, mortgage or hypothecate this Lease or any interest herein. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord. Any request for Landlord's consent to sublease shall be not unreasonably withheld.

11. **INDEMNIFICATION.** – Intentionally Omitted

12. **INSURANCE COVERAGES.** Tenant shall, at all times during the term of this Lease and at Tenant's sole cost and expense, obtain and keep in force the insurance coverages and amounts set forth in this section 11. Tenant shall maintain commercial general liability insurance or aviation liability insurance including Premises, with limits not less than five million dollars (\$5,000,000) per occurrence aggregate, which insures against claims for bodily injury, personal injury, advertising injury and property damage based upon, involving or arising out of the use, occupancy or maintenance of the Premises and the Property. Such insurance shall include blanket contractual liability, fire legal liability, and premises, products and completed operations. The policy shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from a hostile fire. Such insurance shall be written on an occurrence basis and contain a standard separation of insureds provision with cross liability. Tenant shall maintain business auto liability insurance, including Airport Premises if vehicles are used airside, with limits not less than one million dollars (\$1,000,000) each accident covering owned, hired and non-owned vehicles used by Tenant. Tenant shall maintain environmental liability insurance, if required by Landlord, including environmental coverage for any underground or above ground storage tanks owned or operated on the Premises and the Property with limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. Tenant shall maintain workers compensation insurance in statutory limits for all of its employees and employers liability insurance with limits not less than one million (\$1,000,000) for each coverage and policy limit. Such insurance shall contain a waiver of subrogation in favor of Landlord. Tenant shall maintain "all risk" property insurance for all personal property of Tenant and improvements, fixtures and equipment constructed or installed by Tenant in the Premises in an amount not less than the full replacement cost. Such property insurance shall include business income and extra expense coverage with sufficient limits for Tenant to sustain its business operation at this location for a period of twelve (12) months. Tenant shall maintain boiler and machinery insurance against loss or damage from an accident from Tenant installed or above building standard equipment installed for Tenant's use in the Premises for full replacement cost and plate glass insurance coverage against breakage of plate glass in the Premises from causes other than insured perils. Tenant may self insure for plate glass business automobile liability, worker's compensation and employer's liability insurance. Tenant will provide Landlord a self insurance letter upon request. Any deductibles selected by Tenant shall be the sole responsibility of Tenant.
13. **INSURANCE REQUIREMENTS.** All insurance and all renewals thereof shall be issued by companies with a rating of at least "A-" "VIII" or better in the current edition of Best's Insurance Reports or S&P A and be approved to do business in the state in which the Property is located. Each policy shall expressly provide that the policy shall not be canceled or materially reduced below the limits required without thirty (30) days' prior written notice to Landlord and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Landlord and such period of thirty (30) days shall have expired. All liability insurance (except employers liability) shall name Landlord and any other parties designated by Landlord (including any investment manager, asset manager, property manager, ground lessor, aviation authority or mortgagee) as an additional insured, shall be primary and noncontributory to any insurance which may be carried by Landlord, shall afford coverage for all claims based on any act, omission, event or condition that occurred or arose (or the onset of

which occurred or arose) during the policy period, and shall expressly provide that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord. All property insurance shall name Landlord as loss payee as respects Landlord's interest in any improvements and betterments. Tenant shall deliver certificates of insurance, acceptable to Landlord, to Landlord at least ten (10) days before the Commencement Date and at least ten (10) days before expiration of each policy. Additional Insured Endorsement CG 20 11 11 85 or its equivalent is required to be provided as soon as it is available. If Tenant fails to insure or fails to furnish any such insurance certificate, Landlord shall have the right, but not be required to, from time to time to effect such insurance for the benefit of Tenant or Landlord or both of them, and Tenant shall pay to Landlord on written demand, as additional rent, all premiums paid by Landlord. ***Landlord may, by providing 60 days written notice*** amend the requirements herein, to the extent such changes in requirements are commercially available effective at Tenant's next policy renewal term, due to (i) information not previously known to Landlord and which poses a material risk (ii) changed circumstances which in the reasonable judgment of Landlord renders such coverage materially inadequate or (iii) as required by Landlord's lender.

14. **WAIVER OF SUBROGATION.** Tenant waives on behalf of all insurers under all policies of property insurance now or hereafter carried by Tenant insuring or covering the Premises, or any portion or any contents thereof, or any operations therein, all rights of subrogation which any such insurer might otherwise, if at all, have to any claims of Tenant against Landlord. Landlord waives on behalf of all insurers under all policies of property insurance now or hereafter carried by Landlord insuring or covering the Property, or any portion or any contents thereof, or any operations therein, all rights of subrogation which any such insurer might otherwise, if at all, have to any claims of Landlord against Tenant. Landlord and Tenant shall procure from each of the insurers under all policies of property insurance now or hereafter carried by such party insuring or covering the Premises, or any portion or any contents thereof, or any operations therein, a waiver of all rights of subrogation which the insurer might otherwise, if at all, have to any claims of either party against the other as required by this section 13.

15. **LANDLORD INSURANCE REQUIREMENTS.** Landlord shall, at all times during the term of this Lease, secure and maintain all insurance coverages required of Landlord under the Master Lease, including, but not limited to:

All risk property insurance coverage on the Property. Landlord shall not be obligated to insure any furniture, equipment, trade fixture, machinery, goods, or supplies which Tenant may keep or maintain in the Premises or any alteration, addition or improvement which Tenant may make upon the Premises. In addition, Landlord shall secure and maintain rental income insurance and any other insurance coverage required to be maintained by any mortgagee of the Property.

Commercial general liability insurance with limits not less than five million dollars (\$5,000,000) per occurrence and aggregate. Such insurance shall be in addition to, and not in lieu of, insurance required to be maintained by Tenant. Tenant shall not be named as an additional insured on any policy of liability insurance maintained by Landlord.

16. **UTILITIES.** Tenant shall pay, directly to the appropriate supplier before delinquency, for all water, gas, heat, light, power, telephone, sewer, refuse disposal and other utilities and services supplied to the Premises, together with all taxes, assessments, surcharges and similar expenses relating to such utilities and services. If any such utilities or services are jointly metered with the Premises and another part of the Property, Landlord shall determine Tenant's share of the cost of such jointly metered utilities and services based on Landlord's estimate of usage, and Tenant shall pay as additional Rent Tenant's share of the cost of such jointly metered utilities and services to Landlord within *twenty (20)* days after receipt of Landlord's written statement for such cost. Landlord shall not be in default under this Lease or be liable for any damage or loss directly or indirectly resulting from, nor shall the rent be abated or a constructive or other eviction be deemed to have occurred by reason of, any interruption of or failure to supply or delay in supplying any such utilities and services or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any resource or form of energy or other service serving the Premises or the Property, whether such results from mandatory restrictions or voluntary compliance with guidelines, unless such interruption or failure to supply or delay in supplying utility services is caused by the *gross* negligence or willful misconduct of Landlord, or its agents, employees or contractors. In the event of utility "deregulation" Landlord shall choose the service provider.
17. **HOLDING OVER.** Landlord may charge two hundred percent of the Rent due hereunder if Tenant retains possession of the Premises after the Termination Date without Landlord's written consent. If Tenant, with Landlord's consent, remains in the Premises after expiration or termination of the Term, such holdover by Tenant shall be deemed to be on a month-to-month license terminable by either party upon thirty (30) days notice. Any holding over by Tenant without Landlord's consent, and Landlord's collection of any Rent therefor, shall not serve as permission for Tenant's continued occupancy of the Premises nor serve to extend the Term.
18. **SUBORDINATION.** This Lease shall be subject and subordinate to any Property mortgage or ground lease, including without limitation the Master Lease, which may now exist or hereafter be placed on or against the Property or on or against Landlord's interest or estate therein. Upon Landlord's request, Tenant agrees to timely execute a Subordination, Non Disturbance and Attornment Agreement ("SNDA Agreement"), with any person, company, or banking institution ("Lien Holder") holding a mortgage lien or deed of trust lien on the Property ("Lien"). As consideration for Tenant's execution of a SNDA Agreement, the Lien Holder shall covenant and agree that it will recognize this Lease, and, in the event of a foreclosure or deed in lieu of foreclosure of a Lien, the Lien Holder, its successors and assigns, will not terminate or disturb Tenant's occupancy and quiet possession of the Leased Premises, so long as Tenant is not in default under the Lease. Provided that Tenant shall have been provided with the current name and address of the Lien Holder, Tenant further agrees to provide a Lien Holder written notice of a Landlord default under this Lease and a reasonable opportunity to cure such default.
19. **RULES.** Tenant shall comply with the Environmental Requirements (Exhibit B) and Property rules reasonably set forth by Landlord of which Landlord has notified Tenant, including the Rules and Regulations set forth in Exhibit C. Tenant shall install signs or lettering and advertising in compliance with governmental regulations and Property

standards after obtaining Landlord's written consent, which shall not be unreasonably withheld. Tenant shall, at Tenant's expense, remove all such signs prior to or upon termination of this Lease, repair any damage caused by the installation or removal of such signs, and restore the Premises to the condition that existed before installation of such signs. Tenant shall hold and keep current all permits and licenses required by any law or regulation.

20. **REENTRY.** Landlord shall have the right to enter the Premises at any time to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers, lenders or tenants, (c) determine whether Tenant is performing all of Tenant's obligations, (d) supply any service to be provided by Landlord, (e) post notices of nonresponsibility, and (f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Property, provided all such work shall be done as promptly as reasonably practicable and so as to cause as little interference to Tenant as reasonably practicable, and further provided that except in an emergency, Landlord shall give Tenant one business day written notice prior to any such entry. Tenant waives all claims for damages for any inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

21. **TENANT DEFAULT AND LANDLORD REMEDIES.**

Tenant shall be deemed to be in default under this Lease:

- i. if Tenant fails to make any payment of Rent and such failure is not cured within ten (10) days of receipt of written notice;
- ii. except for Tenant's obligations pursuant to Section 18 and Section 27 hereof, if Tenant fails to observe any ordinance, law or regulation or any term, covenant or condition of this Lease or other agreement with Landlord and fails to remedy, or commence to remedy (and diligently pursue until completion) such default within thirty (30) days after notice (provided, however, if Tenant fails observe any ordinance, law or regulation or any term, covenant or condition of this Lease or other agreement with Landlord two times in any six-month period, Tenant shall be in default under this Lease without any further opportunity to cure such failure);
- iii. if Tenant fails to respond to Landlord's request pursuant to Section 18 or Section 27 hereof within the time frames set forth therein without any further notice and cure period;

- iv. if Tenant sublets or assigns this Lease without Landlord's consent in accordance with Section 10 hereof; or
- v. upon the appointment of a receiver or an assignment of assets for the benefit of creditors, or any action taken by Tenant under any bankruptcy or other debtor relief act.

If a default occurs, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the full and immediate right to possession of the Premises and Landlord shall have the right to recover from Tenant all unpaid rent which had been earned at the time of termination, all unpaid rent for the balance of the term of this Lease after termination, and all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. Landlord may elect not to terminate this Lease but to (i) recover the Rent as the same becomes due or, in advance, the present value of the future Rent and/or (ii) cure the default of Tenant and recover from Tenant the cost of such cure plus interest at the Contract Rate until paid. After default Landlord may reenter the Premises, dispossess Tenant and remove all property without releasing Tenant from any obligation, including payment of Rent. To the extent permitted by law, Tenant and Tenant's creditors waive all rights to file claims for damages resulting from such reentry and expulsion, or to reenter or repossess the Premises, after Tenant shall have been dispossessed by any judgement. Landlord's failure to enforce one or more of its rights under this Lease, in the law, or in equity, shall not be construed as a waiver or limitation of Landlord's ability to subsequently enforce any of its rights. Upon the occurrence of a default, Landlord shall have the right to exercise and enforce all rights and remedies granted or permitted by law. The remedies provided for in this Lease are cumulative and in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Exercise by Landlord of any remedy shall not be deemed to be an acceptance of surrender of the Premises by Tenant, either by agreement or by operation of law. Surrender of the Premises can be effected only by the written agreement of Landlord and Tenant.

22. **LANDLORD DEFAULT AND TENANT REMEDIES.** If Landlord shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Landlord, and Landlord shall fail to cure such failure within thirty (30) days after delivery by Tenant to Owner of notice specifying the failure (or if such default is reasonably incapable of being cured within such thirty (30) day period, then such period of time as reasonably necessary to cure such failure provided that Tenant is diligently pursuing such cure), Landlord shall be in default. If a Landlord Default occurs, Tenant may at any time thereafter and without waiving any other rights hereunder or available to Tenant at law or in equity (Tenant's rights being cumulative) terminate this Lease by giving Landlord notice thereof, in which event this Lease and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice; and Tenant shall thereafter be released of all other duties, obligations and responsibilities with respect to

this Lease except for those duties, obligations or responsibilities that expressly survive such termination.

23. **QUIET ENJOYMENT.** Landlord warrants that it has the authority to enter into this Lease. Landlord covenants that Tenant, while paying Rent and performing its other covenants and agreements shall peaceably and quietly have, hold occupy, use and enjoy the Premises, and exercise all of its rights hereunder without hindrance from Landlord.
24. **CASUALTY.** If the Premises or access thereto shall, at any time during the Term hereby created or any renewal thereof, be so badly damaged or destroyed by reason of any cause ("Casualty") that, in the opinion of the Landlord's architect cannot be repaired or rebuilt within one hundred and eighty (180) days from the date on which construction can be commenced, then this Lease may be terminated and ended by either party by a notice in writing to the other mailed within thirty (30) days after the giving of the opinion of the Landlord's architect as aforesaid; provided, however, that, in the event notice of termination is given pursuant to this clause, the Rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date of the Casualty and the Tenant shall deliver up possession of the Premises to the Landlord thirty (30) days after the notice of termination. Landlord shall promptly refund to Tenant any Rent paid by Tenant for periods of time beyond the lease termination date. If damage or destruction to the Premises is, in the opinion of the Landlord's architect capable of being repaired or rebuilt within one hundred and eighty (180) days from the date on which construction can be commenced, then the Landlord shall commence such repair and rebuilding as soon as practicable and shall diligently proceed with reasonable promptness to complete such repair and rebuilding to substantially the same condition as existed prior to the Casualty, provided in no event shall Landlord be required to expend funds to repair and rebuild in excess of available insurance proceeds. Landlord shall not repair or replace Tenant's property. If the Casualty is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, officers, employees, contractors, licensees or invitees, then, during the period the Premises is rendered unusable by such damage or destruction, Tenant shall be entitled to a reduction in Rent in the proportion that the area of the Premises rendered unusable by such damage or destruction bears to the total area of the Premises.

The provisions of this Section 23 shall be subject and subordinate to the provisions of the Master Lease, and any mortgages on the Premises or Property.

25. **EMINENT DOMAIN.** If possession of any material part of the Premises shall be taken under the power of eminent domain, or conveyance in lieu thereof, and the remaining portion of the Premises is not reasonably suitable for Tenant's purposes either party may terminate this Lease within thirty days of such taking. If neither Landlord nor Tenant exercises such right to terminate this Lease in accordance with this Section 24, this Lease shall terminate as to the portion of the Premises so taken as of the date of such taking and shall remain in full force and effect as to the portion of the Premises not so taken, and the Monthly Net Rent and Tenant's Proportionate Share shall be reduced as of the date of such taking in the proportion that the area of the Premises so taken bears to the total area of the Premises, and Landlord shall repair any damages to the Premises caused by the taking.

If all of the Premises is taken by exercise of the power of eminent domain before the Commencement Date or during the term of this Lease, this Lease shall terminate as of the date of such taking. Landlord shall be entitled to recover from the condemning authority the full amount of Landlord's interest in the Property taken in condemnation; Tenant shall be entitled to recover the value of Tenant's remaining Lease interest and the value of Tenant's improvements in the Leased Premises, if any, taken.

26. **SALE BY LANDLORD.** If the Property is sold, Landlord shall be released from any future liability under this Lease and Tenant shall look solely to Landlord's successor; provided, however a sale shall not relieve Landlord of liability for any claims or damages that arose or accrued prior to the sale. Except as set forth in this Article, this Lease shall not be affected by any such sale. If the Premises is sold, transferred, or otherwise conveyed ("Conveyance") by Landlord to a buyer or transferee ("Buyer"), Landlord shall assign this Lease to the Buyer of the Premises ("Assignment of Lease"). Landlord shall provide written notice to Tenant of a Conveyance to a Buyer.
27. **ESTOPPEL CERTIFICATES.** Within ten business days of request, Tenant shall deliver to Landlord or any prospective landlord or mortgagee a statement certifying (a) the Termination Date; (b) that this Lease is unmodified except as specified; (c) the date to which Rent has been paid; (d) that there are no defaults of Landlord's obligations except as specified; and (e) financial, environmental and other information as reasonably requested.
28. **FINANCIAL INFORMATION.** Intentionally Omitted.
29. **SURRENDER OF PREMISES.** Upon termination of this Lease, Tenant will deliver to Landlord possession of the Premises in good condition, broom clean and, subject to Section 6 hereof, with all alterations, additions, fixtures and improvements therein and free of debris and damage, ordinary wear and tear excepted. All obligations of Tenant hereunder not fully performed shall survive termination of this Lease. Tenant shall pay Landlord to remove any alterations or signage and to repair, restore and paint the Premises if necessary. If any movable furniture, equipment, trade fixtures or personal property belonging to Tenant is left in the Premises following the termination of this Lease, Landlord may remove such property from the Premises and store the same at Tenant's expense.
30. **NOTICES.** Notices shall be sent by hand delivery, overnight courier, Certified Mail, or by fax with a confirmation of delivery followed by a copy sent by regular mail, using the addresses set forth on the Reference Page, and shall be deemed given upon delivery or refusal of delivery.
31. **FORCE MAJEURE.** Landlord and Tenant shall be excused for any delay and shall not be in default with respect to the performance of any of the terms or conditions of this Lease when prevented from so doing by a cause beyond their control. This Article shall not apply to the timely payment of Rent. The party claiming Force Majeure shall give the other party written notice of the onset, and any change in the status, of the event of Force Majeure.

32. **DEFINED TERMS AND MISCELLANEOUS.** The headings herein are for convenience and in no way describe the scope or intent of any Article. Any indemnification or insurance of Landlord shall include Landlord's lenders, trustees, directors, beneficiaries, shareholders, agents, affiliates, employees and ground owner. The terms person, Tenant and Landlord or any pronoun used in place thereof shall include the masculine or feminine, the singular or plural number, individuals, firms, and corporations according to the context hereof.

The term "Rentable Area of the Property" shall mean the building area of the Property, less common areas and an allowance for vacancy. The "Rentable Area of the Premises" is deemed to be the square footage set forth on the Reference page. Landlord shall revise the Rentable Area of the Property (and therefore Tenant's Proportionate Share of the Property) if there is a change for any reason including sale, casualty or expansion or reduction in the building area. In projects with multiple buildings, Landlord may elect to calculate Expenses on a building basis or a Property-wide basis in which case Tenant's Proportionate Share shall be adjusted equitably. The Premises is not reserved nor is this Lease effective until fully executed by Landlord and Tenant.

If any one of the provisions herein is judged unenforceable, all other provisions shall remain in full force and effect and the parties shall use their best reasonable efforts to negotiate a lawful and enforceable substitute provision as close to the stricken provision as feasible. Time is of the essence for this Lease and all of its provisions. This Lease has been freely negotiated between the parties and in any controversy over the interpretation of anything contained herein, there shall be no presumption or conclusion drawn against either party by virtue of that party having drafted that section of this Lease. Tenant shall look solely to Landlord's equity in the Property for satisfaction of any judgments or awards. This Lease supersedes any previous understanding or agreement of the parties and may not be modified except in writing.

33. **BROKER.** Each party warrants that it has not dealt with any broker in connection with this Lease, except as noted on the Reference Page, and indemnifies and holds the other harmless from all liability and expense as a result of any alleged breach of such warranty.
34. **PARKING.** Tenant shall have reasonable rights and access to the common parking areas and streets of the Property with other tenants. Tenant shall not use more than its Proportionate Share of common trailer or car parking and in no event shall use more than one trailer parking space for each dock in the Premises without Landlord's written permission. There shall be no parking outside designated parking areas. Tenant shall not allow outside storage or the parking of inoperative vehicles or trailers on the Property.
35. **WAIVER OF JURY TRIAL.** Intentionally Omitted.
36. **SUBSTITUTION OF PREMISES.** Landlord may relocate Tenant to a space at Austin-Bergstrom International Airport which is comparable in size, utility and condition to the Premises upon ninety (90) days' prior written notice. Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving inventory, equipment, supplies, furniture and phones, but shall not be responsible for any consequential damages or lost profits incurred by Tenant as a result thereof.

37. **OBLIGATIONS OF TENANT.** Except as otherwise provided hereunder, this Lease shall be totally net to Landlord. Landlord shall not be liable for any costs or expenses of any nature whatsoever relating to the Premises and Property or the use and occupancy thereof, or the contents thereof, or the business carried on therein, and Tenant shall be solely responsible for any such costs, charges, expenses and outlays, and for its Proportionate Share of Expenses, except as expressly otherwise provided herein. Any obligation which is not expressly declared herein to be that of Landlord shall be deemed to be the obligation of Tenant to be performed by and/or at the expense of Tenant.
38. **NONRESPONSIBILITY OF LANDLORD.** Except as expressly set forth herein, there shall be no abatement from or reduction of the Rent due hereunder regardless of the reason or cause. Unless caused by a breach of this Lease by Landlord, Tenant shall have no claim of any nature whatsoever against Landlord, no abatement or reduction of rent, and no recovery by Tenant from Landlord on account of partial or total failure of, or damage caused by (a) lessening of supply of, or stoppage of, heat, air-conditioning, electric light, power, water, plumbing, sewerage, elevators, or any other service, (b) any damage or annoyance occasioned by water, snow, or ice being upon or coming through the roof, skylight, trapdoors, windows, or otherwise, (c) any defect or break in any pipes, tanks, fixtures, or otherwise whereby steam, water, snow, smoke or gas, leak, issue or flow into the Premises, (d) any damage or annoyance occasioned by the condition or arrangements of any electric or other wiring, (e) any damage or annoyance arising from any acts, omissions, or negligence of co-Tenants or other occupants of the Property, or of owners or occupants of adjacent or contiguous property, or (f) the making of major repairs, alterations, repairs, improvements, or structural changes to the Property, or any thing or service therein or thereon or contiguous thereto provided the same shall be made with reasonable expedition.
39. **MASTER LEASE.** Tenant is cognizant of the terms and conditions of the ground lease for the Property ("Master Lease"), and hereby covenants and agrees that its use and occupancy of the Premises hereunder shall be subject to all the provisions of the Master Lease (as may be amended from time to time) and that it will not do or omit to do or permit to be done or omitted to be done any act or thing over which Tenant has control if such act, thing or omission would constitute a breach of any covenant in the Master Lease on the part of Landlord to be performed and observed. Landlord shall keep and maintain the Master Lease in force and effect, and will not do or omit to do or permit to be done or omitted to be done any act or thing if such act, thing or omission would constitute a breach of the Master Lease on the part of Landlord. If for any reason except a termination due to the default of Landlord, the Master Lease shall at any time be terminated, Tenant shall not have or make any claim or demand in respect thereof against Landlord. Landlord shall not require the consent of Tenant to amend the Master Lease, Tenant waiving hereby any right it may have to give any such consent or consents, provided that such amendment does not impose any increased material obligation on Tenant or materially diminish any of its rights.
40. **SECURITY.** Tenant, and its employees, invitees, guests, and contractors must abide by those security regulations, policies and procedures (applicable at any time during the Term) ("Security Policies and Procedures") of the Landlord of which the Landlord has given notice thereof to Tenant, the airport where the Premises is located, Federal

Aviation Administration, the Transportation Security Administration, or any other applicable governmental or regulatory body, promulgated from time-to-time. The provisions of this section shall survive the expiration or earlier termination of this Lease.

41. **ATTORNEYS' FEES**. Intentionally Omitted.

EXHIBIT A

W-10

EXHIBIT A
24,000 sq.ft.

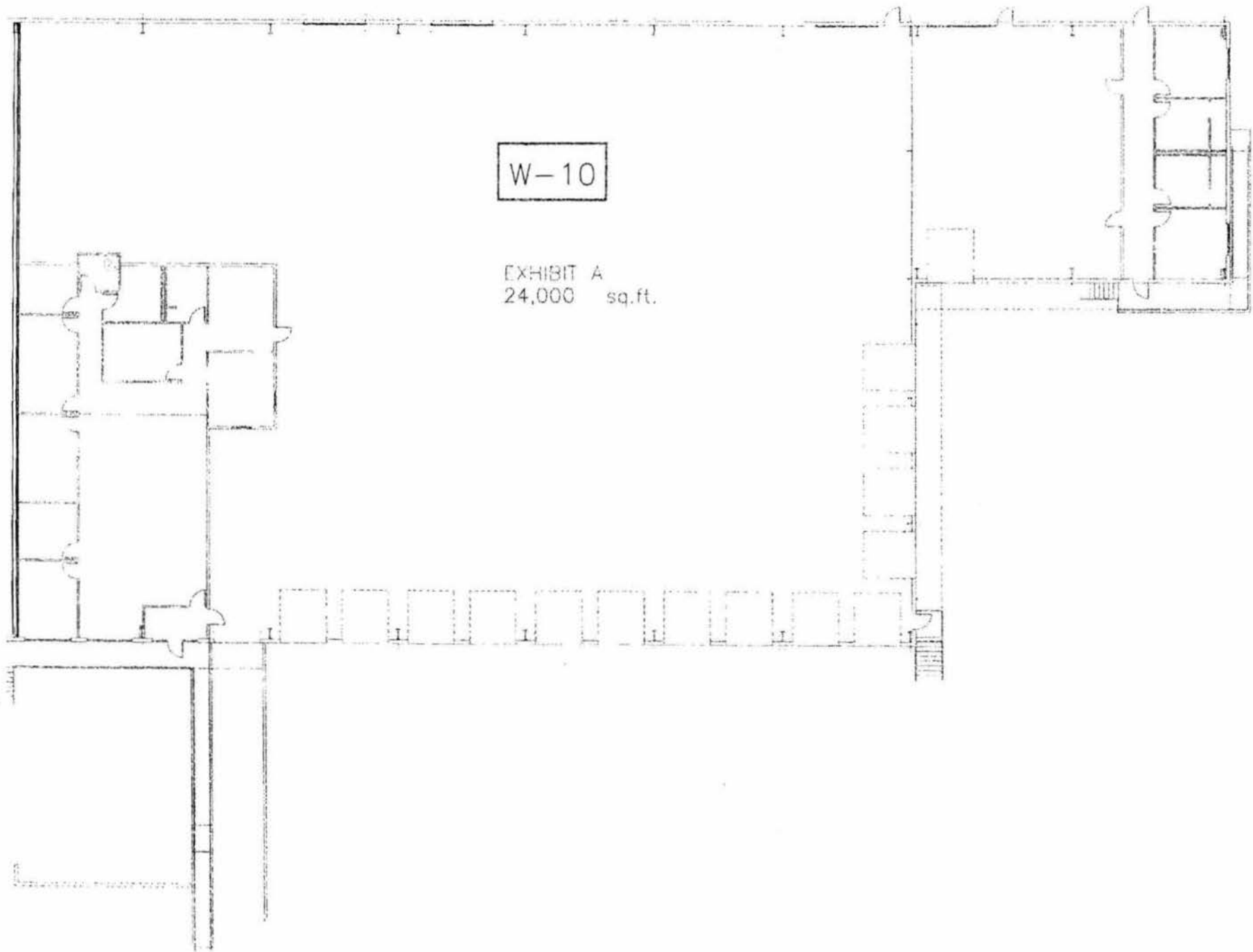


EXHIBIT B

ENVIRONMENTAL REQUIREMENTS

Tenant shall operate its business on the Property and maintain the Premises in compliance with all federal, state and local laws, regulations, and requirements relating to the discharge of air pollutants, water pollutants or wastewater or otherwise relating to the environment or "Hazardous Substances" ("Environmental Laws"). The term "Hazardous Substances" means all hazardous or toxic substances, materials or wastes, including but not limited to, those substances identified as "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time; any oil or petroleum products; asbestos, PCBs; and any substances, materials or wastes that are or become regulated under Environmental Laws. Tenant shall make reasonable efforts not to use propane-fueled forklift trucks but if they are used, shall regularly monitor air quality to insure compliance with all applicable health standards.

Tenant shall give Landlord prompt written notice of any instituted or threatened action, proceeding or claim alleging a violation of Environmental Laws or Hazardous Substances contamination at or affecting the Property. Tenant shall also give Landlord prompt written notice of any condition or occurrence at the Property which constitutes a violation of Environmental Laws or would justify a demand for removal or remediation under Environmental Laws.

Within ten (10) days of request, Tenant shall execute and deliver to Landlord or any prospective landlord or mortgagee a statement certifying: (1) the Hazardous Substances previously used or then in use by Tenant at the Property; (2) that Tenant has obtained and maintained in full force and effect all permits and approvals required under Environmental Laws for the conduct of Tenant's business at the Property and providing copies of those permits and approvals; (3) that Tenant has no notice or knowledge of the presence of Hazardous Substances on the Property that could form the basis for cleanup, remedial, removal or restoration work under Environmental Laws; and (4) such other environmental or related information as reasonably requested.

If Tenant breaches its obligations under this Article, or if the presence of Hazardous Substances on the Property caused or permitted by Tenant results in contamination of the Property or increases Landlord's cost of renovating and/or repairing the Property, or if contamination of the Property by Hazardous Substances otherwise occurs for which Tenant is legally responsible, then Tenant shall, as between Landlord and Tenant, and to the extent permitted by applicable law, be solely responsible for all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitations, diminution in value of Property and sums paid in settlement or defense of claims, consultant fees and expert fees) which arise before or after the Lease termination as a result of such contamination.

Without limiting the foregoing, if the presence of any Hazardous Substances on the Property caused or permitted by Tenant results in any contamination of the Property, Tenant, at its sole expense, shall promptly take all actions necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property.

Landlord shall not cause or intentionally allow the presence of Hazardous Substances in the Premises that would be in violation of Environmental Laws. Landlord agrees to indemnify, defend and hold Tenant, its officers, directors, partners, shareholders, employees and agents harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise from the presence of Hazardous Substances in the Premises if caused by Landlord, its employees, agents or contractors. This indemnification of Tenant by Landlord includes, without limitation, costs in connection with any investigation of site condition on any cleanup, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision or private party.

The foregoing indemnity and obligations shall survive the expiration or earlier termination of this Lease. Landlord and its agents shall have the right, but not the duty, to inspect the Property at any time to determine whether Tenant is complying with the terms of this Lease.

EXHIBIT C

RULES AND REGULATIONS

- a. The roadways, parking lots, sidewalks, entrances, loading docks, stairways and corridors of the Property shall not be obstructed by any Tenants or used by them for any other purpose than that for ingress and egress to and from their respective offices, and no Tenant shall place or allow to be placed in the hallways, corridors or stairways any waste paper, dust, garbage, refuse or any thing whatsoever that shall tend to make them appear unclean, untidy or filthy.
- b. The floors and windows of the building on the Property that reflect or admit light into passageways or common areas in the building or stairwells shall not be covered or obstructed by any of the Tenants and no awnings shall be put over any window; the water closets and other water apparatus shall not be used for any purpose other than those for which they were constructed and no sweepings, rubbish, rags, ashes or other substance shall be thrown therein, and any damage resulting to them from misuse shall be borne by the Tenant by whom or by whose employee the damage was caused.
- c. If in contravention to a provision within the Lease, any sign, advertisement or notices shall be inscribed, painted, or affixed by the Tenant on or to any part of the building whatsoever, then the Landlord shall be at liberty to enter on the Premises and pull down and take away such sign, advertisement or notice, and the expense thereof shall be payable by the Tenant.
- d. No machinery, equipment, or heavy merchandise liable to injure or destroy any part of the building shall be taken into it without the consent of the Landlord in writing, and the Landlord shall in all cases retain the power to limit the weight and indicate the place where such machinery, equipment or heavy merchandise is to stand and the cost of repairing any and all damage done to the building shall be paid for on demand by the Tenant who so causes it. No Tenant shall load for any floor beyond its reasonable weight carrying capacity as set forth in the municipal or other codes applicable to the building.
- e. No animals except used as medical aids (e.g., seeing eye dogs) and such as are cargo in transit shall be kept in or about the Premises.
- f. If the Tenant desires telecommunications, internet or telephone service or other private signal connections, the Landlord reserves the right to direct the electricians or other workmen as to where and how the wires are to be introduced.
- g. Tenants and their employees shall not make or commit any improper noise in the building or in any way interfere with or annoy other Tenants or those having business with them. The Landlord's decision as to what constitutes improper noise, interference or annoyance shall be final and binding on the parties.
- h. All Tenants must observe strict care not to allow their windows to remain open so as to admit rain or snow, or so as to interfere with the heating, air conditioning or ventilation of the building. The Tenants neglecting this rule will be responsible for any injury caused to

the property of other Tenants or to the property of the Landlord because of such carelessness. The Tenant, when closing offices for business, day or evening, shall close all windows and lock all doors.

- i. The Tenant shall give to the Landlord prompt written notice of any accident or any defect in the water pipes, gas pipes, heating apparatus or electric light or other wires in any part of the building.
- j. No flammable oils or other inflammable, dangerous or explosive materials shall be kept or permitted to be kept in the Premises, except in the ordinary course of Tenant's business, and in accordance with all applicable laws and regulations and the Master Lease.
- k. Nothing shall be placed on the outside of windows or projections of the Premises. No air conditioning equipment shall be placed at the windows of the Premises without the consent in writing of the Landlord.
- l. All glass, locks and trimmings in or upon the doors or windows of the Premises shall be kept whole and whenever any part thereof shall become broken, the same shall be replaced or repaired by Tenant.
- m. No Tenant or other person shall make door-to-door canvass of the building for the purpose of selling any products or services to the other Tenants without the written consent of the Landlord.
- n. The Landlord shall have the right to make such other and further reasonable rules and regulations and to alter, amend or cancel all rules and regulations as in its judgement, may from time to time be needed for the safety, care and cleanliness of the building and for the preservation of good order therein and the same shall be kept and observed by the Tenants, their employees or agents.

Exhibit D
Landlord's Work

1. Enlarge restroom to accommodate new shower.