

**Fill in this information to identify the case:**

Debtor Emerge Energy Services LP

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 19-11563

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<p>1. Who is the current creditor?</p>	<p><u>Clearfork Office 1, LP</u> Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p><b>Where should notices to the creditor be sent?</b></p> <p>See summary page</p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p> <p><u>Clearfork Office 1, LP</u> <u>c/o Sheryl LaBoyteaux</u> <u>4200 South Hulen, Suite 614</u> <u>Fort Worth, TX 76109</u></p>
	<p>Contact phone <u>817-336-8651</u></p> <p>Contact email <u>dak@mcdonaldlaw.com</u></p>	<p>Contact phone _____</p> <p>Contact email <u>sheryl@cassco.com</u></p>
	<p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	
<p>4. Does this claim amend one already filed?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>265</u> Filed on <u>9/6/2019</u> MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 2393 \_\_\_\_\_

7. How much is the claim? \$ 828,672.50. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Office Lease Agreement

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 79,000.34

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/18/2020  
MM / DD / YYYY

/s/Donald A. Kaczkowski  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Donald A. Kaczkowski  
First name Middle name Last name

Title Attorney for Creditor

Company McDonald Sanders, P.C.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 634-7165 | International 001-310-823-9000

<b>Debtor:</b> 19-11563 - Emerge Energy Services LP		
<b>District:</b> District of Delaware		
<b>Creditor:</b> Clearfork Office 1, LP c/o Donald Kaczkowski, McDonald Sanders, P.C. 777 Main Street, Suite 2700  Fort Worth, TX, 76102  <b>Phone:</b> 817-336-8651 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> dak@mcdonaldlaw.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded  <b>Related Document Statement:</b>  <b>Has Related Claim:</b> No  <b>Related Claim Filed By:</b>  <b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> Clearfork Office 1, LP c/o Sheryl LaBoyteaux 4200 South Hulen, Suite 614  Fort Worth, TX, 76109  <b>Phone:</b>  <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> sheryl@cassco.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> Yes - 265, 9/6/2019  <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Office Lease Agreement	<b>Last 4 Digits:</b> Yes - 2393	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 828,672.50	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No  <b>Amount of 503(b)(9):</b> No  <b>Based on Lease:</b> Yes, 79,000.34  <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Donald A. Kaczkowski on 18-Jan-2020 5:17:31 p.m. Eastern Time  <b>Title:</b> Attorney for Creditor  <b>Company:</b> McDonald Sanders, P.C.		

Case No. 19-11563 (KBO)  
Emerge Energy Services, LP

Case No. 19-11566 (KBO)  
Superior Silica Sands LLC

Jointly Administered under

Case No. 19-11563 (KBO)  
Emerge Energy Services, LP

**Exhibit “A”**  
**Attachment to Amended Proof of Claim**  
**of Clearfork Office 1, LP**

**Overview of the Claim.**

Clearfork Office 1, LP (“Clearfork”) is a Texas limited partnership and a creditor of Emerge Energy Services, LP (“Emerge Energy”) and its affiliate Superior Silica Sands LLC (“Superior”), sometimes collectively referred to herein as the “Debtor,” as the Landlord under that certain Office Lease Agreement with Superior, as Tenant, and Emerge Energy, as Guarantor, dated effective May 31, 2017 (the “Office Lease”), for lease of office space for Superior’s and/or Emerge Energy’s corporate headquarters on the 4th Floor of the office building located at 5600 Clearfork Main Street, Fort Worth, Texas 76109 (the “Leased Premises”). The expiration date under the Office Lease is April 30, 2028. The Debtor rejected the Office Lease on or about December 20, 2019, when the Debtor’s plan of reorganization was consummated and became effective.

A true and correct copy of the Office Lease is attached as Exhibit “A-1” and is incorporated herein by reference for all purposes.

The Debtor failed to make monthly rental payments due and owing under the Office Lease for the months of June and July 2019. The Debtor is also liable for late fees and interest under the terms of the Office Lease.

Clearfork’s total Claim, including rental amounts owed and fees as of July 15, 2019 (the “Petition Date”), plus Clearfork’s lease rejection damages calculated under 11 U.S.C. section 502(b)(6), totals \$828,672.50<sup>1</sup> as shown in more detail below. Clearfork reserves its right to supplement or amend this Claim.

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<sup>1</sup> These amounts do not include Debtor’s unpaid “stub rent” for occupancy of the Leased Premises during the period of 7/16/19 through 7/31/19, including late fees and interest as permitted under the Office Lease, totaling \$25,726.45 and agreed to by Clearfork and Debtor, which Clearfork filed separately as an administrative expense claim on or before January 20, 2020.

Clearfork is filing this amended Proof of Claim in the Superior Silica Sands LLC and Emerge Energy Services, LP bankruptcy cases as styled above, *however, Clearfork is not seeking multiple recoveries.*

**Calculation of Claim.**

Base Rent (6/1/19–6/30/19)	\$45,462.50
Base Electric Costs (6/1/19-6/30/19)	\$ 1,434.45
Excess Operating Expenses (6/1/19-6/30/19)	<u>\$ 376.55</u>
Total Delinquent June Rent	\$47,273.50
June Late Fee (5%)	\$ 2,363.68 <sup>2</sup>
Interest (10% per annum) on Delinquent June Rent (6/1/19-7/15/19)	<u>\$ 584.56<sup>3</sup></u>
<i>Total Pre-Petition Amount for June Lease Month</i>	<i>\$50,221.74</i>
Pro-Rated Base Rent (7/1/19-7/15/19)	\$21,997.98
Pro-Rated Base Electric Costs (7/1/19-7/15/19)	\$ 694.09
Pro-Rated Excess Operating Expenses (7/1/19-7/15/19)	<u>\$ 182.20</u>
Total Pro-Rated Delinquent July Rent	\$22,874.27
July Late Fee (5%)	\$ 1,143.71 <sup>4</sup>
Interest (10% per annum) on Delinquent July Rent (7/1/19-7/15/19)	<u>\$ 190.62<sup>5</sup></u>
<i>Total Pre-Petition Amount for July Lease Month (excluding stub-rent)</i>	<i>\$24,208.60</i>
<i>Pre-Petition Attorneys' Fees (thru 7/15/19)</i>	<i><u>\$ 4,570.00<sup>6</sup></u></i>
<b>Total Pre-Petition Rent and Fees</b>	<b>\$79,000.34</b>
<b>502(b)(6) Rejection Damages</b>	<b>\$ 749,672.16<sup>7</sup></b>
<b><u>Total Claim</u></b>	<b><u>\$ 828,672.50</u></b>

<sup>2</sup> As allowed by section 3(d) of the Office Lease; Debtor was previously late in paying monthly rental amounts at least once within the prior twelve-month period.

<sup>3</sup> As allowed by section 25(j) of the Office Lease.

<sup>4</sup> See footnote no. 2.

<sup>5</sup> See footnote no. 3.

<sup>6</sup> As allowed by sections 25 and 39(b) of the Office Lease.

<sup>7</sup> As of the Petition Date, there were 105 months remaining under the Office Lease. Fifteen percent of 105 is 15.75 months, which is less than 3 years or 36 months. The monthly rent reserved, including base rent as well as base electric costs and excess operating expenses, according to the Office Lease is \$47,273.50, and this figure multiplied by 15.75 equals \$744,557.63, plus an additional \$5,114.53 for the \$.50 base rent increase for 6.75 of the 15.75 months as provided in section 1(a) of the Office Lease.

### **Reservation of Rights.**

By filing this amended Proof of Claim, Clearfork reserves the right to alter, amend, supplement, modify, and/or withdraw this Claim at any time in the future. Clearfork does not waive its rights with respect to its separately filed administrative expense claim for “stub rent.” The submission of this Claim is subject to, and not a waiver or release of, and Clearfork hereby reserves: (i) the right to contest venue or jurisdiction of this Court over this case or any adversary action, contested matter or other proceeding (collectively a “Matter”) in this case, (ii) any right to a trial by jury in any Matter, (iii) any right to *de novo* review of any non-core Matter (iv) rights to have an Article III Court enter final orders on Matters to the full extent provided for in *Stern v. Marshall*; (v) any right to contest and deny any and all claims, if any, asserted against Clearfork, (vi) any right to withdrawal of the referenced of this case or any Matter; and (vii) any other rights, claims, actions, defenses and setoff or recoupment.

## OFFICE LEASE AGREEMENT

Clearfork Office 1, LP, a Texas limited partnership ("Landlord") and Superior Silica Sands LLC, a Texas limited liability company ("Tenant"), for good and valuable consideration, enter into this Office Lease Agreement ("Lease").

1. Definitions.

- (a) **Base Rent** means the fixed amounts stated in the following schedule.

**Schedule of Base Rent per  
Rentable Square Foot of the Premises for the Primary Term**

LEASE MONTHS	AMOUNT PER RENTABLE SQUARE FOOT
First Lease Month - April 30, 2018	-0-
May 1, 2018 - April 30, 2019	\$29.50
May 1, 2019 - April 30, 2020	\$30.00
May 1, 2020 - April 30, 2021	\$30.50
May 1, 2021 - April 30, 2022	\$31.00
May 1, 2022 - April 30, 2023	\$31.50
May 1, 2023 - April 30, 2024	\$32.00
May 1, 2024 - April 30, 2025	\$32.50
May 1, 2025 - April 30, 2026	\$33.00
May 1, 2026 - April 30, 2027	\$33.50
May 1, 2027 - April 30, 2028	\$34.00

As used herein, the term "Lease Month" will mean each calendar month during the Term (and if the Commencement Date does not occur on the first (1st) day of a calendar month, the period from the Commencement Date to the first (1st) day of the next calendar month will be included in the first (1st) Lease Month for purposes of determining the duration of the Primary Term; provided that the monthly Rent (to the extent owed under this Lease) applicable to such partial month shall be prorated and payable by the first (1st) day of the first full calendar month of the Term.

- (b) **Base Year** is 2018.

(c) **Broker** includes Landlord's Broker, being Jones Lang LaSalle, and Tenant's Broker, being Colliers International.

(d) **Building** is the six (6) story office building constructed by Landlord on the Land, having an address of 5600 Clearfork Main Street, Fort Worth, Texas 76109.

(e) **Building Standard** mean the type, brand, quality or quantity of materials, equipment, methods, scheduling, usages, or services that Landlord may designate from



time to time for minimum or exclusive use the Project, including those materials described in Schedule 2 to Exhibit C.

(f) **Business Day(s)** mean Mondays through Fridays, except for normal business holidays for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day (Holidays), and **Normal Business Hours** means 7:00 a.m. to 6:00 p.m. on Business Days, and from 8:00 a.m. to 1:00 p.m., on Saturdays, except for Holidays.

(g) **Commencement Date** will be the earlier of (i) the date of Substantial Completion of the Tenant Improvements, or (ii) May 1, 2018, unless and only to the extent Substantial Completion of the Tenant Improvements is unreasonably delayed by Landlord beyond May 1, 2018, in which case the Commencement Date shall be adjusted accordingly. To claim Landlord's unreasonable delay Tenant must notify Landlord in writing not later than ten (10) days after such delay is asserted to have occurred, otherwise any such delay will be deemed to be waived.

(h) **Common Areas** are those corridors, elevator foyers, mail rooms, restrooms, mechanical rooms, janitorial closets, electrical and telephone/telecom closets, vending areas, lobby areas, and other similar facilities in the Building, and driveways, sidewalks, loading areas, and similar areas outside the Building but on the Project, available for the non-exclusive use or benefit of tenants generally or the public whether initially constructed by Landlord as part of the development of the Project, or thereafter.

(i) **Declaration** means the Declaration of Covenants, Conditions and Restrictions for Edwards Ranch Clearfork Addition dated effective November 26, 2008, recorded as Instrument No. D208439441 in the Tarrant County Real Property Records as well as all amendments thereto which have been or may hereafter be recorded in the Tarrant County Real Property Records.

(j) **Effective Date** is the date this Lease is fully executed by Landlord and Tenant as evidenced by the latest date shown on the signature pages of this Lease. Landlord's delivery of an unsigned copy or draft of this Lease does not constitute an offer to, or an option in favor of, Tenant.

(k) **Electricity Costs** are all costs – other than Operating Expenses – incurred by Landlord which are directly attributable or reasonably allocated to the Project, including, without limitation; (i) electrical services used in the operation, maintenance, and use of the Project; and (ii) sales, use, excise and other taxes assessed by governmental authorities on electrical services supplied to the Project. Electricity Costs shall not include any amounts reimbursed to Landlord separately by Tenant, any other tenant or paid by any tenant directly to the electrical service provider. Landlord shall use commercially reasonable efforts to minimize Tenant paying a disproportionate share of Electricity Costs that are actually attributable to other tenants within the Project whose electricity use materially and disproportionately exceeds that of other office tenants within the Project.

(l) **Excess Operating Expenses** are the amount (prorated for any partial calendar year) by which Operating Expenses for that calendar year exceed the Operating Expenses for the Base Year, but the Base Rent will never be reduced, even if Operating Expenses for any calendar year are less than Operating Expenses for the Base Year. Landlord will compute the Operating Expenses in accordance with consistently applied accounting principles, and if the Building is not fully occupied, or if Building Standard services are not provided to the entire Building during any calendar year (including the Base Year), Landlord will be entitled to gross-up all Operating Expenses that vary with occupancy as if the Building has been 95% occupied and Building Standard services had been provided to the entire Building during that calendar year. However, Tenant's Pro Rata Share of Operating Expenses (excluding Non-Controllable Expenses) in any calendar year will not increase by more than 5% annually over controllable Operating Expenses in the prior calendar year. Tenant will be required to pay 100% of any increase in Tenant's Pro Rata Share of Operating Expenses attributable to those Operating Expenses excluded from the 5% limitation.

(m) **Expiration Date** is April 30, 2028.

(n) **Land** means the real property described in **Exhibit B** on which the Building is situated.

(o) **Landlord Parties** are (i) Landlord, (ii) Landlord's Mortgagee, (iii) the Building manager, and (iv) their respective shareholders, members, partners, affiliates subsidiaries, directors, officers, employees, agents and contractors.

(p) **Non-Controllable Expenses** are the following Operating Expenses: real and personal property taxes and assessments, insurance costs, utility costs, costs due to change in governmental or code requirements or changes in Project security costs due to changes in security levels from year to year.

(q) **Operating Expenses** are all direct and indirect costs and expenditures of every kind incurred in connection with operating, maintaining, protecting, repairing, replacing, managing, and owning the Project, including, without limitation, (i) all costs connected with: procuring property, liability, and other insurance coverages (including, without limitation, any payments made to satisfy any deductibles and the allocable cost of any blanket insurance policies); (ii) providing, maintaining, inspecting, repairing, replacing, changing, installing, servicing, cleaning, evaluating, or making available any service, facility, amenity, or equipment serving any part of the Project (including, without limitation, utility, mechanical, electrical, plumbing, HVAC, gas, water and sewer, vertical transportation, fire prevention, warning, and control, access control, security, janitorial, window cleaning, and waste disposal, and landscaping), and buying, renting, or paying for any materials and supplies (e.g., light bulbs and ballasts); equipment and tools; floor, wall, and window coverings; personal property; required or beneficial easements; or service agreements furthering such purposes; (iii) complying with any Applicable Law changed after the date of this Lease (including, without limitation, license, permit and

inspection fees, professional fees, and other costs of negotiating or contesting real estate taxes or any governmental impositions on the Project); (iv) capital improvements made to any part of the Project that are either (i) required to comply with Applicable Law changed after the date of this Lease or (ii) designed to reduce Operating Expenses, to the extent of such savings, in each case amortized or depreciated over a reasonable period determined by Landlord (useful life), plus interest on the un-amortized or un-depreciated balance at 2% over the prime rate published by The Wall Street Journal (**Wall Street Journal Prime**) on, or on the publication date nearest, the date on which the cost incurred; (v) all taxes, assessments, excises, association dues (including, without limitation those dues and assessments payable pursuant to the Declaration), fees, levies, charges, and other taxes of every kind levied or assessed against, or arising in connection with, the ownership, use, occupancy, rental, operation, or possession of the Project now or in the future ("Taxes"); and (vi) property management fees paid to Landlord's property manager to manage the Project.

But notwithstanding the foregoing, Operating Expenses *will not* include the cost of:

(i) brokerage and leasing commissions, attorneys' fees, costs and disbursement and other expenses incurred in connection with leasing, renovating or improving space for tenants or prospective tenants of the Project; (ii) costs incurred by Landlord in the discharge of its obligations to provide improvements and tenant finish work under other leases or similar agreements; (iii) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving, fixturing or renovating, painting or decorating space for tenants or vacant space; (iv) Landlord's costs of any non-Building Standard goods and services furnished to tenants or any other amounts for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental apart from, and in addition to, any Excess Operating Expenses payable under the lease with such tenant or other occupant; (v) any depreciation and amortization on the Project except as expressly permitted herein; (vi) costs incurred due to violation by Landlord of any of the terms and conditions of this Lease or any other lease relating to the Project; (vii) interest on debt or principal/amortization payments on any mortgages or deeds of trust or rental payments on any ground or underlying lease of the Project, or any other debt for borrowed money; (viii) all items and services for which any Tenant reimburses Landlord outside of Excess Operating Expenses or otherwise, or pays third persons or which Landlord provides selectively to one or more tenants or occupants of the Project (other than Tenant) without reimbursement; (ix) cost of tenant allowances and concessions incurred by Landlord in securing new tenants of the Project or retaining existing tenants, including marketing, advertising and promotional expenditures and legal fees; (x) costs of repairs or replacements incurred by reason of fire, windstorm, other insurable casualty or condemnation (except to the extent of any deductible); (xi) repairs resulting from any defect in the design or construction of the any building within the Project or such building equipment; (xii) the cost of installing, operating and maintaining any specialty service, such as an observatory, broadcasting facilities, luncheon club, athletic or recreational club, restaurant or other retail use or commercial concession, or costs associated with off-site parking; (xiii) costs associated with the business of the entity that constitutes Landlord, such as general corporate overhead and administrative expenses,

accounting and legal matters of Landlord (including salaries, fringe benefits and other compensation paid to partners, officers and executives of Landlord) not incurred exclusively in the operation of the Project, and costs incurred by Landlord to audit any tenant in the Project or audit costs incurred by Landlord from being audited by a tenant of the Project; (xiv) the cost of any work or service performed for any tenant of the Project (other than Tenant) to a materially greater extent or in a materially more favorable manner than that furnished generally to the tenants and other occupants of the Project (including Tenant); and, without limiting the generality of the foregoing, this exclusion shall be deemed to include the cost of HVAC provided in excess of that described in this Lease; (xv) the cost of any work or service performed for any facility in the Project other than the Building and the parking garage on the Land; (xvi) capital expenditures and costs incurred in connection with the original construction of any building or Common Area within the Project, and the cost of capital improvements related to any additions, repairs, alterations, changes, replacements and other items, which are major changes (except to the extent allowed above) or which are not properly classified under generally accepted accounting principles as an expense or which are made in order to prepare for a new tenant's occupancy; (xvii) insurance premiums and utilities to the extent Landlord may be reimbursed therefor or that are directly paid by any tenant to the provider (other than through the payment of Operating Expenses by Tenant or other tenants of the Project); (xviii) rental under any ground lease or other underlying lease; (xix) any costs representing an amount paid to any person or entity which controls, is controlled by or is under common control with Landlord to the extent that is in excess of the amount that would have been paid in the absence of such relationship; (xx) other than as provided above, rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature except equipment rented on a temporary basis; (xxi) any expense for repairs or maintenance that is covered by warranties and service contracts except to the extent Landlord incurs a deductible or a cost due to the improper failure or refusal of the warranty or service provider to perform; (xxii) costs for which Landlord has been compensated by a construction management fee; (xxiii) legal and auditing fees that are for the benefit of Landlord, such as collecting delinquent rents, preparing tax returns and other financial statements, and audits other than those incurred in connection with the preparation of reports required under this Lease; (xxiv) the salaries or wages of any employee above the grade of building manager or for services not related directly to the management, maintenance, operation and repair of the Project; (xxv) charitable and political contributions; (xxvi) costs of removal, abatement or treatment of any Hazardous Materials or Contamination (as hereinafter defined) in or under the Project (other than in the normal course of business of operating, maintaining and repairing the Building, parking garage and equipment therein); (xxvii) electrical power costs above normal consumption for which any tenant is separately metered or directly contracts with the local public service company; (xxviii) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for services or materials in the Project to the extent the same exceeds the market costs of such services or materials rendered by comparable unaffiliated third parties on a competitive basis; (xxix) costs of acquiring paintings, sculptures, fountains or other objects of art located in the Project; (xxx) costs incurred in connection with the sale, financing, refinancing, mortgaging, selling or

change of ownership of Landlord, the Project and any increase in real estate taxes resulting from a sale or refinancing of any part or all of the Project; (xxxix) moving expense costs of tenants of the Project; (xxxix) management fees in excess of four percent (4%) of the aggregate of all gross receipts from income derived from the Project; (xxxix) late charges, fines, penalties and interest incurred by Landlord for its failure to pay timely mortgage installments, taxes, insurance, utilities or other Operating Expenses (provided Tenant has timely paid Tenant's Pro Rata Share, if any, as provided in this Lease); (xxxix) office furniture, equipment or any other similar articles or fixtures that could be utilized by Landlord in its business generally, unless used solely at the Project; (xxxix) bad debt loss, rent loss, or reserves for either of these, and any other reserves for repairs, maintenance or replacements unless pursuant to generally accepted accounting principles; (xxxix) any fines, penalties or interest or other costs resulting from the gross negligence or willful misconduct of Landlord Parties; (xxxix) attorneys' fees and other expenses incurred in connection with lawsuits, liquidated damages settlements, negotiations, claims or disputes involving Landlord, the Project or any tenant thereof, except for attorney's fees and other expenses incurred to the extent they result in a reduction of Operating Expenses; and (xxxix) costs, fines or penalties incurred as a result of violation by Landlord (or noncompliance of the Project or by any tenant) of any Applicable Laws or by Landlord's violation of any lease.

The term "Taxes" shall not include (A) any special assessment for highway, street or traffic control improvements, for sanitary or storm sewers, for utilities or for off-site improvements of any nature whatsoever made in connection with the development of the Building, the Project, the Common Areas or other development, mitigation, impact, concurrence, connection and tap-in fees, contributions in-aid-of-construction or other fees assessed by any utility or governmental entity as a requirement or condition for furnishing utility or municipal services to the Premises, the Building or the Project (but only to the extent the useful life exceeds the initial term of this Lease), (B) Landlord's federal income taxes or any franchise, income, corporate, personal property, capital levy, capital stock, gross receipts, excess profits, transfer, revenue, estate, inheritance, gift, devolution or succession tax payable by Landlord, (C) any tax or assessment resulting from the sale, refinancing, transfer or other change in the ownership of the Building or the Project by Landlord or the assignment of this Lease or any other lease, and (D) any special assessment resulting, in whole or in part, from capital improvements to any part of the Land.

Such Operating Expenses shall be "net" only, and for that purpose shall be reduced by the amounts of any cash discounts, reimbursements, refunds or credits received by Landlord (net of the reasonable costs and expenses of obtaining the same, if any). Landlord shall make payments for goods, utilities and services in a timely manner to obtain the maximum possible discount if obtaining the discount is deemed prudent by Landlord. Landlord will not collect or be entitled to collect Operating Expenses in an amount which is in excess of one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Building and the Project and Landlord shall make no profit from Landlord's collection of the Operating Expenses. Landlord shall pay all Operating Expenses in a timely manner prior to

delinquency. Any recalculation or additional operating costs actually incurred more than one (1) year prior to the year in which Landlord proposes that such costs be included as an Operating Expense shall be included with as an Operating Expense, except to the extent such delay was caused by governmental requirements or a force majeure event.

(r) **Parking Fees** are the amounts Landlord will be entitled to charge for any Tenant Party's right to use any parking facilities serving the Project, plus any applicable taxes, as follows: For the Primary Term of the Lease, Parking Fees for the reserved parking spaces will be \$50.00 per space per month plus taxes. There will be no charge for unreserved spaces. Parking Fees for any Renewal Term will be subject to increase as provided for in Option to Extend (Rider 1).

(s) **Permitted Uses** means general office purposes and no other purpose.

(t) **Premises** mean the space in the Building as shown on Exhibit D located on the 4th floor of the Building, consisting of approximately 17,994 rentable square feet. Landlord and Tenant agree that once the Tenant Improvements have been constructed, the suite number (Suite 400) for the Premises will be determined and identified in the Commencement Letter (Exhibit A), which will also identify the Rentable Area of the Premises and – if requested by either party – a lease amendment.

(u) **Primary Term** means the period of time commencing on the Commencement Date and ending at midnight on the Expiration Date.

(v) **Project** means the Land, the Building, any parking facilities serving the Building, and all other improvements and facilities now or hereinafter located in the Building or on the Land.

(w) **Rent** means Base Rent, Tenant's Pro Rata Share of both Electricity Costs and Excess Operating Expenses, and all other sums of money owed to Landlord under this Lease.

(x) **Rentable Area of the Building** means 169,332 square feet.

(y) **Rentable Area of the Premises** means the total number of rentable square feet in the Premises as determined by Landlord's architect, and subject to reasonable verification by Tenant's Architect, in accordance with the 2010 Office Measurement Standard – Method B published by BOMA.

(z) **Rules and Regulations** are the Building Rules and Regulations (Exhibit E) as Landlord may, from time to time amend them, subject to Section 33 of this Lease.

(aa) **Security Deposit** – None.

(bb) **Service Areas** are those areas in the Building that are used for stairs, elevator shafts, flues, vents, stacks, pipe shafts and other vertical penetrations (excluding

such area designated to a particular tenant's exclusive use) and those areas outside the Building but serving the Project that are not available for non-exclusive use or benefit of tenants generally or the public.

(cc) **Substantial Completion** means the Tenant's Work (as such term is defined in the Work Letter (Exhibit C)) is substantially completed in substantial accordance with the Final Tenant Plans and the issuance of a Certificate of Occupancy by the City of Fort Worth allowing Tenant to occupy the Premises. Substantial Completion shall have occurred even though punch list items and minor details of construction, decoration, landscaping and mechanical adjustments remain to be completed, so long as such punch list items can be completed within forty-five (45) days of Substantial Completion and without causing unreasonable interference with Tenant's use of the Premises.

(dd) **Tenant's Guarantor** means Emerge Energy Services, LP, a Delaware limited partnership.

(ee) **Tenant's Parties** are Tenant, Tenant's Guarantor and their respective shareholders, members, partners, directors, officers, employees, agents, sublessees, licensees, invitees and contractors.

(ff) **Tenant's Pro Rata Share** means the Rentable Area of the Premises divided by the Rentable Area of the Building expressed as a percentage. The Commencement Letter (Exhibit A) will set forth Tenant's Pro Rata Share. To the extent Operating Expenses are passed through with respect to the Project, Tenant's Pro Rata Share shall be adjusted for the total Rentable Area of the Building from time to time and the Rentable Area of any future improvements to the Project which become available for lease in a reasonable and equitable manner.

(gg) **Term** means the Primary Term and any Renewal Period exercised in accordance with the terms and conditions set forth in Rider 1.

(hh) **TI Allowance and Supplemental TI Allowance** are defined in Exhibit C (Work Letter) attached here.

(ii) **Trade Fixtures** include Tenant's furniture, equipment and any signs within the Premises. Trade Fixtures do not include any permanent leasehold improvements in the Premises or the Building; any floor, wall or ceiling coverings (except throw rugs), interior walls or partitions; lighting fixtures; or anything else that is part of, or associated with, any electrical, plumbing, or mechanical system in or serving the Premises.

2. **Lease Grant.** On the terms and conditions expressed in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord for the Term. By taking of possession of the Premises upon Substantial Completion, except for matters related to Hazardous Materials and Contamination not caused by any Tenant Party, Tenant (a) accepts the

Premises AS IS; (b) waives any implied warranties of suitability, habitability, merchantability, and fitness for a particular purpose; (c) waives all claims based on any defect in the Premises or the Project that could have been discovered by Tenant's reasonable inspection; and (d) acknowledges that Landlord has fully performed its obligations under the Work Letter, except for Landlord's completion of any items of Landlord's Work listed in any punch list. If Tenant does not receive possession of the Premises with Landlord's Work [other than stacking the acoustical ceiling grid system and ceiling title in the Premises, which will be scheduled as Tenant Improvements are being completed] complete within ninety (90) days after the Effective Date ("Outside Date"), then Tenant shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days of the Outside Date, in which case any amounts pre-paid by Tenant to Landlord shall be immediately reimbursed to Tenant and thereafter the parties shall be discharged from all obligations hereunder.

3. Rent. Except for any notice or demand expressly required in this Lease, Tenant must pay to Landlord – without any notice, demand, setoff, or deduction (except as otherwise expressly provided in the Lease) – Base Rent and all other components of Rent, commencing on the Commencement Date.

(a) Unless otherwise expressly provided in this Lease, Base Rent will be due and payable, in advance monthly installments on or before the 1<sup>st</sup> day of each calendar month. All components of Rent owed to Landlord will be prorated daily on a 365-day year for any partial calendar month for which any Rent is due. [Upon full execution of this Lease, Tenant will deposit with Landlord the sum of \$46,289.57 (including Base Rent of \$44,235.25 and estimated Electricity Costs of \$2,054.32), to be applied to the first monthly installment of Base Rent owed under this Lease and estimated Tenant's Pro Rata Share of Electricity Costs.]

(b) Tenant's Pro Rata Share of Electricity Costs will be payable commencing on the Commencement Date as follows: Landlord will provide Tenant with an estimate for each calendar year or portion thereof and Tenant will pay 1/12th of such annual estimate monthly on the same dates that Base Rent is due. Within 120 days after the end of each calendar year Landlord will provide Tenant with a statement of the actual Electricity Costs. Landlord will refund any overpayment to Tenant (or at Landlord's option if any further Rent payments are due hereunder, credit such overpayment to the next-accruing payment of Rent) and Tenant will pay any underpayment to Landlord, within thirty (30) days after Landlord furnishes such statement to Tenant.

(c) During each calendar year after the Base Year, Landlord will be entitled to estimate Tenant's Pro Rata Share of Excess Operating Expenses for that calendar year, and by April 30<sup>th</sup> of the next calendar year, or as soon thereafter as practicable, Landlord will furnish Tenant a statement of actual Operating Expenses and Electricity Costs for the prior calendar year. If no uncured Default then exists (and no condition exists which, with the passage of time or giving of notice, would become a Default), Landlord will refund any overpayment to Tenant for the prior calendar year (or, at Landlord's option, apply such overpayment against Rent due or to become due). Tenant will pay Landlord, not later than thirty (30) days after demand as Rent, any underpayment for the prior



calendar year. Landlord will be entitled to revise its estimates or alter its billing procedures (so long as such procedures are in accordance with commercially accepted real estate accounting principles) from time to time (but no more than once during a twelve-month period) based upon Landlord's good faith estimates of Operating Expenses and/or Electricity Costs.

(d) If Tenant fails to pay (i) any monthly installment of Base Rent, Tenant's Pro Rata Share of Electricity Costs, Tenant's Pro Rata Share of Excess Operating Expenses or Parking Fees by the 5<sup>th</sup> day of the month when due and such late payment occurs more than once in a twelve-month period; or (ii) any other component of Rent within five (5) business days after demand (or after such period provided for payment if specified in this Lease) or after the due date specified in this Lease, Tenant must pay a 5% late fee on the delinquent amount. Landlord will apply all payments to fees, costs, interest, other sums due under the Lease and then to earliest accrued and unpaid Rent then outstanding in that order.

(e) Within sixty (60) days after Landlord delivers its statement of actual Operating Expenses for the prior calendar year (including the Base Year), Tenant may give Landlord written notice of Tenant's election to audit Landlord's Operating Expenses for the prior calendar year. If Tenant timely gives this notice, Tenant, at its sole cost, may audit Landlord's Operating Expenses only for the prior calendar year during Landlord's normal business hours, subject to the following terms and conditions: (i) the audit must be prepared by a certified public accounting firm which is independent of Tenant ("Tenant's Accountant"); (ii) the audit cannot be performed by a firm retained on a contingency fee basis; (iii) the audit must be completed within ninety (90) days after Landlord makes Landlord's books and records pertaining to Operating Expenses available to Tenant's Accountant; (iv) the audit must be conducted where Landlord or its property manager maintains its books and records pertaining to the Project and must not unreasonably interfere with the conduct of Landlord's or its property manager's business; (v) Tenant and Tenant's Accountant must treat any audit in a confidential manner and each must execute Landlord's standard confidentiality agreement before beginning the audit; and (vi) there is no uncured Default by Tenant under the Lease at the time the audit is requested or commenced. If Landlord and Tenant are unable to agree upon the final audit report within thirty (30) days after the final report is submitted to Landlord, Landlord and Tenant agree to jointly select an independent certified public accounting firm of national or regional or local standing (the "Independent Accountant") which firm shall conclusively determine whether Landlord's annual statement of Operating Expenses is accurate, and if not, what amount is accurate within thirty (30) days following its selection. Both parties will be bound by such determination. Tenant shall pay the charges of Tenant's Accountant and the Independent Accountant (if the Independent Accountant is retained), unless Tenant's Accountant discloses an error, acknowledged by Landlord (or found to have conclusively occurred by the Independent Accountant, of more than five percent (5%) in the computation of actual total Operating Expenses as set forth in Landlord's statement of Operating Expenses, resulting in an overpayment by Tenant for the calendar year in dispute, in such event Landlord will credit Tenant against the next-accruing Rent for (i) the reasonable costs incurred by

Tenant in obtaining both audits, and (ii) any overpayment by Tenant, within thirty (30) days following the final resolution of such audit results. If the amount of the credit due to Tenant exceeds the balance of the Rent due, the excess amount of the credit will be refunded to Tenant within such thirty (30) day period. Likewise, Tenant shall pay to Landlord any underpayment determined by the audit process described above within thirty (30) days after such amount is determined by such audit process. These obligations will survive the Expiration Date. If Tenant does not give timely written notice of its election to audit Landlord's statement of Operating Expenses, Landlord's statement of the Operating Costs for the applicable calendar year shall be deemed approval for all purposes, and Tenant will have no further right to review or contest them.

4. Security Deposit. Intentionally Deleted.

5. Use. The Premises may only be used for the Permitted Use. Tenant may also maintain (for use by Tenant and its employees and incidental use by their visitors and invitees) in the Premises employee lunch rooms, employee coffee bars, printing and copying facilities, storage, telecommunications equipment, computer equipment, data and word processing equipment and other equipment utilized in Tenant's office operations at the Premises.

(a) Prohibited Uses. Notwithstanding anything in this Lease to the contrary, Tenant must not use the Premises, or permit their use, for: (i) any illegal purpose; (ii) any activity that is dangerous to life, limb, or property; (iii) any activity that does or would, in Landlord's reasonable opinion, create a nuisance, disturb other occupants of the Building or increase insurance costs for Landlord or other occupants of the Building; (iv) any use prohibited by the Declaration, or (v) any existing exclusive use identified in Rider 1 to this Lease.

(b) Floor Loads. Tenant must not place nor allowed to be placed any load upon any floor of the Premises exceeding the maximum load per square foot as determined by Landlord's structural engineer.

(c) Compatible Use. Tenant will (i) to install, operate, and maintain its business machines and equipment so as not to transmit noise or vibration to the Building in excess of that transmitted by other typical office tenants of the Building, (ii) to conduct its business and control Tenant Parties in such a manner so as not to interfere with, annoy, or disturb, in Landlord's reasonable opinion, other occupants or Landlord's management of the Building, and (iii) not to commit waste on the Premises or permit others to do so.

(d) Parking. During the Term, Tenant may use at its election, collectively, in accordance with this Lease and any Rules and Regulations from time to time promulgated by Landlord, ten (10) reserved parking spaces located in the neighboring parking garage for the amount of the Parking Fees for such spaces to be paid by Tenant on or before the 1<sup>st</sup> day of each calendar month. Landlord will provide Tenant with a parking ratio in the Project of not less than four (4) spaces per 1000 square feet of the Rentable Area of the Premises. Landlord will be entitled to: (i) issue access control

devices and use access control methods it deems necessary; (ii) impose fines for violation of the parking Rules and Regulations or unauthorized use of parking facilities by any Tenant parking, as may be set forth in the Rules and Regulations, and (iii) make reasonable charges to replace previously issued access control devices. Tenant may relinquish any of its ten (10) reserved parking spaces at any time (and not pay any Parking Fees for such relinquished spaces), but reserved parking spaces relinquished by Tenant may only be reclaimed by Tenant if available, upon Tenant's request. Subject to the preceding sentence, if Landlord does not make any of the requested reserved parking spaces available for Tenant's use, Tenant's sole remedy will be abatement of the Parking Fees (prorated daily) for that space for each day that such space(s) are not available for use. **LANDLORD WILL HAVE NO LIABILITY TO ANY TENANT PARTY FOR ANY CLAIM ARISING FROM ANY TENANT PARTY'S ACT OR OMISSION IN CONNECTION WITH THE USE OF ANY PARKING FACILITY SERVING THE BUILDING, AND TENANT WILL INDEMNIFY AND DEFEND LANDLORD FROM ALL CLAIMS AGAINST LANDLORD ARISING FROM ANY TENANT PARTY'S ACT OR OMISSION ARISING IN CONNECTION WITH THE USE OF ANY PARKING FACILITY SERVING THE BUILDING.**

(e) Subject to Landlord's prior written approval, Tenant may hire a security officer at its expense to monitor security within the Premises (but not in the Building generally).

6. **Entry by Landlord.** Landlord Parties may enter the Premises at all reasonable hours on Business Days upon 48 hours prior notice (and, in emergencies, at any time, by any means Landlord may deem proper, and without liability, so long as notice is provided to Tenant as soon as practicable thereafter) to inspect the Premises; to show the Premises to prospective purchasers, mortgagees, tenants (within the final year of the Term), or insurers; and to inspect, clean, repair, or alter the Premises. No such entry will entitle Tenant to any compensation or to any reduction in Rent so long as Landlord makes good faith efforts not to unreasonably interfere with the Tenant's use of the Premises. Subject to obtaining Landlord's prior approval, Tenant shall have the right to maintain its own security system within the Premises.

7. **Basic Services.** Landlord will furnish these Building Standard services to Tenant during the Term:

(a) hot and cold water for lavatory and drinking purposes at those points of supply provided for general use of tenants in the Building.

(b) electricity for lighting and operating business equipment as specified in the Base Building Specifications attached as Schedule 1 to Exhibit C hereto.

(c) heat, ventilation and air conditioning (HVAC) for the comfortable use of the Premises throughout the year during Normal Business Hours, and Landlord will supply HVAC during other than Normal Business Hours if Tenant delivers its written request to Landlord or the Building Manager before 1:00 p.m. on the preceding Business Day. The charge for HVAC during other than Normal Business Hours will be \$45.00 per hour subject to reasonable increase from time to time to the extent Landlord's actual cost

to provide such services may increase, and Tenant must pay that cost, within thirty (30) days upon receipt of an invoice therefor, as Rent.

(d) routine maintenance of electric lighting and replacement of light bulbs, starters and ballasts in Common Areas and Service Areas.

(e) janitorial service Sunday through Thursday. Cleaning and maintenance of the Common Areas.

(f) exterior window washing.

(g) non-exclusive passenger elevator service sufficient for ingress and egress to the Premises.

(h) light and fluorescent bulb replacements for light fixtures in the Premises, and Tenant must pay Landlord the reasonable cost of any replacement bulbs, plus installation labor, within thirty (30) days upon receipt of a invoice therefor, as Rent.

(i) access control devices or codes allowing Tenant access to the Building during all times other than Normal Business Hours.

(j) at least one (1) on-site security guard for the Project during Normal Business Hours.

Unless expressly provided otherwise in this Lease, or paid for separately by Tenant, the cost of furnishing all Building Standard services to Tenant will be included as part of Operating Expenses.

8. **Electrical Services.** Landlord will furnish Building Standard electrical service to the Premises. Building Standard electrical service is that service required to operate Building Standard lighting and ordinary amounts and types of office equipment as determined by Landlord. Tenant will not use electrical services that differ from or exceed Building Standard.

(a) On thirty (30) days written notice, Landlord, if Landlord reasonably believes that Tenant is consuming more than Tenant's Pro Rata Share of Electricity Costs — unless prohibited by Applicable Law — will be entitled to install a sub-meter for the Premises, and, in that event, Tenant must continue paying Tenant's Pro Rata Share of Electricity Costs, except that Landlord will credit any separate payments to Landlord for the sub-metered use of Building Standard electricity for Premises. The cost to install the sub-meter shall be Landlord's sole cost unless the sub-meter shows that Tenant is in fact consuming more than Tenant's Pro Rata Share of Electricity Costs, in which case Tenant shall reimburse Landlord for the reasonable, actual cost to Landlord for such installation.

(b) Landlord, at Landlord's expense, will be entitled to measure Tenant's actual electrical consumption in the Premises by a survey conducted by a reputable

consultant selected by Landlord or by separate meters installed, read, and maintained by Landlord, and, in either event, Tenant must pay Landlord any non-Building Standard electrical use, within thirty (30) days after demand, as Rent, unless Tenant pays it directly to its electric service provider. Any such payments shall be credited against Tenant's Pro Rata Share of Electricity Costs.

9. Service Terms. Landlord will be entitled, from time to time, to select and change any provider of Building Standard and non-Building Standard utility services, electrical services, or of any service furnished by Landlord.

(a) Tenant may make written requests for any non-Building Standard service. Landlord may withhold, condition, or—on not less than thirty (30) days prior written notice to Tenant—revoke its consent to any non-Building Standard service if, in Landlord's sole judgment, it (i) would damage or injure the Premises or the Project; (ii) would create a dangerous or hazardous condition; (iii) would entail material alteration or repair to any part of the Project; (iv) would disturb or interfere with the operation of other facilities or equipment in, or any other occupant's use of, the Project; (v) would increase Landlord's insurance or other costs to operate the Building; or (v) would otherwise be detrimental to the Project, to other occupants, or to Landlord. In no event will Landlord be liable to any Tenant Party for withholding, conditioning, or revoking its consent to any non-Building Standard service.

(b) Tenant will cooperate with Landlord and any service provider at all times, and Tenant will allow any Landlord Party or any service provider reasonable access to the Building's electric lines, cables, feeders, risers, wiring, electrical panels, and any other equipment or machinery within, or accessed from, the Premises, subject to Section 6 of this Lease.

(c) Except as otherwise provided herein, no change, interruption, or malfunction of any utility service, electrical service, or of any service furnished by Landlord will: (i) constitute an actual or constructive eviction, a disturbance of Tenant's use or occupancy of the Premises, or a breach of Landlord's obligations under this Lease; (ii) render any Landlord Party liable or responsible for any loss or damage Tenant may sustain because the quantity or character of any service changes, becomes unavailable, or becomes unsuitable; (iii) relieve Tenant of any obligation under this Lease (including, without limitation, the obligation to pay any component of Rent), or (iv) entitle Tenant to any set-off, abatement, recoupment, or other reduction in any component of Rent, except that if such change, interruption, or malfunction continues for more than five (5) consecutive Business Days during which Tenant is unable to conduct its business in the Premises days after Tenant notifies Landlord of such event (the "Interruption Notice") and if such interruption of service does not arise as the result of the negligence or willful misconduct of any Tenant Party, (iv) is not the result of a fire or other casualty (in which event Section 20 shall control), then Tenant, as its sole and exclusive Claim, will be entitled to an abatement of Base Rent from the date of such change, interruption or malfunction to the restoration of such service, provided that if Tenant is able to conduct its business in a portion of the Premises, the Base Rent will be equitably adjusted, AND

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, TENANT WAIVES ALL OTHER CLAIMS AGAINST LANDLORD PARTIES ARISING FROM INTERRUPTION OF ANY UTILITY SERVICE, ELECTRICAL SERVICE, OR ANY SERVICE FURNISHED BY LANDLORD SO LONG AS LANDLORD COMPLIES WITH THE FOLLOWING SENTENCE. Landlord will use reasonable diligence to restore any interrupted service and make commercially reasonable efforts to minimize any service disruptions for scheduled maintenance, repairs, inspections and tests.

10. Graphics. Landlord, at its cost, will supply and install letters and numerals in the interior to the Building naming Tenant and identifying Tenant's suite number. These letters and numerals will be in Building Standard graphics, and Tenant will not allow any other graphics to be visible from outside the Premises, unless Landlord gives its prior written consent. And, if Landlord consents to Tenant's use of any other letters, numerals, or graphics, Tenant must pay all costs associated with their acquisition, installation, and removal, and all costs to restore the Premises and any other part of the Building to their condition before such installation.

11. Improvements by Landlord. Except for Building Standard graphics and any Work described in the Work Letter, Landlord will have no obligation to make other improvements to the Premises or the Project.

12. Maintenance and Repair by Landlord. Landlord shall be responsible for the good and workmanlike repair, maintenance, and replacement costs of the Building and Project, to the extent installed by Landlord, including but not limited to: any construction defects in Landlord's Work, foundation, floors (but not floor coverings), floor slabs, roof, exterior walls, structural walls and other load-bearing or structural supports, corridors, mechanical systems, HVAC systems, plumbing and sewer systems, electrical systems, life safety systems, any equipment associated with such systems (such as pipes, fixtures, wiring, breakers and switches), restrooms, elevators, exterior windows and doors, glass, parking structures/lots, driveways, Common Areas, and other areas outside the Building. Except to the extent described in this section, Landlord will not be required to repair or maintain any part of the Premises or pay to repair or maintain any part of the Premises; however, notwithstanding anything contained in this section to the contrary, in no event will Landlord be obligated to maintain, repair or replace any of the Tenant Improvements or any other work or materials installed or performed by or at Tenant's request. Tenant will promptly notify Landlord of the need for any such repairs or maintenance. Landlord will also maintain the parking areas for the Building. The costs incurred by Landlord for repairs, maintenance and replacements to the Building and/or the Project will be included in Operating Expenses (to the extent the same qualify as Operating Expenses).

13. Maintenance, Repairs, and Alterations by Tenant. Except as otherwise described in this Lease, Tenant, at its sole cost, must keep the Premises clean, healthful, and in good repair and condition (including, without limitation, all Tenant Improvements plus all fixtures, plumbing, and interior plate glass; carpet or other floor covering; interior partitions; doors; any demising walls; communications, computer, and other cabling exclusively serving Tenant's equipment; supplemental air conditioning units, private showers and kitchens (including all plumbing and other facilities exclusively serving the Premises or Tenant). If Tenant fails to maintain, repair, or replace such items, Landlord may perform Tenant's obligations, and Tenant

must pay Landlord's costs of doing so, within thirty (30) days after written invoice therefor, as Rent. Tenant, at its sole cost, must repair or replace any damage to any part of the Project caused by any Tenant Party or reimburse Landlord for its costs incurred to repair or replace such damage.

(a) Unless Tenant obtains Landlord's prior written consent (such consent not to be unreasonably withheld conditioned, or delayed), Tenant will not alter, add to, or improve the Premises or any other part of the Project. Before beginning any alteration, addition, or improvement, and as a condition to obtaining Landlord's consent, Tenant must furnish Landlord with: (i) plans and specifications reasonably acceptable to Landlord; (ii) names and addresses of contractors reasonably acceptable to Landlord; (iii) copies of contracts; (iv) necessary permits and approvals; and (v) evidence of contractor's and subcontractor's insurance (to include coverage against such risks, in such amounts and with such companies as Landlord may require). Notwithstanding the forgoing, Tenant shall be allowed to perform minor alterations ("Minor Alterations") to the Premises without Landlord's consent, so long as each such Minor Alteration does not exceed \$20,000.00, complies with Applicable Law, and does not structurally alter the Building, including, but not limited to, painting, decorating, shelving, partitioning and installation of trade fixtures.

(b) All such improvements, alterations or additions will be constructed in a good and workmanlike manner using Building Standard materials or other new materials of equal or greater quality approved, in advance, by Landlord.

(c) All alterations performed by Tenant must be performed in accordance with the requirements of the Rules and Regulations, including, without limitation, scheduling and coordination with Landlord.

14. **Mechanic's Liens or Claims.** Tenant will not permit any mechanic's or other lien to be placed upon any part of the Premises or the Project. Unless Tenant obtains Landlord's specific written consent (such consent not to be unreasonably withheld, conditioned, or delayed), Tenant will have no right, power, or authority to procure any material or service that would give rise to any mechanic's or other lien on the any part of the Premises or the Project. If any person asserts such a lien or claim against any part of the Premises or the Project as a result of the claimant's dealings with Tenant, Tenant must, not later than ten (10) business days after such lien or claim is asserted, notify Landlord of same and within thirty (30) days from the date of filing, provide Landlord with written release from the claimant, in form acceptable to Landlord, or bond around such claim or lien with the bond to meet the requirements of Subchapter H of Chapter 53 of the Texas Property Code, or its successor. If Tenant fails to timely take such action, then Landlord may, in addition to any other remedies available to Landlord hereunder upon a Default by Tenant, pay the lien claim, and any amounts so paid, together with a 10% charge on such amount as an administrative fee, shall be paid by Tenant to Landlord within ten (10) business days after Tenant's receipt of an invoice therefor.

15. **Assignment and Subletting.** Except as otherwise provided herein, Tenant will not sell, assign, sublease, encumber, license, or otherwise transfer (collectively, "Transfer") any

right or interest in this Lease or any part of the Premises. Any Transfer, without Landlord's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed, so long as Tenant is not in Default hereunder, will be a Default under this Lease, and Landlord may – in its sole discretion and in addition to its other remedies – declare void any such transfers.

(a) Landlord's consent to any Transfer will not waive its rights, and it will not estop Landlord from exercising its rights, with respect to any other actual or proposed Transfer, and Landlord's consent to any Transfer will not relieve Tenant of any rental liability to Landlord under this Lease unless Landlord should otherwise agree in writing.

(b) Tenant may request, in writing, Landlord's consent to a proposed Transfer and that request must include: (i) the name of the proposed transferee; (ii) the nature and character of the transferee's business; (iii) the term, use, rental rate, and all other material terms of the proposed Transfer; and (iv) to the extent available, audited financial statements or other evidence of the proposed transferee's assets, liabilities, net cash flow, operating history, and other evidence Landlord may reasonably request to evaluate the financial capacity of the proposed transferee to perform its obligations.

(c) Within fifteen (15) days after its receipt of the required and any other information requested, Landlord will either consent to or refuse its consent to the proposed Transfer. If Tenant does not receive written notice of Landlord's decision within fifteen (15) days after the later of the date Landlord receives written notice of the proposed Transfer or the date Landlord receives all of the required information and any requested information, Landlord will be deemed to have refused its consent to the proposed Transfer, leaving this Lease in full force and effect. Tenant will pay, on demand as Rent, an administrative review fee of \$1,500.00 to Landlord, to cover the costs and expenses that Landlord may incur in connection with Landlord's review of any request for consent.

(d) In connection with any sublease of all or part of the Premises, Tenant will pay to Landlord 50% of all rent and other consideration Tenant receives with respect to this Lease (on a rentable per square foot basis) in excess of the Rent payable under this Lease and all of Tenant's other rental costs per RSF (e.g., base rent, expenses overages, electrical costs, parking charges, etc.), after first deducting all of Tenant's reasonable marketing, legal and releasing costs of such sublease space, within five (5) business days after Tenant receives it. If Tenant fails to pay any such sum when due, Landlord may contact any transferee and require that transferee to make all payments due under the Transfer directly to Landlord.

(e) A Transfer will be deemed to occur if the person or persons who own or have voting control of 50% or more of Tenant on the Effective Date cease to own Tenant during the Term, unless at least 80% of Tenant's voting stock is listed on a national security exchange or owned by another corporation whose voting stock is so listed, or unless substantially the same directors, officers or partners (as the case may be) of Tenant's parent remain in control of Tenant.



(f) Tenant's Transfer of any interest in this Lease, or in the Premises, in violation of this Lease will be a Default under this Lease and will entitle Landlord to terminate this Lease and any option or other right granted Tenant by this Lease.

(g) For purposes of this subsection (g), the term "Affiliate" means any entity controlling, controlled by, or under common control with Tenant. Notwithstanding the above, Tenant may assign this Lease or sublet the Premises, or any part thereof, to (i) any Affiliate of Tenant, (ii) a successor by merger, acquisition, consolidation or reorganization; provided that such proposed transferee is a successor to Tenant by merger, acquisition, consolidation or reorganization, or (iii) a purchaser of all or substantially all of the assets of Tenant or its parent company (each, a "Permitted Transfer", and any such transferee being a "Permitted Transferee"), without the prior written consent of Landlord, provided (1) no Default by Tenant exists under this Lease beyond applicable notice and cure period; (2) Tenant shall give Landlord at least ten (10) Business Days prior written notice of the proposed assignment or sublease, which notice shall be subject to confidentiality by Landlord in all respects, and (3) if the then-Tenant will not be the surviving entity following such assignment, the Permitted Transferee must have a tangible net worth immediately following the assignment at least equal to that of the then-Tenant immediately preceding the assignment, as documented in financial statements for the proposed assignee submitted to Landlord.

16. **Tenant's Insurance.** Tenant, at its sole cost, must procure and maintain these insurance coverages throughout the Term:

(a) **General Liability Insurance.** Commercial general liability insurance (CG): (i) on form ISO CG 0001 1093 or ISO CG 0001 0695 (or, if Tenant has more than 1 location covered by a policy having a general aggregate limit, ISO form amendment Aggregate Limits of Insurance Per Location CG 2504 1185); (ii) on an occurrence basis; (iii) with at least a \$2,000,000 combined single limit; (iv) having these unmodified endorsements on Tenant's CG and on any umbrella policy: (A) ISO additional insured form CG 20 11 01 96 or equivalent designating Landlord Parties as additional insureds without modification; and (B) ISO waiver of subrogation form CG 2404 1092 in favor of Landlord Parties; and (v) deleting the contractual claim exclusion for personal injury and advertising injury.

(b) **Workers' Compensation and Employer Liability Coverage.** Workers' Compensation insurance (not any alternative form of coverage) for at least the applicable statutory limit; and employer's liability (or equivalent coverage under commercial umbrella) with at least a \$1,000,000 limit for each accident, for bodily injury by accident, and at least a \$1,000,000 limit for each employee for bodily injury by disease. Each such policy must waive subrogation in favor of Landlord Parties on endorsement form WC 420304 (Texas only) or ISO form WC 000313 (all other states).

(c) **Property Insurance.** Broadest available "special form" or "all risks" property insurance: (i) on ISO form CP 1030 (or equivalent business owner's policy); (ii) with no exclusions, except the standard printed exclusions; (iii) for 100% of the

replacement cost of Tenant's furniture, fixtures, and equipment and all above-Building Standard improvements or alterations to the Premises, regardless of who paid for them; (iv) waiving of subrogation in favor of Landlord Parties; and (iv) having these unmodified endorsements: (A) Landlord Parties shown as "insured as its interest may appear"; and (B) ordinance or law coverage.

(d) **Business Income and Extra Expense Coverage.** Business income and extra expense coverage for at least 6 months of Tenant's income and expenses with a waiver of subrogation in favor of Landlord Parties.

(e) **Policy Forms and Additional Requirements.** Each of Tenant's insurance providers must maintain ratings of *Best's Insurance Guide A/VIII* or *Standard & Poor Insurance Solvency Review A-*, or better, and be admitted to engage in the business of insurance in the State of Texas, and each of Tenant's policies must: (i) be primary — with all policies of Landlord and Landlord's lien holders being excess, secondary, and noncontributing; (ii) require Tenant's insurance provider to give Tenant notice (and Tenant shall then provide Landlord and Landlord's Mortgages notice) at least thirty (30) days prior written notice of any cancellation, nonrenewal, or material modification; and (iii) not have a deductible or self-insured retention in excess of \$10,000. Tenant must reinstate the full aggregate limit of any policy reduced below 75% any aggregate limit required in this Lease and maintain any other insurance coverages that Landlord or Landlord's Mortgages may reasonably require. Landlord also may require Tenant to procure and maintain its insurance coverages on other forms or with other endorsements to the extent commonly used or provided for office premises.

(f) **Evidence of Property Insurance.** Before the Effective Date, and at least thirty (30) days before the expiration of that policy, Tenant must deliver to Landlord proof of its property and business income insurance on ACORD form 27 "Evidence of Property Insurance" and of its CG and workers' compensation insurance on ACORD form 25 "Certificate of Insurance," with copies of any required endorsements attached.

(g) **ISO Forms.** All references in this Lease to ISO forms mean the stated form or its equivalent if the stated form is no longer current.

17. **Landlord's Insurance.** Landlord must procure and continue in force these insurance coverages: (i) CG with a combined single limit for bodily injury and property damage of not less than \$2,000,000.00 for each occurrence and \$5,000,000.00 in the aggregate and resulting from the operations of Landlord Parties within the Project; and (ii) special form (all risks) property insurance covering the Project, Building, Building Standard leasehold improvements, Landlord's Work and all machinery, equipment, and other personal property that Landlord uses in connection with the Building, for the full replacement value of this real and personal property.

18. **Indemnities and Waivers.**

(a) **Definitions.** For purposes of this Lease:

(i) **Beneficiary** is the intended recipient of another party's Indemnity, Waiver, or obligation to Defend;

(ii) **Claims** means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity, or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding);

(iii) **Defend** means to defend with counsel reasonably acceptable to the indemnified party at no cost to that party;

(iv) **Indemnify** means to indemnify, and hold free and harmless from and against;

(v) **Insurable Injury** is any bodily injury, property damage, or advertising injury as those terms are defined in the form of commercial general insurance policy CG 0001 1093 issued by Insurance Services Office, Inc. (ISO);

(A) **Landlord's Insurable Injury** is any Insurable Injury occurring in or outside the Premises and caused by a Landlord Party;

(B) **Tenant's Insurable Injury** is any Insurable Injury occurring in or outside the Premises and caused by a Tenant Party;

(vi) **Waive** means to knowingly and voluntarily relinquish a right or release another party from liability for a Claim.

(b) **Tenant's Performance Indemnities.** TO THE FULLEST EXTENT PERMITTED BY LAW AND THIS LEASE, TENANT WILL INDEMNIFY AND DEFEND LANDLORD PARTIES AGAINST ALL CLAIMS ARISING OUT OF: (i) ANY ACT OR OMISSION OF ANY TENANT PARTY (INCLUDING, WITHOUT LIMITATION, TENANT'S CONDUCT OF BUSINESS IN THE PREMISES RESULTING IN ANY INCREASE IN THE PREMIUM FOR ANY INSURANCE POLICY OR COVERAGE CARRIED BY LANDLORD); (ii) ANY TENANT PARTY'S VIOLATION OF, OR FAILURE TO COMPLY WITH, ANY APPLICABLE LAW; (iii) ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY OBLIGATION OF TENANT UNDER THIS LEASE; or (iv) ANY INTENTIONAL MISREPRESENTATION CONNECTED WITH THIS LEASE MADE BY TENANT.

(c) **Tenant's Indemnities for its Insurable Injuries.** TO THE FULLEST EXTENT PERMITTED BY LAW AND THIS LEASE, TENANT WILL INDEMNIFY AND DEFEND LANDLORD PARTIES AGAINST ALL CLAIMS ARISING OUT OF ANY TENANT'S INSURABLE INJURY.

(d) Landlord's Performance Indemnities. TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE LIMITATIONS ON LANDLORD'S LIABILITIES IN THIS LEASE (INCLUDING, WITHOUT LIMITATION, SECTION 19), LANDLORD WILL INDEMNIFY AND DEFEND TENANT PARTIES AGAINST ALL CLAIMS ARISING OUT OF: (i) ANY ACT OR OMISSION OF ANY LANDLORD PARTY; (ii) ANY LANDLORD PARTY'S VIOLATION OF, OR FAILURE TO COMPLY WITH, ANY APPLICABLE LAW; (iii) ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY OBLIGATION OF LANDLORD UNDER THIS LEASE; or (iv) ANY INTENTIONAL MISREPRESENTATION CONNECTED WITH THIS LEASE MADE BY LANDLORD.

(e) Landlord's Indemnities for its Insurable Injuries. TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE LIMITATIONS ON LANDLORD'S LIABILITIES IN THIS LEASE (INCLUDING, WITHOUT LIMITATION, SECTION 19), LANDLORD WILL INDEMNIFY AND DEFEND TENANT PARTIES AGAINST ALL CLAIMS ARISING OUT OF ANY LANDLORD'S INSURABLE INJURY.

(f) Landlord's Indemnities. TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE LIMITATIONS ON LANDLORD'S LIABILITIES IN THIS LEASE (INCLUDING, WITHOUT LIMITATION, SECTION 19), LANDLORD WILL INDEMNIFY AND DEFEND TENANT PARTIES AGAINST ALL CLAIMS ARISING OUT OF ANY INSURABLE INJURY SUFFERED BY TENANT OR A THIRD PARTY IN THE COMMON AREAS OR SERVICE AREAS TO THE EXTENT IT WAS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD PARTY, BUT LANDLORD WILL HAVE NO OBLIGATION TO INDEMNIFY OR DEFEND ANY CLAIM FOR WHICH ANY LANDLORD PARTY IS TO BE INDEMNIFIED UNDER THIS LEASE.

(g) Waivers. TO THE FULLEST EXTENT PERMITTED BY LAW AND THIS LEASE, (i) TENANT WAIVES ALL CLAIMS AGAINST LANDLORD PARTIES ARISING FROM: (A) TENANT'S INSURABLE INJURIES; OR (B) ANY INSURABLE INJURY TO ANY TENANT PARTY NOT CAUSED BY A LANDLORD PARTY, and (ii) LANDLORD WAIVES ALL CLAIMS AGAINST TENANT PARTIES ARISING FROM (A) LANDLORD'S INSURABLE INJURIES; OR (B) ANY INSURABLE INJURY TO ANY LANDLORD PARTY NOT CAUSED BY A TENANT PARTY.

(h) Scope of Indemnities and Waivers. ALL INDEMNITIES, WAIVERS, AND OBLIGATIONS TO DEFEND IN THIS LEASE: (I) WILL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFICIARY'S BENEFIT, REGARDLESS OF ANY EXTRAORDINARY SHIFTING OF RISK, BUT NOT TO THE EXTENT THE CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE, SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE BENEFICIARY (TAKING INTO ACCOUNT WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED ON, OR ALLEGED AGAINST THAT BENEFICIARY), AND NOT TO THE EXTENT THAT BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CAUSED THE CLAIM, (II) ARE INDEPENDENT OF, AND WILL NOT BE LIMITED BY, EACH OTHER OR ANY INSURANCE OBLIGATIONS IN THIS LEASE (WHETHER OR NOT COMPLIED WITH); AND (III) WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE UNTIL ALL CLAIMS AGAINST

THE BENEFICIARY ARE TIME-BARRED UNDER APPLICABLE LAW. NOTWITHSTANDING ANY EXTRAORDINARY SHIFTING OF RISK, LANDLORD AND TENANT EACH EXECUTED THIS LEASE IN MATERIAL RELIANCE ON THE INCLUSION OF EACH INDEMNITY AND WAIVER IN THIS LEASE.

19. Limitations of Landlord's Liability. Landlord's liability for any act or omission or for breach of any obligation under this Lease will be recoverable exclusively from the Project (and the rents and insurance proceeds therefor), and Tenant Waives: (a) all other rights of recovery against Landlord or its other assets; and (b) all Claims against any Landlord Party for consequential, incidental, or punitive damages (including, without limitation, lost profits and business interruption) allegedly suffered by any Tenant Party, except to the extent that such Claim is caused by the willful misconduct or gross negligence of a Landlord Party. No Landlord Party will have personal liability under this Lease or be personally liable for any judgment or deficiency.

Landlord Waives all Claims against any Tenant Party for consequential, incidental, or punitive damages (including, without limitation, lost profits and business interruption) allegedly suffered by any Landlord Party, except to the extent that such Claim is caused by the willful misconduct or gross negligence of a Tenant Party.

20. Casualty Damage. If a fire or other casualty damages any part of the Premises, Tenant will give prompt, written notice to Landlord. If (a) any casualty damages the Building, and the Building, in Landlord's sole discretion, requires substantial and material alteration or reconstruction (whether or not the Premises are damaged), i.e. the repair costs would exceed \$1,000,000 and the time needed to repair the damages would take longer than 180 days from the date of the casualty, (b) Landlord's Mortgagee requires Landlord to use the insurance proceeds payable as a result of that casualty toward the mortgage debt, or (c) there is a material uninsured loss to the Building (for which Landlord was not required to carry insurance under this Lease), Landlord will be entitled to terminate this Lease by giving Tenant written notice of such termination within sixty (60) days after the date of such fire or other casualty.

(a) If Landlord does not elect to terminate this Lease within that time, Landlord thereafter will use reasonable diligence to restore the Project, Common Areas, Building, Building Standard leasehold improvements and Landlord's Work (except that Landlord will not be responsible for delays beyond Landlord's control) to substantially the same condition as they were in immediately before the casualty. But Landlord will not be required to spend more than the insurance proceeds Landlord actually receives as a result of the casualty to restore the Building and Landlord's Work. If Landlord's obligations to repair and restore are not completely satisfied within 180 days from the date of the fire or other casualty, Tenant shall have the right to terminate this Lease by giving written notice to Landlord (the "Termination Notice") within thirty (30) days from the date such deadline passes. The Termination Notice must include a date (not earlier than thirty (30) days after the Termination Notice is given) by which the termination will be effective; provided, however, if Landlord causes Substantial Completion of such repairs and restoration to occur prior to the termination date specified

in Tenant's Termination Notice, then this Lease will not be terminated and the Termination Notice will be deemed to have been withdrawn by Tenant.

(b) Immediately after Landlord notifies Tenant to begin restoring or replacing Tenant's (above-Building Standard) Improvements and Trade Fixtures, Tenant, at its sole cost, will use reasonable diligence to do so. Except for the costs (to the extent of insurance proceeds received by Landlord) of restoring Landlord's Work, Tenant must pay all costs of reconstructing or restoring the Premises (the above-Building Standard improvements) and Tenant's furniture, fixtures and equipment, and Tenant must give Landlord satisfactory evidence of Tenant's ability to pay such costs before Landlord will have an obligation to begin restoring the Premises.

(c) Landlord will allow Tenant an abatement of Rent during the time, and to the extent, that the Premises are unfit for occupancy for Tenant's use, but Tenant will be entitled to this allowance only if the damage did not result from the gross negligence or willful misconduct of any Tenant Party.

21. **Condemnation.** If a substantial part of the Premises or the Building is condemned or taken for any public or quasi-public use by law, ordinance, or regulation; by eminent domain; or by private purchase in lieu thereof, Landlord may, in its sole discretion, either: (a) terminate this Lease effective when any such condemnation or taking occurs; or (b) abate Rent for the portion of the Premises physically taken or condemned beginning on the day that any physical taking or condemnation occurs. Tenant shall have the right to terminate this Lease by giving written notice to Landlord not later than sixty (60) days after Tenant receives notice of such condemnation or taking, if the condemnation or taking renders the Premises reasonably insufficient for Tenant to continue operation of its business thereon or otherwise materially affects Tenant's access thereto. All compensation awarded for any such taking or condemnation, or sale proceeds in lieu thereof, will be Landlord's property, and Tenant Waives any claim thereto, except for the portion of any award or proceeds the condemning or purchasing party allocates to the taking of, or damage to, Tenant's Trade Fixtures or other personal property and equipment of Tenant, unamortized tenant improvements paid for by Tenant and Tenant's moving expenses, which Tenant specifically reserves to itself.

22. **Subordination, Non-Disturbance and Attornment Agreement.** Tenant accepts this Lease subject to any voluntary lien, mortgage or deed of trust (collectively "Mortgage") that now or later may affect title to the Premises or any part of the Project (including, without limitation, any renewal, modification, refinancing or extension of any Mortgage); provided, however, that if the mortgagee, trustee or holder of such Mortgage (each a "Mortgagee") elects to have Tenant's interest in this Lease superior to such Mortgage, then by notice to Tenant this Lease shall be deemed superior to such Mortgage. At Landlord's expense, Landlord shall cause its current Mortgagee to execute and deliver (which Landlord and Tenant shall also execute), a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") substantially in the form attached hereto as Exhibit F, subject to any changes required by the Mortgagee so long as such changes do not substantially interfere with the benefits provided by the non-disturbance covenant in favor of Tenant to be contained in the SNDA. Landlord shall use commercially reasonable efforts to obtain a similar SNDA from any future Mortgagee.

23. Estoppel Certificates. Within ten (10) Business Days after Landlord's written request, Tenant will sign and deliver a recordable, written statement certifying that (a) this Lease is unmodified and in full force and effect (or, if there have been any modifications, that this Lease, as so modified, is in full force and effect); (b) Landlord is not in breach of any obligation to Tenant (or, if Tenant claims such a breach then exists, specifying the nature of each such breach); and (c) Tenant has paid all Rent (including any specific components of Rent) through a specified date or dates; and (d) certifying to the status of any other matters related to this Lease or its performance.

24. Default. The occurrence of any one or more of the following events is a Default:

(a) Tenant fails to pay where and when due any Base Rent or other component of Rent and that failure continues for five (5) Business Days after Landlord delivers written notice to Tenant of its failure (**Monetary Default**); provided that with respect to Base Rent, Landlord shall not be required to provide such notice more than once per twelve-month period and any further notices within such 12-month period will be waived.

(b) Tenant does not vacate the Premises immediately upon the expiration or termination of the Lease.

(c) Tenant: (i) becomes insolvent; (ii) makes a transfer in fraud of creditors; (iii) makes an assignment for the benefit of creditors; or (iv) admits, in writing, its inability to pay its debts as they become due;

(d) Tenant: (i) commits an act of bankruptcy; (ii) files a petition under the United States Bankruptcy Code or under any other similar Federal or state law; (iii) is adjudged a debtor in any bankruptcy proceeding; or (iv) is named in pleading or motion filed in any court proposing to reorganize or adjudicate Tenant as Debtor, and that pleading or motion is not discharged or denied within sixty (60) days after its filing.

(e) A receiver or trustee is appointed for all or substantially all of the assets of Tenant (i) in any proceeding brought by Tenant; or (ii) in any proceeding brought against Tenant, and the receiver or trustee (A) is not discharged within sixty (60) days after its appointment, or (B) Tenant consents to, or acquiesces in, its appointment.

(f) The leasehold estate is taken in execution, by writ, or by other process in any action against Tenant.

(g) The liquidation, termination, dissolution, forfeiture of right to do business, or death of Tenant.

(h) Tenant fails to comply with any other term of this lease, and Tenant does not cure its failure within thirty (30) days after Landlord delivers written notice to Tenant of its failure; provided, however, that if such failure cannot reasonably be cured by

Tenant within such thirty (30) day period, Tenant shall have additional time as is reasonable under the circumstances for Tenant to cure such default so long as Tenant commences the cure within such thirty (30) day period and prosecutes such cure with diligence to completion.

(i) Tenant fails to take possession of and occupy the Premises within thirty (30) days after the Commencement Date.

(j) Unless Tenant is timely paying all Rent owed under this Lease when due, Tenant (whichever is the occupant) abandons or vacates a substantial portion of the Premises without Landlord's prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed). Tenant will be conclusively presumed to have abandoned the Premises when Tenant, or any person acting on its behalf, has removed, is removing, or is preparing to remove (other than in the normal course of business) substantial amounts of goods, equipment, fixtures, or other property from the Premises, and this presumption will supersede Section 93.002 of the Texas Property Code to the extent of any conflict.

25. Remedies. Landlord's remedies are cumulative and not exclusive. If a Default occurs and is continuing, Landlord – without prejudice to any other legal, equitable, or contractual right or remedy – will be entitled to exercise any one or more of the following remedies, using lawful force if necessary or appropriate:

(a) Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Premises.

(b) Terminate Tenant's right to occupy all or any part of the Premises — without terminating this Lease — and with or without reentering or repossessing the Premises.

(c) Recover unpaid delinquent Rent and any Damages;

(d) Change or pick the locks, access codes, or other access control devices, and take any other self-help or judicial action to reenter the Premises, repossess the Premises, and exclude Tenant and other occupants from the Premises, subject to the relevant provisions of the Texas Property Code.

(e) Remove and store (at Tenant's sole cost) any property on the Premises.

(f) Sue for eviction, specific enforcement, equitable relief, rent, damages, or any other available remedy.

(g) Apply any Security Deposit in any manner permitted by this Lease.



(h) Cure Tenant's Default, and if Landlord does so, Tenant must reimburse Landlord within thirty (30) days after Landlord delivers an invoice for any expenses Landlord incurred effecting compliance with Tenant's obligations.

(i) Withhold or suspend any payment that this Lease would otherwise require Landlord to make.

(j) Charge interest on any amount not paid when due from the due date through the date of its payment at the Default Rate, which is the lesser of 10% per annum or the highest rate permitted by Applicable Law.

(k) Recover the Rental Deficiency.

(l) Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).

**Damages** include, without limitation, all actual, incidental, and consequential damages, court costs, interest, and attorneys' fees arising from Tenant's breach of the Lease (including, without limitation, the cost of (A) recovering possession, (B) removing and storing Tenant's and any other occupant's property, (C) reletting (including, without limitation, the costs of brokerage commissions and cleaning, decorating, repairing, or altering the Premises for a substitute tenant or tenants), (D) collecting any money owed by Tenant or a substitute tenant, (E) repairing any damage caused by any Tenant Party, (F) performing any obligation of Tenant under the Lease, (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach, (H) any contractual or liquidated types or measures of damages specified in this Lease; and (I) any other type or measure of damages recoverable for any particular breach under Applicable Law.

**Rental Deficiency** is a contractual measure of Damages for Tenant's non-payment of Rent measured by either the: (A) **Actual Rental Deficiency**, which is the difference (never less than zero) between (1) the Base Rent due for, and other Rent allocable under this Lease to, each month beginning with the first month with respect to which Landlord receives rent from reletting the Premises, and (2) the proceeds, if any, that Landlord actually collects from any substitute tenant for any part of the Premises in each corresponding month in which the Term and the term of the substitute tenant's lease overlap, or (B) **Market Rental Deficiency**, which is the present value — discounted at seven percent (7%) simple annual interest — of the difference (never less than zero) between (1) the Rent otherwise due under the Lease during any period after Tenant's breach in which Landlord may elect to recover this damage measure, and (2) the Fair Rental Value of the Premises during that period, plus any costs incurred in connection with any actual or attempted reletting and any other Damages. In determining the Market Rental Deficiency, the **Fair Rental Value** will be the total rent that a comparable tenant would pay for comparable space in a building of substantially equivalent quality, size, condition, and location, considering rental rates and concessions then prevalent in the marketplace, the remaining lease term, the expected vacancy, any other relevant factors. An independent MAI appraiser selected by Landlord will determine the Premises' Fair Rental Value, and that determination will conclusively bind the parties in any computation of the Market Rental Deficiency.

Landlord will not be in breach of this Lease if Landlord begins and pursues the cure of its failure to meet any material obligation under this Lease within thirty (30) days after Landlord receives written notice from Tenant specifying Landlord's failure, and Landlord thereafter diligently pursues said cure. Tenant will have no right to terminate or rescind this Lease or to abate, set-off, or withhold any payment of Rent as a result of Landlord's breach of this Lease, except as otherwise expressly provided in this Lease. Tenant Waives all rights to terminate or rescind this Lease for Landlord's breach, and Tenant agrees that its sole and exclusive remedy for any breach will be a suit for damages, specific performance, or injunction, except as otherwise expressly provided in this Lease. Before exercising any remedy for Landlord's breach, Tenant will give Landlord's Mortgagees written notice specifying Landlord's breach and at least thirty (30) days right to cure that breach, to the extent Landlord has provided Tenant with such Mortgagee's name and address.

Unless Landlord delivers signed, written notice thereof to Tenant, no act or omission by any Landlord Party will constitute Landlord's acceptance of surrender of the Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any Landlord Party or Landlord's repossession, reentry, or reletting of the Premises).

**NO LANDLORD PARTY WILL BE LIABLE FOR ANY CLAIM BY ANY TENANT PARTY ARISING FROM ANY ACT OR OMISSION OF ANY LANDLORD PARTY IN THE EXERCISE OF ANY RIGHT REMEDY FOR TENANT'S DEFAULT UNDER THIS LEASE, INCLUDING WITHOUT LIMITATION, CLAIMS ARISING FROM A LANDLORD PARTY'S OWN NEGLIGENCE, UNLESS SUCH CLAIM ARISES FROM A LANDLORD'S PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.**

26. **Mitigation.** Landlord shall use commercially reasonable efforts to mitigate the Rental Deficiency and Damages after a Default by Tenant and Tenant has physically vacated the Premises. Without limiting Landlord's duty to mitigate, beginning not more than sixty (60) days after Tenant physically vacates the Premises and continuing until the Premises have been relet, Landlord will market the Premises for lease through Landlord's leasing agents or outside real estate brokers and include the Rentable Area of the Premises in Landlord's regularly published advertising (if any) of available space in the Building.

(a) In addition, Landlord — without breaching any duty to mitigate — may, among other things, (i) relet other vacant space in the Building before reletting the Premises, and Tenant will not be entitled to have any proceeds from reletting such vacant space credited against any amounts due Landlord under this Lease; (ii) refuse to relet to any prospective tenant who does not meet Landlord's then current leasing guidelines; or (iii) offer or agree to relet the Premises, or any part of the Premises, (A) for its then fair rental value (regardless of whether the rental rate is more or less than the rent stipulated in this Lease); (B) for a shorter or longer term than the term then remaining under this Lease; (C) on terms different from those in this Lease (including, without limitation, lease concessions comparable to those then being offered for comparable space in light of market conditions and the other terms of the substitute lease); and (D) with cosmetic improvements made to the Premises, but Landlord will not be obligated to make any

improvements to the Premises for a substitute tenant, unless Tenant pays such costs to Landlord, in advance, of Landlord's agreement to make them. The terms of any substitute tenant's lease will not effect a surrender of this Lease.

(b) Tenant stipulates that the mitigation requirements and limitations expressed in Paragraph 26 of this Lease are objectively reasonable. Tenant will have the burden to plead and prove that Landlord failed to mitigate as required herein.

27. Expiration, Termination, and Hold Over. If Tenant holds over or continues to occupy the Premises after the expiration or termination of this Lease or of Tenant's right of possession, Tenant will: (a) do so as a tenant-at-will, (b) pay Landlord (for the entire holdover or period of occupancy, prorated for each day of holdover) 150% of the Rent that otherwise would have accrued during the holdover or occupancy based on the rental rate in effect for the last month of the Term.

(a) No holding over by Tenant or payment to Landlord after the expiration or termination of this Lease will renew or extend this Lease, prevent Landlord from recovering immediate possession of the Premises by summary proceedings or otherwise, unless Landlord sends written notice to Tenant that Landlord elects to extend this Lease.

(b) Tenant will be liable for all of Landlord's damages which are recoverable under Applicable Law due to Tenant's failure to timely vacate the Premises upon the expiration or sooner termination of this Lease.

(c) When this Lease expires or is terminated, Tenant must immediately: (i) surrender any keys, electronic ID cards, and other access control devices to Landlord at the place then fixed for the payment of Rent; (ii) remove all Tenant's Trade Fixtures from the Premises; (iii) turn over to Landlord the Premises in broom or vacuum clean condition, ordinary wear and tear excepted; (iv) leave the Premises and any improvements to the Premises in the substantially the same condition as they were when all Tenant Improvements were initially completed (except as otherwise provided by this Lease), ordinary wear and tear excepted; and (v) deliver the Premises to Landlord free of any and all Hazardous Materials and Contamination (except for any Hazardous Materials or Contamination existing on the Premises before the Effective Date).

(d) Any and all alterations, additions, and improvements to the Premises and all attached furniture, equipment and fixtures will become the property of Landlord upon the expiration or termination of this Lease. In addition, all other personal property of Tenant remaining in the Premises fifteen (15) days after the termination of this Lease will, at Landlord's option and upon written notice to Tenant, (i) be deemed abandoned; or (ii) become the property of Landlord. Landlord may require Tenant to remove, at Tenant's sole cost, such fixtures, furniture, trade fixtures, equipment, improvements, alterations, additions and personal property as designated in writing to Tenant by Landlord ("**Required Removables**"), provided that (i) with respect to the Tenant Improvements or any future alteration or improvement performed by or on behalf of Tenant to the Premises, such notification shall be provided to Tenant either upon

finalization of the Final Tenant Plans or at the time that Landlord consents to such alteration or improvement, as the case may be, and (ii) Tenant shall not be required to remove Minor Alterations. If Tenant fails to remove the Required Removables, Tenant will pay Landlord on demand all costs incurred in removing, storing, or disposing of the Required Removables. Tenant will be responsible for repairing any damage to the Premises or the Project resulting from the removal of any Required Removables or Tenant's personal property.

28. **Quiet Enjoyment.** So Long as Tenant is not in Default (after any applicable notice and cure period has expired), Landlord will not disturb Tenant's possession of the Premises, except in accordance with this Lease.

29. **Reservations by Landlord.** In addition to its other rights, Landlord, in its sole discretion, may: (a) change the name of the Building or the Project; (b) change the location of entrances and exits to the Building, the Project, and any parking facilities; (c) place signs on the Building, in Common Areas, or elsewhere on the Project's grounds; (d) change the Building's street address; (e) take any reasonable measures for the safety and protection of the Premises, the Building, the Project, or their occupants; (g) sell, mortgage, assign, or transfer the Building and this Lease; (h) have pass keys to the Premises; (i) repair, alter, add to, improve, build additional stories on the Building or build other facilities on the Project; (j) run necessary pipes, conduits, and ducts through the Premises; (k) carry on any work, repairs, alterations or improvements in, on or about the Building or its vicinity, and, during any such work, temporarily close or obstruct doors, entry ways, public space, and corridors in the Building; (l) interrupt or temporarily suspend Building services and facilities, subject to Section 9 of this Lease; (m) change the arrangement and location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets, or other public parts of the Building; and (n) grant to anyone the exclusive right to conduct any business or render any service in or to the Building, unless that grant would preclude Tenant's Permitted Use of the Premises. Upon any change in the name, street address or ownership of the Building or Project, Landlord shall promptly notify Tenant in writing of same. With respect to any construction, repair or similar work conducted by or on behalf of Landlord, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of and access to the Premises.

30: **Transfers by Landlord.** Landlord may transfer its rights, interests, and obligations under this Lease and in any part of the Project provided that such transferee expressly assume Landlord's obligations under this Lease accruing on or after the effective date of transfer. Upon any such transfer, (a) Landlord will give Tenant written notice of the transfer; (b) the transferor Landlord will be released from any further obligations under this Lease accruing on or after the effective date of the transfer; (c) the transferor Landlord will transfer the unused balance of any Security Deposit to the transferee Landlord; and (c) Tenant will attorn to the transferee Landlord and look solely to the transferee Landlord to perform any obligations of Landlord accruing on or after the effective date of the transfer.

31. **Taxes on Tenant's Property.** Tenant will be liable for, and will promptly pay, all taxes on personal property, furniture, improvements, additions, or fixtures that any Tenant Party places or keeps in the Premises. If any tax for which Tenant is liable is levied or assessed against

Landlord or Landlord's property, Landlord may pay the tax, or, if the assessed value of Landlord's property is increased by inclusion of any Tenant Party's personal property, furniture, or fixtures in the Premises, Landlord may pay the tax attributable to such valuation increase, and, in either case, Tenant must reimburse Landlord for such tax payments within thirty (30) days after Tenant receives written demand from Landlord.

32. Tenant's Authority. If Tenant is a corporation (including any form of professional association), limited liability company, partnership (general or limited), or other form of organization other than a natural person, then Tenant and each person executing this Lease on behalf of Tenant covenants, warrants and represents that: (a) Tenant — in accordance with Tenant's organizational documents — has duly authorized that person to execute and deliver this Lease; (b) this Lease is binding on Tenant according to its terms; (c) Tenant is duly organized and legally existing in the state of its organization, and is qualified to do business in the State of Texas; (iv) upon request, Tenant will provide Landlord with true and correct copies of Tenant's organizational documents (including any amendments) and any authorizations for Tenant to enter into the Lease; and (v) Tenant's execution and delivery of this Lease will not breach, or cause a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement, or other contract. No Tenant Party other than Tenant and Tenant's Guarantor shall have any personal liability under this Lease.

33. Building Rules and Regulations. Tenant must comply, and cause all other Tenant Parties, to comply with the Building Rules and Regulations adopted or altered by Landlord from time to time, so long as Landlord provides Tenant with reasonable notice of any changes or amendments to such Rules and Regulations and they will not change the economic, liability or other terms of this Lease and will not unreasonably interfere with Tenant's use of the Premises. These rules will apply generally to tenants, but Landlord will be entitled to change or Waive any Building rule or regulation, so long as it does not materially interfere with Tenant's Permitted Use of the Premises or Common Areas. Any Tenant Party's breach of any Building rule or regulation may, at Landlord's option, constitute a Default. Notwithstanding the forgoing, the Rules and Regulations shall be uniformly applicable to all tenants and occupants of the Project and shall be enforced by Landlord on a non-discriminatory basis.

34. Compliance with Applicable Laws. Tenant, at its sole cost, must comply with all applicable laws; ordinances; rules; regulations; court orders; judgments; decrees; police, fire, and sanitary codes; and any other requirements, present and future (Applicable Laws), adopted by any governmental authority, board of fire underwriters, utility company, property association, or other such entity, relating to (i) Hazardous Materials, on or (ii) the condition, use, or occupancy of, any part of the Premises or the Project, subject to Section 35 of this Lease. The obligations in this paragraph will survive the expiration or termination of this Lease.

(a) Hazardous Materials mean any toxic, flammable, reactive, or corrosive substance now or hereafter regulated by any Applicable Law, including, without limitation, any substance (i) defined as a hazardous waste, extremely hazardous waste, hazardous substance, hazardous material, or regulated substance, or (ii) requiring special use, handling, storage, or disposal under any Applicable Law.

(b) **Contamination** means any release or disposal of Hazardous Materials affecting the improvements, facilities, soil, groundwater, air, or other element pertaining to the Project that could result in a Claim against any Landlord Party or in a fine, use restriction, cost recovery lien, remediation requirement, or other imposition against any Landlord Party or any part of the Project. A Claim arising from Contamination includes, without limitation, the loss of or restriction on the use of any part of the Project, any adverse impact on marketing or leasing space, and all costs of site investigation, remediation, removal, and restoration, claims settlement, attorneys' fees, consultant fees, and expert fees).

(c) Tenant will not bring, or permit any Tenant Party to bring, any Hazardous Material on the Project (except for *de minimus* amounts of household cleaning and office products used, kept, and disposed of in compliance with all Applicable Laws). If Tenant becomes aware of any other Hazardous Materials on the Premises or the Project, Tenant will notify Landlord immediately.

(d) If any Contamination occurs as a result of the act or omission of any Tenant Party, Tenant, at its sole cost, will comply with all Applicable Laws relating to the Contamination and will promptly take all actions necessary to return any contaminated or affected property or facilities on or adjoining the Project to their condition before such Contamination. Before Tenant remediates any Contamination, Tenant must obtain Landlord's written approval and any required governmental approvals. In addition, **TENANT WILL INDEMNIFY AND DEFEND LANDLORD PARTIES FROM ANY CLAIMS ARISING FROM CONTAMINATION CAUSED IN WHOLE OR IN PART BY ANY TENANT PARTY'S ACT OR OMISSION.** But, Tenant will not indemnify, defend, or be liable to Landlord for any Claim arising from any Contamination existing on the Project before the Effective Date.

(e) Landlord, its agents, and its representatives will be entitled to (but they will not be required to) inspect the Premises at any time to monitor Tenant's compliance with Applicable Laws, subject to Section 6 of this Lease. If Landlord reasonably believes Tenant is not in compliance, Landlord may notify Tenant in writing of Tenant's non-compliance, and, if Tenant does not cure its non-compliance within thirty (30) days (or if such non-compliance cannot reasonably be cured within such thirty (30) day period, Tenant shall have additional time as is reasonable under the circumstances so long as Tenant diligently pursues said cure), Landlord — at Tenant's sole cost plus a 10% administrative fee — may enter the Premises and remedy any non-compliance or Contamination. Landlord will use reasonable efforts to minimize any resulting interference with Tenant's business, but Landlord will not otherwise be liable for any such interference.

Landlord warrants and represents to Tenant that the Building, as constructed by Landlord, does not contain any asbestos or other Hazardous Materials and to Landlord's actual knowledge as of the Effective Date, no Hazardous Materials are located on or under the Land. Landlord will not bring, or permit any Landlord Party to bring, any Hazardous Material on the Project. If any Contamination occurs as a result of the act or omission of any Landlord Party, Landlord, at its

sole cost, will comply with all Applicable Laws relating to the Contamination and will promptly take all actions necessary to return any contaminated or affected property or facilities on or adjoining the Project to their condition before such Contamination affecting the Premises. In addition, **LANDLORD WILL INDEMNIFY AND DEFEND TENANT PARTIES FROM ANY CLAIMS ARISING FROM CONTAMINATION CAUSED IN WHOLE OR IN PART BY ANY LANDLORD PARTY.**

35. Americans with Disabilities Act and Texas Architectural Barriers Act. Tenant, at its sole cost, will (a) comply with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990)) [ADA] and the Texas Architectural Barriers Act (Article 9102, TEX. REV. Civ. STAT. (Vernon's 1991)) [Texas Act] applicable to the Premises and to any improvements or other facilities within the Premises except those improvements on other facilities installed by Landlord; (b) be solely responsible for any accommodations within, or alterations to, the Premises required to accommodate any Tenant Party; (c) be solely responsible for any accommodations or alterations to the Project required for a Tenant Party if Landlord would not otherwise be required to make the additional accommodation or alteration under generally applicable provisions of the ADA or the Texas Act but for Tenant's unique use of the Premises. Landlord, at its sole cost will be responsible for: (d) constructing and maintaining the Building and Project in compliance with ADA and the Texas Act; (e) making necessary changes in Common Areas to be in compliance with ADA and the Texas Act; and (f) for modifying policies, practices, or procedures applicable to all tenants to the extent required under Title III of the ADA. No term of this Lease authorizes, or should be construed as authorizing, Landlord or Tenant to violate the ADA or the Texas Act.

36. Telecommunications. Tenant, at its sole cost, may order and use telephone and other wired telecommunications services in accordance with Rules and Regulations adopted by Landlord from time to time, but Tenant must obtain Landlord's prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed) to Tenant's use of services of a telephone or telecommunications service provider who is not then providing service to the Building. Unless Landlord otherwise requests or consents in writing, Tenant's telecommunications equipment must be located in the Premises and the telephone closet(s) on the floor(s) on which the Premises are located. Landlord has no obligation to maintain Tenant's telecommunications equipment, wiring, or other infrastructure, and if any such service is interrupted, curtailed, or discontinued, Landlord will have no obligation or liability to Tenant, subject to Section 9 of this Lease.

(a) Landlord — upon reasonable prior notice to Tenant and subject to Section 9 of this Lease — will be entitled to interrupt or turn off telecommunications facilities for any emergency, to repair the Building, or to install telecommunications or other equipment for the Building's other occupants or users.

(b) By the expiration or termination of this Lease, Tenant, at its sole cost, will remove all telecommunications equipment and other facilities for telecommunications transmittal (except wiring) installed in the Premises or on the Project for Tenant's use. But Landlord will be entitled to, upon written notice to Tenant given no later than forty-five (45) days before the Term expires, require Tenant to abandon and leave in place —

without payment to Tenant or credit against Rent — any and all telecommunications wiring, related infrastructure, and selected components thereof, whether located in the Premises or elsewhere in the Building.

(c) Tenant will not use or allow any Tenant Party to use, any wireless communications equipment (other than cellular telephones, Wi-Fi which operates in the Premises and wireless headsets), antennae, or satellite receiver dishes within the Premises or on the Project or on the roof of the Building without Landlord's prior written consent (such consent, except for consent to use the roof, not to be unreasonably withheld, conditioned, or delayed). Tenant will, at its expense, maintain any satellite receiver and other equipment it or any Tenant Party installs in good condition, repair and appearance and will remove same and repair all damages to the Building and the Premises at the expiration or sooner termination of this Lease.

(d) If any Tenant Party's telecommunications service, transmitters, or receivers interfere with Landlord's or another occupant's telecommunications services or equipment, Tenant will promptly eliminate any such interference or, if Tenant cannot eliminate it, stop using the equipment or service causing such interference. Tenant assumes liability for all Claims related to such interference.

37. Landlord's Lien. Landlord waives any statutory or constitution lien against Tenant's personal property.

38. Notices. All notices, demands, requests, and other communications required or permitted by this Lease must be: (a) in writing; (b) delivered to the party's designated representative at the party's address on its signature page of this Lease, or to another person, or at another address, designated in a notice delivered in a manner permitted by this paragraph; and (c) delivered (i) in person (e.g., hand delivery by courier or overnight delivery service), (ii) by facsimile transmittal (fax), or (iii) by United States mail, registered or certified, postage fully prepaid, return receipt requested. Any notice given by fax also must be given by another means permitted by this paragraph. Notice delivered in person, by fax, or by mail will be effective when actually received, and any properly mailed notice (even if not actually received) will be deemed received on the 3rd day after its deposit in a regularly maintained receptacle for the United States mail.

39. Miscellaneous. The following provisions are not immaterial because they are included in this paragraph of this Lease.

(a) Amendments. No change in any term of this Lease will be effective, unless Landlord and Tenant each sign and deliver a written instrument evidencing the change.

(b) Attorneys' Fees. In any suit or other dispute between Landlord and Tenant, the prevailing party will be entitled to recover its reasonable attorneys' fees, court costs, and other litigation expenses. In the event any proceeding is filed by or against Tenant under the United States Bankruptcy Code, Landlord will also be entitled to



recover as part of its claim its attorneys' fees and expenses incurred in connection with such bankruptcy proceeding.

(c) **Commissions.** Except for Landlord's obligation to pay a commission to Landlord's Broker and Tenant's Broker pursuant to separate written commission agreement(s), Landlord and Tenant each agree to Defend and Indemnify the other against any Claim for any commission or brokerage fee connected with this Lease, its renewal, or any options granted in it arising from the indemnitor's acts or omissions.

(d) **Construction.** Landlord and Tenant have participated in drafting this Lease, and they agree that this Lease will not be construed against either party as its drafter. Each defined term includes any capitalized grammatical variants, and the use of bold type is sometimes used for the reader's convenience, but its use does not affect any term's meaning. Unless the context otherwise requires, the singular includes the plural, and vice versa, and any gender references are interchangeable. Time is of the essence.

(e) **Force Majeure.** Whenever this Lease sets a time period for a party to act, the party required to perform the act will not be liable to the other party, and the computation of the time period will exclude, any delays due to strikes; riots; acts of God; shortages of labor or materials; war; governmental laws, regulations, or restrictions; or any other cause beyond that party's control. But no such force majeure will excuse Tenant's obligations to timely pay Rent or any other sum of money to Landlord.

(f) **No Merger.** If the same person or entity acquires any direct or indirect interest in this Lease or the leasehold and in the fee, the leasehold will not merge with the fee. And, neither Tenant's surrender of this Lease nor its mutual cancellation will constitute a merger. But, upon any surrender or cancellation of this Lease, Landlord, in its sole discretion, may terminate or assume any then existing subtenancy.

(g) **Non-Disclosure.** Tenant will not disclose any terms of this Lease to other tenants in this Building or to prospective tenants or to the public generally.

(h) **Recording.** Tenant will not record this Lease or any memorandum of this Lease.

(i) **Representations and Warranties.** Tenant represents and warrants to Landlord that: (a) no Landlord Party made, and no Tenant Party relied on, any representation, warranty, or promise with respect to this Lease, the Premises, or the Project, except for those expressed in this Lease; (b) Tenant acquired no rights, easements, or licenses (by implication or otherwise), except for those expressed in this Lease; (c) any and all financial information about Tenant was true and correct in all material respects when it was delivered and on the Effective Date. **LANDLORD DISCLAIMS ALL IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF SUITABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**

(j) Severability. If any term of this Lease is or becomes illegal, invalid, or unenforceable, the remaining terms of this Lease will not be affected, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable.

(k) Successors. This Lease will apply to, inure to the benefit of, and bind Landlord and Tenant, and their respective heirs, successors-in-interest, legal representatives, and permitted assigns, except as otherwise expressly provided in this Lease.

(l) Waivers. Landlord will not be deemed to have Waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach, and Landlord's Waiver of any right, or of Tenant's breach, on one or more occasions will not be deemed a Waiver on any other occasion. No custom or practice arising during the administration of this Lease will Waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies. In addition, the following waivers will apply:

(i) Appraisals. Tenant Waives its rights (if any) (A) to protest or appeal any tax appraisal, and (B) to receive notice of any tax reappraisal;

(ii) Notices. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT WAIVES ALL NOTICES AND DEMANDS (INCLUDING, WITHOUT LIMITATION, NOTICE OF BREACH OR DEFAULT, NOTICE OF NON-PAYMENT OR NON-PERFORMANCE, DEMAND FOR PAYMENT OR PERFORMANCE, DEMAND FOR POSSESSION, NOTICE OF ANY CHANGE IN LOCKS OR ACCESS CONTROL DEVICES, REENTRY, OR REPOSSESSION, AND NOTICE TO VACATE), EXCEPT FOR THOSE NOTICES AND DEMANDS EXPRESSLY REQUIRED IN THIS LEASE; AND

(iii) JURY TRIAL. TENANT PARTIES AND LANDLORD PARTIES EACH KNOWINGLY, VOLUNTARILY, AND ON THE ADVICE OF COUNSEL: (i) AGREE NOT TO ELECT A JURY TRIAL IN ANY SUIT ARISING OUT OF, OR RELATING TO, THIS LEASE OR THE PROJECT; AND (ii) WAIVE ANY PRESENT OR FUTURE RIGHT TO A JURY TRIAL.

(m) OFAC Representations. Anti-Terrorism and Money Laundering Representation and Indemnification. Landlord and Tenant each represent and warrant to the other that: (i) neither it nor its officers, directors or controlling owners is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or

transaction ("SDN") pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("OFAC"); (ii) neither it nor its officers, directors or controlling owners is engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) neither it nor its officers, directors or controlling owners is in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. Each of Landlord and Tenant agree to defend, indemnify, and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representation by the breaching party. Should Landlord or Tenant, during the term of this Lease, be designated a SDN, the other party may, at its sole option terminate this Lease.

40. Guaranty Agreement. Landlord has agreed to enter into this Lease based, in part, on the creditworthiness of the Tenant's Guarantor. Tenant agrees that it shall cause the Tenant's Guarantor to execute the Guaranty Agreement in the form attached hereto as Exhibit "G". In the event Landlord should execute this Lease before the Guaranty Agreement is executed by Tenant's Guarantor and delivered to Landlord, then Landlord shall have no obligation hereunder and this Lease shall not become effective until Tenant's Guarantor has executed the Guaranty Agreement and Tenant has executed this Lease.

41. Exhibits and Riders. The following Exhibits and Riders are part of this Lease.

EXHIBIT A: Commencement Letter

EXHIBIT B: Legal Description of Land

EXHIBIT C: Work Letter

EXHIBIT D: Premises

EXHIBIT E: Rules and Regulations

EXHIBIT F: SNDA

EXHIBIT G: Guaranty Agreement

RIDER 1: Option to Extend,  
Existing Exclusives and Signage

RIDER 2: Right of First Refusal

RIDER 3: Early Termination by  
Tenant

As of the Effective Date, Landlord and Tenant have executed multiple original counterparts of this Lease.

Address:

4200 South Hulen, Suite 614  
Fort Worth, Texas 76109

Date of Execution:

May 31<sup>st</sup>, 2017

Address:

c/o Insight Equity Management Company LLC  
1400 Civic Place, Suite 250  
Southlake, Texas 76092-7641  
Attn: Rob Conner

Date of Execution:

May 30<sup>th</sup>, 2017

LANDLORD:

Clearfork Office 1, LP,  
a Texas limited partnership

By: Clearfork Development Company, LLC,  
a Texas limited liability company,  
its general partner

By: [Signature]  
Name: Paxton E. Motheral  
Title: Manager

TENANT:

Superior Silica Sands LLC,  
a Texas limited liability company

By: [Signature]  
Name: Richard J. Shearer  
Title: President and CEO

EXHIBIT A

COMMENCEMENT DATE LETTER

This Exhibit is attached to and made a part of the Lease by and between Clearfork Office 1, LP ("*Landlord*") and Superior Silica Sands LLC, a Texas limited liability company ("*Tenant*").

1. The Commencement Date of the Lease is \_\_\_\_\_, 201\_.
2. The Expiration Date of the Lease is April 30, 2028, unless renewed, extended or terminated pursuant to the terms of the Lease.
3. The Rentable Area of the Premises is \_\_\_\_\_ square feet and Tenant's Pro Rata Share is \_\_\_\_\_%. The Premises have been designated as Suite \_\_\_\_\_.
4. Tenant acknowledges that the Tenant Improvements have been completed in accordance with the Final Tenant Plans and Tenant accepts such Tenant Improvements, subject to any punch list items being completed.
5. Tenant further acknowledges that any TI Allowance owed to Tenant has been paid to Tenant or to others for the benefit of Tenant, and other obligations of Landlord to Tenant in connection with the Tenant Improvements have been satisfied and all other conditions precedent to the commencement of the Lease Term have occurred and that the Lease is in full force and effect.
6. To the best knowledge of Tenant, there are no existing defenses or offsets which, as of the date hereof, Tenant has against the enforcement of the Lease by Landlord. To the best knowledge of Landlord, there are no existing defenses or offsets against amounts owed which, as of the date hereof, Landlord has against the enforcement of the Lease by Landlord.

EXECUTED on the \_\_\_\_ day of \_\_\_\_\_, 201\_.

Address:

4200 South Hulen, Suite 614  
Fort Worth, Texas 76109

Date of Execution:

\_\_\_\_\_, 201\_

LANDLORD:

Clearfork Office 1, LP,  
a Texas limited partnership

By: Clearfork Development Company, LLC,  
a Texas limited liability company,  
its general partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

c/o Insight Equity Management Company LLC  
1400 Civic Place, Suite 250  
Southlake, Texas 76092-7641  
Attn: Rob Conner

Date of Execution:

\_\_\_\_\_, 201\_

TENANT:

Superior Silica Sands LLC,  
a Texas limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

Legal Description of Land

Lot 2, Block 3, Edwards Ranch Clearfork Addition, an addition to the City of Fort Worth, Tarrant County, Texas, according to Plat recorded as Instrument No. D215157273, Real Property Records of Tarrant County, Texas.

## EXHIBIT C

### WORK LETTER

1. Certain Definitions. As used in this work letter (this "Work Letter") and in the Lease, the term "Shell" will mean those improvements set out on the Final Shell Plans for the Building. As used in this Work Letter and in the Lease, the term "Tenant Improvements" will mean those improvements set out on the Final Tenant Plans (as defined in Section 5(b) of this Work Letter). As used in this Work Letter (i) "Improvements" will mean the Shell and the Tenant Improvements, and (ii) "Landlord's Work" means the construction of the Shell in accordance with the Final Shell Plans, including the Base Building Specifications as hereinafter defined. The construction and installation of the Improvements is sometimes referred to herein as the "Work."

2. Completion of Shell. Landlord has Substantially Completed the construction of the Shell and has obtained a Certificate of Occupancy from the City of Fort Worth for the Shell. Tenant has accepted the Premises for construction of the Tenant Improvements as hereinafter provided, subject to any Base Building Specifications (as hereinafter defined) remaining to be completed.

3. Designation of Representatives. With respect to the planning, design and construction of the Tenant Improvements, Landlord hereby designates Peloton Real Estate Management, LLC as "Landlord's Representative" and Tenant hereby designates Noel Ragin as "Tenant's Representative." Tenant hereby confirms that Tenant's Representative has full authority to act on behalf of and to bind Tenant with respect to all matters pertaining to the planning, design and construction of the Tenant Improvements. Landlord hereby confirms that Landlord's Representative has full authority to act on behalf of Landlord with respect to matters pertaining to the planning, design and construction of the Tenant Improvements. Either party may change its designated representative upon five (5) days prior written notice to the other party.

4. Tenant Architect Selection. Tenant has or will designate a licensed architect to act as the architect with respect to the design and construction of the Tenant Improvements (the "Tenant's Architect"). [If Tenant has selected an architect please include the architect's name here: \_\_\_\_\_.] The parties acknowledged and agree that the architect contract entered into with Tenant's Architect will obligate Tenant's Architect to issue to Landlord and Tenant an Architect's Certificate upon Substantial Completion of Tenant Improvements in accordance with the Final Tenant Plans (as hereinafter defined).

5. Improvement Plans.

(a) Base Building Specifications. Schedule 1 attached hereto describes the base building specifications for the Shell ("Base Building Specifications") which have been or will be completed by Landlord as part of Landlord's Work.



(b) Tenant Plans. On or before sixty (60) days after the Effective Date of the Lease, Tenant will deliver to Landlord the space plans and working drawings for the Tenant Improvements. Landlord will have ten (10) business days after receipt of such plans to approve the same or to specify in writing to Tenant its specific objections to such plans. Tenant will review Landlord's objections and cause Tenant's Architect to revise the plans to meet Landlord's objections and/or consult with Landlord to resolve any differences. Tenant may not request a building permit or start construction of the Tenant Improvements until Landlord has approved in writing the final space plan and working drawings (the "Final Tenant Plans"). Tenant's Architect will submit the Final Tenant Plans to the appropriate governmental agency for plan checking and the issuance of a building permit for the Tenant Improvements. Tenant's Architect will make any and all changes to the Final Tenant Plans required by any applicable governmental entity to obtain any necessary building permit for the Tenant Improvements.

(c) No Representations Regarding Tenant's Intended Use. Notwithstanding anything to the contrary contained in the Lease or herein, Landlord's participation in the review and approval of the Final Tenant Plans and the construction of the Tenant Improvements will not constitute any representation or warranty, express or implied that the Tenant Improvements, if built substantially in accordance with the Final Tenant Plans, will be suitable for Tenant's intended purpose. Tenant acknowledges and agrees that the Tenant Improvements are intended for use by Tenant and the specifications and design requirements for such Tenant Improvements are not within the special knowledge or experience of Landlord. Landlord's sole obligation will be to arrange the construction of Landlord's Work substantially in accordance with the requirements of the Final Shell Plans, and the Base Building Specifications; and any additional costs or expense required for the modification thereof to more adequately meet Tenant's use, whether during or after Landlord's construction thereof, will be borne entirely by Tenant except as otherwise provided in this Work Letter.

6. Processing and Cost of Change Orders. Any proposed changes to the Final Tenant Plans by Tenant at any time will require Landlord's prior written approval, such approval will not be unreasonably withheld, conditioned, or delayed; however, (1) if such requested change would adversely affect (i) the Building's Structure or the Building's Systems, or (ii) the exterior appearance of the Building or materials, or (2) if any such change might delay the Commencement Date, Landlord may withhold its consent in its sole discretion. Further, after the parties approve the Final Tenant Plans and a building permit for the Tenant Improvements is issued, any further changes to the Final Tenant Plans will require the prior written approval of Landlord (not to be unreasonably withheld, conditioned, or delayed). If Tenant desires any change in the Final Tenant Plans which is reasonable and practical, such changes may only be requested by the delivery to Landlord by Tenant of a proposed written change order (a "Change Order") specifically setting out the requested change. Landlord will have five (5) Business Days from the receipt of the proposed Change Order to provide Tenant with Landlord's disapproval of the proposed change stating the reason(s) for such disapproval, or if Landlord approves the proposed change, Tenant must provide a summary of any increase in the cost of the Tenant Improvements resulting from the Change Order (the "Change Order Cost").

7. **TI Contractor.** Tenant will select, subject to Landlord's reasonable approval, a general contractor for the construction of the Tenant Improvements (the "**TI Contractor**"). Once selected by Tenant and approved by Landlord, the TI Contractor must enter into a construction contract with Tenant or its designee (the "**Project Manager**"). Once the hard costs of constructing the Tenant Improvements in accordance with the Final Tenant Plans have been determined (collectively, the "**Total Construction Costs**"), if the Total Construction Costs, as may be increased by change orders or otherwise, exceed the TI Allowance and Supplemental TI Allowance if applicable (the excess being referred to as the "**Tenant Contribution**"), Tenant shall be responsible for such Tenant Contribution. Notwithstanding anything to the contrary set forth in this Exhibit C, Landlord will advance the TI Allowance and, if applicable, the Supplemental TI Allowance on a parri passu basis with Tenant with respect to each interim advance by Landlord. For example, if the estimated Total Construction Costs are \$60.00 per square foot of Rentable Area in the Premises and assuming the Supplemental TI Allowance is not applicable, Landlord will fund 66.67% of each advance (up to a maximum of \$40.00 per Rentable square foot in the Premises) and Tenant shall fund 33.33% of such interim advance. Once Landlord has funded the entire TI Allowance and the Supplemental TI Allowance, if applicable, Tenant shall pay all remaining costs of the Tenant Improvements.

8. **Payment for Cost of the Tenant Improvements.**

(a) **TI Allowance.** Landlord will provide to Tenant a TI Allowance for the work described on the Final Tenant Plans in the amount of \$40.00 per rentable square foot in the Premises (the "**TI Allowance**"). The TI Allowance and Supplemental TI Allowance (if applicable) will be disbursed by Landlord, subject to the terms of Section 7 above, only to pay the following expenses, except as otherwise provided in Subsection 8(d) below:

(1) Payment of the cost of preparing any preliminary plans relative to the Tenant Improvements (including the applicable Architect's fees and costs) and the Final Tenant Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Tenant Plans, subject to the limitation set forth in Section 8(d) below.

(2) Payment of plan check, permit and license fees relating to construction of the Tenant Improvements.

(3) Construction of the Tenant Improvements as provided in the Final Tenant Plans, including the following:

(i) Installation within the Premises of all demising walls, partitioning, doors, floor coverings, ceilings, wall coverings and painting and similar items;

(ii) All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises;

(iii) The furnishing, installation and screening of all HVAC units, duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioner systems within Premises;

(iv) Any additional improvements to Premises required for Tenant's use of the Premises including exterior Signs, special heating, ventilation and air conditioner systems within Premises;

(v) All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

(vi) All modifications or expansions needed to the distributed antenna system installed by Landlord in the Building for emergency communications, which modification or expansion costs will be paid by Tenant;

(vii) All plumbing fixtures, pipes and accessories necessary for the Premises;

(viii) Testing and inspection costs;

(ix) Fees for the TI Contractor as provided in the Construction Contract or pursuant to any Change Order including fees and costs attributable to general conditions associated with the construction of the Tenant Improvements; and

(x) Payment of the construction management fees as provided in Section 9 of this Exhibit.

(b) Interim Advances. Tenant may request advances of the TI Allowance and Supplemental TI Allowance (if applicable) on a monthly basis in order to reimburse Tenant for costs incurred by Tenant or to pay Project Manager for costs incurred to construct the Tenant Improvements, in accordance with the following terms and conditions:

(1) Requests for advances must be submitted no later than the 10th day of the calendar month and once the request is approved by Landlord the amount approved will be funded to Tenant or Project Manager by the last day of such calendar month.

(2) With each request for advance Tenant must submit (i) an itemization of the bills paid by Tenant or to be paid by the Project Manager for which the advance is being requested by Tenant; (ii) a certificate from Tenant's Architect certifying that the work for which reimbursement is requested has been completed in accordance with the Final Tenant Plans; and (iii) a lien waiver from the TI Contractor

in the form provided for in the Texas Mechanic's Lien statutes, which may be conditioned upon final payment, along with a bills paid affidavit from the TI Contractor in a form reasonably acceptable to Landlord.

(3) Landlord may decline to fund any requested advance if a Tenant Default exists.

(c) **Final Advance.** So long as no Tenant Default exists, Landlord agrees to fund the final advance of the TI Allowance and Supplemental TI Allowance (if applicable) to Tenant and/or Project Manager not later than thirty (30) days after all of the following conditions have been satisfied:

(1) Tenant shall have opened for business in the Premises and shall have furnished Landlord with a copy of its final Certificate of Occupancy issued by the City of Fort Worth;

(2) Tenant shall have furnished to Landlord a statement of the total costs of Tenant Improvements reasonably itemized, based upon the Final Tenant Plans;

(3) Tenant has furnished Landlord with a certificate from Tenant's Architect stating that the Tenant Improvements have been completed in accordance with the Final Tenant Plans and in compliance with applicable zoning, building, environmental and other laws applicable to Tenant Improvements and Tenant's occupancy of the Premises;

(4) Tenant or Project Manager has furnished Landlord with copies of as-built drawings for Tenant Improvements; and

(4) Tenant's TI Contractor furnishes Landlord with an all bills paid affidavit, a final release of all lien claims of the TI Contractor and lien waivers or releases from the major subcontractors and suppliers as determined by Landlord.

(d) **Additional Uses and Limitations on TI Allowance.** In addition to the uses of the TI Allowance and Supplemental TI Allowance as set forth in Section 8(a) hereof, Tenant may also use any remaining TI Allowance and Supplemental TI Allowance, if applicable, for the payment of the following expenses if incurred by Tenant: (i) purchase and installation of telephony/computer equipment and related cabling; (ii) move-related expenses; (iii) security systems, communication equipment, permit fees, power upgrades, or any other necessary improvements or equipment needed for Tenant's functional occupancy; (iv) consulting fees for project management, economic incentives, technology, lighting and acoustical; (v) legal fees related to the negotiation of the Lease and completion of the Tenant Improvements; and (vi) furniture, fixtures and equipment to be used in the Premises.

(e) **Supplemental TI Allowance.** If the Total Construction Costs are expected to exceed the TI Allowance based upon the final bid submitted by the TI Contractor and other contractors to be hired for the Tenant Improvements, Tenant shall be entitled to, upon request, an additional allowance (the "**Supplemental TI Allowance**") from Landlord in an amount up to \$10.00 per rentable square foot in the Premises. Tenant must request the Supplemental TI Allowance not later than sixty (60) days after the building permit for the TI Improvements is issued by the City of Fort Worth; otherwise the Supplemental TI Allowance will be deemed to be waived by Tenant. If Tenant requests the Supplemental TI Allowance, the Monthly Base Rent, as the same may increase from time to time, shall be increased by an amount equal to the monthly payments that would be due on a loan whose original principal balance is equal to the amount of the Supplemental TI Allowance funded by Landlord, whose interest rate is 8% per annum and which is payable in equal monthly installments of principal and interest amortized over a term of 120 months. If Tenant requests Landlord to disburse all or any portion of the Supplemental TI Allowance, then Landlord and Tenant will, at Landlord's option, enter into an amendment to the Lease providing that Tenant's Monthly Base Rent Obligation will increase by the amount of the monthly payment of the hypothetical loan described above. In no event will any abatement of Base Rent as may be provided for in this Lease abate any payments of the Supplemental TI Allowance as herein provided. All requests for disbursements of any of the Supplemental TI Allowance must be submitted to Landlord not later than sixty (60) days after the Commencement Date, and Landlord may decline to advance any amounts requested thereafter.

9. **Construction Management Fee.** Tenant will pay Landlord a construction management fee equal to two percent (2%) of the lesser of the Total Construction Costs (i.e., hard construction costs) or the TI Allowance for the Tenant Improvements, which fee will be paid from the TI Allowance or the Supplemental TI Allowance, if applicable.

10. **Regarding the Project Manager.**

(a) Tenant will have the right to select its own Project Manager to manage the construction of the Tenant Improvements on Tenant's behalf. While the Project Manager is contracting with the TI Contractor (if this is the case), Tenant will be a third-party beneficiary of all warranties provided by the TI Contractor and all manufacturers' warranties with respect to equipment installed as part of the Tenant Improvements.

(b) LANDLORD SHALL NOT BE OBLIGATED TO, AND DOES NOT MAKE ANY WARRANTIES OR COVENANTS WITH RESPECT TO THE TENANT IMPROVEMENTS WORK, NOR SHALL LANDLORD BE OBLIGATED FOR ANY OF THE WARRANTIES FROM THE TI CONTRACTOR OR ANY OTHER CONTRACTOR OR SUBCONTRACTOR TO TENANT. IT IS EXPRESSLY STIPULATED, ACKNOWLEDGED AND AGREED THAT LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TENANT IMPROVEMENTS. ALL IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, MARKETABILITY, CONDITION AND FITNESS FOR PARTICULAR USE OR PURPOSE, ARE EXPRESSLY NEGATED AND WAIVED.

WITHOUT LIMITING THE FOREGOING, LANDLORD SHALL NOT BE RESPONSIBLE FOR FAILURE OF ANY WORK PROVIDED BY THE TI CONTRACTOR OR ITS SUBCONTRACTORS. Landlord will, however, assign to Tenant, without recourse, any warranties obtained from the TI Contractor or any other subcontractors and suppliers in connection with the TI Improvements to the extent such warranties are assignable.

11. Early Access. Landlord agrees that Tenant may have access to the Premises thirty (30) days prior to the Commencement Date for purposes of installing furniture, fixtures, telephone, computer and other equipment, cabling and other make-ready work. During such early access period, Tenant shall not be charged for any rent or expenses, including but not limited to electricity, utilities, HVAC and expenses for Tenant's use of freight elevators.

12. Space Planning Allowance. Landlord shall provide to Tenant an additional allowance (the "Space Plan Allowance") toward costs incurred by Tenant in preparing a "test fit" of the Premises (space plan and design development drawings) in an amount up to Fifteen Cents (\$0.15) per rentable square foot in the Premises. Costs and expenses incurred by Tenant in preparing the "test fit" will first be deducted from the Space Plan Allowance and then, if necessary, remaining amounts may be used from the TI Allowance

## SCHEDULE 1

### BASE BUILDING SPECIFICATIONS

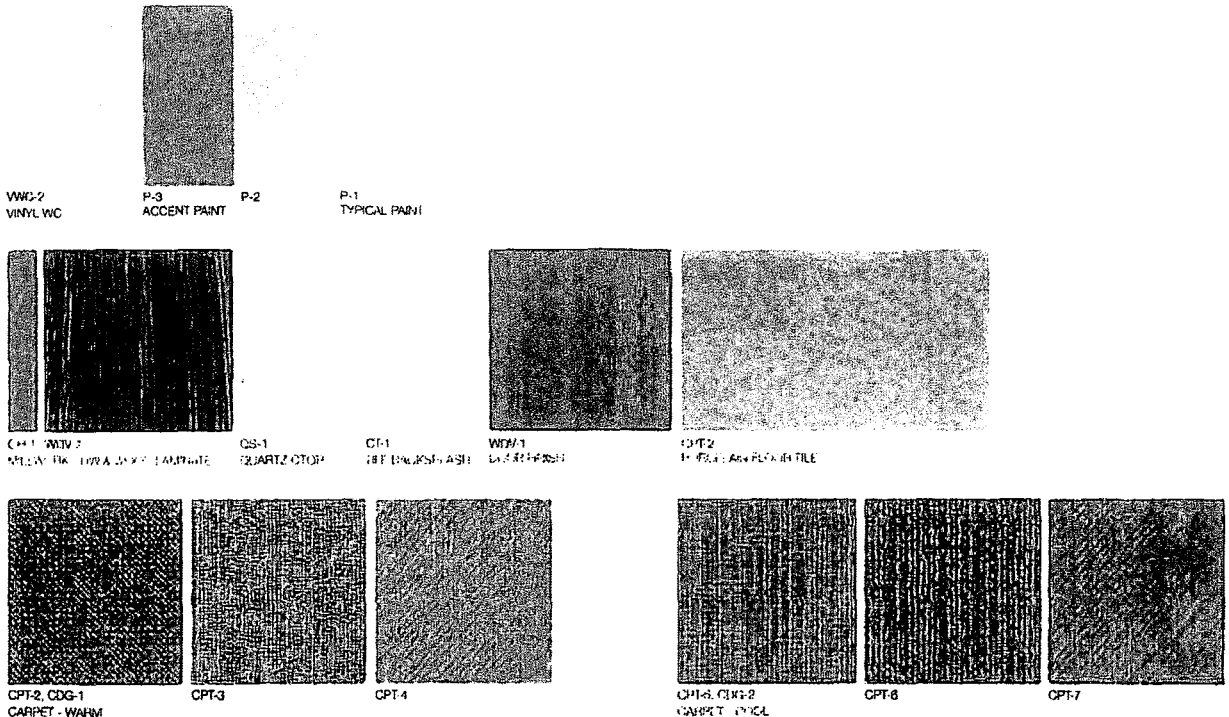
1. The HVAC distribution main loop shall be in place, tight to the slab above. Tenant shall furnish and install VAV boxes, distribution lines and linear slot diffusers at the window line as part of the TIA.
2. Electrical service to the electrical closet on each floor, with 120/208-volt power panels and circuit breakers in place, along with an isolated grounding system. System shall accommodate up to 3.5 watts/rsf of Tenant's connected power.
3. Interior surfaces of the exterior walls shall be insulated and ready for drywall which shall be stacked on the floor in sufficient quantity to finish the exterior walls.
4. All interior columns shall be treated in similar manner as the exterior walls, except they will not include insulation.
5. All work in common areas of the Building, including, but not limited to, common corridors and common elevator lobbies shall be completed at Landlord's cost, concurrent with the build-out of the Premises.
6. The automatic sprinkler system main loop shall be fully completed, operational and tested in accordance with NFPA requirements.
7. All Building Standard restroom work shall be completed and meet all ADA requirements with finishes in accordance with Landlord's Building Standard.
8. Floor slabs shall be flash patched to achieve a level, smooth surface and prepped for carpet installation and shall be level so that there is no more than one fourth (1/4) inch deflection per each ten (10) linear feet in any direction. All vertical penetrations shall be sealed and fireproofed.
9. Connection "stub outs" shall be available for vent, hot and cold water at all wet columns that are in, or near, the Premises.
- 10.. Connection point installed on the floor(s) for fire alarm system. The complete core fire detection system shall be installed, operating and tested in accordance with NFPA requirements. Compliance with this number 10 shall be in accordance with applicable code.
11. Building Standard light fixtures, at a rate of 1/150 RSF, acoustical ceiling grid system and ceiling tiles will be stacked on the floor for Tenant's use. The ceiling system and lighting systems are under development.

SCHEDULE 2

BUILDING STANDARD MATERIALS

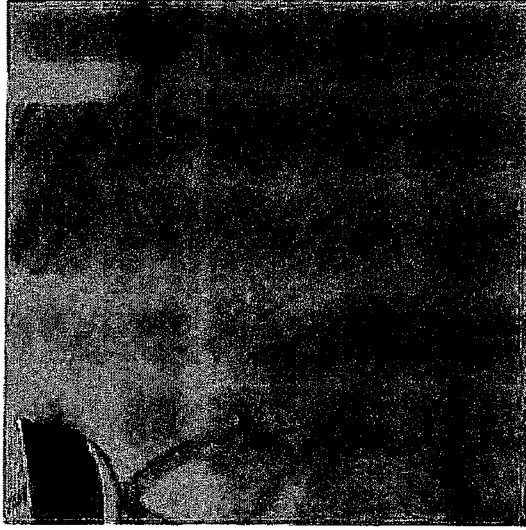
[See Building Standard Materials on following pages]



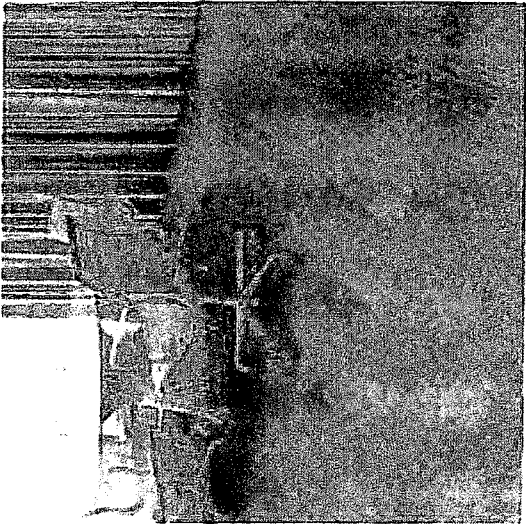


TENANT STANDARDS | FINISH PALETTE  
 5600 CLEARFORK MAJN  
 MAY 10, 2016

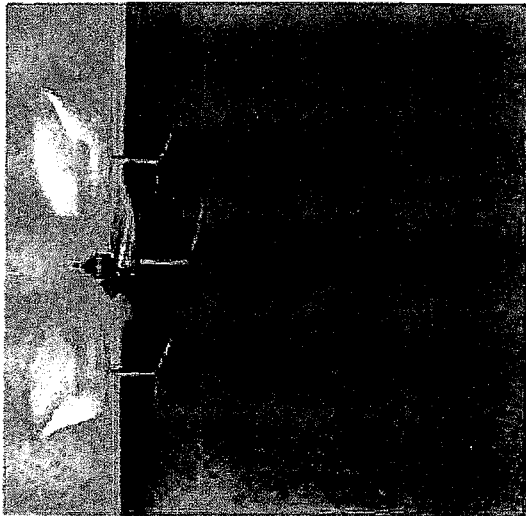




CPT-4 (PATTERN ONLY)



CPT-3



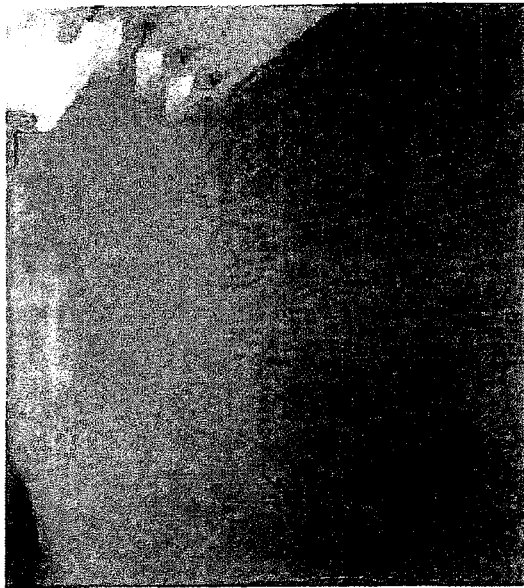
CPT-2, CDG-1 (PATTERN ONLY)



TENANT STANDARDS | FINISH PALETTE  
5600 CLEARFORK MAIN  
MAY 16, 2016



CPT-7 (PATTERN ONLY)



CPT-6 (PATTERN ONLY)



CPT-5, CDG-2 (PATTERN ONLY)



TENANT STANDARDS | FINISH PALETTE  
6800 CLEARFORK MAIN  
MAY 16, 2016

PROJECT NAME - 5600 CLEARFORK MAIN - TENANT STANDARDS FORT WORTH, TEXAS		PROJECT NO. 1616.00 DATE 13-May-2016 REVISED 13-May-2016	
INCLUDED IN BUILDING FINISHES			
BASE OPTION			
UPGRADE OPTION			
MARK	DESCRIPTION	QUANTITY	REMARKS
<b>DIV 06 WOODS AND PLASTICS</b>			
<b>SEC 06 40 00 CABINET HARDWARE</b>			
CH	CH-1 DOORS AND DRAWER PULLS AT MILLWORK	MFG: CKP BRAND STYLE: #8000 SERIES STAINLESS STEEL BAR PULL SIZE: 7-71/8"L @ LOWER CABS, 14-28"L @ UPPERS (VARIES, VERIFY W/ OWNER)	OCCURS: TENANT SPACE MILLWORK.
	CH-2 2-1/2" GROMMET AT MILLWORK	MFG: DOUG MOCKETT STYLE: MM8A 2-1/2" SOLID BRASS GROMMET LINER & CAP FINISH: SATIN CHROME	OCCURS: TENANT SPACE MILLWORK
	CH-3 12" TRASH GROMMET AT MILLWORK	MFG: DOUG MOCKETT FINISH: STAINLESS STEEL SIZE: 12"DIAM X 3" DEEP	OCCURS: TENANT SPACE MILLWORK
<b>SEC 06 40 00 INTERIOR ARCHITECTURAL WOODWORK</b>			
WDV	WDV-2 WOOD VENEER LAMINATE	MFG: TREEFROG STYLE: 62217 GREY OAK LATI GROOVE, PRE-FINISHED VERTICAL GRAIN DIRECTION	OCCURS: TENANT SPACE MILLWORK CABINET FRONTS CONTACT: LISA BELL @ 214-783-8393, lisa@specreps.com
WB	WB-1 WOOD BASE	TYPE: RECESSED PAINTED WOOD WALL BASE SPECIES & CUT: PLAIN SAWN, CLEAR, KILN-DRIED POPLAR COLOR: SW 7008 ALABASTER SIZE: 4.5" HIGH CONTINUOUS	OCCURS: WALL BASE @ P-4 LOCATIONS: ELEVATOR LOBBY AND CORRIDORS
	WB-2 WOOD BASE	TYPE: RECESSED PAINTED WOOD WALL BASE SPECIES & CUT: PLAIN SAWN, CLEAR, KILN-DRIED POPLAR COLOR: SW 7036 ACCESSIBLE BEIGE SIZE: 4.5" HIGH CONTINUOUS	OCCURS: WALL BASE @ P-5 LOCATIONS: ELEVATOR LOBBY AND CORRIDORS
	WB-3 WOOD BASE	TYPE: APPLIED PAINTED WOOD WALL BASE SPECIES & CUT: PLAIN SAWN, CLEAR, KILN-DRIED POPLAR COLOR: SW 7008 ALABASTER SIZE: 4.5" HIGH CONTINUOUS	OCCURS: WALL BASE @ VCW-2 LOCATIONS
<b>SEC 06 81 18 QUARTZ SURFACING FABRICATIONS</b>			
QS	QS-1 QUARTZ SURFACING	MFG: CAESARSTONE STYLE/COLOR: 4001 FRESH CONCRETE THICKNESS: 2CM PROFILE TO BE MITERED EDGE, TYP. JOINTS TO BE CLR SILICONE AS MIN AS POSSIBLE PER MFG RECOMMENDATIONS	OCCURS: TENANT SPACE COUNTERTOP @ BREAKROOM & BUILT-IN MILLWORK CONTACT: LESLIE GREENBLATT @ 972.242.8322, Leslie.Greenblatt@caesarstoneus.com

MARK	DESCRIPTION	ITEM	DESCRIPTION	REMARKS
<b>DIV 08 DOORS AND WINDOWS</b>				
<b>SEC 08 41 28 ALL-GLASS ENTRANCES</b>				
		ALL GLASS DOOR	STYLE: HERCULITE- 1/2" CLEAR TEMPERED GLASS; CRLAURENCE 2-1/2" SLENDER PROFILE DOOR RAILS, PIVOTS & LOCKS, BRUSHED STAINLESS STEEL; CLOSER: DORMA RTS88 SERIES OVERHEAD - CONCEALED DOOR CLOSER; ASSA ABLOY 409-CONCAVE WROUGHT WALL STOP (WHERE REQ'D), FINISH: US32D/830	OCCURS: DOUBLE DOOR @ TENANT ENTRY OFF ELEVATOR LOBBY, SINGLE DOOR @ TENANT ENTRY OFF CORRIDOR
NOTE: SCHLAGE ELECTROMAGNETIC LOCKSET W/ HERCULITE DOOR BRACKET, ACCESS CONTROLS TO BE INTERFACED W/ ELECTRO-MAGNETIC LOCK, VERIFY W/ OWNER				
<b>SEC 08 71 00 DOOR HARDWARE</b>				
		GLASS DOOR PUSH/PULL	MFG: ROCKWOOD MFG STYLE: MEGA TEK RM3301 FINISH: BRUSHED STAINLESS STEEL LENGTH: 60"L x 1-1/4"DIA	OCCURS: ALL-GLASS DOORS (BOTH SIDES), TENANT SPACE ENTRY DOORS
		DOOR HARDWARE	SCHLAGE MORTISE LOCKSET, SERIES SCHLAGE LEVER L-SERIES STYLE 02, SATIN STAINLESS STEEL 2-9/16" DIA. SCHLAGE CYLINDER KEYWAY COORDINATE ALL KEYING W/ OWNER'S MASTER KEYING REQUIREMENTS WES-FS13 DOME FLOOR STOP (WHERE REQ'D), SATIN STAINLESS FINISH	OCCURS: TENANT SPACE TYP DOOR
<b>DIV 08 FINISHES</b>				
<b>SEC 08 30 00 TILING</b>				
T	RT-2	PORCELAIN FLOOR TILE	MFG: AMERICAN TILE STYLE: SEASTONE COLOR: SAND MATTE FINISH SIZE: 12" X 23" GROUT TO BE CUSTOM BLDG PRODUCTS COLOR #172 URBAN PUTTY. GROUT SIZE TO BE MIN. AS POSSIBLE PER MFG RECOMMENDATIONS	OCCURS: FIELD FLOOR TILE TYPICAL ELEVATOR LOBBY & TENANT SPACE CONTACT: DEBBIE MICHALSKI @ 214.682.8243, dmichalsk@amercantile.com
	RT-4	PORCELAIN FLOOR TILE	MFG: AMERICAN TILE/ STONEREAK STYLE: PLANE COLOR: COPPER SIZE: VARIES GROUT TO BE CUSTOM BLDG PRODUCTS COLOR #32 TOBACCO BROWN. GROUT SIZE TO BE MIN. AS POSSIBLE PER MFG RECOMMENDATIONS	OCCURS: ACCENT FLOOR TILE ELEVATOR LOBBY CONTACT: DEBBIE MICHALSKI @ 214.682.8243, dmichalsk@amercantile.com
	CT-1	GLAZED CERAMIC WALL TILE	MFG: DAL TILE STYLE: MODERN DIMENSIONS COLOR: 0790 ARCTIC WHITE, GLAZED CERAMIC MATTE SIZE: 4-1/4" X 12-3/4" INSTALL: MONOLITHIC GROUT TO BE 1/16" CUSTOM BLDG PRODUCTS COLOR #382 BRIGHT WHITE.	OCCURS: TENANT SPACE BREAKROOM BACKSPASH CONTACT: KELLY RYAN @ 214.534.0003, kelly.ryan@daltile.com

MARK	CD OR REF	ITEM	DESCRIPTION	REMARKS
SEC 09 30 13				
		METAL TRANSITION STRIP (FLOOR)	MFG: SCHLUTER STYLE: RENO-U FINISH: Satin anodized aluminum	CARPET TO SEALED CONCRETE CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com
		METAL TRANSITION STRIP (FLOOR)	MFG: SCHLUTER STYLE: SCHIENE FINISH: STAINLESS STEEL	CARPET TO PORCELAIN TILE CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com
SEC 09 51 13 ACOUSTIC PANEL CEILINGS				
AC	AC-1	ACOUSTICAL CEILING TILE	MFG: ARMSTRONG WORLD CEILINGS STYLE: DUNC BEVELED REGULAR EDGE NUMBER: 1774 SIZE: 24"X24"X3/4" COLOR: WHITE GRID: PRELUDE XL-15A6" WHITE	OCCURS: BUILDING FINISHES, VERIFY CONTACT: LEE BACSETT @ 372.641.1749 leebacset@armstrongceilings.com
	AC-2	ACOUSTICAL ORNLITE TILE	MFG: ARMSTRONG WORLD INDUSTRIES STYLE: DUNC BEVELED REGULAR EDGE NUMBER: 1774 SIZE: 24"X24"X3/4" COLOR: WHITE GRID: SUPRAFINE XL-15A6" EXPOSED TEE WHITE	OCCURS: TENANT SPACE CONTACT: LEE BACSETT @ 372.641.1749 leebacset@armstrongceilings.com
SEC 09 65 13 RESILIENT BASE & ACCESSORIES				
RB	RB-1	RUBBER BASE	MFG: JOHNSONITE STYLE: TIGHTLOCK WALLBASE COLOR: 08 ICICLE SIZE: 4.5" HIGH CONTINUOUS	OCCURS: TENANT SPACE, P1 & P2 LOCATIONS @ CARPET, COVE BASE @ TILE & SEALED CONCRETE CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com
	RB-2	RUBBER BASE	MFG: JOHNSONITE STYLE: TIGHTLOCK WALLBASE COLOR: 121 CEMENT SIZE: 4.5" HIGH CONTINUOUS	OCCURS: TENANT SPACE, P3 LOCATIONS @ CARPET, COVE BASE @ TILE & SEALED CONCRETE CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com
	RB-3	RUBBER BASE	MFG: JOHNSONITE STYLE: MILLWORK/CONTIGURED REVEAL WALLBASE COLOR: 08 ICICLE SIZE: 4.5" HIGH CONTINUOUS	OCCURS: TENANT SPACE, P1 & P2 LOCATIONS CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com
	RB-4	RUBBER BASE	MFG: JOHNSONITE STYLE: MILLWORK/CONTIGURED REVEAL WALLBASE COLOR: 121 CEMENT SIZE: 4.5" HIGH CONTINUOUS	OCCURS: TENANT SPACE, P3 LOCATIONS CONTACT: ILKNUR OZGUR @ lozgun@bipteam.com

MARK	COLOR KEY	ITEM	DESCRIPTION	REMARKS
<b>SEC 09 68 00 BROADLOOM CARPETING</b>				
CDG	CDG-1	CARPET - BROADLOOM DIRECT GLUE WARM PALETTE	MFG: MANNINGTON STYLE: SERIKOS II COLOR: CEDAR	OCCURS: TENANT SPACE CONTACT: KARRI KIRKHAM @ 214.214.3451, Karr_Kirkham@mannington.com
	CDG-2	CARPET - BROADLOOM DIRECT GLUE COOL PALETTE	MFG: MANNINGTON STYLE: RAFFIA COLOR: BROOM	OCCURS: TENANT SPACE CONTACT: KARRI KIRKHAM @ 214.214.3451, Karr_Kirkham@mannington.com
<b>SEC 09 68 13 TILE CARPETING</b>				
CPT	CPT-1	CARPET TILE	MFG: MILLIKEN STYLE: LINEN 26 COLOR: LINTA CAMRAI SIZE: 1m x 1m (39.4" x 39.4") INSTALL: MONOLITHIC	OCCURS: TYPICAL CORRIDOR CARPET TILE CONTACT: JAMEY JENKINS @ 469.61317588
	CPT-2	CARPET TILE - WARM PALETTE	MFG: MANNINGTON STYLE: SERIKOS II COLOR: CEDAR SIZE: 24" X 24" INSTALL: MONOLITHIC	OCCURS: TENANT SPACE CONTACT: KARRI KIRKHAM @ 214.214.3451, karr_kirkham@mannington.com
	CPT-3	CARPET TILE - WARM PALETTE	MFG: INTERFACE STYLE: SHIVER METIMBERS COLOR: BEACH SIZE: 25cm X 1m (9.845" X 39.37") INSTALL: ASHLAR	OCCURS: TENANT SPACE CONTACT: LEX WOOD @ 469.800.0844 lex.wood@interface.com
	CPT-4	CARPET TILE - WARM PALETTE	MFG: MOHAWK STYLE: DENIM COLLECTION - JEAN COLOR: SLIM 788 SIZE: 24" X 24" INSTALL: MONOLITHIC	OCCURS: TENANT SPACE CONTACT: DAVID NUDDELMAN @ 817.404.4478 David.Nudelman@mohawknd.com
	CPT-5	CARPET TILE - COOL PALETTE	MFG: MANNINGTON STYLE: RAFFIA INFINITY MODULAR COLOR: BROOM SIZE: 24" X 24" INSTALL: MONOLITHIC	OCCURS: TENANT SPACE CONTACT: KARRI KIRKHAM @ 214.214.3451 Karr_Kirkham@mannington.com
	CPT-6	CARPET TILE - COOL PALETTE	MFG: MOHAWK STYLE: DENIM COLLECTION - INSEAM 12X36 COLOR: STRAIGHT 849 SIZE: 12" X 36" INSTALL: MONOLITHIC	OCCURS: TENANT SPACE CONTACT: DAVID NUDDELMAN @ 817.404.4478 David.Nudelman@mohawknd.com
	CPT-7	CARPET TILE - COOL PALETTE	MFG: MOHAWK STYLE: DENIM COLLECTION - JEAN COLOR: STRAIGHT 849 SIZE: 24" X 24" INSTALL: MONOLITHIC	OCCURS: TENANT SPACE CONTACT: DAVID NUDDELMAN @ 817.404.4478 David.Nudelman@mohawknd.com

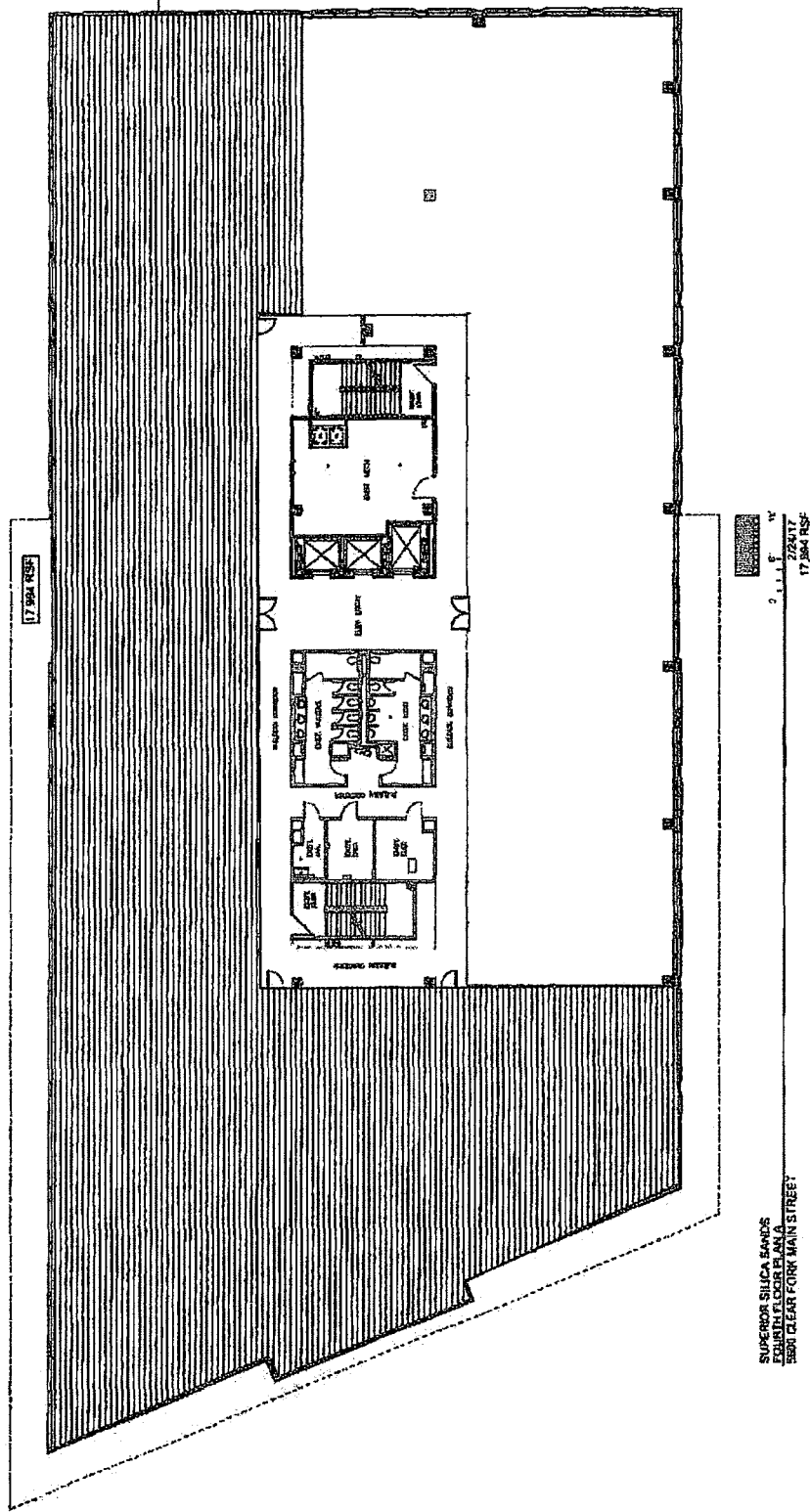
MARK	COLOR	ITEM	DESCRIPTION	REMARKS
<b>SEC 08 72 00 WALL COVERINGS</b>				
VWC	VWC-2	VINYL WALL COVERING	MFG: MAHARAM STYLE FLAXEN 397130 COLOR: 125 DOVE WIDTH: 54"	OCCURS: ELEVATOR LOBBY & CORRIDOR WALL FINISH, ALTERNATE TO P-4 & P-5. TYPICAL FLOORS CONTACT: TERI RYBA @ tryba@maharam.com
<b>SEC 08 90 00 PAINT</b>				
P	P-1	GYPSUM WALLBOARD - PAINT	MFG: KELLY-MOORE COLOR: KMW43 WHITEST WHITE	OCCURS: TYPICAL WALL & CEILING PAINT, TENANT SPACE
	P-2	GYPSUM WALLBOARD - PAINT	MFG: KELLY-MOORE COLOR: KM4927 POLISHED LIMESTONE	OCCURS: ACCENT WALL PAINT, TENANT SPACE
	P-3	GYPSUM WALLBOARD - PAINT	MFG: KELLY-MOORE COLOR: KM4929 WARM GRAY FLANNEL	OCCURS: ACCENT WALL PAINT, TENANT SPACE
	P-4	GYPSUM WALLBOARD - PAINT	MFG: SHERWIN WILLIAMS COLOR: SW7008 ALABASTER	OCCURS: TYPICAL FLOOR ELEVATOR LOBBY & CORRIDORS
	P-5	GYPSUM WALLBOARD - PAINT	MFG: SHERWIN WILLIAMS COLOR: SW7038 ACCESSIBLE BEIGE	OCCURS: TYPICAL FLOOR ELEVATOR LOBBY & CORRIDORS, ACCENT
<b>DIV 12 FURNISHINGS</b>				
<b>SEC 12 24 13 ROLLER WINDOW SHADES</b>				
WS	WS-1	WINDOW SHADE FABRIC	MFG: DRAPER STYLE SW2403 (2410-316) COLOR: SW2400 CHARCOAL GRAY	OCCURS: TYPICAL WINDOW SHADE FABRIC @ EXTERIOR GLAZING



EXHIBIT D

PREMISES

[Floor plan on following page]



## EXHIBIT E

### RULES AND REGULATIONS

This Exhibit is attached to and made a part of the Lease by and between Clearfork Office 1, LP ("*Landlord*") and Superior Silica Sands LLC ("*Tenant*").

A. The following rules and regulations shall apply to the Building, including, without limitation the Premises:

1. Sidewalks, doorways, vestibules, hall, stairways, and other similar areas shall not be obstructed by Tenant or used by any Tenant for purposes other than ingress and egress to and from the Premises. No rubbish, litter, trash, or material of any nature shall be placed, emptied, or thrown in those areas. At no time shall Tenant permit Tenant's agents, employees, contractors, guests, authorized guests or licensees to loiter in common areas or elsewhere in or about the Building.

2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuses by Tenant or its agents, employees or authorized guests, shall be paid by such Tenant.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other part of the Building without the prior written consent of Landlord (such consent not to be unreasonably withheld, conditioned, or delayed if not visible from the exterior of the Building). No curtains or other window treatments shall be placed on the glass, without Landlord's prior written approval. No lighting which may be visible from the exterior of the Premises other than lighting approved by Landlord may be utilized without Landlord's prior written approval.

4. Landlord may provide and maintain an alphabetical directory for all tenants in the main lobby of the Building.

5. Tenant shall not place any additional door locks in its Premises without Landlord's prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed). Notwithstanding the foregoing, Tenant shall have the right to designate certain portions of the Premises as secure areas and Landlord shall not have a key or pass for any such areas. Landlord shall furnish to Tenant a reasonable number of keys to the door locks in Tenant's Premises which were provided by Landlord free of cost and additional keys, at Tenant's cost. Tenant shall not make a duplicate of any key. A key or pass shall be given to Landlord at the expiration or earlier termination of this Lease for any secure areas for which Landlord does not have a key or pass. Notwithstanding anything contained in this Lease, in the event of any emergency, Landlord shall have the right to enter the Premises by forcible entry.

6. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of any merchandise or materials which require use of elevators or stairways,

common area loading docks or movement through the Building entrances or lobby shall be restricted to hours designated by Landlord. Tenant must seek Landlord's prior approval for any of the foregoing by furnishing to Landlord, in writing, a detailed listing of the activity. If approved by Landlord, such activity must be conducted under Landlord's supervision at such times and in such manner as Landlord may reasonably require. Tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons resulting from such activity. If any equipment, property and personnel of Landlord are damaged or injured as a result of acts in connection with this activity, then Tenant shall be solely liable for any and all damage or loss resulting therefrom.

7. Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner which will avoid damage to the Building, which may include the use of such supporting devices as Landlord may require, and which may not in any case exceed the acceptable floor loading and weight distribution for the Building. All damages to the Building caused by the installation or removal of any property of a Tenant, or done by Tenant's property while in the Building, shall be repaired at the expense of such Tenant.

8. Corridor doors, when not in use, shall be kept closed. Tenant shall cause all doors to the Premises to be closed and securely locked before leaving the Building at the end of the day.

9. No birds or animals (except seeing eye dogs) shall be brought into or kept in, or about the Premises. No portion of the Premises shall at any time be used or occupied as sleeping or lodging quarters or for any immoral or illegal purposes or for any purpose which would tend to injure the reputation of the Building or impair the value of the Building.

10. Tenant shall not commit waste and shall keep its premises neat and clean. All trash and debris must be placed in receptacles provided therefor.

11. Tenant shall not make or permit any improper, reasonably objectionable or unpleasant noises, vibrations or odors to emanate from the Premises to other parts of the Building or otherwise interfere in any way with other tenants or persons having business with them, shall not solicit business or distribute, or cause to be distributed, in any portion of the Building any handbills, promotional materials or other advertising, and shall not conduct or permit any other activities in the Building that might constitute a nuisance. Tenant shall not do any cooking or operate a restaurant or food service business from the Premises (other than a microwave oven for use by its employees or a beverage service that is free or of nominal charge for use by employees and authorized guests).

12. No machinery of any kind (other than normal office equipment) shall be operated by Tenant on its premises without Landlord's prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed).

13. No flammable, explosive or dangerous fluid or substances shall be used or kept by Tenant in the Premises.

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

15. No coin, vending or dispensing machines of any kind may be maintained in any premises, except that Tenant may from time to time maintain soft drink machines and/or candy or snack machines for use by its employees and authorized guests on a no-charge or nominal charge basis.

16. Tenant shall not utilize any equipment or apparatus in such manner as to create any magnetic fields or waves which adversely affect or interfere with the operation of any systems or equipment in the Building.

17. Except as set forth in the Lease, neither Tenant nor any agent, contractor or employee of Tenant shall have any right of access to the roof of the Premises or the Building and neither shall install, repair, place or replace any aerial, fan, air conditioner or other device on the roof of the Premises or the Building without the prior written consent of Landlord. Such consent may be expressly conditioned upon Landlord's supervision of access to roof and upon such other reasonable restrictions as Landlord may advise Tenant. Except as set forth in the Lease, any aerial, fan, air conditioner or device installed without such written consent shall be subject to removal, at Tenant's expense, without notice, at any time. Tenant shall be liable for all damages resulting from the installation or removal of any aerial, fan, air conditioner or other device.

18. Subject to Tenant's security requirements, Tenant will refer to Landlord for Landlord's supervision, approval and control all contractors, contractor representatives, and installation technicians rendering any service to Tenant, before performance of any contractual service. Landlord may limit work and installation hours in order to minimize interference or noise affecting other tenants of the Building. Such supervisory action by Landlord shall not render Landlord responsible for any work performed for Tenant. This provision shall apply to work performed in the Building, including, without limitation, the installation of telephones, computer wiring, cabling, electrical devices attachments and installation of any nature. Tenant shall be solely responsible for complying with all applicable laws, codes and ordinances pursuant to which such work shall be performed.

19. Landlord may from time to time (without any obligation to do so or liability for not doing so) adopt appropriate systems and procedures for the security or safety of the Building, its occupants, entry and use, or its contents and Tenant, its employees, contractors, agents and authorized guests shall comply therewith.

20. Canvassing, soliciting, and peddling in or about the Building is prohibited and Tenant shall cooperate and use reasonable efforts to prevent same.

21. At no time shall Tenant permit or shall Tenant's agents, employees, contractors, guests, licensees or authorized guests smoke in the Premises or any common areas of the Building, unless such common areas have been declared a designated smoking area by Landlord.

22. Tenant accepts any and all liability for damages and injuries to persons and property resulting from the serving and sales of alcoholic beverages from the Premises. Nothing contained herein shall be construed as the consent of Landlord to permit the serving or sale of alcoholic beverages on the Premises.

23. Landlord will not be liable for any damages to Tenant's vehicles, or loss of vehicle contents, or those of any employees, agents, contractors, or guests of Tenant who use the parking spaces.

B. The Landlord reserves the right to rescind any of these rules and make such other and further rules and regulations as in the judgment of Landlord shall from time to time be needed for the safety, protection, care and cleanliness of the Building, the operation thereof, the preservation of good order therein, and the protection and comfort of its tenants, their agents, employees and authorized guests, which rules when made and notice thereof given to Tenant shall be binding upon him in like manner as if originally therein prescribed. Notwithstanding the foregoing, any changes or additions to these rules shall be conducted on a non-discriminatory basis and in no event shall Tenant's financial obligations hereunder be increased by any such rule or regulation.

C. The Building and the Premises and Tenant's occupancy thereof is subject to the rules, regulations and restrictions set for the in the Declaration.

EXHIBIT F

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT ("Agreement"), is executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lender"), and Clearfork Office 1, LP, a Texas limited partnership ("Landlord").

RECITALS:

A. Pursuant to that one certain Lease Agreement dated \_\_\_\_\_, 2017 (as amended, the "Lease"), Landlord leased and rented to Tenant certain premises located in the City of Fort Worth, Tarrant County, Texas (the "Property") a more particular description of which Property appears in Exhibit A attached hereto and by this reference made a part hereof.

B. Landlord has obtained a loan from Lender in the principal amount of \$\_\_\_\_\_ (the "Loan"), which is secured by a Deed of Trust, Security Agreement – Financing Statement covering the Property and collaterally assigning the Lease and the rents thereunder (the "Security Instrument").

C. Tenant has requested Lender's Agreement not to disturb Tenant's possession of the leased premises upon the conditions set forth in this Agreement and Tenant has agreed to subordinate Tenant's interest under the Lease to the Security Instrument, all as hereinafter set forth.

AGREEMENTS:

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and to induce Lender to make the Loan, Tenant, Landlord and Lender agree as follows:

1. Subordination. The Lease and the rights of Tenant thereunder and with respect to the Property are and shall be subject and subordinate to the lien of the Security Instrument and to all of the terms, conditions and provisions thereof and under any of the documents evidencing the Loan (the "Loan Documents") to all advances made or to be made thereunder, to the full extent of all sums from time to time secured thereby, and to any renewal, substitution, extension, modification, refinance or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto.

2. Attornment. In the event that Lender or any other person (the Lender, any other such

person and their successors and assigns being referred to herein as the "Purchaser") acquires title to the Property pursuant to the exercise of any remedy provided for in the Security Instrument and under any Loan Document (including without limitation foreclosure) or by reason of the acceptance of a deed in lieu of foreclosure or otherwise (a "Foreclosure Event"), Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and subject to the provisions in Paragraph 4 of this Agreement, the Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser without the execution of any further documents, except that, notwithstanding anything to the contrary herein or in the Lease, the provisions of the Security Instrument (rather than in the Lease) will govern with respect to the disposition of proceeds of insurance policies or condemnation or eminent domain awards. Tenant agrees to execute and deliver, upon the request of Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Security Instrument or any Purchaser, any instrument or certificate which, in the sole reasonable judgment of the requesting party, is necessary or appropriate, in connection with any Foreclosure Event, to evidence such attornment, which instrument or certificate shall be in form and content reasonably acceptable to Tenant. Tenant hereby waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any Foreclosure Event absent a default by the landlord under the Lease that would entitle Tenant to terminate the Lease.

3. Non-Disturbance. So long as the Lease is in full force and effect and Tenant shall not be in default under any provision of the Lease or this Agreement, and no event has occurred which has continued to exist for a period of time (after notice, if any, required by the Lease) as would entitle Landlord to terminate the Lease or Tenant's right to possession thereunder or would cause, without further action by Landlord, the termination of the Lease, or would entitle Landlord to dispossess the Tenant thereunder:

- (a) the right of possession of Tenant to the leased premises shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its rights under the Security Instrument or the indebtedness secured thereby or under the Loan Documents, including without limitation a Foreclosure Event;
- (b) the Lease shall not be terminated (except upon expiration of the term thereof or as otherwise expressly permitted under the terms of the Lease) or affected by said exercise of any remedy provided for in the Security Instrument and the Loan Documents, and Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Security Instrument, the Loan Documents or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder.

4. Post-Foreclosure Liability. In no event shall Purchaser be:

- (a) liable for any act or omission of any prior landlord, including the Landlord, or the breach of any warranties or obligations relating to the Property;
- (b) liable for the return of any security deposit, except to the extent actually received by



Purchaser;

- (c) subject to any offsets, defenses or claims which the Tenant might have against any prior landlord (including Landlord) accruing prior to the date that Lender succeeds to the interest of Landlord under the Lease;
- (d) bound by any payment of rent or additional rent which the Tenant might have paid to any prior landlord for more than the current month or one month's rent paid in advance to the extent required under the Lease to be paid in advance;
- (e) bound by any amendment, modification, termination or cancellation of the Lease made without Purchaser's prior written consent;
- (f) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, Tenant hereby acknowledging that Purchaser has no obligation to reimburse Tenant for any work done by Tenant;
- (g) required to make any general repairs to the Property as a result of fire or other casualty, or by reason of condemnation, unless Purchaser (as landlord) shall be obligated under the Lease to make such repairs and Purchaser shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs;
- (h) required to make any capital improvements to the Property in general or to the Property which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the Property;
- (i) liable or responsible for payment of any brokerage or other commission or compensation due with respect to the Lease or any renewal, extension, expansion or other amendment thereof; or
- (j) liable to Tenant for any actions of its successors-in-interest upon a subsequent transfer by Purchaser of its interest in the Property; provided that any security deposit received by Purchaser shall be paid to such successor-in-interest.

5. Notice of Default; Right to Cure. Tenant agrees to give prompt written notice to Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the rent payable thereunder (there being no implication that Tenant has any right to cancel the Lease or abate the rent payable thereunder), and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within thirty (30) days after the date of receipt thereof to cure, or if the default cannot be cured within thirty (30) days, has failed to commence and to diligently pursue the cure of Landlord's default which gave rise to such right of cancellation or abatement. Tenant shall endeavor to provide a copy to Lender of any other notices required by the Lease to be given by

Tenant to the Landlord. Tenant further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Tenant of its acquisition of Lender's interest in the Security Instrument and designated the address to which such notices are to be sent.

6. Tenant's Covenants. Tenant agrees that it will not, without the prior written consent of Lender, do any of the following, and any such purported action without such consent shall be void as against Lender:

- (a) modify the Lease in any way; or
- (b) terminate the Lease or surrender possession of the leased premises except on the presently scheduled expiration date in the Lease or unless Tenant has provided Lender with the requisite notice and cure rights as provided in Section 5 above and Lender has failed to cure such default (to the extent susceptible to cure); or
- (c) make a prepayment in excess of one month of rent thereunder; or
- (d) subordinate or permit subordination of the Lease to any lien subordinate to the Security Instrument; or
- (e) exercise any termination right by paying a cancellation, surrender or termination fee or other such payment, except as expressly contemplated by Rider 3 of the Lease; or
- (f) mortgage, pledge or grant a lien on any of its rights under the Lease or its leasehold interest.

7. Texas Assignment of Rents Act. Upon Tenant's receipt of written notice from Lender as provided in Paragraph 14 that substantially complies with the requirements of the terms of the Texas Assignment of Rents Act (Sections 64.001 et. seq. of the Texas Property Code) ("TARA"), Tenant shall pay to Lender the amount of all prepaid rents made in excess of one month's rent, all payments of accrued but unpaid rent, rents as they accrue after the notice is received and other sums that become due under the Lease without deduction or offset directly to Lender or to the person and at the address specified by Lender, notwithstanding any conflicting instructions or demands by Landlord or any third party. Tenant hereby waives any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of notice set forth in Section 64.056 of TARA. Tenant shall be under no obligation to ascertain whether a default by Landlord has occurred under the Security Instrument or any other Loan Document. Landlord hereby authorizes and directs Tenant to deliver such payment to Lender upon receipt of such written notice and shall indemnify and hold Tenant harmless from any loss, cost, expense or claim incurred by Tenant in connection with its compliance with this provision. Landlord waives any right, claim or demand it may now or hereafter have against Tenant by reason of such direct payment to Lender and agrees that such direct payment to Lender shall discharge all obligations of Tenant to make such payment to Landlord.

8. Certification. Tenant agrees to certify in writing to Lender, upon request but not more

than once per year, whether or not any default on the part of Landlord exists under the Lease and the nature of any such default, and such other information as Lender may reasonably request.

9. Successors and Assigns. The agreements herein contained shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at a Foreclosure Event.

10. Amendment. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. Upon full payment of the Loan, Lender shall execute and deliver to Tenant upon request a release of this instrument in recordable form, if this Agreement has been recorded.

11. Counterparts. This Agreement may be separately executed in any number of counterparts, each of which will be an original, but all of which, taken together, will be deemed to constitute one and the same instrument. For purposes of negotiating and finalizing this Agreement, if this document or any document executed in connection with it is transmitted by facsimile machine, electronic mail or other electronic transmission, it will be treated for all purposes as an original document. Additionally, the signature of any party on this document transmitted by way of a facsimile machine or electronic mail will be considered for all purposes as an original signature. Any such faxed or electronically transmitted document will be considered to have the same binding legal effect as an original document. At the request of any party, any faxed or electronically transmitted document will be re-executed by each signatory party in an original form.

12. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed under the laws of the state in which the Property is located and applicable laws of the United States.

13. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section:

If to Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

If to Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

The parties agree that no notices or other communications by electronic means between such parties or their representatives in connection with this Agreement or any instrument executed in connection herewith shall constitute a transaction, agreement, contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions, unless otherwise specifically agreed to in writing.

14. Exhibits. All exhibits attached to this Agreement are incorporated herein for all purposes.

15. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Limitation of Liability. In the event Lender shall acquire title to the Property, Tenant agrees to look solely to Lender's interest in the Property and the rents, income or proceeds derived therefrom for the recovery of any judgment against Lender, it being agreed that Lender shall have no obligation nor incur any liability beyond Lender's then equity interest (including Lender's right in and to such rents, income or proceeds), if any, in the Property, for payment and discharge of any obligations imposed upon Lender hereunder or under the Lease or for recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment. The foregoing shall not otherwise limit any right Tenant may have to obtain injunctive relief against Lender from and after the date Lender acquires title to the Property to the extent expressly provided as a remedy to Tenant under the terms of the Lease.

**17. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE GOVERNMENTAL REQUIREMENT, ANY RIGHT IT MAY HAVE TO**

A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

18. Attorneys' Fees. In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party, arising out of this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees, expenses and court costs.

19. Entire Agreement. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Lease, the leasehold estate created by the Lease and all rights of Tenant under the Lease to the lien under the Loan Documents. This Agreement supersedes and cancels all oral negotiations and prior and other writings, other than the Lease, with respect to such subordination. If there is any conflict between the provisions of this Agreement and those of the Lease, the provisions of this Agreement shall prevail.

20. Governing Law. This Agreement shall be governed by the law of the State of Texas, without regard to the choice of law rules of that State.

[Remainder of Page Blank.  
Signature Page Follows.]

EXECUTED as of the date and year first above written.

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule of Exhibits:

Exhibit A - Property

[Acknowledgment Page Follows]

STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_. by \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas



EXHIBIT A

Property

[To be attached]

## EXHIBIT "G"

### GUARANTY AGREEMENT

In order to induce Landlord to execute the foregoing Office Lease Agreement (the "Lease") with Superior Silica Sands LLC, a Texas limited liability company ("Tenant"), for certain Premises in the office building located at 5600 Clearfork Main Street, Fort Worth, Tarrant County, Texas, the undersigned [whether one (1) or more] has guaranteed and, by this instrument does hereby guarantee, the full and prompt payment and performance of all liabilities, obligations and duties (including, but not limited to, payment of Rent) imposed upon Tenant under the terms of the Lease, as if the undersigned had executed the Lease as Tenant thereunder.

The undersigned hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices of default by Tenant under the Lease and waives diligence, presentment and suit on the part of Landlord in the enforcement of any liability, obligation, or duty guaranteed hereby.

The undersigned further agrees that Landlord shall not be first required to enforce against Tenant or any other person any liability, obligation, or duty guaranteed hereby before seeking enforcement thereof against the undersigned. Suit may be brought and maintained against the undersigned by Landlord to enforce any liability, obligation, or duty guaranteed hereby without joinder of Tenant or any other person. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement or variation of terms which may be extended to Tenant by Landlord or agreed upon by Landlord and Tenant and shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Tenant or its estate in bankruptcy, or if any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the United States Bankruptcy Code, or any similar law or statute of the United States or any state thereof. Landlord and Tenant, without notice to or consent by the undersigned, may at any time or times enter into such extensions, amendments, assignments, subleases, or other covenants with respect to the Lease as they may deem appropriate and the undersigned shall not be released thereby, but shall continue to be fully Liable for the payment and performance of all liabilities, obligations and duties of Tenant under the Lease as so extended, amended, assigned or otherwise modified.

It is understood that other agreements similar to this guaranty may, at Landlord's sole option and discretion, be executed by other persons with respect to the Lease. This guaranty shall be cumulative of any such agreements and the liabilities and obligations of the undersigned hereunder shall in no event be affected or diminished by reason of such other agreement. Moreover, in the event Landlord obtains another signature of more than one guarantor on this Guaranty Agreement or by obtaining additional guarantee agreements, or both, the undersigned agrees that Landlord, in Landlord's sole discretion, may (i) bring suit against all guarantors of the Lease, or against any one (1) or more of them, (ii) compromise or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, and (iii) release one or more

of the guarantors from liability, all without affecting or diminishing the liability of any other guarantors. If more than one (1) party executes this Guaranty Agreement, the liability of each party hereunder shall be joint and several.

If this Guaranty Agreement is executed on behalf of a corporation, limited liability company, limited partnership or other entity, the individual signing this Guaranty Agreement on behalf of such entity warrants and represents to Landlord that such individual has been duly authorized to execute this Guaranty Agreement and that this Guaranty Agreement will be binding upon Guarantor.

The undersigned agrees that if Landlord shall employ an attorney to present, enforce or defend Landlord's rights or remedies hereunder, the undersigned shall pay any reasonable attorney's fees incurred by Landlord in such connection.

This Guaranty Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas and is performable in Tarrant County, Texas, where venue shall lie for any action hereunder.

This Guaranty Agreement shall be binding upon each of the undersigned and the successors, heirs, executors and administrators of each of the undersigned and shall inure to the benefit of Landlord and Landlord's successors and assigns.

EXECUTED this 30<sup>th</sup> day of May, 2017, to be effective the same day as the effective date of the Lease.

**ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GUARANTOR:**

Emerge Energy Services, LP,  
a Delaware limited partnership

By: Emerge Energy Services GP, LC  
Its general partner

By: Richard J. Shearer  
Printed Name: Richard J. Shearer  
Title: President and CEO

## RIDER 1

### I. Option to Extend

A. **Renewal Period.** Tenant may, at its option, extend the Lease term for all of the Premises for two (2) renewal periods of five (5) years each (each, a "Renewal Period") by written notice to Landlord (the "Renewal Notice") given no later than nine (9) months prior to the expiration of the Primary Term (or the prior Renewal Period, as applicable), provided that at the time of such notice and at the commencement of such Renewal Period, (i) Tenant remains in occupancy of all of the Premises, and (ii) no Default by Tenant exists under the Lease. The Base Rent payable during the Renewal Period shall be the Market Rental Rate (hereinafter defined) for the Premises and Parking Fees for reserved parking spaces will be the Parking Fees then being quoted for new tenants in the Building. However, in no event shall the Base Rent or Parking Fees for the Renewal Period be less than the Base Rent or the Parking Fees, as applicable, in effect at the expiration of the Primary Term or the prior Renewal Term, as applicable. Except as provided in this Rider No. 1, all terms and conditions of the Lease shall continue to apply during the Renewal Period, except that Tenant shall have no further Option to Extend the Lease term after the final Renewal Period. Tenant may not exercise the second Renewal Period if it has not exercised the first Renewal Period.

B. **Acceptance.** Within fifteen (15) days of the Renewal Notice, Landlord shall notify Tenant of the Base Rent and the Parking Fees for such Renewal Period (the "Rental Notice"). Tenant may accept the terms set forth in the Rental Notice by written notice (the "Acceptance Notice") to Landlord given within thirty (30) days after receipt of the Rental Notice. If Tenant timely delivers its Acceptance Notice, Tenant shall, within thirty (30) days after receipt, execute a lease amendment confirming the Base Rent, Parking Fees and other terms applicable during the Renewal Period (including typical market concessions, such as an updated Base Year, TI Allowance, rental abatements and brokerage commissions and other tenant inducements included in determining Market Rental Rate). If Tenant fails timely (i) to deliver its Acceptance Notice or (ii) to execute and return the required lease amendment, then this Option to Extend shall automatically expire and be of no further force or effect. In addition this Option to Extend shall terminate upon assignment of the Lease or subletting of all or any part of the Premises, except with respect to a Permitted Transferee.

C. **Market Rental Rate.** The "Market Rental Rate" shall be the then average current rental rate being charged by the owners of The Offices at Clearfork and any other Class A buildings that contain at least 50,000 square feet of rentable area but not more than 300,000 square feet of rentable area and are similar in quality and amenities, constructed subsequent to the Commencement Date, and located in the west/southwest Fort Worth submarket to new tenants for office space, taking into consideration the amount of any TI Allowances (or adjusting for no TI Allowance if Tenant so elects) and other tenant inducements.

### II. Existing Exclusive

Landlord has previously granted an exclusive use right to an existing tenant in the Building that

prohibits Landlord from leasing any space in the Building to certain users for the operation of a business which originates and services residential mortgage loans. Tenant agrees that it will not operate any business in the Premises that originates and services residential mortgage loans nor will it allow any sublessee, licensee or any other occupant of the Premises to conduct such a business at the Premises.

### III. Signage

A. Monument Signage. So long as Tenant is not in Default under the Lease and the Premises occupied by Tenant contain at least 15,000 square feet, Tenant will be entitled to install a sign panel containing Tenant's name and logo on the monument sign that Landlord has constructed on the Land. Tenant must submit its proposed signage to Landlord for its approval and to the Clearfork Design Review Board ("DRB") for approval pursuant to the terms of the Declaration. Once approved by the Landlord and the DRB, the signage will be prepared and submitted to Landlord for installation on the monument sign, at Tenant's expense. Tenant will be responsible for any casualty damages to Tenant's signage and will keep such signage in good condition, repair and appearance, at Tenant's expense. Upon termination or expiration of this Lease, Landlord may remove Tenant's signage from the monument sign, and Tenant will reimburse Landlord for its costs incurred in removing the signage and returning the monument sign to substantially the same condition existing at the time of installation of Tenant's signage.

B. Directory and Suite Signage. Landlord shall provide a Building tenant directory listing in the main lobby of the Building as well as Premises suite signage in Building Standard format, all at Landlord's expense.

## RIDER 2

### Right of First Refusal

For purposes of this Right of First Refusal, the term "**Right of First Refusal Space**" means any space on the fourth (4th) floor of the Building, excluding the Premises, which is (i) contiguous to the Premises and (ii) is vacant and/or becomes available for lease by Landlord at any time after the initial lease of such space has expired or been terminated. In the event Landlord enters negotiations with a prospective tenant interested in leasing all or a portion of the Right of First Refusal Space (the space which is subject to such negotiations being referred to as the "**Offered Space**") and Landlord and the prospective tenant have agreed upon the material business terms of a lease for the Offered Space, Tenant will have an ongoing right of first refusal to lease the Offered Space, subject to the following terms and conditions:

(a) Tenant's right of first refusal will be subject and subordinate to any existing right of first refusal that any existing tenant of the Building has on the Effective Date with respect to the Offered Space (each such existing tenant holding a right of first refusal being referred to herein as an "**Existing ROFR Holder**"). Tenant's right of first refusal will only become exercisable if, as and when each Existing ROFR Holder has waived or is deemed to have waived its right of first refusal for the Offered Space. Once Tenant's right of first refusal becomes exercisable, Landlord will give written notice of such fact to Tenant and such notice (the "**ROFR Notice**") will include the material business terms which have been agreed upon with the prospective tenant, including the proposed rent, lease term, tenant improvement allowance, size of the lease space and other material business terms. Tenant will have seven (7) days from the date of delivery of such ROFR Notice to Tenant (in accordance with the provisions of Section 38 of the Lease) to notify Landlord whether Tenant elects to exercise its right of first refusal to lease the Offered Space on the terms specified in the ROFR Notice. If Tenant fails to give written notice of exercise to Landlord within the required seven (7) day period or declines in writing to exercise its right of first refusal, Tenant will be deemed to have waived its right of first refusal to lease the Offered Space. If Tenant so waives its right of first refusal (either by giving written notice thereof or by failing to give any notice to Landlord), Landlord will have the right to lease the Offered Space to the prospective tenant upon economic terms which are not materially less favorable to the Landlord than those specified in the ROFR Notice, and upon execution of such lease between Landlord and the prospective tenant this right of first refusal as to the Offered Space will be of no further force or effect with respect to such lease. Landlord agrees not to commence any speculative construction in all or any portion of the Right to First Refusal Space without the prior written consent of Tenant.

(b) If Landlord does not enter into a lease with the prospective tenant covering the Offered Space within one hundred twenty (120) days after the ROFR Notice is given to Tenant, or if Landlord desires to enter into a lease with the prospective tenant on terms that are, when considered as a whole, materially less favorable to Landlord, Tenant's right of first refusal with respect to the Offered Space will become applicable again and the procedures set forth in subparagraph (a) of this Rider 2 will apply.

(c) Upon the exercise by Tenant of its right of first refusal as provided herein, Landlord and Tenant will, within fifteen (15) days after Tenant delivers to Landlord notice of its election to exercise, enter into an amendment to this Lease incorporating the Offered Space into the Premises for the rent, for the term and containing such other terms and conditions as Landlord notified Tenant in the ROFR Notice with respect to the Offered Space. Notwithstanding the foregoing, if Tenant exercises the right of first refusal and the term applicable to the Offered Space set forth in the ROFR Notice expires prior to the Expiration Date of this Lease, then, unless Tenant's written notice of exercise includes a request not to extend the term of the Lease with respect to the Offered Space, the term of this Lease with respect to the Offered Space shall expire on the Expiration Date, and in such event the Base Rent applicable to the Offered Space for the period after the expiration of the term of the lease to the prospect through the Expiration Date will continue to increase at the same intervals and in the same amounts as the Base Rent to be paid by the prospect, which amounts will be stated in the ROFR Notice. Further, notwithstanding the foregoing, if Tenant exercises the right of first refusal and the term applicable to the Offered Space set forth in the ROFR Notice expires after the Expiration Date of this Lease, then, unless Tenant's written notice of exercise includes a request not to extend the term of the Lease with respect to the then-current Premises leased by Tenant, the term of the Lease with respect to the then-current Premises leased by Tenant shall be extended to expire on the expiration date of the Offered Space as set forth in the ROFR Notice, and in such event the Base Rent applicable to the then-current Premises for the period after the Expiration Date of this Lease through the extended term applicable to the Offered Space shall be the Market Rental Rate as determined as of the Expiration Date in accordance with the definition of Market Rental Rate set forth in Rider 1 of this Lease, and Landlord will state Landlord's determination of the Market Rental Rate for such extension period for the then-current Premises in the ROFR Notice.

(d) The right of first refusal granted herein is personal to the originally named Tenant hereunder and may not be assignable except in connection with a complete assignment of this Lease by Tenant in compliance with its terms and will not be assignable to any other person or entity.

### RIDER 3

#### Early Termination by Tenant

In the event of any conflicts between the terms and conditions of this Rider 3 and the remainder of this Lease, the following terms and conditions will control:

(a) Early Termination. Tenant will have a one-time right to terminate the Primary Term of this Lease prior to its stated Expiration Date at the end of seven (7) consecutive years of paid Rent upon satisfaction of each of the following conditions precedent:

(1) Tenant must give Landlord not less than twelve (12) months advance written notice of its request to terminate (the "Early Termination Notice"), such written notice to state the date of termination (i.e., the end of the seventh (7th) consecutive year of paid Rent);

(2) All Base Rent and other Rent due and payable by Tenant under the terms of this Lease shall have been paid prior to the date of termination;

(3) No event of Default or event with the passage of time and/or the giving of notice might become a Default may exist either at the time the Early Termination Notice is given to Landlord or on the date of termination; and

(4) Tenant shall pay to Landlord at the time the Early Termination Notice is given to Landlord, a termination fee (the "Early Termination Fee") equal to (i) two (2) months of the Base Rent in effect on the date of termination notice, plus (ii) the unamortized leasing commissions paid to Tenant's Broker and Landlord's Broker, as well as legal fees paid by Landlord in connection with this Lease, plus all unamortized TI Allowance funded by Landlord, all amortized on a straight line basis over a term of 120 months, beginning May 1, 2018, plus (iii) the unamortized Supplemental TI Allowance, if any, funded by Landlord, amortized at an interest rate of 8% per annum over a term of 120 months beginning on May 1, 2018.

In no event shall any period of Rent abatement following April 30, 2018 provided in accordance with the terms of this Lease act to interrupt or toll the 7-year period contemplated above.

The terms and conditions of this Lease which apply at the stated Expiration Date will also apply to an early termination by Tenant.