

**AMENDED & RESTATED
LEASE AND DEVELOPMENT AGREEMENT**

by and between

**WILLIE G'S POST OAK, LLC,
as Tenant**

and

**THE CITY OF SAN ANTONIO, TEXAS,
as Landlord**

Dated as of [●]

TOWER OF THE AMERICAS

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**AMENDED & RESTATED
LEASE AND DEVELOPMENT AGREEMENT**

THIS AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT (this "**Lease**") is made and entered into effective as of _____, 202_ (the "**Effective Date**") by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation and home-rule city of the State of Texas principally situated in Bexar County, Texas, acting by and through its governing body, the City Council ("**Landlord**"), and **WILLIE G'S POST OAK, INC.**, a Texas limited liability company ("**Tenant**"). Landlord and Tenant are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

A. Landlord is the owner of certain real property situated in San Antonio, Bexar County, Texas, more particularly identified by diagram in Exhibit A-1 (the "**Tower Tract**") and Exhibit A-2 (the "**Walkway Tracts**") and Exhibit A-3 (the "**Parking Tract**") attached hereto.

B. On October 23, 2003, City Council approved issuance of a request for proposal for the operation of the improvements situated on the Tower Tract and associated parking.

C. In response to the request for proposals initiated by the City, the City Council, by Ordinance No. 98910, authorized the City Manager to enter into negotiations with Guarantor for the development, operation and maintenance of the improvements located on the Tower Tract and associated parking.

D. By that certain Lease and Development Agreement authorized by Ordinance 99996 and dated effective as of November 18, 2004 (as (i) amended by that certain First Amendment to Lease and Development Agreement authorized by Ordinance 2007-05-17-0570 and dated as of June 1, 2007 (the "**First Amendment**"), by and between the Parties, (ii) further amended by that certain Second Amendment to Lease and Development Agreement authorized by Ordinance 2013-06-06-0389 and dated as of June 12, 2013 (the "**Second Amendment**"), by and between the Parties, (iii) further amended by that certain Third Amendment to Lease and Development Agreement authorized by Ordinance 2019-09-12-0694A and dated as of September 12, 2019 (the "**Third Amendment**"), by and between the Parties, and (iv) modified by that certain Letter of Understanding Regarding Holdover Status dated July 15, 2021 (the "**Holdover Agreement**"), by and between the Parties, the "**Original Lease**"), Landlord leased to Tenant, a wholly-owned subsidiary of Guarantor, certain real property situated in San Antonio, Bexar County, Texas, as more particularly described therein, and certain improvements located thereon.

E. Pursuant to Section 5.4 of the Original Lease, on November 27, 2019, Tenant delivered written notice to Landlord stating Tenant's intent to exercise its Renewal Option (as defined in the Original Lease) to extend the Operating Term of the Original Lease for a period of ten (10) years (as provided for in the Original Lease).

F. The Operating Term of the Original Lease expired as of midnight on June 30, 2021, and, pursuant to Section 2 of the Holdover Agreement, as of the Effective Date, Tenant continues to operate the Premises in a hold over status with the Approval of Landlord.

G. The Parties now desire to extend the Operating Term of the Original Lease for the Renewal Term (as defined in the Original Lease) and to amend and restate the Original Lease, and the Parties are willing to agree to such an extension and such amendment upon the terms and conditions set forth below.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Landlord and Tenant, intending to be legally bound, hereby amend and restate the Original Lease and supersede and replace the Original Lease in its entirety with this Amended & Restated Lease and Development Agreement and agree as follows:

ARTICLE I

GENERAL TERMS

1.1 Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Lease shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A, which also contains rules as to usage that shall be applicable herein.

1.2 Governing Provisions. The governing provisions set forth in Appendix B attached hereto shall apply to and govern this Lease for all purposes.

ARTICLE II

REPRESENTATIVES

2.1 Landlord Representative. For so long as the City is Landlord under this Lease, (a) Landlord hereby designates the Director of the Center City Development & Operations Department of the City to be the representative of Landlord (the "**Landlord Representative**") and (b) City Council authorizes the City Manager of the City to have the right, and Tenant agrees that the City Manager of the City shall have the right, from time to time, to change the Persons who are the Landlord Representative by giving at least ten (10) calendar days prior written Notice to Tenant thereof. In the event the City is no longer Landlord under this Lease, the successor Landlord shall have the right, from time to time, to change the Persons who are the Landlord Representative by giving at least ten (10) calendar days prior written Notice to Tenant thereof. The only functions under this Lease of the Landlord Representative shall be as expressly specified in this Lease. With respect to any such action, decision or determination which is to be taken or made by Landlord under this Lease, the Landlord Representative may take such action or make such decision or determination or shall notify Tenant in writing of the department, bureau, agency, division, section or office of Landlord responsible for such action, decision or determination and shall forward any communications and documentation to such department, bureau, agency, division, section or office for response or action. Any one of the Persons from time to time serving as the Landlord Representative, acting alone and without the joinder of the other persons then

serving as the Landlord Representative, shall have the power to bind Landlord in those instances in which this Lease specifically provides for the Approval, Consent, decision, confirmation or determination of the Landlord Representative and in no other instances; *provided, however*, that notwithstanding anything in this Lease to the contrary, the Landlord Representative shall not have any right to modify, amend or terminate this Lease.

2.2 Tenant Representative. Tenant hereby designates the person from time to time serving as Senior Vice President of Development of Guarantor (or such successor positions), and being Mr. Jeffrey Cantwell as of the Effective Date, to be the representative of Tenant (the "**Tenant Representative**"), who shall be authorized to act on behalf of Tenant under this Lease. Tenant shall have the right, from time to time, to change the Person who is the Tenant Representative by giving Landlord written notice thereof; *provided, however*, that Tenant shall give Landlord at least ten (10) calendar days prior written notice of any intention to appoint a new Tenant Representative and shall consult in good faith with Landlord with respect to the selection of such new Tenant Representative. With respect to any such action, decision or determination to be taken or made by Tenant under this Lease, the Tenant Representative shall take such action or make such decision or determination or shall notify Landlord in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, Consent, decision, confirmation or determination hereunder by the Tenant Representative shall be binding on Tenant; *provided, however*, that that notwithstanding anything in this Lease to the contrary, the Tenant Representative shall not have any right to modify, amend or terminate this Lease.

ARTICLE III

LEASED PREMISES

3.1 Grant.

3.1.1 Grant of Leased Premises; Habendum. In consideration of and pursuant to the covenants, agreements and conditions set forth herein, Landlord does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby rent and lease from Landlord, on and subject to the terms, conditions and provisions of this Lease, a leasehold estate in and to the Tower Tract and the Project Improvements located on the Tower Tract (collectively, the "**Leased Premises**"), for the Term set forth in ARTICLE V hereof.

TO HAVE AND TO HOLD the Leased Premises unto Tenant for the Term pursuant to the terms and conditions of this Lease.

3.1.2 Naming Rights. In consideration of and pursuant to the covenants, agreements and conditions set forth in this Lease, including, ARTICLE XXV, Landlord does hereby grant to Tenant the right to name the Leased Premises or any portion thereof (other than the right to name the Tower and the Tower Plaza) and to grant and license Naming Rights (other than the right to grant or license any Naming Rights with respect to the Tower and the Tower Plaza), each in accordance with the terms of this Lease and each only for the Term. Notwithstanding the foregoing, Tenant shall not have the right to name

the Leased Premises (or any portion thereof) or grant or license any Naming Rights with respect to the Leased Premises unless and until Tenant obtains the Approval of Landlord of the particular name to be given to the Leased Premises (or any portion thereof) and any Naming Rights to be granted or licensed by Tenant, except that no Approval shall be required in connection with the naming (i) in a generic manner of the portions of the Leased Premises for which Tenant is entitled to grant Naming Rights and which is not for the benefit of, or in a manner which identifies, any Person or any Person's products, services or property (real, tangible or intangible), (ii) of the Gift Shop, the Theater, the Tower Restaurant, the Café and the moderately priced food venue on the Observation Deck Level after an Affiliate of Tenant and (iii) of the Observation Deck Level as the "Landry's Observation Deck", "Landry's Restaurants Observation Deck" or "Landry's Restaurants, Inc. Observation Deck."

3.2 Delivery of Possession; Covenant of Quiet Enjoyment; Leasehold Priority.

3.2.1 Delivery of Possession. On the Effective Date, Landlord will deliver to Tenant possession and occupancy of the Leased Premises subject only to (i) the Permitted Exceptions, (ii) the rights and reservations of Landlord under this Lease and (iii) all Applicable Laws.

3.2.2 Covenant of Quiet Enjoyment; No Warranty of Title. Landlord covenants for the Term that Tenant, upon paying the Rent and upon keeping, timely observing and performing the terms, covenants and conditions of this Lease to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use and enjoy the Leased Premises during the Term without ejection or interference by or from Landlord or any other Person claiming by, through or under Landlord (other than Persons claiming by, through or under Tenant), subject only to (i) rights of permitted Subtenants arising by, through or under Tenant, (ii) the Permitted Exceptions, (iii) Applicable Law, (iv) the power of eminent domain, (v) the police power of Governmental Authorities under Applicable Laws and (vi) the rights and reservations of Landlord under this Lease. Without limiting or reducing any of Landlord's covenants contained in this Section 3.2.2, Tenant agrees that Landlord is leasing to Tenant all of Landlord's right, title and interest to the Leased Premises without warranty of title.

3.2.3 Leasehold Priority. Landlord covenants and agrees that Tenant's leasehold estate in the Leased Premises shall be senior and prior to any Lien or other Encumbrance other than the Permitted Exceptions and any other Encumbrance arising by, through or under Tenant or any Affiliate or Related Party of Tenant or permitted pursuant to the terms of this Lease. Further, Landlord agrees that Landlord will not grant any third Person the right use, occupy or operate the Leased Premises during the Term, except pursuant to the Permitted Exceptions.

3.3 Leased Premises Reservations. Notwithstanding anything in this Lease to the contrary, Landlord hereby reserves (and the Leasehold Estate shall not include) the following with respect to the Leased Premises (the "**Leased Premises Reservations**"):

3.3.1 Ingress and Egress. For the benefit of (i) the public, the non-exclusive right of ingress and egress to, from and across the Tower Plaza and the other exterior public areas located on the Tower Tract (the "**Public Plaza Reservation**") and (ii) all Governmental Authorities, a non-exclusive, unobstructed access easement thirty-five feet (35') wide and fourteen and one-half feet (14½') high (commencing at ground level) across the Tower Plaza for temporary emergency vehicle access along a route determined by the City (the "**Emergency Vehicle Reservation**"); *provided, however* that (x) with respect to the Public Plaza Reservation only and subject to the prior written Approval of the Landlord Representative, which will not be unreasonably withheld and which may be expressly granted as part of an Approval of a temporary special event pursuant to Section 12.1(10), Tenant may restrict access by the public to certain portions of the Tower Plaza to address security concerns and (y) with respect to the Emergency Vehicle Reservation only, the Landlord Representative will coordinate the location thereof with Tenant in an effort to not materially interfere with the operation of the Leased Premises by Tenant pursuant to the terms of this Lease.

3.3.2 Utilities. Subject to (i) Landlord's maintenance obligations pursuant to Section 14.1.5 and (ii) the terms of ARTICLE XVI, the right of the City to install under or below Ground Level at the Leased Premises any and all utilities (and appurtenances related thereto) that the City deems reasonably necessary; *provided, however*, that the location, route, construction and use thereof will not materially interfere with the operation of the Leased Premises by Tenant, as a whole, pursuant to the terms of this Lease.

3.3.3 Governmental Functions. The right of the City to use or occupy the Leased Premises pursuant to the exercise of the Governmental Functions of the City.

3.3.4 Mineral Rights. For the benefit of Landlord and the City, the exclusive right to any natural resources in, on or under the Leased Premises, including all oil, coal, natural gas and other hydrocarbons, minerals, aggregates and geothermal resources as well as a right to grant leases or to conduct and undertake surface or subsurface extraction of same, *provided, however*, that no extraction shall (i) be inconsistent or incompatible with the rights or privileges of Tenant under this Lease, (ii) be permitted on the surface of the Leased Premises or (iii) adversely affect the surface of the Leased Premises or adversely undermine the support for the Leased Premises.

3.3.5 Maintenance. For the benefit of Landlord, access to and the right to perform on the Leased Premises all of Landlord's maintenance obligations pursuant to the terms and conditions of Section 14.1.5 and ARTICLE XVI.

3.3.6 Broadcast Facility Leases. For the benefit of Landlord and the City, the exclusive right to lease or license space for, and place, radio, television, wireless telecommunication, telecommunications towers/antennae, broadcast facilities and any other communication equipment ("**Landlord's Communication Equipment**") on or in Landlord's Area of Responsibility, including radio and television transmission antennae and cellular phone towers, and, subject to ARTICLE XVI, the right of Landlord and its tenants in connection with same to access Landlord's Area of Responsibility. Landlord

shall ensure that all Landlord's Communication Equipment operated by Landlord is operated in accordance with Applicable Law and Landlord shall use commercially reasonable efforts to cause any Landlord's Communication Equipment operated by any other Person to be operated in compliance with Applicable Law. Tenant agrees to reasonably cooperate with Landlord in connection with the placement and operation of the Landlord's Communication Equipment; *provided* that Tenant shall not be obligated to expend any funds in connection with such cooperation and nothing herein shall imply or import any duty or responsibility on the part of Tenant to obtain for Landlord, or any tenant or licensee of Landlord, any license or permit (or renewal or extension thereof) that may be necessary for the placement or operation of Landlord's Communication Equipment. Tenant covenants and agrees that the operation of any radio, television, wireless telecommunication or other communication equipment used by Tenant at the Leased Premises in connection with its operation of the Leased Premises pursuant to the terms of this Lease ("**Tenant's Communication Equipment**") shall not (i) interfere in any manner with any Landlord's Communication Equipment used or operated by or on behalf of Landlord or any Governmental Authority, in each case, in connection with public safety or any Governmental Function ("**Landlord's Emergency Communication Equipment**") and the use and operation of any Landlord's Emergency Communication Equipment shall have priority over the use of any Tenant's Communication Equipment and (ii) unreasonably interfere with any other Landlord's Communication Equipment installed in the Leased Premises and in use prior to the time that Tenant's Communication Equipment is installed and in use; *provided, however*, that Landlord covenants and agrees to use commercially reasonable efforts to cause any contract, lease, license or other agreement with any Person entered into on or after the Effective Date concerning the placement or operation of any Landlord's Communication Equipment (other than Landlord's Emergency Communication Equipment) on the Leased Premises to contain a requirement to not unreasonably interfere with any Tenant's Communication Equipment which is used for the reception of satellite radio or television and Landlord hereby covenants and agrees to enforce any such provision it is successful in obtaining.

3.3.7 New Year's Eve Celebration. For the benefit of Landlord and the City, the right to use each calendar year during the Term, at no cost to Landlord or the City, the Observation Deck Level and all associated utilities and appurtenances, including the west facing Elevator, for the set up, launching and dismantling of a fireworks display and the set up, display and dismantling of a laser-light show for the annual New Year's Eve celebration held in HemisFair Park (the "**New Year's Celebration**"). The Landlord Representative and the Tenant Representative shall mutually agree to a special operating plan for the operation of the Leased Premises during the New Year's Celebration at least one hundred twenty (120) calendar days prior to each New Year's Celebration during the Term, each Party agreeing to be reasonable in connection with mutually agreeing as to any such operating plan. The special operating plan will require Landlord and Tenant to use commercially reasonable efforts to minimize interference with each other and to allow Tenant as complete an operation of the Premises as is consistent with the preservation and protection of life, health, safety and property; *provided, however* that Tenant acknowledges that Landlord will have the right to exclude Tenant and the public from a portion of the Observation Deck Level in connection with the production of the New Year's Celebration

so long as same is limited to those portions of the Observation Deck Level, and for such duration, as is reasonably necessary for the presentation of the New Year's Celebration in question. Landlord agrees to use commercially reasonable efforts to cause the third-party producer of the New Year's Celebration to provide (i) a commercially reasonable indemnity in favor of Tenant and (ii) commercially reasonable insurance naming Tenant as an additional insured. Notwithstanding anything herein to the contrary, Landlord's right to hold the New Year's Celebration shall not permit Landlord the right to grant access to the Tower to the public nor prohibit Tenant from operating the Tower Restaurant pursuant to the terms of this Lease.

3.3.8 Access for City Business Tours. For the benefit of Landlord and the City, the right to access the Observation Deck Level, without charge except as provided in this Section 3.3.8, for City Business Tours. Notwithstanding the foregoing, Tenant shall be entitled to a credit against Tenant's monthly installment of Base Rent and Participation Rent for any such access to the Observation Deck Level for City Business Tours by Landlord or the City occurring during such month in question. Such credit shall be calculated by multiplying the number of persons who are designated guests of the City during City Business Tours and granted access to the Observation Deck Level pursuant to this Section 3.3.8 times Tenant's then published rate for access by the public to the Observation Deck Level (taking into considerations any discounts or reduced rates that may apply, e.g. seniors, children, group discounts, etc.). Landlord shall coordinate such access with Tenant and shall make a good faith effort to provide Notice to Tenant such access at least ten (10) calendar days prior to the event in question.

3.3.9 Naming Rights. For the benefit of Landlord and the City, the right to name and grant or license any Naming Rights with respect to the Tower and the Tower Plaza, and Tenant shall not have the right to name, or grant or license any Naming Rights with respect to, the Tower or the Tower Plaza; *provided, however*, that neither Landlord nor the City shall name or grant or license any Naming Rights with respect to the Tower or the Tower Plaza during the Term unless and until Landlord obtains the Approval of Tenant of the particular name to be given to the Tower or the Tower Plaza, as applicable, or the Naming Rights to be granted or licensed by Landlord with respect to the Tower or Tower Plaza, as applicable, except that no Approval of Tenant shall be required in connection with naming the Tower with the Tower Name.

ARTICLE IV

LICENSED PREMISES; ASSIGNMENT OF TELESCOPE LICENSE

4.1 Parking.

4.1.1 Parking License. Subject to the terms and conditions of this Lease, Landlord hereby grants to Tenant during the Term of this Lease the following (as the same may be terminated and re-licensed pursuant to Section 4.1.2, the "**Parking License**") (A) an exclusive license in and to the following parking spaces (as the same may be relocated pursuant to Section 4.1.2, "**Tenant's Parking Spaces**") for the period until this Parking

License may be terminated and re-licensed pursuant to Section 4.1.2: (i) on a twenty-four (24) hour basis, seven (7) days a week, 160 spaces located in the parking lots depicted on Exhibit A-3 ("Parking Tract"), (ii) for the period until this Parking License may be terminated and re-licensed, an additional 34 spaces also on a twenty-four (24) hour basis, seven (7) days a week, (iii) an additional 50 spaces between the hours of 7:00 p.m. and 7:00 a.m. local time, seven (7) days a week, located in lots 7 and 8, and (iv) an additional 75 spaces between the hours of 7:00 p.m. and 7:00 a.m. local time, Monday-Friday, and on a twenty-four (24) hour basis on Saturday & Sunday, and (B) a non-exclusive license as to the remaining Parking Improvements, all for the sole purposes of (1) permitting parking of passenger vehicles, (2) Tenant's performance of its obligations under this Lease with respect to the Parking Improvements and (3) such other uses as are Approved by Landlord's Representative pursuant to Section 12.1(6). Tenant shall have the right to designate the Tenant's Parking Spaces as reserved for the use of patrons, visitors or guests of the Leased Premises or Tenant's employees, agents or contractors who are employed at or performing services in connection with Tenant's operation the Premises; and except as otherwise *provided* hereinabove, Tenant shall not otherwise be entitled to exclude the public from parking in Tenant's Parking Spaces. Tenant agrees to accommodate traffic at no charge to cross Parking Tract, including vehicles supporting Convention Center expansion and Market Street realignment and multi-passenger vehicles visiting the Institute of Texan Cultures. Notwithstanding the preceding, Landlord continues to reserve the right to relocate Tenant's Parking Spaces according to the provisions of Section 4.1.2.

Parking Spaces	Days Available	Hours Available
160	7 days per week	24 hours per day
34	7 days per week	24 hours per day

4.1.2 Right to Relocate Tenant's Parking Spaces. Notwithstanding anything herein to the contrary and subject to the terms of this Section 4.1.2, Landlord shall have the continuous right throughout the Term, for any reason and in its sole discretion, to terminate the Parking License as to Tenant's Parking Spaces upon ninety (90) calendar days prior Notice to Tenant. In the event that Landlord exercises its right to terminate the Parking License pursuant to the terms hereof, subject to Section 4.1.3, Landlord shall provide Tenant, and grant Tenant a similar license over, one hundred ninety-four (194) reasonably configured, contiguous parking spaces and associated parking and wayfinding signage on available land owned and controlled by Landlord in reasonable proximity to the Premises; *provided* that (i) the relative rights and responsibilities of Landlord and Tenant with respect to such relocated Tenant's Parking Spaces and the area in which they are relocated shall remain substantially the same as existed with respect to the previous Tenant's Parking Spaces and the Parking Tract in which the same were located (including, without limitation, rights and responsibilities relating to operation and maintenance), and (ii) Landlord shall relocate the Walkway License in accordance with the requirements of Section 4.2.2.

4.1.3 Valet Parking.

(a) The Parties acknowledge and agree that the completion of Hemisfair Blvd Phase III is expected to include a valet turn-in area to support visitors to the Leased Premises (a "**Valet Turn-In Area**"); *provided* that Landlord is under no obligation to create a Valet Turn-In Area. In the event Landlord constructs a Valet Turn-In Area, no later than thirty (30) calendar days after the completion of such Valet Turn-In Area, Landlord shall (i) designate an area for valet parking to serve the Premises, which will be as set forth on the attached Exhibit J (the "**Valet Parking Area**"), and provide notice to Tenant of the same, and (ii) grant Tenant during the Term a non-exclusive, revocable license in and to the Valet Parking Area for the purpose of Tenant's operation of a valet parking program.

(b) Tenant shall have the right to lease from Landlord, for use by Tenant in connection with its operation of its valet parking program at a market-standard, long-term, monthly rental rate to be reasonably negotiated by Tenant and Landlord, contiguous parking spaces in a number chosen in Tenant's discretion from time to time located in the Parking Tract, but in no event more than seventy-five (75) parking spaces (the "**Valet Parking Spaces**"). Landlord's obligation, pursuant to Section 4.1.2 above, to provide Tenant with one hundred ninety-four (194) parking spaces in the event that Landlord exercises its right to terminate the Parking License shall be reduced by the number of Valet Parking Spaces leased by Tenant in accordance with this Section 4.1.3(b), if any.

4.2 Walkways.

4.2.1 Walkway License. Subject to the terms and conditions of this Lease, Landlord hereby grants Tenant during the Term a non-exclusive, revocable license in and to the Walkway Tracts for the purpose of pedestrian ingress and egress to and from the Tower Tract (as the same may be terminated pursuant to Section 4.2.2, the "**Walkway License**").

4.2.2 Right to Relocate Parking Walkway. Notwithstanding anything herein to the contrary and subject to the terms of this Section 4.2.2 and the requirements of Applicable Law, Landlord shall have the continuous right throughout the Term, for any reason and in its sole discretion, to terminate the Walkway License as to the then current Walkway Tracts between the Leased Premises and the Parking Tract (collectively, the "**Parking Walkway**") upon sixty (60) calendar days prior Notice to Tenant. In the event that Landlord exercises its right to terminate the Walkway License as to a Parking Walkway pursuant to the terms hereof, Landlord shall, as a condition to such termination, provide Tenant with an alternative license over a walkway tract between the Parking Tract and the Tower Tract which Walkway Tract shall be paved and lit (but only to the extent the Walkway Tract covered by the Walkway License that is then being terminated was so lit as of the date of termination) and otherwise substantially equivalent to the Walkway Tract covered by the Walkway License being terminated, and shall cause such alternative walkway tract to be as direct a route between the Parking Tract and the Tower Tract as is reasonably practicable. Notwithstanding anything herein to the contrary, in the event that

Landlord shall terminate the Parking License in accordance with Section 4.1.2, Landlord shall be required to terminate the Walkway License as to the then current Walkway Tracts between the Tower Tract and the Parking Tract for which the Parking License is then being terminated and grant Tenant an alternative license over two (2) walkway tracts between the new relocated parking area and the Tower Tract pursuant to the terms and conditions of this Section 4.2.2.

4.3 Pump Room.

4.3.1 Pump Room License. Subject to the terms and conditions of this Lease, Landlord hereby grants Tenant during the Term a non-exclusive, revocable license in and to a portion of the Pump Room, with such portion to be mutually agreed to by Landlord and Tenant (as mutually agreed to pursuant to the terms hereof, "**Tenant's Pump Room Area**") for the purpose of (i) storage and staging in connection with the construction of the New Tenant Improvements and (ii) operational support in connection with Tenant's operation of the Premises pursuant to the terms of this Lease (collectively, the "**Pump Room License**"). Tenant hereby acknowledges and agrees that (i) Landlord has informed Tenant that the Pump Room leaks and that Landlord shall have no responsibility to Tenant for any damage to any of Tenant's Personal Property or other Property stored within Tenant's Pump Room Area as a result of such leaking and (ii) during the Term, Tenant shall be required to secure Tenant's Pump Room Area at Tenant's sole cost and expense.

4.4 No Warranty of Title. Tenant agrees that Landlord is licensing to Tenant all of Landlord's right, title and interest to the Licensed Premises without warranty of title and that Tenant's possession and occupancy of the Leased Premises is subject only to (i) the Permitted Exceptions, (ii) the rights and reservations of Landlord under this Lease and (iii) Applicable Laws.

4.5 Licensed Premises Reservations. Notwithstanding anything in this Lease to the contrary, Landlord hereby reserves (and the Leasehold Estate shall not include) the following with respect to the Licensed Premises (the "**Licensed Premises Reservation**"):

4.5.1 Ingress and Egress. For the benefit of the public (except as to the Tenant's Pump Room Area), the Landlord and the City, the non-exclusive right of ingress and egress to, from and across the Licensed Premises and any use of the Licensed Premises that does not materially interfere with Tenant's use thereof in accordance with the terms of this Lease.

4.5.2 Utilities. Subject to (i) Landlord's maintenance obligations pursuant to Section 14.1.5 and (ii) the terms of ARTICLE XVI, the right of the City to install under the Licensed Premises any and all utilities (and appurtenances related thereto) that the City deems reasonably necessary; *provided, however*, that the location, route, construction and use thereof will not materially interfere with the operation of the Licensed Premises by Tenant, as a whole, pursuant to the terms of this Lease.

4.5.3 Governmental Functions. The right of the City to use or occupy the Licensed Premises pursuant to the exercise of the Governmental Functions of the City.

4.5.4 Mineral Rights. For the benefit of Landlord and the City, the exclusive right to any natural resources in, on or under the Licensed Premises, including all oil, coal, natural gas and other hydrocarbons, minerals, aggregates and geothermal resources as well as a right to grant leases or to conduct and undertake surface or subsurface extraction of same, *provided, however*, that no extraction shall (i) be inconsistent or incompatible with the rights or privileges of Tenant under this Lease, (ii) be permitted on the surface of the Licensed Premises or (iii) adversely affect the surface of the Licensed Premises or adversely undermine the support for the Licensed Premises.

4.5.5 Maintenance. For the benefit of Landlord, access to and the right to perform on the Licensed Premises all of Landlord's maintenance obligations pursuant to the terms and conditions of Section 14.1.5 and ARTICLE XVI.

4.5.6 Broadcast Facility Leases. For the benefit of Landlord and the City, the exclusive right to lease or license space for, and place, Landlord's Communication Equipment on or in the Licensed Premises, and the right of Landlord and its tenants and licensees in connection with same to access the Licensed Premises, all in the same manner and upon the same terms and conditions as provided in Section 3.3.6.

4.5.7 Naming Rights. For the benefit of Landlord and the City, the right to name or to grant or license any Naming Rights with respect to the Licensed Premises and Tenant shall not have the right to name or grant or license any Naming Rights with respect to the Licensed Premises; *provided, however*, that neither Landlord nor the City shall name or grant any Naming Rights with respect to the Licensed Premises during the Term unless and until Landlord obtains the Approval of Tenant of the particular name to be given to the Licensed Premises or portion thereof or the Naming Rights to be granted or licensed by Landlord with respect to the Licensed Premises or portion thereof.

4.6 Construction Lay-down Areas. Subject to the Leased Premises Reservations and the Licensed Premises Reservations, Tenant shall confine all Construction Work during the Term to within the Premises. Notwithstanding the foregoing, in the event that Tenant reasonably requires the use of a portion of any real property owned by Landlord as a construction lay-down area in connection with Construction Work during the Term, Tenant may request the Approval of the Landlord Representative for Tenant's use of such areas as are reasonably necessary to cause the completion of the construction of the Construction Work, as applicable, in accordance with the terms of this Lease. In the event that the Landlord Representative grants such Approval in its reasonable discretion, then the area so Approved by the Landlord Representative shall become a portion of the Licensed Premises under the same terms and conditions as the other Licensed Premises hereunder, as applicable, including compliance with the then applicable Construction Safety Plan, and such other terms and conditions as may be contained in the Approval of the Landlord Representative, except that the license to such area shall immediately expire upon the date specified in the Approval of Landlord Representative, as to the New Tenant Improvements, and the completion of the Additional Improvements in accordance with the terms of this Lease, as to the Additional Work, and Tenant shall be limited to the use of such area as a construction lay-down and staging area in connection with the performance of such Construction Work.

4.7 Telescope License Agreement. Landlord hereby assigns to Tenant and Tenant hereby assumes in all respects, the Telescope License Agreement effective as of the Effective Date. All rights, liabilities and obligations of Landlord under the Telescope License Agreement arising from and after the Effective Date shall be the rights, liabilities and obligations of Tenant and Tenant shall indemnify Landlord for same pursuant to its indemnity obligations as provided in Section 19.8. During the current term of the Telescope License Agreement as of the Effective Date, Landlord shall have the right to Approve any renewals or extensions of the Telescope License Agreement and Tenant shall not be permitted to voluntarily or involuntarily sell, assign, transfer, pledge, mortgage or encumber (by operation of law or otherwise) the Telescope License Agreement, except in connection with a Transfer which has been Approved by Landlord pursuant to Section 21.1 hereof or a Permitted Transfer/Sublease. In the event that this Lease is terminated by either Party pursuant to any provision of this Lease, then Tenant shall immediately assign to Landlord and Landlord shall assume, effective as of the date that this Lease terminates, the Telescope License Agreement; *provided, however*, that Tenant shall remain responsible for, and shall indemnify Landlord for, pursuant to the terms of Section 19.8, (i) any liabilities or obligations arising under or related to the Telescope License Agreement occurring from and after the Effective Date and prior to the termination of this Lease (ii) any liabilities or obligations arising under or related to the Telescope License Agreement arising after the Effective Date and occurring only as a result of a Tenant Default.

ARTICLE V

TERM

5.1 Term. The term of this Lease (the "**Term**") shall commence on the Effective Date and expire on the Lease Expiration Date.

5.2 Extension Option. The Term may be extended for an additional five (5) year period by Tenant delivering written notice to Landlord of such extension at least one hundred eighty (180) days prior to the Lease Expiration Date and subsequent approval of the extension by City Council.

ARTICLE VI

RENT; FUNDING OBLIGATIONS

6.1 Payment of Rent. All Rent and other payments required to be made by Tenant to Landlord hereunder shall be paid in accordance with Section 22 of Appendix B.

6.2 Rent. During the Term, Tenant covenants and agrees to pay to Landlord rental as follows (collectively, "**Rent**"):

- (a) Base Rent for each Lease Year of the Term as provided in Section 6.3.1, which Base Rent shall be due and payable in accordance with Section 6.3.2;

(b) Participation Rent for each Lease Year of the Term as provided in Section 6.4.1, which Participation Rent shall be due and payable in accordance with Section 6.4.2; and

(c) Additional Rent as provided in Section 6.5, which Additional Rent shall be due and payable in accordance with Section 6.5.

6.3 Calculation and Payment of Base Rent.

6.3.1 Calculation of Base Rent. Commencing with the first Lease Year of the Term and continuing thereafter for the remainder of the Term, Tenant shall pay Landlord the following annual rent (the "**Base Rent**"):

(1) From the Effective Date until the end of the first full Lease Year following Substantial Completion of the New Tenant Improvements, an amount equal to \$1,911,101.80 per Lease Year; and

(2) After the end of the first full Lease Year following Substantial Completion of the New Tenant Improvements until the end of the Term, an amount per Lease Year equal to the greater of (A) \$1,911,101.80 and (B) eighty percent (80%) of the Adjusted Monthly Landlord Participation Revenue.

6.3.2 Payment of Base Rent. Base Rent shall be due and payable in arrears in equal monthly installments, without notice or demand, beginning on the fifteenth (15th) day of the second (2nd) calendar month of the Term and continuing on the fifteenth (15th) day of each calendar month thereafter for the remainder of the Term; *provided, however*, that Base Rent as to any fractional month during the final Lease Year of the Term shall be pro rated based on the actual number of days in the month in question.

6.3.3 Recalculation of Base Rent. Base Rent shall be determined in accordance with Section 6.3.1 contemporaneously with Tenant's delivery to Landlord of its annual statement pursuant to Section 6.8.

6.4 Calculation and Payment of Participation Rent.

6.4.1 Calculation of Participation Rent. For purposes of calculating the amount of Landlord's Participation Revenues for each Lease Year during the Term, the following percentages (each a "**Landlord's Participation Revenue Percentage**") shall be multiplied by the Adjusted Gross Revenue for such Lease Year from the category of Business Operations set forth opposite such percentage:

Source of Revenue	Participation Revenue Percentage
Restaurant Operations	10%
Observation Deck Operations	35%

Parking Operations	30%
Retail Operations	15%
Telescope and Other Operations	50%
Theater and Incidental Operations	5%

For purposes of this Lease, the term "**Landlord's Participation Revenues**" shall mean an amount that is determined with respect to each Lease Year during the Term and which is equal to sum of the products obtained when the Adjusted Gross Revenues for such Lease Year from each Business Operation is multiplied by the Landlord's Participation Revenue Percentage for such Business Operation, as specified above. Commencing with the first Lease Year of the Term and continuing thereafter for the remainder of the Term, Tenant shall pay to Landlord for each Lease Year a participation rental (the "**Participation Rent**") equal to the amount, if any, by which the Landlord's Participation Revenues for such Lease Year exceed the aggregate Base Rent for such Lease Year.

6.4.2 Payment of Participation Rent. The Participation Rent shall be due and payable monthly in arrears, without notice or demand, beginning on the fifteenth (15th) day of the second (2nd) full calendar month of the Term and continuing on the fifteenth (15th) day of each calendar month thereafter throughout the Term.

6.5 Additional Rent. Tenant covenants and agrees to pay, as additional rental, all of the following (collectively, the "**Additional Rent**"):

- (a) All Impositions as and when required to be paid under the terms of this Lease; and
- (b) All costs, expenses, liabilities, obligations and other payments of whatever nature which Tenant has agreed to pay Landlord under the provisions of this Lease as and when required to be paid pursuant to the terms of this Lease, including the funding of the Marketing Commitment during the Term.

6.6 Place and Method of Payment. All Base Rent and Participation Rent shall be paid to Landlord, without notice or demand, and all Rent shall be paid as required by this Lease and in the manner set forth in Section 6.1.

6.7 Accounting Standard. For purposes of determining Base Rent and Participation Rent and the preparation of all financial statements required to be delivered to Landlord under this Lease, Adjusted Gross Revenues shall be determined on an accrual basis in accordance with GAAP (the "**Accounting Standard**"). The Accounting Standard shall be consistently applied during the Term and shall be used for the preparation and maintenance by all books and records required to be maintained by or on behalf of Tenant under the terms of this Lease.

6.8 Tenant's Annual Statements. Tenant, at its sole cost and expense, shall provide to Landlord annually, within ninety (90) calendar days after the end of each Lease Year during the Term, (i) a statement of Adjusted Gross Revenues for the Lease Year that just ended, (ii) the calculation of the Landlord's Participation Revenues and Participation Rent for the Lease Year that just ended, (iii) the calculation of Base Rent for the current Lease Year, and (iv) a statement of the amount of money expended by Tenant toward fulfillment of its obligations with respect to the Marketing Commitment ("**Marketing Expenditures**") each of which has been prepared by Tenant and audited by a national independent public accounting firm selected by Tenant, together with such auditor's opinion issued in connection with such audit. Such opinion shall be addressed to Landlord and Tenant and shall certify that (i) the statement of Adjusted Gross Revenues, Landlord's Participation Revenues, Participation Rent, and Marketing Expenditures for such Lease Year present fairly, in all material respects, the Adjusted Gross Revenues, Landlord's Participation Revenues, Participation Rent, and Marketing Expenditures for such Lease Year, (ii) the audit has been conducted in accordance with all applicable Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants and generally accepted auditing standards and (iii) based on such audit, there is a reasonable basis for concluding that the statement of Adjusted Gross Revenues, Landlord's Participation Revenue, Participation Rent, and Marketing Expenditures for the Lease Year in question are free of any material misstatement. Subject to the provisions of Section 6.11 and Section 6.12 below, in the event the auditor's opinion for any Lease Year demonstrates that there has been an overpayment or underpayment of Participation Rent or any other amount payable to Landlord for such Lease Year, any such overpayments or underpayments shall be credited or paid, as applicable, in accordance with the provisions of Section 6.11 below.

6.9 Books and Records. Tenant shall keep, or cause to be kept, full, complete and proper books, records and accounts of Adjusted Gross Revenues, Landlord's Participation Revenue, Participation Rent, and Marketing Expenditures by Lease Year, on an accrual basis and determined in accordance with the Accounting Standard. The books of account and all other records relating to or reflecting Adjusted Gross Revenues, Landlord's Participation Revenue, Participation Rent, and Marketing Expenditures shall be kept at a business office within the Leased Premises, at Guarantor's corporate headquarters in the State of Texas or at such other location reasonably Approved by the Landlord Representative, and the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than two (2) calendar days' Notice to Tenant, to examine and inspect such books of account and other records for the purpose of investigating and verifying the accuracy of any statement of Adjusted Gross Revenues, Landlord's Participation Revenues, Participation Rent, or Marketing Expenditures; *provided, however*, that Tenant shall keep such books of account and records and make them available for inspection or audit by Landlord only for five (5) years after the end of each Lease Year in question, but in no event longer than two (2) years after the Lease Expiration Date.

6.10 Landlord Audit. Landlord, at its expense (except as provided herein), shall have the right, at any time during the Term and within the earlier of (i) five (5) years after the Lease Year in question and (ii) two (2) years following the Lease Expiration Date to audit those portions of the books and records for the Premises which relate to the calculation of Adjusted Gross Revenues, Landlord's Participation Revenues, Participation Rent, or Marketing Expenditures for

such Lease Year or as otherwise necessary to confirm Tenant's compliance with the terms of this Lease Agreement. Any such audit will be commenced and conducted with reasonable promptness, after reasonable notice to Tenant and by an auditor whose fee for such audit is not calculated on a contingent basis.

6.11 Overpayments; Underpayments.

6.11.1 Tenant's Annual Statements. Subject to Landlord's right to perform its own audit pursuant to Section 6.11.2 below, if any annual statement delivered by Tenant pursuant to Section 6.8 discloses (i) an overpayment of Participation Rent during the prior Lease Year or an overpayment of Base Rent during the current Lease Year as a result of Base Rent being reduced for such Lease Year pursuant to the recalculation of Base Rent as provided in Section 6.3.3, then Tenant shall be entitled to a credit in the amount of such overpayment against Base Rent and Participation Rent next coming due under this Lease until such credit is extinguished; *provided, however*, that during the last Lease Year of the Term, in the event that the credit for such overpayment of Base Rent or Participation Rent is not extinguished by actual credits against Base Rent and Participation Rent during such Lease Year, Landlord shall pay to Tenant the amount of such overpayment of Base Rent or Participation Rent which was not actually extinguished by credits against Base Rent and Participation Rent within thirty (30) calendar days of Landlord's receipt of the annual audit for the last Lease Year pursuant to Section 6.8, (ii) an over-expenditure with respect to the Marketing Commitment, Tenant shall be entitled to a credit in the amount of such over-expenditure against the Marketing Commitment for the current Lease Year until such credit is extinguished, (iii) an underpayment of Participation Rent during the prior Lease Year or an underpayment of Base Rent during the current Lease Year as a result of Base Rent being increased for such Lease Year pursuant to the recalculation of Base Rent as provided in Section 6.3.3, Tenant shall pay to Landlord, contemporaneously with delivery of its annual statement pursuant to Section 6.8, the amount of such underpayment of Participation Rent for the prior Lease Year and Base Rent for the current Lease Year or (iv) an under-expenditure of Marketing Commitment, Tenant shall, contemporaneously with delivery of its annual statement pursuant to Section 6.8, increase the Marketing Commitment for the current Lease Year by the amount of such under-expenditure.

6.11.2 Landlord's Audit. Subject to Tenant's rights to disagree with said findings or some portion of the same pursuant to the terms of this Section 6.11.2, in the event an audit performed by or on behalf of Landlord pursuant to Section 6.10 shall indicate that Tenant has (i) underpaid Participation Rent or Base Rent during any Lease Year covered by such audit, Tenant shall pay to Landlord, within thirty (30) calendar days after Tenant's receipt of a copy such audit and without Notice or demand, the amount of such underpayment of Participation Rent and Base Rent together with interest at the Default Rate on the amount of such underpayment from the date such Base Rent or Participation Rent, as applicable, was originally due until paid, (ii) not made expenditures sufficient to meet the Marketing Commitment, Tenant shall, within thirty (30) calendar days after Tenant's receipt of a copy of such audit by Landlord and without Notice or demand, increase the Marketing Commitment for the current Lease Year by the amount of such under-expenditure, (iii) overpaid Base Rent or Participation Rent during any Lease Year

covered by such audit, Tenant shall be entitled to a credit in the amount of such overpayment against Base Rent and Participation Rent next coming due under this Lease until such credit is extinguished; *provided, however*, that during the last Lease Year of the Term, in the event that the credit for such overpayment of Base Rent or Participation Rent is not extinguished by actual credits against Base Rent and Participation Rent during such Lease Year, Landlord shall pay to Tenant, within thirty (30) calendar days Landlord's receipt of the annual audit for the last Lease Year pursuant to Section 6.8, the amount of such overpayment of Base Rent or Participation Rent which was not actually extinguished by credits against Base Rent and Participation Rent, (iv) an over-expenditure with respect to the Marketing Commitment, Tenant shall be entitled to a credit in the amount of such over-expenditure against the Marketing Commitment for the current Lease Year, as applicable, until such credit is extinguished. In the event that the audit by or on behalf of Landlord pursuant to Section 6.10 shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of Adjusted Gross Revenues for any Lease Year covered by such audit, Tenant shall reimburse Landlord for all Landlord's actual and reasonable out-of-pocket expenses in connection with such audit by or on behalf of Landlord, including the engagement of an independent accountant or accounting firm, within thirty (30) calendar days after Tenant's receipt of a copy of such audit. Notwithstanding the foregoing, in the event that Tenant shall give Notice to Landlord within thirty (30) calendar days after Tenant's receipt of a copy an audit by or on behalf of Landlord pursuant to Section 6.10 that Tenant disagrees with said findings or some portion of the same, Tenant will promptly (i) pay Landlord the underpaid Base Rent and Participation Rent, together with interest thereon at the Default Rate from the date such Base Rent or Participation Rent, as applicable, was originally due until paid, by an amount equal to that portion that Tenant does not disagree with, (ii) increase the Marketing Commitment for the current Lease Year, as applicable, by an amount equal to that portion that it does not disagree with, and (iii) reimburse Landlord for the cost of Landlord's audit if the agreed upon discrepancy shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of Adjusted Gross Revenues for any Lease Year in question. If no Notice is given by Tenant to Landlord during said thirty (30) calendar day period, Tenant shall be deemed to have given Notice as of the last day of said period that it agrees with the entire disputed amount of Landlord's audit.

6.12 Independent Audit. If Tenant and Landlord fail to agree to a settlement of the disputed amounts under Section 6.11.2 above (whether as to all or a portion of Landlord's or its auditor's findings) within forty-five (45) calendar days after Notice by Tenant to Landlord of its dispute under Section 6.11.2, then Tenant shall designate (subject to the Approval of the Landlord Representative) an independent public accounting firm that is not a Person Related to or otherwise retained or employed by Landlord, Tenant or any Person Related to either of them, and other than the firm which performed Landlord's or Tenant's audit, to audit such disputed report, audit or calculation, and any overpayment or excess deposit or expenditure or underpayment or insufficient deposit or expenditure revealed by the additional audit of said independent accountants, shall be credited, paid or deposited, as applicable, in accordance with Section 6.11.2 above. If the additional audit shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of aggregate Adjusted Gross Revenues for

all Business Operations for any Lease Year in question, and Tenant has not previously paid Landlord for the cost of its audit pursuant to Section 6.11.2 above, then Tenant shall reimburse Landlord for the cost of Landlord's audit pursuant Section 6.10. Additionally, if the additional audit pursuant to this Section 6.12 indicates (i) an understatement by Tenant of aggregate Adjusted Gross Revenues for all Business Operations for all Lease Years covered by such audit by an amount equal to or in excess of three percent (3%) of actual aggregate Adjusted Gross Revenues for all Business Operations for such Lease Year(s), then Tenant shall pay the entire cost of the additional audit, (ii) an overstatement by Tenant of aggregate Adjusted Gross Revenues for all Business Operations for all Lease Years covered by such audit by an amount equal to or in excess of three percent (3%) of actual aggregate Adjusted Gross Revenues for all Business Operations for such Lease Year(s), then Landlord shall pay the entire cost of the additional audit and (iii) that actual aggregate Adjusted Gross Revenues for all Business Operations for all Lease Year(s) covered by such audit were neither understated nor overstated by an amount equal to or in excess of three percent (3%), then Landlord and Tenant shall share equally the cost of the additional audit.

6.13 [Reserved].

6.14 Marketing Commitment. During each Lease Year during the Term, Tenant covenants and agrees to spend at least five percent (5%) of the first Six Million and No/100 Dollars (\$6,000,000.00) of Adjusted Gross Revenue for such Lease Year and four percent (4%) of all Adjusted Gross Revenues for such Lease Year in excess of such Six Million and No/100 Dollars (\$6,000,000.00) (collectively, the "**Marketing Commitment**") on marketing, advertising and promoting the Premises in accordance with Section 12.7.10.

6.15 Landlord's Right to Revenue from the Premises. Except as expressly permitted pursuant to the terms of this Lease, including Sections 3.3.4, 3.3.6, 3.3.7, 4.1.2, 4.5.4 and 4.5.6, Landlord shall not have the right to conduct any revenue generating operations upon the Premises.

ARTICLE VII

CONDITION OF PREMISES

7.1 Condition of Premises; Disclaimer of Representations and Warranties.
TENANT ACKNOWLEDGES AND AGREES:

(a) THAT NEITHER LANDLORD NOR ANY RELATED PARTY OF LANDLORD MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND LANDLORD HEREBY DISCLAIMS AND TENANT WAIVES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER UNDERLYING THE PREMISES AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE PREMISES), (ii) THE SUITABILITY OF THE PREMISES OR THEIR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH TENANT MAY MAKE THEREOF OR CONDUCT THEREON AT ANY

TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE NEW TENANT IMPROVEMENTS WORK, (v) THE EXISTENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF THE NEW TENANT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS ON THE PREMISES, (vii) THE MASTER PLAN OR (viii) ANY OTHER MATTER RELATING TO THE NEW TENANT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;

(b) THAT NO REVIEW, APPROVAL OR OTHER ACTION BY LANDLORD UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;

(c) THAT TENANT HAS BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND TENANT HAS INSPECTED AND HAS HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) THAT TENANT'S ACCEPTANCE OF THE PREMISES ON THE EFFECTIVE DATE WILL BE STRICTLY ON AN "AS IS, WHERE IS" BASIS INCLUDING THE ENVIRONMENTAL CONDITION OF THE PREMISES AND THAT THE PUMP ROOM IS NOT WATER-PROOF AND LEAKS.

7.2 Tenant's Risks. TENANT AGREES THAT NEITHER LANDLORD NOR ANY OF LANDLORD'S AFFILIATES OR RELATED PARTIES SHALL HAVE ANY RESPONSIBILITY FOR ANY OF THE FOLLOWING:

(a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON, INCLUDING THE ENVIRONMENTAL REPORTS AND THE ENGINEERING REPORT;

(b) THE CONDITION, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION OR VALUE OF THE PREMISES;

(c) THE COMPLIANCE OF THE PREMISES OR ANY OTHER PROPERTY OF LANDLORD WITH ANY APPLICABLE LAND USE REGULATIONS OR ANY APPLICABLE LAW;

(d) THE FEASIBILITY OF THE PROJECT, NEW TENANT IMPROVEMENTS WORK OR ANY ADDITIONAL WORK;

(e) THE EXISTENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS OTHER THAN THOSE ARISING FROM AN ENVIRONMENTAL EVENT REQUIRED TO BE COVERED BY LANDLORD'S REMEDIAL WORK PURSUANT TO THE TERMS OF THIS LEASE;

(f) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE PREMISES OR ANY ADJACENT PROPERTIES, INCLUDING A CONVENTION CENTER HOTEL, BUT THE FOREGOING SHALL NOT CONSTITUTE A WAIVER OF ANY EXPRESS OBLIGATION OF LANDLORD UNDER THIS LEASE, INCLUDING SECTION 12.6 HEREOF;

(g) ANY OTHER MATTER RELATING TO ANY EXISTING IMPROVEMENTS, EXISTING TENANT IMPROVEMENTS, NEW TENANT IMPROVEMENTS OR ADDITIONAL IMPROVEMENTS; AND

(h) THE MASTER PLAN AND ANY CHANGES TO THE MASTER PLAN, BUT THE FOREGOING SHALL NOT CONSTITUTE A WAIVER OF ANY EXPRESS OBLIGATION OF LANDLORD UNDER THIS LEASE, INCLUDING SECTION 12.6 HEREOF.

NEITHER LANDLORD NOR ANY OF ITS RELATED PARTIES SHALL BE LIABLE AS A RESULT OF THE FAILURE BY ANY PERSON (OTHER THAN LANDLORD OR ITS RELATED PARTIES) TO ACT OR PERFORM THEIR OBLIGATIONS. IT IS UNDERSTOOD AND AGREED BY TENANT (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT, INCLUDING ITS RELATED PARTIES) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE CONDITION, STATUS AND NATURE OF ANY PERSON, THE PREMISES, THE EXISTING IMPROVEMENTS OR ANY OTHER PROPERTY.

ARTICLE VIII

NEW TENANT IMPROVEMENTS WORK; TENANT DEADLINES AND DELIVERABLES

8.1 Conditions to Commencement of New Tenant Improvements Work. The following are conditions to commencement of the New Tenant Improvements Work (the "Conditions to Commencement of New Tenant Improvements Work"):

8.1.1 New Project Schematics.

(a) The Landlord shall have delivered to Tenant the New Landlord Project Schematics in accordance with Section 8.11.2.

(b) The Landlord Representative shall have Approved the New Tenant Project Schematics in accordance with Section 8.11.2.

8.1.2 New Project Drawings.

(a) The Landlord shall have delivered to Tenant the New Landlord Project Drawings in accordance with Section 8.11.3.

(b) The Landlord Representative shall have Approved the New Tenant Project Drawings in accordance with Section 8.11.3.

8.1.3 Construction Safety Plan; Construction Contract. Tenant shall have provided the Landlord Representative with a Construction Safety Plan with respect to the New Tenant Improvements (after considering any comments provided by Landlord pursuant to Section 8.11.6). In addition, Tenant shall enter into a general contract in a form substantially similar to the form attached hereto as Exhibit I, subject to reasonable modifications prior to execution which do not materially modify any terms, the modification of which, would require the City's consent under this Lease.

8.1.4 Governmental Authorizations. Tenant shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the New Tenant Improvements Work, including building permits, engineering and land use approvals necessary for the commencement of development and construction of the New Tenant Improvements.

8.1.5 New Project Management Team. Tenant shall have engaged a Project Executive and a Project Contractor to oversee the New Tenant Improvements Work (it being understood that Tenant may engage multiple Project Contractors to oversee distinct aspects of the New Tenant Improvements Work (including the New Landlord Supported Improvements)). Tenant reserves the right to change the designation of a Project Contractor from time to time, subject to the reasonable approval of Landlord.

8.2 Agreement to Consult and Status Reports. At any reasonable time prior to the New Tenant Improvements Delivery Date as Tenant may from time to time reasonably request, the Landlord Representative shall meet and consult with Tenant with respect to satisfaction of the Conditions to Commencement of New Tenant Improvements Work. No later than the 20th calendar day of each full calendar month after the Effective Date and until the satisfaction of the Conditions to Commencement of New Tenant Improvements Work, Tenant shall give to the Landlord Representative (i) a written progress report each month concerning the status of Tenant's efforts to satisfy the Conditions to Commencement of New Tenant Improvements Work and (ii) a written report setting forth any new matters occurring since the date of the last monthly report which Tenant expects will change or significantly affect any such deadlines or milestones promptly after Tenant becomes aware of any such matters.

8.3 Tenant Obligations Subsequent to Commencement of New Tenant Improvements. Subject to extension as a result of an Excusable Tenant Delay Period in accordance with the terms of this Lease and after all the Conditions to Commencement of New Tenant Improvements Work have been satisfied or waived:

8.3.1 New Tenant Project Plans. Tenant shall provide the New Tenant Project Plans to the Landlord Representative for review and Approval in accordance with Section 8.11.4; *provided* that Landlord shall have delivered to Tenant the New Landlord Project Plans in accordance with Section 8.11.4.

8.3.2 New Project Budget. Tenant will provide the Landlord Representative with Notice of any material change to the New Project Budget within ten (10) calendar days of such change.

8.3.3 New Project Construction Schedule. Tenant shall deliver to the Landlord Representative an updated version of the New Project Construction Schedule no less frequently than once every thirty (30) calendar days after the Effective Date and prior to Substantial Completion of the New Tenant Improvements.

8.3.4 New Project Construction Status Reports. Tenant shall provide written reports to the Landlord Representative, signed by a Responsible Officer of Tenant, regarding the status of the New Tenant Improvements Work no later than the 20th calendar day of each calendar month after commencement of the New Tenant Improvements Work until Final Completion of the New Tenant Improvements Work, which reports shall include (i) any new or additional facts discovered or any circumstances that occur during the course of the New Tenant Improvements Work which materially change the New Project Costs or materially affect Tenant's ability to achieve Substantial Completion of the New Tenant Improvements and Recommencement of Operations on or before the Substantial Completion Deadline, including any Excusable Tenant Delay and reasonable detail of such facts or circumstances, (ii) any change to the New Project Construction Schedule or the New Project Budget, (iii) a statement confirming the number of days that the Premises was closed during the reporting period due to the New Tenant Improvements Closure, if any, and (iv) if the New Tenant Improvements Closure began during such reporting period, a statement identifying the date on which the New Tenant Improvements Closure began (the "**New Tenant Improvements Closure Date**").

8.3.5 Substantial Completion. Subject to any Excusable Tenant Delay and Section 8.4, Tenant shall cause Substantial Completion of the New Tenant Improvements and Recommencement of Operations to occur on or before the Substantial Completion Deadline as identified in Exhibit G.

8.3.6 Substantial Completion Certificate. Subject to any Excusable Tenant Delay and Section 8.4, on or before the Substantial Completion Deadline, Tenant shall deliver to the Landlord Representative a written certification, which has been executed by a Responsible Officer of Tenant (the "**New Tenant Improvements Substantial Completion Certificate**"), certifying the following (collectively, the "**Conditions to Full Reopening**") (i) that Substantial Completion of the New Tenant Improvements occurred on or before the Substantial Completion Deadline, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same, (ii) that Recommencement of Operations occurred on or before the Substantial Completion Deadline, (iii) the date upon which Substantial Completion of the New Tenant

Improvements actually occurred and the date upon which Recommencement of Operations actually occurred (the "**Recommencement of Operations Date**"), and (iv) that Tenant has paid to Landlord all New Tenant Improvements Late Opening Charges payable pursuant to Section 8.4, if any.

8.3.7 Final Completion. After all of the Conditions to Full Reopening have been satisfied, Tenant shall use reasonable efforts to cause Final Completion of the New Tenant Improvements Work to occur as soon as reasonably practicable. Upon Final Completion of the New Tenant Improvements Work, Tenant shall deliver to the Landlord Representative a written certification, which has been executed by a Responsible Officer of Tenant (the "**New Tenant Improvements Final Completion Certificate**"), certifying that (i) all aspects of Final Completion of the New Tenant Improvements Work have been achieved, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same and the date of Final Completion, and (ii) Tenant has fulfilled its obligations under Section 8.7 with respect to Tenant's New Capital Investment (in reasonable detail and allocation among the categories set forth in the New Project Budget), along with the final New Project Budget and such documentation as is necessary (or as Landlord may reasonably require) to substantiate same.

8.4 New Tenant Improvements Late Opening Charge. If on or before the Substantial Completion Deadline (as the same may be extended due to Excusable Tenant Delay), Tenant has not achieved all of the Conditions to Full Reopening, then for each day after the Substantial Completion Deadline which elapses until all of the Conditions to Full Reopening have been fully satisfied, Tenant shall pay Landlord the New Tenant Improvements Late Opening Charge, as liquidated damages for Tenant's delay and not as a penalty, and the Substantial Completion Deadline shall be extended by one (1) calendar day for each day that Tenant pays Landlord such New Tenant Improvements Late Opening Charge. Landlord and Tenant agree that (i) because of the difficulty or impossibility of determining Landlord's actual damages by way of loss should Tenant fail to fully satisfy all of the Conditions to Full Reopening on or before the Substantial Completion Deadline, the difficulties of proof of loss, and the inconvenience or nonfeasibility of Landlord otherwise having a remedy for such breach, the New Tenant Improvements Late Opening Charge is a reasonable amount to be paid for each day of such breach, (ii) the New Tenant Improvements Late Opening Charge constitutes liquidated damages for each day that Tenant fails to fully satisfy all of the Conditions to Full Reopening and not damages for Tenant's failure to fully satisfy the Conditions to Full Reopening, and (iii) Tenant's obligation to pay New Tenant Improvements Late Opening Charges under this Section 8.4 shall not limit any rights or remedies that Landlord may have in the event Tenant fails to satisfy the Conditions to Full Reopening; *provided, however*, that Tenant shall be entitled to a credit for any New Tenant Improvements Late Opening Charges actually paid with respect to any damages payable to Landlord as a result of Tenant's failure to timely satisfy all of the Conditions to Full Reopening. The New Tenant Improvements Late Opening Charge, if any, shall be payable on the earlier of: (a) the date that is 30 days after Tenant has delivered the New Tenant Improvements Substantial Completion Certificate to Landlord pursuant to Section 8.3.6 or (b) concurrently with the termination or expiration of this Lease.

8.5 General Provisions.

8.5.1 New Tenant Improvements. Tenant shall design, develop and construct the New Tenant Improvements as identified in Exhibit M within the Premises in accordance with the terms and conditions of this Lease and all Applicable Laws and with the oversight of the Project Executive and the applicable Project Contractor, and shall diligently and continuously use commercially reasonable efforts to adhere to the New Project Construction Schedule (subject to any Excusable Tenant Delay permitted in accordance with the terms of this Lease), in each case, at Tenant's sole cost, risk and expense, except with respect to Landlord Supported Improvements and subject to any credits against rent or cash reimbursements to which Tenant is entitled under this Lease.

8.5.2 New Project Specifications. Tenant covenants and agrees that the construction of the New Tenant Improvements at and within the Premises will include the following scope of design/development specifications (the "**New Project Specifications**"):

- (a) the scope of work set forth in Exhibit M; and
- (b) the scope of work set forth in Exhibit N (the "**New Landlord Supported Improvements**").

8.6 Work Performed on Project – New Tenant Improvements.

8.6.1 General Requirements. Tenant shall not do or permit others to do any New Tenant Improvements Work, (i) prior to the New Tenant Improvements Delivery Date, (ii) unless and until Tenant shall have first procured and paid for all Governmental Authorizations then required for the New Tenant Improvements Work being then performed, (iii) unless and until Tenant shall have submitted the New Tenant Project Plans for Approval pursuant to the terms of this Lease, as and if required, (iv) unless and until Tenant shall have delivered to the Landlord Representative evidence of its compliance with Section 8.6.4, and (v) unless and until Tenant is in compliance with all Insurance Covenants. It is understood and agreed that, to the extent permitted by Applicable Law, such permits and authorizations may be procured in stages. All New Tenant Improvements Work shall be (a) prosecuted with due diligence and completed with all reasonable dispatch (and in any event by the Substantial Completion Deadline, as may be extended in accordance with the terms of this Lease), (b) constructed and performed in a good and workmanlike manner in accordance with standard construction practice for construction of improvements similar to the Improvements in question or the performance of the work in question, (c) constructed and performed using qualified workers and subcontractors, (d) constructed and performed in accordance with all Applicable Law, the requirements of this Lease and the requirements, rules and regulations of all insurers of the Premises and (e) free of any Liens. Without limiting the foregoing, Tenant shall diligently and continuously use commercially reasonable efforts to adhere to the New Project Construction Schedule. Tenant shall take all reasonably necessary measures and precautions to minimize the risk of damage, disruption or inconvenience caused by such work in accordance with the Operating Standard and make adequate provisions for the safety and convenience of all Persons affected thereby in connection with any New Tenant Improvements Work. Except for costs that Landlord has specifically agreed to pay pursuant to the express terms of this

Lease and without limiting any express provisions herein pursuant to which Tenant is entitled to a credit against or abatement of Rent, Tenant shall be responsible for all costs incurred in connection with any New Tenant Improvements Work. Dust, noise and other effects of such work shall be controlled using commercially accepted methods so as to comply with all Applicable Laws.

8.6.2 Record Drawings and Other Documents. Upon completion of any New Tenant Improvements Work, Tenant shall furnish to Landlord (i) three (3) complete, legible, full-size sets of "record drawings" (prepared in accordance with accepted industry standards, to the extent appropriate considering the work performed) regarding all of the New Tenant Improvements Work in question and (ii) copies (certified by Tenant as being true, correct and complete) of all Governmental Authorizations required for the use, occupancy and operation of all aspects and areas of the Premises in accordance with the terms of this Lease, including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease.

8.6.3 Retention of Drawings and Other Documents. Tenant shall retain and at all times maintain at a business office within the Premises, at least one (1) complete, legible, full-size set of all "working drawings" in accordance with accepted industry standards regarding the New Tenant Improvements, to the extent appropriate considering all work performed to date and the New Tenant Improvements as they then exist, and certified true copies of all Governmental Authorizations, including (if applicable), but not limited to, all certificates of occupancy or their equivalent for the Premises as they then exist, as shall then be required by any Governmental Authority. After termination or expiration of this Lease, Tenant shall permit Landlord to use (but not own) for purposes related to the New Tenant Improvements all such "working drawings" Governmental Authorizations retained by Tenant under this Section 8.6.3, and at all times during the Term, the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than two (2) calendar days' notice to Tenant, to examine, inspect, review, copy and otherwise use the same.

8.6.4 Contract Requirements. Tenant shall cause (i) any contract with any design professional or any contractor with respect to any New Landlord Supported Improvements Work to require such party to such agreement to comply with the SBEDA Policy in accordance with Section 27.7, (ii) all contracts with any contractor regarding the construction of any New Landlord Supported Improvements Work to require such contractor to perform such New Landlord Supported Improvements Work in a good and workmanlike manner, (iii) any New Project Construction Contract with respect to any New Landlord Supported Improvements Work to provide for statutory retainage in accordance with the then current requirements of the Texas Property Code, and (iv) any New Project Construction Document with respect to any New Landlord Supported Improvements Work will separately allocate the cost of any New Landlord Supported Improvements Work from all other work or services and provide for a separate itemization and scheduling of the costs for same. With respect to the New Landlord Supported Improvements and pursuant to Section 271.114 of the Texas Local Government Code, Landlord has delegated to Tenant,

as its designated representative, Landlord's authority under Section 271.114 of the Texas Local Government Code.

8.6.5 Warranty. Any New Project Construction Contract with respect to any New Landlord Supported Improvements Work shall contain a representation and warranty that the New Landlord Supported Improvements Work covered by such agreements will be warranted from defects in workmanship and materials for a period of at least one (1) year from the date of Final Completion of such New Landlord Supported Improvements Work (unless a longer period of time is provided for by the manufacturer or supplier of any materials or equipment which is a part of such New Landlord Supported Improvements Work) and an assignment to Landlord of the right to enforce such warranty as to any New Landlord Supported Improvements Work which are the obligation of Landlord to maintain pursuant to Section 14.1.5, to the same extent as if Landlord were a party to the contract.

8.7 Tenant's New Capital Investment. Tenant covenants and agrees that (i) it will expend such funds and incur such costs and expenses for the design, development and construction of the New Tenant Improvements (other than the portion of the New Landlord Supported Improvements which are funded by Landlord's New Capital Investment) such that by the New Project Completion Date, Tenant's New Capital Investment shall be no less than Four Million Two Hundred Fifty Thousand and No/100 Dollars (\$4,250,000.00) and (ii) Tenant's New Capital Investment will be allocated to the New Tenant Improvements Work in substantially the same amounts per portion of the New Tenant Improvements Work as are indicated on the New Project Budget unless a different allocation is Approved by the Landlord Representative, such Approval not to be unreasonably withheld. Notwithstanding the foregoing or anything herein to the contrary, Tenant's obligation to fund Tenant's New Capital Investment shall not limit or in any way modify Tenant's obligations under this Lease, including Tenant's obligation to construct the New Tenant Improvements and, as such, in the event that the New Project Costs for New Tenant Improvements Work exceeds Tenant's New Capital Investment, Tenant shall be obligated to pay for same; *provided, however*, that the foregoing shall not limit Tenant's rights under Section 8.8 or Section 8.9. For the avoidance of doubt, Landlord acknowledges and agrees that Tenant has performed a portion of the New Tenant Improvements prior to Effective Date, and that any amounts funded by Tenant with respect to the New Tenant Improvements prior to the Effective Date shall be included in the calculation of Tenant's New Capital Investment, subject to Tenant providing reasonable documentation of such expenditures.

8.8 Landlord's New Investment.

8.8.1 New Capital Investment by City. Notwithstanding anything in this Lease to the contrary, Landlord agrees that through the use of revenues received by the City from its issuance of general obligation bonds and certificates of obligation, Landlord will pay Tenant up to Eleven Million Eight Hundred Thirty-Two Thousand Seven Hundred Fifty-Seven and No/100 Dollars (\$11,832,757.00) ("**Landlord's New Capital Investment**"), and no more (subject to Section 8.9), to pay Tenant for the New Project Costs incurred by Tenant which are attributable to the construction of the New Landlord Supported Improvements. From and after the Effective Date, Landlord shall disburse Landlord's New Capital Investment to Tenant on a monthly basis to pay Tenant for the New Project Costs

to be incurred by Tenant during the following month for the construction of the New Landlord Supported Improvements, less a ten percent (10%) retainage, within thirty (30) calendar days of receipt from Tenant of an application for payment for the portion of the New Landlord Supported Improvements Work to be performed in the following month, which application for payment must contain the following: (i) a description of the New Landlord Supported Improvements Work for which payment is being requested, (ii) the parties to whom money will be owed by Tenant for such New Landlord Supported Improvements Work and the amount that will be owed, (iii) a certification from the applicable Project Contractor that such amounts represent payments that will be due for services rendered or materials acquired or furnished in connection with the New Landlord Supported Improvements Work and (iv) the percentage of completion of the New Landlord Supported Improvements Work upon completion of the work covered by such payment application, as determined by the applicable Project Contractor. Landlord shall pay Tenant in the manner described above, however Tenant – with responsibility for project management and oversight of the selected contractor – is required to confirm that the contractor's monthly work plan was complete, that the work is consistent with the design documents and completed in a commercially acceptable manner prior to releasing payment to contractor. Tenant shall affirm this monthly upon request for the next monthly payment and shall communicate any funds currently being withheld from contractor and the status of the outstanding work, including the details of any requested recovery schedules from contractor. Landlord shall release to Tenant all retainage withheld within thirty (30) calendar days after Final Completion of the New Landlord Supported Improvements Work or as may otherwise be required under any New Project Construction Contract with respect to any New Landlord Supported Improvements Work.

8.8.2 Failure to Fund Landlord's New Capital Investment. In the event that Tenant is entitled to receive a disbursement of all or any portion of Landlord's New Capital Investment pursuant to the terms of Section 8.8.1 and Landlord fails to make such disbursement within the time period specified in Section 8.8.1, then Tenant shall have the option, at its sole discretion, to either (a) receive a credit against the next occurring payment of Base Rent or Participation Rent for such amount that Landlord was obligated to, and failed to, disburse to Tenant pursuant to Section 8.8.1 (plus interest on such amount at the Default Rate commencing on the date Tenant was actually entitled to receive payment of such amount from Landlord pursuant to the terms of this Lease and continuing until Tenant is actually reimbursed for same through such credit or otherwise) in lieu of claiming a Landlord Default for the same and exercising any other remedy for the same; *provided that* (i) Tenant first delivers Notice to Landlord of such failure and Tenant's intention to receive a credit pursuant to this Section 8.8.2, specifying the amount of such credit and (ii) within thirty (30) calendar days after Landlord's receipt of such Notice, Landlord either fails to make the required disbursement of Landlord's New Capital Investment to Tenant or fails to deliver Notice to Tenant that Landlord disputes Tenant's right to receive the claimed credit, or (b) only if the amount of credits received under subparagraph (a) above have exceed \$1,000,000.00 in the aggregate, claim a Landlord Default.

8.8.3 Limitation of Landlord's Obligation. Except as set forth in this Lease (including, without limitation, Section 8.9) Landlord shall never be obligated to fund more than Landlord's New Capital Investment.

8.9 Unforeseeable Cost Overruns. If Tenant incurs New Project Costs for New Landlord Supported Improvements Work in excess of those contemplated in the New Project Budget that the Parties reasonably agree were reasonably unforeseeable as of the Effective Date ("**Unforeseeable Cost Overruns**"), then Tenant shall be solely responsible for funding such Unforeseeable Cost Overruns; *provided* that Tenant shall be entitled to receive a credit against Base Rent and Participation Rent in the amount of Tenant's funding of Unforeseeable Cost Overruns, not to exceed an aggregate amount of \$1,500,000.00 (the "**Unforeseeable Cost Overruns Credit**"). Such Unforeseeable Cost Overruns Credit shall be available to Tenant as a credit against Base Rent and Participation Rent credited in equal monthly installments over a sixty (60) month period, commencing with the next occurring payment of Base Rent or Participation Rent, as applicable, after such Unforeseeable Cost Overruns Credit becomes available to Tenant pursuant to this Section 8.9. City has the option to directly reimburse tenant from available project funding for any cost overruns and/or to utilize the above defined credit.

8.10 New Tenant Improvements Closure.

8.10.1 Closure of Premises. The Parties acknowledge and agree that Tenant may close to the public either (a) all or substantially all of the Premises after the Effective Date, or (b) all or substantially all of the Restaurant Level for a period not to exceed ninety (90) days (in either case, the "**New Tenant Improvements Closure**") in order to perform the New Tenant Improvements Work in accordance with the terms of this Lease.

8.10.2 Abatement of Base Rent for New Tenant Improvements Closure. Notwithstanding anything to the contrary in this Lease, (i) Base Rent shall be 100% abated during the period beginning on the New Tenant Improvements Closure Date and ending on the Recommencement of Operations Date, (ii) Base Rent shall be 50% abated for a three (3) calendar month period immediately following the Recommencement of Operations Date (the "**50% Abatement Period**"), and (iii) Base Rent shall be 25% abated for a three (3) calendar month period immediately following the expiration of the 50% Abatement Period. In addition, during any period when the Restaurant Level is closed as provided in Section 8.10.1(b) above, Participation Rent on any temporary Restaurant Operations shall be abated.

8.11 Approvals, Confirmations and Notices.

8.11.1 New Project Specifications. Tenant shall first obtain the Approval of Landlord of any proposed change to the New Project Specifications prior to the commencement of any New Tenant Improvements Work that deviates from the New Project Specifications.

8.11.2 New Project Schematics. Landlord shall provide the Tenant with the New Landlord Project Schematics, which shall be subject to the reasonable review, comment, and approval of the Tenant. Tenant shall obtain the Approval of the Landlord

Representative of the New Tenant Project Schematics and of any proposed change to the New Tenant Project Schematics prior to the commencement of any New Tenant Improvements Work (other than any New Landlord Supported Improvements Work) that deviates from the New Tenant Project Schematics previously Approved by the Landlord Representative, if any, in each case with such Approval of the Landlord Representative not to be unreasonably withheld; *provided, however*, that notwithstanding the foregoing, the Approval of Landlord (as opposed to the Landlord Representative) must be obtained in connection with any portion of the New Tenant Project Schematics, or any change to the New Tenant Project Schematics, which does not conform to the New Project Specifications.

8.11.3 New Project Drawings. Landlord shall provide the Tenant with the New Landlord Project Drawings, which shall conform to the New Project Specifications and the New Landlord Project Schematics and which shall be subject to the reasonable review, comment, and approval of the Tenant. Tenant shall first obtain the Approval of the Landlord Representative of any Material Change to the New Tenant Project Drawings, with such Approval of the Landlord Representative not to be unreasonably withheld and prior to the commencement of the New Tenant Improvements Work affected by such New Tenant Project Drawings, and otherwise, confirmation that the same conform to the New Project Specifications and the New Tenant Project Schematics which have been Approved pursuant to the terms of this Lease, as and if required, and prior to the commencement of the New Tenant Improvements Work affected by such New Tenant Project Drawings. Also, Tenant shall provide the Landlord Representative, for informational purposes only and promptly following implementation thereof, Notice of any changes to the New Tenant Project Drawings which do not result in a Material Change.

8.11.4 New Landlord Project Plans. Landlord shall provide the Tenant with the New Landlord Project Plans, which shall be subject to the reasonable review, comment, and approval of the Tenant. Tenant shall first obtain the Approval of the Landlord Representative of any Material Change to the New Tenant Project Plans with respect to the New Tenant Improvements (other than the New Landlord Supported Improvements), with such Approval of the Landlord Representative not to be unreasonably withheld and prior to the commencement of the New Tenant Improvements Work affected by such New Tenant Project Plans, and otherwise, confirmation that the same conform to the New Project Specifications and the New Tenant Project Schematics which have been Approved pursuant to the terms of this Lease, as and if required, and prior to the commencement of the New Tenant Improvements Work affected by such New Tenant Project Plans. Also, Tenant shall provide the Landlord Representative for informational purposes only and promptly following implementation thereof, Notice of any changes to the New Tenant Project Plans that do not result in a Material Change.

8.11.5 Compliance with Applicable Laws. Prior to entering into any New Project Construction Documents relating to the New Landlord Supported Improvements or the New Landlord Supported Improvements Work, Tenant shall provide Landlord with evidence reasonably acceptable to Landlord that Tenant has fully complied with all requirements of (i) the worker's compensation insurance provisions of Section 406.096 of

the Texas Labor Code, (ii) the prevailing wage provisions of the Chapter 2258 of the Texas Government Code, (iii) the provisions of Section 2254 of the Texas Government Code with regard to the procurement of professional services and (iv) the provisions of Section 2253 of the Texas Government Code, all with respect to such New Project Construction Documents and in such detail to permit Landlord to confirm such compliance.

8.11.6 Construction Safety Plan. Tenant will submit to the Landlord Representative an initial Construction Safety Plan in accordance with Section 8.1.3 and any material changes to a Construction Safety Plan previously submitted at least thirty (30) calendar days prior to the implementation of any material changes to the Construction Safety Plan previously submitted to the Landlord Representative. The Landlord Representative may submit comments to a Construction Safety Plan (i) with respect to the initial draft of a Construction Safety Plan delivered in accordance with Section 8.1.3, within fifteen (15) calendar days of the Landlord Representative's receipt of same and (ii) with respect to any material changes to a Construction Safety Plan previously submitted to the Landlord Representative, within fifteen (15) calendar days of the Landlord Representative's receipt of same, and Tenant covenants and agrees to consult with the Landlord Representative regarding such comments and to give such comments due consideration in preparing any Construction Safety Plan but Tenant shall not be under any obligation to incorporate such comments.

8.12 Informational Purposes Only; No Approval Required. Information that is submitted to Landlord for informational purposes only shall require no confirmation or Approval by Landlord; *provided, however*, such information may be used by Landlord for the purpose of confirming that Tenant has complied with its obligations under this Lease including its obligations to meet the timetables and deadlines set forth in Section 8.1 or Section 8.3.

8.13 Governmental Rule. No Approvals, Consents or confirmations by Landlord or Landlord Representative under this Lease shall relieve or release Tenant from any Applicable Laws relating to the design, construction, development, operation or occupancy of the New Tenant Improvements (including Applicable Laws that are procedural, as well as or rather than, substantive in nature).

ARTICLE IX

GENERAL WORK REQUIREMENTS

9.1 Tenant's Remedial Work.

9.1.1 General. Tenant hereby acknowledges that it has received and reviewed the Environmental Reports. During the Term, Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law (including the Antiquities Code) to be performed with respect to any Environmental Event or any Hazardous Materials or state historical landmarks present at, in, on or under the Premises other than Landlord's Remedial Work ("**Tenant's Remedial Work**"). Prior

to undertaking any Tenant's Remedial Work, Tenant shall obtain the Approval of the Landlord Representative (such Approval not to be unreasonably withheld) of the steps Tenant proposes to take with respect to any Tenant's Remedial Work and Tenant shall select, subject to the Approval of the Landlord Representative (such Approval not to be unreasonably withheld), an independent environmental consultant or engineer to oversee Tenant's Remedial Work. To the extent Landlord has a claim against any third Person with respect to any Environmental Event that is included Tenant's Remedial Work, Landlord hereby assigns to Tenant, as of the date Tenant is required to perform the related Tenant's Remedial Work, such claim insofar as it relates to the cost of Tenant's Remedial Work or any damages suffered by Tenant in connection with such Environmental Event, and Landlord shall reasonably cooperate with Tenant and provide Tenant with such information as Tenant shall reasonably request in pursuing such claim against any such Person.

9.1.2 Asbestos Work. Upon completion of any Tenant's Remedial Work related to asbestos or asbestos-containing material, Landlord shall prepare an Asbestos Operations and Management Plan (the "**Asbestos Plan**") and Tenant shall assist Landlord in connection with same by providing information as required to identify remaining asbestos-containing materials and methods for the future management of these materials. Tenant shall conform to, and update as necessary, the Asbestos Operations and Management Plan.

9.1.3 Waste Disposal. All construction wastes resulting from any Construction Work shall be disposed of appropriately by Tenant based on its waste classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility. Tenant shall be the generator of any construction-related wastes resulting from any Construction Work in accordance with Environmental Laws.

9.1.4 No Cost to Landlord. For the avoidance of doubt it is understood and agreed that Landlord shall not be responsible for the cost of any of Tenant's Remedial Work.

9.2 Landlord's Remedial Work; Notice.

9.2.1 Landlord's Remedial Work. Landlord shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to an Environmental Event that (i) first occurred after the date of the Environmental Reports and prior to the Original Execution Date and was not caused by Tenant or its Related Parties, (ii) first occurred after the Original Execution Date and was caused by Landlord or its Related Parties, (iii) caused by the lead paint located on the roof of the Tower as of the date of the Environmental Reports, including any soils or materials contamination resulting from such lead paint, other than to the extent, and only to the extent, caused by Tenant, its Related Parties or any of their invitees or guests, provided that in connection with Tenant's normal and customary excavation for the New Tenant Improvements Work, in no event will Tenant be required to increase the amount of soils or materials it removes or remediates as a result of any soil or materials

contamination that is not the result of any act or omission of Tenant other than the act of excavation itself or (iv) first occurred in Landlord's Area of Responsibility prior to the date of the Environmental Reports, other than to the extent, and only to the extent, caused by Tenant's use or occupancy of the Landlord's Area of Responsibility or any Construction Work by Tenant or its Related Parties ("**Landlord's Remedial Work**"). Subject to **ARTICLE XVI**, Landlord shall perform, or cause to be performed, Landlord's Remedial Work with due diligence and in accordance with the requirements of Applicable Laws.

9.2.2 Notice of Any Discovered Matters. During the Term, Landlord shall promptly inform Tenant and all applicable Governmental Authorities (to the extent required by Applicable Law) of any Environmental Event discovered by Landlord (or by any agent, contractor or subcontractor of Landlord which so informs Landlord) in, on or under the Premises and promptly shall furnish to Tenant any and all reports and other information available to Landlord concerning the matter. Tenant and Landlord shall thereafter promptly consult as to the steps to be taken to investigate and, if necessary, remedy such matter.

9.2.3 Waste Disposal. All construction wastes resulting from Landlord's Remedial Work shall be disposed of appropriately by Landlord based on its waste classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility. Landlord shall be the generator of any construction-related wastes resulting from any Landlord's Remedial Work in accordance with Environmental Laws.

9.2.4 No Cost to Tenant. For the avoidance of doubt it is understood and agreed that Tenant shall not be responsible for the cost of any of Landlord's Remedial Work.

9.3 Work Performed on Project –Additional Work.

9.3.1 General Requirements. Tenant shall not do or permit others to do any Construction Work, (i) unless and until Tenant shall have first procured and paid for all Governmental Authorizations then required for the Construction Work being then performed, (ii) with respect to any Material Additional Work only, unless and until Tenant shall have submitted the Material Additional Work Plans for Approval pursuant to the terms of this Lease, as and if required, (iii) unless and until Tenant shall have delivered to the Landlord Representative evidence of its compliance with **Section 9.3.4** and (iv) unless and until Tenant is in compliance with all Insurance Covenants. It is understood and agreed that, to the extent permitted by Applicable Law, such permits and authorizations may be procured in stages. All Construction Work shall be (a) prosecuted with due diligence and completed with all reasonable dispatch (provided that with respect to Material Additional Work, in accordance with the Material Additional Work Construction Schedule, as it may be extended by Excusable Tenant Delay in accordance with the terms of this Lease), (b) constructed and performed in a good and workmanlike manner in accordance with standard construction practice for construction of improvements similar to the Improvements in question or the performance of the work in question, (c) constructed and performed using qualified workers and subcontractors, (d) constructed and performed in accordance with

all Applicable Law, the requirements of this Lease and the requirements, rules and regulations of all insurers of the Premises and (e) free of any Liens. Tenant shall take all reasonably necessary measures and precautions to minimize the risk of damage, disruption or inconvenience caused by such work in accordance with the Operating Standard and make adequate provisions for the safety and convenience of all Persons affected thereby in connection with any Construction Work. Except for costs that Landlord has specifically agreed to pay pursuant to the express terms of this Lease and without limiting any express provisions herein pursuant to which Tenant is entitled to a credit against or abatement of Rent, Tenant shall be responsible for all costs incurred in connection with any Construction Work. Dust, noise and other effects of such work shall be controlled using commercially accepted methods so as to comply with all Applicable Laws.

9.3.2 Record Drawings and Other Documents. Upon completion of any New Tenant Improvements Work or any Material Additional Work, Tenant shall furnish to Landlord (i) three (3) complete, legible, full-size sets of "record drawings" (prepared in accordance with accepted industry standards, to the extent appropriate considering the work performed) regarding all of the New Tenant Improvements Work or any Material Additional Work in question and (ii) copies (certified by Tenant as being true, correct and complete) of all Governmental Authorizations required for the use, occupancy and operation of all aspects and areas of the Premises in accordance with the terms of this Lease, including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease.

9.3.3 Retention of Drawings and Other Documents. Tenant shall retain and at all times maintain at a business office within the Premises, at least one (1) complete, legible, full-size set of all "working drawings" in accordance with accepted industry standards regarding the Project Improvements, to the extent appropriate considering all work performed to date and the Improvements as they then exist, and certified true copies of all Governmental Authorizations, including (if applicable), but not limited to, all certificates of occupancy or their equivalent for the Premises as they then exist, as shall then be required by any Governmental Authority. After termination or expiration of this Lease, Tenant shall permit Landlord to use (but not own) for purposes related to the Project Improvements all such "working drawings" Governmental Authorizations retained by Tenant under this Section 9.3.3, and at all times during the Term, the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than two (2) calendar days' notice to Tenant, to examine, inspect, review, copy and otherwise use the same.

9.3.4 Contract Requirements. Tenant shall cause (i) any contract with any design professional or any contractor with respect to any Construction Work to require such party to such agreement to comply with the SBEDA Policy in accordance with Section 27.7 hereof, (ii) all contracts with any contractor regarding the construction of any Construction Work to require such contractor to perform such Construction Work in a good and workmanlike manner, (iii) the New Project Design Contract and any Material Additional Work Design Contract to permit Landlord to use (but not own) any plans and specifications to which Tenant is then entitled pursuant to any such New Project Design

Contract or Material Additional Work Design Contract; *provided* that Landlord assumes the future obligations of Tenant under such contract including the obligation to pay any future sums due under such contract, and (iv) the New Project Construction Contract and any Material Additional Work Construction Contract, to provide for statutory retainage in accordance with the then current requirements of the Texas Property Code and to contain a representation and warranty that the Construction Work covered by such agreements will be warranted from defects in workmanship and materials for a period of at least one (1) year from the date of Final Completion of such Construction Work (unless a longer period of time is provided for by the manufacturer or supplier of any materials or equipment which is a part of such Construction Work) and an assignment to Landlord of the right to enforce such warranty as to any Existing Improvements, or any Improvements which are the obligation of Landlord to maintain pursuant to Section 14.1.5, to the same extent as if Landlord were a party to the contract.

9.4 Mechanics' Liens and Claims. If any Lien or Claim of Lien, whether choate or inchoate shall be filed against the Premises, Landlord's interest in the Premises, Landlord or any Property of Landlord by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Premises (collectively, any "**Mechanic's Lien**") by or on behalf of Tenant, any Affiliate of Tenant or anyone claiming by, through or under Tenant or any Affiliate of Tenant, Tenant shall, at its sole cost and expense, after notice of the filing thereof but in no event less than thirty (30) calendar days prior to the foreclosure of any such Mechanic's Lien, cause the same to be satisfied or discharged of record, or effectively prevent, to the reasonable satisfaction of the Landlord Representative, the enforcement or foreclosure thereof against the Premises, Landlord's interest in the Premises, Landlord or any Property of Landlord by injunction, payment, deposit, bond, order of court or otherwise. If Tenant fails to satisfy or discharge of record any such Mechanic's Lien, or effectively prevent the enforcement thereof, by the date which is thirty (30) calendar days prior to the foreclosure thereof, then Landlord shall have the right, but not the obligation, to satisfy or discharge such Mechanic's Lien by payment to the claimant on whose behalf it was filed, and Tenant shall reimburse Landlord within fifteen (15) calendar days after demand for all amounts paid by Landlord (including reasonable attorneys' fees, costs and expenses), together with interest on such amounts at the Default Rate from the date such amounts are paid by Landlord until reimbursed by Tenant, without regard to any defense or offset that Tenant has or may have had against such Mechanic's Lien claim. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all such Mechanic's Liens (including, all costs, expenses and liabilities, including reasonable attorneys' fees and court costs, so incurred in connection with such Mechanic's Liens). **IT IS THE INTENT OF LANDLORD AND TENANT THAT NOTHING CONTAINED IN THIS LEASE SHALL (1) BE CONSTRUED AS A WAIVER OF THE CITY'S LEGAL IMMUNITY AGAINST MECHANIC'S LIENS ON ITS PROPERTY AND/OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANIC'S LIENS ON ITS PROPERTY, INCLUDING THE PREMISES, OR (2) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF THE CITY FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, TENANT THAT WOULD GIVE RISE TO ANY SUCH MECHANIC'S LIEN AGAINST THE CITY'S INTEREST IN THE PREMISES, THE PROJECT, THE CITY OR ANY PROPERTY OF THE CITY, OR IMPOSING ANY LIABILITY ON THE CITY FOR ANY LABOR OR**

MATERIALS FURNISHED TO OR TO BE FURNISHED TO TENANT UPON CREDIT. TENANT SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY IN THE PREMISES TO POST AND KEEP POSTED ON THE PREMISES SUCH NOTICES OF NON-RESPONSIBILITY AS THE CITY MAY DEEM NECESSARY FOR THE PROTECTION OF THE CITY, AND THE FEE OF THE PREMISES, FROM MECHANIC'S LIENS.

9.5 Construction Safety Plan. Without in anyway limiting, waiving or releasing any of the obligations of Tenant under this Lease or any Applicable Law, Tenant covenants and agrees to take all means and methods as would be taken by a Reasonable and Prudent Developer or a Reasonable and Prudent Operator, as applicable, to insure that all Construction Work at all times during the construction thereof is performed in accordance with a Construction Safety Plan that meets or exceeds the requirements of this Lease.

9.6 Landlord's Investment.

9.6.1 Limitation of Landlord's Obligation. Except as set forth herein, Landlord shall never be obligated to fund more than Landlord's New Capital Investment.

ARTICLE X

DELAYS AND EFFECT OF DELAYS

10.1 Excusable Tenant Delay. Regardless of the existence or absence of references to Excusable Tenant Delay elsewhere in this Lease, all deadlines and time periods within which Tenant must fulfill the obligations of Tenant in this Lease shall each be adjusted as appropriate to include Excusable Tenant Delay Periods; *provided* that (i) the obligation to pay Rent as and when due pursuant to the terms of this Lease is not subject to adjustment or extension due to Excusable Tenant Delay and (ii) Tenant complies with the requirements of this ARTICLE X.

With respect to each occurrence of Excusable Tenant Delay, Tenant shall, within thirty (30) calendar days after Tenant's knowledge of the occurrence of such event of Excusable Tenant Delay, give Notice to the Landlord Representative of the event constituting Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period resulting therefrom and the basis therefor, Tenant's good faith estimate of any adjustment resulting therefrom that is to be made to the New Project Construction Schedule or other time for performance, as the case may be, together with reasonable documentation supporting the adjustments proposed. If the Landlord Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, the Landlord Representative shall give Notice to Tenant of the claimed deficiency and Tenant shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from Tenant shall be required with respect to a continuing Excusable Tenant Delay, except that Tenant shall promptly (and in no event less often than every thirty (30) calendar days) give Notice to the Landlord Representative of any further changes in the New Project Construction Schedule or the additional time for performance claimed by reason of the continuing delay. The Landlord Representative shall have the right to challenge Tenant's assertion of the occurrence of an Excusable Tenant Delay, or Tenant's good faith estimate

of the Excusable Tenant Delay Period, changes in the New Project Construction Schedule or the additional time for performance claimed by reason of the Excusable Tenant Delay if the Landlord Representative gives Notice to Tenant within thirty (30) calendar days after receipt by the Landlord Representative of such claim of Excusable Tenant Delay or Notice from Tenant of further changes to such dates as a result of such Excusable Tenant Delay, as the case may be (which challenge shall be deemed to have been made if the Landlord Representative gives Notice to Tenant of any claimed deficiency in documentation as provided for above in this Section 10.1).

10.2 Excusable Landlord Delay. Regardless of the existence or absence of references to Excusable Landlord Delay elsewhere in this Lease, any deadline or time period within which Landlord must fulfill the obligations of Landlord in this Lease shall each be adjusted as appropriate to include Excusable Landlord Delay Periods; *provided* that (i) the obligation of Landlord to pay any sums to Tenant as and when due pursuant to the terms of this Lease is not subject to adjustment or extension due to Excusable Landlord Delay and (ii) Landlord complies with the requirements of this ARTICLE X.

With respect to each occurrence of Excusable Landlord Delay, the Landlord Representative shall, within thirty (30) calendar days after Landlord's knowledge of the occurrence of such event of Excusable Landlord Delay, give Notice to Tenant of the event constituting Excusable Landlord Delay, the Landlord Representative's good faith estimate of the Excusable Landlord Delay Period resulting therefrom and the basis therefor, the Landlord Representative's good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Tenant believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Tenant shall give Notice to the Landlord Representative of the claimed deficiency and the Landlord Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from the Landlord Representative shall be required with respect to a continuing Excusable Landlord Delay, except that the Landlord Representative shall promptly (and in no event less often than every thirty (30) calendar days) give Notice to Tenant of any further changes in the additional time for performance claimed by reason of the continuing delay. Tenant shall have the right to challenge the Landlord Representative's assertion of the occurrence of an Excusable Landlord Delay, or the Landlord Representative's good faith estimate of the Excusable Landlord Delay Period, or changes in the additional time for performance claimed by reason of Excusable Landlord Delay if Tenant gives Notice to the Landlord Representative within thirty (30) calendar days after receipt by Tenant of such claim of Excusable Landlord Delay or Notice from the Landlord Representative of further changes to such dates as a result of such Excusable Landlord Delay, as the case may be (which challenge shall be deemed to have been made if Tenant gives Notice to the Landlord Representative of any claimed deficiency in documentation as provided for above in this Section 10.2).

10.3 Continued Performance; Exceptions. Upon the occurrence of any Tenant Delay or Landlord Delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Tenant and Landlord each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Tenant Delay or Landlord Delay occasioned by an Excusable Tenant Delay or Excusable Landlord Delay, and shall diligently and continuously use its commercially reasonable

efforts to ensure resumption of performance of its obligations under this Lease after the occurrence of any Excusable Tenant Delay or Excusable Landlord Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any Landlord Delay or Tenant Delay.

ARTICLE XI

APPROVALS AND CONSENTS

11.1 Approvals and Consents; Standards.

11.1.1 Review and Approvals or Consent Rights. The provisions of this Section 11.1 shall be applicable with respect to all instances in which it is provided under this Lease that Landlord, the Landlord Representative, Tenant or the Tenant Representative exercises Review and Approval or Consent Rights (as defined below); *provided, however*, that if the provisions of this Section 11.1 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Lease providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Lease shall control. As used herein, the term "**Review and Approval or Consent Rights**" shall include, without limiting the generality of that term, all instances in which one Party (the "**Submitting Party**") is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the "**Reviewing Party**") has a right or duty hereunder to review, comment, confirm, Consent, Approve, disapprove, dispute or challenge the submission or determination of the Submitting Party.

11.1.2 Standard for Review. Unless this Lease specifically provides that a Party's Review and Approval or Consent Rights shall be exercised in its reasonable discretion or not unreasonably withheld, all of the Parties' respective Review and Approval or Consent Rights under this Lease may be exercised in their sole and absolute discretion. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party by the Submitting Party and with respect to which the Reviewing Party has Review and Approval or Consent Rights under this Lease to be submitted under cover of a request which (i) states the date of submission to the Reviewing Party by the Submitting Party (but which date shall ultimately be determined by Section 26.2), (ii) states the date by which a response is required under the terms of this Lease (to the extent a specific response time is required pursuant to the terms hereof, as opposed to the general requirements of this Section 11.1), (iii) identifies the provision of this Lease pursuant to which such Review and Approval or Consent is sought, and (iv) identifies (by document or drawing title, identifying number and revision date, or other clear descriptor) all enclosures to such request with respect to which Review and Approval or Consent is then being sought. The Reviewing Party shall review the same and shall promptly (but in any event within fifteen (15) calendar days after such receipt) give Notice to the Submitting Party of the Reviewing Party's comments resulting from such review and, if the matter is one that requires Approval, Consent or confirmation pursuant to the terms of this Lease,

such Approval, Consent, confirmation, disapproval or failure to confirm, setting forth in detail the Reviewing Party's reasons for any disapproval or failure to confirm. Any failure to respond within the foregoing fifteen (15) calendar day period shall be deemed to be a disapproval or failure to confirm of the matter submitted. Unless otherwise provided herein, the Reviewing Party's right to disapprove or not confirm any matter submitted to it for Approval, Consent or confirmation or and to which this Section 11.1 applies shall be limited to the elements thereof: (i) which do not conform substantially to Approvals, Consents or confirmations previously given with respect to the same matter; or (ii) which are new elements not previously presented; or (iii) which propose or depict matters that are or the result of which would be a violation of or inconsistent with the provisions of this Lease or Applicable Law.

11.1.3 Resubmissions. If the Reviewing Party disapproves or fails to confirm of a matter to which this Section 11.1 applies within the applicable time period, the Submitting Party shall have the right, within thirty (30) calendar days after the Submitting Party receives Notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party's basis for disapproval or failure to confirm (all subsequent re-submissions with respect to such matter must be made within thirty (30) calendar days of the date the Submitting Party receives Notice of disapproval or failure to confirm of the prior re-submission). The applicable Submitting Party shall use reasonable efforts to cause any such re-submission to expressly state that it is a resubmission, to identify the disapproved or not confirmed portion of the original submission and any prior resubmissions, and to not be included with an original submission unless the matter previously disapproved is expressly identified thereon. Any resubmission made pursuant to this Section 11.1 shall be subject to Review and Approval or Consent by the Reviewing Party in accordance with the procedures described in this Section 11.1 for an original submission (except that the Review and Approval and Consent Rights shall be limited to the portion previously disapproved or not confirmed), until such matter shall be Approved or Consented to by the Reviewing Party.

11.1.4 Duties, Obligations and Responsibilities Not Affected. Approval, Consent or confirmation by the Reviewing Party of or to a matter submitted to it by the Submitting Party shall neither, unless specifically otherwise provided (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Lease with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

ARTICLE XII

USE AND OCCUPANCY; PERMITTED AND PROHIBITED USES; OPERATING REQUIREMENTS

12.1 Permitted Uses. During the Term, Tenant covenants and agrees that it shall use and occupy the Premises solely for the following and not for any Prohibited Uses (collectively, the "Permitted Uses");

(1) designing, developing, constructing and operating the New Tenant Improvements pursuant to the terms and conditions of this Lease;

(2) with respect to the Ground Level of the Tower Tract and the Project Improvements located thereon, the use of such portion of the Premises for the operation of (i) an indoor/outdoor restaurant/café, (ii) the Gift Shop, (iii) a 4-dimension theatre and (iv) restaurant support space for food and supply storage, refrigeration, food preparation, inventory and supply shipping/receiving and trash holding, each in accordance with the requirements of this Lease;

(3) with respect to the Restaurant Level of the Tower Tract and the Project Improvements located thereon, the use of such portion of the Premises for the operation of the Tower Restaurant in accordance with the requirements of this Lease;

(4) with respect to the Observation Deck Level of the Tower Tract and the Project Improvements located thereon, the use of such portion of the Premises for the operation of (i) an observation deck, (ii) a banquet facility, (iii) a private dining room and (iv) a food venue, each in accordance with the requirements of this Lease;

(5) with respect to the Walkway Tracts, for pedestrian ingress and egress to and from the Tower Tract in accordance with the terms of the Walkway License;

(6) with respect to the Parking Improvements, for (i) the transient parking of passenger vehicles in Tenant's Parking Spaces for patrons, visitors or guests of the Leased Premises or Tenant's employees, agents or contractors who are employed at or performing services in connection with Tenant's operation of the Premises and (ii) such temporary special event uses permitted pursuant to clause (10) below which are held within Tenant's Parking Spaces;

(7) with respect to Tenant's Pump Room Area, (A) storage and staging in connection with the construction of the New Tenant Improvements, and (B) operational support in connection with Tenant's operation of the Premises;

(8) interior storage of equipment and supplies used in connection with a Permitted Use of the Premises;

(9) Construction Work permitted or required pursuant to the terms of this Lease;

(10) temporary special event uses that do not exceed ten (10) calendar days in duration, to the extent, and only to the extent, (i) Tenant obtains the advance Approval of the Landlord Representative for the same, such Approval not to be unreasonably withheld, and (ii) such uses are consistent with the Operating

Standard and the priority Permitted Uses described in subparagraphs (2), (3) and (4) above and do not distract from such priority Permitted Uses;

(11) the incidental displaying, and the related housing or keeping, of caged or enclosed animals to the extent and only to the extent (i) Tenant obtains the advance Approval of Landlord for the same and (ii) such uses are consistent with the Operating Standard and the priority Permitted Uses described in subparagraphs (2), (3) and (4) above and do not distract from such priority Permitted Uses; *provided, however*, that no Approval shall be required in connection with the placement of incidental and decorative fish aquariums within the Leased Premises;

(12) the operation, and related storage and display, of an arcade, amusement rides or games to the extent and only to the extent (i) Tenant obtains the advance Approval of Landlord for the same and (ii) such uses are consistent with the Operating Standard and the priority Permitted Uses described in subparagraphs (2), (3) and (4) above and do not distract from such priority Permitted Uses; *provided, however*, that the Approval of the Landlord Representative (as opposed to the Landlord), such Approval not to be unreasonably withheld, shall be required in connection with the placement and operation of arcade games or souvenir dispensing machines on the Observation Deck Level, in the Gift Shop or immediately adjacent to the Gift Shop but inside the Tower and not on the Tower Plaza;

(13) live performances to the extent and only to the extent (i) Tenant obtains the advance Approval of the Landlord Representative for the same, such Approval not to be unreasonably withheld and (ii) such performances are consistent with the Operating Standard and the priority Permitted Uses described in subparagraphs (2), (3) and (4) above and do not distract from such priority Permitted Uses;

(14) any activity not expressly included in the description of the Permitted Uses set forth above, but which activity is inherent in such Permitted Uses above and which is commonly understood in the industry to be inherent in such Permitted Uses to the extent and only to the extent such activity is not inconsistent with the Operating Standard or the priority Permitted Uses described in subparagraphs (2), (3) and (4) above and does not distract from such priority Permitted Uses;

(15) subject to Section 3.3.6, the installation of satellite radio and television antenna within the Premises for the purpose of receiving radio and television broadcasts to support Tenant's operations at the Premises; and

in all cases consistent with the Operating Standard, Applicable Laws, and the New Tenant Project Plans or the New Landlord Project Plans, as applicable, that have been Approved pursuant to the terms of this Lease, as and if required.

12.2 Prohibited Uses. Tenant shall not use, or permit the use of, the Premises for any other, different or additional purpose that is not a Permitted Use without first obtaining the Approval of the Landlord Representative or, in the instances described in subparagraphs (11) and (12) of Section 12.1, Landlord. Tenant agrees that the Permitted Uses are subject to Tenant's compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Premises and that nothing in this ARTICLE XXII or elsewhere in this Lease shall constitute or be deemed to constitute a waiver by Landlord of the performance of its Governmental Functions or of any such Applicable Laws or of the duty of Tenant to comply with such Applicable Laws. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the "**Prohibited Uses**"):

- (a) Cause or permit obnoxious or offensive odors or fumes to emanate or be dispelled from the Premises other than normal odors incident to Tenant's restaurant operation;
- (b) Cause or permit excessive accumulations of garbage, trash, rubbish or any other refuse in, on or about the Premises;
- (c) Create, cause, maintain or permit any public or private nuisance in, on or about the Premises;
- (d) Use or allow the Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Premises any store or other facility, a principal or significant portion of the business of which is a "sexually oriented business," as such term is defined in the City Codes in effect from time to time during the Term, or any similar business;
- (e) Use or allow the Premises to be used for the sale or display of any lewd, offensive or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive or immoral activities, including sexually immoral activities;
- (f) Use or allow the Premises to be used as a hotel or a place of temporary or permanent residence by any Person or for any time share purposes;
- (g) Use or allow the Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);
- (h) Use or permit the Premises to be used for the public display or public or private sale of guns and other weapons, ammunition, or explosives, including fireworks;
- (i) Use or permit the Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold at any permitted retail or restaurant establishment within the Premises shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or

permit the Premises to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial agricultural operation or use;

(j) Except during the course of any Construction Work (and then only if kept in a neat and orderly condition), use any portion of the Premises, other than portions inside the Improvements designated for same, for storage;

(k) Install any advertisements, signs, decorations or displays on the exterior of the Project Improvements without the prior Approval of the Landlord Representative, such Approval not to be unreasonably withheld, and, to the extent required by any Applicable Laws, any necessary departments, boards or commissions of the City;

(l) Place any tables, chairs or other service furniture or any improvements in the Tower Plaza or any outdoor areas of the Premises (other than as indicated in the New Tenant Project Plans or the New Landlord Project Plans, as applicable) that have been Approved pursuant to the terms of this Lease, as and if required, without the prior Approval of the Landlord Representative, such Approval not to be unreasonably withheld, and, to the extent required by any Applicable Law, any necessary departments, boards or commissions of the City;

(m) Place any speakers or amplified music in or near any exterior portions of the Premises without the Approval of Landlord and the Director of Parks and Recreation; *provided, however*, that the foregoing shall not prohibit (1) low volume, background music or (2) such speakers and amplified music as are Approved in connection with a special tenant event or a live performance pursuant to Section 12.1(10) or Section 12.1(13), respectively;

(n) Use or permit the use of the Premises as a casino (or other establishment in which gambling is permitted or games of chance are operated), a gentlemen's club (or other establishment which allows full or partial nudity), a massage parlor or a tanning parlor;

(o) Use or permit the Premises to be used to provide catering to locations or Persons outside of the Premises, other than temporary, incidental catering; and

(p) Install or permit to be installed on the roof of the Tower any equipment or fixtures of any kind other than (1) any equipment or fixtures identified in the New Tenant Project Plans or the New Landlord Project Plans, as applicable, that have been Approved pursuant to the terms of this Lease, as and if required, or (2) otherwise Approved by the Landlord Representative, such Approval not to be unreasonably withheld.

(q) Install or operate, or permit to be installed or operated, anywhere on the Premises a ferris wheel unless Approved by Landlord.

(r) With respect to Level 5, Level 6 and the roof of the Tower, any use other than mechanical support for Tenant's operations elsewhere in the Premises.

The provisions of this Section 12.2 shall inure to the benefit of, and be enforceable by Landlord and its successors and assigns. No other Person, including any guest or patron of the Premises, shall have any right to enforce the prohibitions as to the Prohibited Uses. Uses made of the Premises pursuant to the Leased Premises Reservation or Licensed Premises Reservation by anyone other than Tenant, Guarantor, any Affiliate of Tenant or Guarantor, any Person Related to Tenant, Guarantor or any of their Affiliates, any Subtenant of Tenant, or any guests or invitees of any the foregoing are not attributable to Tenant for purposes of this Section 12.3 and may be permitted by Tenant.

12.3 Continuous Operation During the Term.

12.3.1 Covenant to Operate. At all times during the Term, Tenant covenants to (a) operate the Project Improvements and cause the same to be operated, diligently and continuously by a Qualified Operator, all in accordance with the Operating Standard, without interruption for any reason other than Down Times or the New Tenant Improvements Closure, but the foregoing shall not require Tenant to keep the Premises open to the public during any hours other than the Operating Hours, (b) perform Maintenance and Repair Work with respect to the same in accordance with ARTICLE IV, (c) possess all personal property (whether intangible or otherwise) necessary to meet the Operating Standard, and (d) maintain such inventory consistent with the requirements of clause (a) of this sentence.

12.3.2 Down Times. Tenant may temporarily close to the public specified areas or all or substantially all of the Premises during the Term for, and only for, limited periods of down time in one or more of the following circumstances for the applicable period specified below ("**Down Times**"):

(a) During the period of any Construction Work, to the extent, and only to the extent, reasonably necessary in order to perform same in accordance with the terms of this Lease; or

(b) During the period of commercially reasonable interruptions as are incidental to the normal conduct of the Business Operations at the Premises on a continued basis and provided that Tenant shall have delivered Notice to the Landlord Representative of the reasons for such interruption and the maximum period for the Down Time;

(c) During the period of time in which Tenant is required to cease operations of the Premises pursuant to Applicable Law, so long as not the result of Tenant's or its Related Parties' acts or omissions;

provided, however, that during all Down Times, Tenant shall use commercially reasonable efforts to minimize (i) the duration of such Down Time and (ii) the disruption to the operation of the areas of the Project Improvements which remain open to the public and the services, aesthetic appearances and public and guest access to and in such portions of the Premises

12.3.3 Continuing Rental Obligation. No closure of the Premises to the public permitted during Down Time shall relieve Tenant of any obligations under this Lease

(including the obligation to pay Rent) other than the relevant portions of the covenant of continuous operation contained in Section 12.3.1. Tenant acknowledges and agrees that (a) its continuous use and occupancy of the Premises and its payment of Rent pursuant to the terms of this Lease provide a significant benefit on which Landlord economically depends, (b) violation of the covenants of continuous use, occupancy and operation in Section 12.3 shall each be a material breach of this Lease subject to the terms and conditions of ARTICLE XXIV and (c) Landlord considers such covenants of continuous use, occupancy and operation a valuable contractual interest with which no other landlord should interfere by attempting to induce Tenant to move to other premises.

12.4 Compliance with Applicable Laws and Permitted Exceptions.

12.4.1 Tenant's Compliance. Except to the extent Landlord has specifically agreed to any of the following pursuant to the express terms of this Lease, Tenant shall, (i) throughout the Term and within the time periods permitted by Applicable Law, comply or cause compliance with all Applicable Laws applicable to the Premises, including any applicable to the manner of use or the maintenance, repair or condition of the Project Improvements, the City's smoking ordinance or any activities or operations conducted in or about the Premises and (ii) throughout the Term, comply or cause compliance with the Permitted Exceptions, but with respect to each of the foregoing, Tenant shall not be responsible for any failure to comply with Applicable Law or the Permitted Exceptions to the extent caused by Landlord or its Related Parties. Tenant shall, however, have the right to contest the validity or application of any Applicable Law, and if Tenant promptly contests and if compliance therewith may legally be held in abeyance during such contest, Tenant may postpone compliance until the final determination of such contest, *provided* that such contest is prosecuted with due diligence and that Tenant shall not so postpone compliance therewith in such a manner as to, or if doing so would (i) impair the structural integrity of the Project Improvements, (ii) during such contest, subject Landlord to any fine or penalty or to prosecution for a criminal act, or expose Landlord to any civil liability or (iii) cause the Project Improvements to be condemned or vacated. Even though a Lien against the Project Improvements may be imposed by reason of such noncompliance, Tenant may nevertheless delay compliance therewith during a contest thereof provided that such contest is otherwise in compliance with the requirements of this Lease and Tenant effectively prevents foreclosure of any such Lien. Tenant shall give Landlord reasonable Notice (which in no event shall be less than five (5) calendar days) of its intent to carry on such contest, specifying the Applicable Law that Tenant proposes to contest, the name of counsel representing Tenant in such contest and the Excusable Tenant Delay, if any, that such contest will cause in any repair, alteration or improvement of the Project Improvements.

12.4.2 Landlord's Compliance. In addition to Landlord's obligations under Section 14.1.5, Landlord shall, throughout the Term and within the time periods permitted by Applicable Law, comply with and cause compliance with all Applicable Laws applicable to (i) Landlord's Area of Responsibility and the Parking Tract to the extent of Landlord's obligations under Section 14.1.5 and (ii) by Landlord and Landlord's Related Parties with regard to those specific rights, duties or obligations of Landlord or Landlord's

Related Parties under this Lease, but, in each case, Landlord shall not be responsible for any failure to comply with Applicable Laws to the extent caused by Tenant, Tenant's Related Parties and any invitees or guests of Tenant or Tenant's Related Parties.

12.5 Light and Air. No diminution or shutting off of light, air or view by any structure that may be erected by any Person on lands in the vicinity of the Premises shall in any manner affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord, but the foregoing shall not constitute a waiver of any express obligation of Landlord under this Lease, including Section 12.6.

12.6 Adjacent Improvement and Access. Landlord, as both the City and as Landlord, hereby agrees that in the exercise of its rights with respect to the ownership and control of its real property, Landlord will not cause or grant any third party the right to cause any of the following to occur during the Term without the written Consent of Tenant, which Consent shall not be unreasonably withheld: (i) the construction or placement of any new buildings, structures or other above ground fixtures, equipment, structures or improvements or the exterior expansion of any buildings, structures or other above ground fixtures, equipment, structures or improvements (the "**Prohibited Improvements**") in that portion of HemisFair Park identified on Exhibit F attached hereto (the "**Restricted Area**") which Prohibited Improvements would be reasonably likely to materially and adversely affect or interfere with Tenant's then existing operations from the Premises, which are permitted pursuant to the terms of this Lease; or (ii) the elimination of pedestrian access between (a) the Tower Tract and the site where the Convention Center is currently located, as may be expanded and remodeled from time to time, (b) the Tower Tract and S. Alamo Street, or (c) subject to Section 4.1.2, the Tower Tract and the Parking Tract.

12.7 Operation of Premises. During the Term, Tenant shall comply with the following:

12.7.1 Elevators. Each of the Elevators shall be operated by Tenant so as not to exceed the maximum recommended per hour passenger capacity established by the manufacturer of each Elevator. Tenant shall provide a qualified employee to operate each of the public Elevators at all times that such an Elevator is operating and will not permit patrons of the Premises to self-operate any Elevators. Tenant shall create and implement in the Elevators audio narratives with respect to any or all of the Tower, the City or the State of Texas and the content of such audio narratives will be subject to the Approval of the Landlord Representative, such Approval not to be unreasonably withheld.

12.7.2 Security. Tenant shall be responsible for providing, at its sole cost and expense, all security within the Premises which security will (i) meet or exceed the Operating Standard (but regardless of the Operating Standard, security personnel shall not be required to be certified peace officers unless required by Applicable Law), (ii) comply with the requirements of the San Antonio Park Police in the event of an Emergency, (iii) prohibit vehicular access on the Tower Tract other than maintenance, repair, construction and emergency vehicles and (iv) include a video surveillance and security system for the entire Premises and on-site personnel during Operating Hours.

12.7.3 Hours of Operation. Subject to any limitation imposed on Tenant pursuant to Section 3.3.7, Tenant shall have the right to set the hours and days the Premises are open to the public, but which at a minimum shall be the following (the "**Operating Hours**"): (i) the Observation Deck Level (excluding the food venue located thereon) shall be open 9:00 a.m. to 10:00 p.m. Sunday through Thursday and 9:00 a.m. to 11:00 p.m. Friday and Saturday, on a three hundred and sixty-five/six (365/6) day a year basis (other than Thanksgiving and Christmas Day), (ii) at least one of the Café and the moderately priced food venue on the Observation Deck Level shall be open from 11:00 a.m. to 9:00 p.m. Sunday through Thursday and 11:00 a.m. to 10:00 p.m. Friday and Saturday, on a three hundred and sixty-five/six (365/6) calendar day a year basis (other than Thanksgiving and Christmas Day), (iii) both of the Café and the moderately priced food venue on the Observation Deck Level shall be open for at least three (3) hours of continuous operation, at least five (5) days a week and (iv) the remainder of the Premises shall be open from 11:00 a.m. to 9:00 p.m. Sunday through Thursday and 11:00 a.m. to 10:00 p.m. Friday and Saturday, on at least at three hundred ten (310) calendar days during each calendar year; *provided* that (x) with respect to the foregoing clause (iv), during the first partial calendar year after the Effective Date, such obligation to be open at least three hundred ten (310) calendar days shall be prorated by multiplying three hundred ten (310) times the fraction comprised of a numerator which is the number of days remaining in such calendar year after the Effective Date and a denominator which is the number of total days in such calendar year and (y) notwithstanding the foregoing, in no circumstance shall the Premises be open and both of the Café and the moderately priced food venue on the Observation Deck Level be closed.

12.7.4 Pricing. As of the Effective Date, Landlord and Tenant have mutually agreed to the prices or price ranges, as applicable, for (i) admission tickets to the Theater, (ii) admission tickets to the Observation Deck Level, (iii) retail merchandise in connection with the Retail Operations, (iv) the interactive kiosks on the Observation Deck Level and (v) parking in Tenant's Parking Spaces, all as indicated on Appendix E, which prices shall be charged by Tenant, set forth therein. Tenant shall be entitled to raise the prices for admission to the Theater and the Observation Deck Level each calendar year as set forth on Appendix E, without the Approval of Landlord but with prior Notice to the Landlord Representative. Tenant shall also be entitled, without the Approval of Landlord but with prior Notice to the Landlord Representative, each calendar year to increase charges (x) for parking in Tenant's Parking Spaces by no more than One and No/100 Dollar (\$1.00), and (y) with respect to all other pricing, to increase such pricing (other than the Café and the food venue on the Observation Deck Level which shall be maintained as moderately priced food venues based on the pricing standards for a moderately priced food venue in the City of San Antonio at the time in question and the Tower Restaurant which shall be priced in a manner consistent with a Signature Restaurant) during each calendar year by no more than five percent (5%) over the prices charged in the prior calendar year (provided that with respect to the Retail Operations such five percent (5%) increase shall refer to the price range for retail merchandise during the prior Lease Year), each without Approval of Landlord but with prior Notice to the Landlord Representative. All price increases permitted hereunder shall be cumulative should Tenant not elect to exercise them during the permitted periods. Should Tenant desire to increase such prices by more than such

amounts or at any other time except as permitted pursuant to the foregoing, Tenant shall be required to obtain the Approval of Landlord as to any increase in pricing with respect to admission tickets to the Theater or the Observation Deck Level and the Landlord Representative with respect to a price increase as to any other Business Operation. The Café and the food venue on the Observation Deck Level shall be operated at all times during the Term as moderately priced food venues based on the pricing standards for a moderately priced food venue in the City of San Antonio at the time in question and the Tower Restaurant shall be operated, and the food and beverage served therein priced, at all times during the Term in a manner consistent with Signature Restaurants. Further, and without limiting the foregoing, Tenant has agreed to implement the discounts identified on Appendix E. Tenant shall have the right to offer combined tickets to the Observation Deck Level and the Theater provided that (i) the combined ticket price shall not exceed the sum of the ticket prices for the combined ticket set forth on Appendix E; (ii) Tenant continues to offer to sell to its customers individual tickets to the separate attractions; (iii) Tenant visibly promotes on its menu board the Bexar County discount for the Observation Deck Level and Theater; and (iv) Participation Revenue Rent payments based on the combined ticket sales shall be calculated by multiplying the Observation Deck Operations Participation Revenue Percentage (35 percent) by [the combined ticket price times [the individual Observation Deck Level ticket price divided by the sum of the individual Observation Deck Level ticket price and the individual Theater ticket price]], with the remaining revenue from the combined ticket sale being multiplied by the Participation Revenue Percentage for Theater and Incidental Operations (5 percent). By way of example, if a combined ticket is sold for \$10.95, an individual ticket for the Observation Deck Level is sold for \$5, and an individual ticket for the Theater is sold for \$8.95, Participation Revenue Rent on the combined ticket sales would be calculated as follows: $.35 \times [10.95 \times (5 / 5 + 8.95)]$ plus $0.5 \times [10.95 \times (8.95 / 5 + 8.95)]$. Any further combined tickets shall be subject to prior approval of the Landlord Representative, such approval not to be unreasonably withheld.

12.7.4.1 Fee to Support a Special Fund to Address Homelessness.

For each admission ticket sold to (1) the Theater and (2) the Observation Deck Level or (3) each combination admission ticket to both the Theater and the Observation Deck Level shall collect a fee of fifty cents (\$0.50), such funds to be used by Landlord to address homelessness. Tenant shall pay all such funds collected to Landlord along with its monthly Participation Rent. Tenant shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided. To account for this fee, Tenant shall provide to Landlord a monthly report of all tickets sold. The monthly report shall be broken down by tickets sold to (1) the Theater and (2) the Observation Deck Level or (3) each combination admission ticket to both the Theater and the Observation Deck Level. Additionally, the monthly report will further identify tickets sold based on the following categories: Adults, Senior & Military, Children 4-12, and Children 2 years and under.

12.7.5 Gift Shop; Retail Products. Tenant shall stock the Gift Shop with a unique and changing assortment of products, including proprietary products tailored to the Tower, the Tower Name and the other Tower Marks. The Gift Shop will be themed to match the Tower and the retail staff will have themed uniforms.

12.7.6 Parking Tract. Subject to Section 4.1.2, Tenant shall manage all Parking Operations at the Parking Tract, including Tenant's Parking Spaces, and shall do so in accordance with the Operating Standard.

12.7.7 Restaurant Operations.

(a) *Restaurant Level.* The Tower Restaurant shall be operated at all times as a Signature Restaurant.

(b) *Ground Level and Observation Deck Level.* The Café and the food venue on the Observation Deck Level shall be operated as moderately priced food venues (in accordance with Section 12.7.4 above) and in a manner that otherwise meets or exceeds the Operating Standard.

(c) *Alcoholic Beverages.* All alcoholic beverages, including all beer, wine, liquor and mixed drinks, shall be sold at the Premises in such portions of the Premises and in such manner as permitted in accordance with the Alcohol Beverage Service Policy/Plan and Tenant shall at all times comply in all material respects with the Alcohol Beverage Service Policy/Plan.

12.7.8 Theater Operations. The Theater will show four-dimensional movies with the primary movie shown at the Theater being a custom themed production that relates to the history, landscape, architecture or people of the City or State of Texas. The Landlord Representative shall have the right to Approve in advance the content of any movies shown in the Theater for historical accuracy or to the extent the content thereof relates to, the State of Texas, the City or the City's residents, with such Approval not to be unreasonably withheld.

12.7.9 Expenses. Tenant shall be responsible for all costs and expenses, including recruitment, staff training, meals, supplies, labor expenses, and management and staff support associated with the use, occupancy and all operations on the Premises by Tenant.

12.7.10 Marketing and Advertising. Tenant shall use the Marketing Commitment to (i) advertise the Leased Premises (which may, as appropriate, include advertising in conjunction with any other businesses of Tenant, Guarantor or any of their Affiliates as Tenant may desire, in local, regional and national markets through co-operative advertising campaigns implemented by Tenant and Guarantor) and (ii) create, implement and manage practical and innovative programs that market the Leased Premises and promote (including public relations activities) its value as a major tourist destination in an effort to realize its potential for increased attendance and sales. Such advertising and marketing activities shall be allocated across various media (including radio, TV, newspaper inserts, tourist publications, in-flight and regional magazines, direct mail and

billboards). None of such advertising, marketing and signage shall take away from or diminish the first-class nature of the Premises and shall be consistent and implemented in accordance with the Operating Standard.

12.7.11 Revenue Control System. Tenant shall utilize, and cause to be utilized, at its sole cost and expense, a point of sale revenue control system equipped with sealed continuous totals or such other devices for recording sales but which, at a minimum, will (i) breakdown sales and revenues by each of the Business Categories for each of the Landlord's Participation Revenue Percentages pursuant to Section 6.4.1, (ii) maintain refunds, allowances or adjustments in a separate account, (iii) shows on a monthly basis attendance, revenue, liquor and sales tax data and (iv) meets or exceeds the quality and performance of the "Aloha" system as of the Original Execution Date or the equivalent industry standard for the Business Operation in question if Aloha is not used in connection with such Business Operation.

12.7.12 Telescopes. Upon termination or expiration of the Telescope License Agreement, Tenant shall install new telescopes on the Observation Deck Level.

12.7.13 Recycling Program. Tenant shall implement and maintain during the Term a recycling program for recyclable material which is generated at or from or which is disposed of on the Leased Premises in a manner consistent with Tenant's recycling programs from time to time in effect at its Signature Restaurants, including the recycling of fry oil.

ARTICLE XIII

IMPOSITIONS; NET LEASE

13.1 Taxes and Assessments.

13.1.1 Impositions on Premises. As a result of the public purpose being served by this Lease in promoting the economic development of HemisFair Park, Tenant's interest in the Premises may not be subject to property taxation; *provided, however*, that in the event it is determined that this Lease creates a possessory interest in the Premises that is subject to property taxation, then, in such event, Tenant shall be subject to, and shall be responsible for the payment of property taxes and other Impositions levied on or payable with respect to such interest. In addition and regardless of the foregoing, Tenant shall pay or cause to be paid, all Impositions that accrue during the Term, whenever levied or payable, including with respect to Landlord's interest in the Premises or against any Improvements or Tenant's Personal Property located in, on or about the Premises, including the Project Improvements. Notwithstanding the foregoing, with respect to Landlord's interest in the Premises only, all Impositions for the fiscal year or tax year in which the Lease Expiration Date occurs or this Lease is earlier terminated shall be apportioned so that Tenant shall pay only the portion of such Impositions that are attributable to the period prior to the Lease Expiration Date.

13.1.2 Payment of Impositions. Throughout the Term, Tenant shall pay, or cause to be paid, all such Impositions directly to the taxing authority or other payee therefor. Such payment shall be completed prior to the date on which Impositions would become delinquent, subject to Section 13.2 below. If any Impositions legally may be paid in installments prior to delinquency, whether or not interest shall accrue on the unpaid balance thereof, Tenant shall have the option to pay such Impositions in installments, and Tenant shall be obligated to pay only such installments or portions thereof as shall be properly allocated to periods within the Term. Tenant shall furnish to Landlord, promptly upon receipt thereof, copies of all notices of Property Taxes. Within sixty (60) calendar days after payment by Tenant of such Property Taxes, Tenant shall deliver to Landlord reasonable evidence of the payment thereof. Other than with respect to Property Taxes, Tenant shall be obligated to provide evidence of the payment of Impositions only when specifically requested to do so by Landlord, at any time and from time to time, and then only as to Impositions that have been paid, are payable or for which notice for the payment thereof has been received within the twenty-four (24) months prior to the date of Landlord's request.

13.2 Tenant's Right to Contest Impositions.

13.2.1 Notice. Tenant shall have the right in its own name, and at its sole cost and expense, to contest the validity or amount, in whole or in part, of any Impositions, by appropriate proceedings timely instituted in accordance with any protest procedures permitted by applicable Governmental Authority (a "**Tax Proceeding**"); *provided* Tenant gives Landlord at least thirty (30) calendar days prior notice of its intention to contest and diligently prosecute such contest by a Tax Proceeding and at all times effectively stays or prevents any non-judicial or judicial sale of any part of the Premises or the Leasehold Estate created by this Lease or any interest of Landlord in any of the foregoing, by reason of non-payment of any Impositions. Tenant shall diligently pursue all such Tax Proceedings in good faith. Further, Tenant shall, incident to any such Tax Proceeding, provide such bond or other security as may be required by the applicable Governmental Authority. Tenant shall indemnify, defend, and hold Landlord harmless from any and all such Impositions and all Claims, costs, fees, and expense related to any such Impositions or Tax Proceeding, including any and all penalties and interest, and Tenant shall promptly pay any valid final adjudication enforcing any Impositions and shall cause any such final adjudication to be timely satisfied prior to any time period within which any non-judicial or judicial sale could occur to collect any such Impositions.

13.2.2 Payment. Upon the entry of any determination, ruling or judgment in any Tax Proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof, as is finally determined in such Tax Proceedings, the payment of which may have been deferred during the prosecution thereof, together with any Claims, costs, fees, interest, penalties, charges or other liabilities in connection therewith. Nothing herein contained, however, shall be construed so as to allow such Imposition to remain unpaid for such length of time as shall permit the Premises or the Leasehold Estate, or any part thereof, to be sold or taken by any Governmental Authority for the non-payment of any Imposition. Tenant shall promptly furnish Landlord with copies of all notices, filings and pleadings in

all such Tax Proceedings. If Landlord chooses to participate in any such Tax Proceedings, then Landlord shall have the right, at its expense, to participate therein.

13.2.3 Payment. Upon the entry of any judicial determination, ruling or judgment in any Tax Proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof, as is finally determined in such Tax Proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, charges or other liabilities in connection therewith.

13.2.4 Reduction of Assessed Valuation. Tenant at its expense may, if it shall so desire, endeavor at any time or times to obtain a reduction in assessed valuation of the Premises for the purpose of reducing Impositions thereon. Tenant shall be authorized to collect any tax refund payable as a result of any preceding Tenant may institute for any such reduction in assessed value and any such tax refund shall be the property of Tenant (unless the same was paid by Landlord and not reimbursed by Tenant).

13.2.5 Rendition. Tenant is obligated to notify each Governmental Authority imposing Impositions that all certificates, advices, bills or statements regarding Impositions should be sent directly to Tenant. Landlord hereby grants and gives permission to Tenant to render the Premises from time to time during the Term.

13.2.6 Joinder of Landlord not Required. Landlord shall not be required to join in any Tax Proceeding or other Action or Proceeding referred to in this Section 13.2 unless required by Applicable Law in order to make such Action or Proceeding effective, in which event any such Action or Proceeding may be taken by Tenant in the name of but without expense to Landlord, and **TENANT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH ACTION OR PROCEEDING.** To the extent such cooperation is required by applicable Governmental Authority for such Tax Proceeding, Landlord shall cooperate in any such Tax Proceeding as reasonably requested by Tenant, at Tenant's sole cost and expense, whether or not Landlord is joined pursuant thereto, and Landlord agrees to take no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay Impositions.

13.2.7 Prima Facie Evidence. The certificate, advice, bill or statement issued or given by any Governmental Authority authorized by law to issue the same or to receive payment of an Imposition shall be prima facie evidence of the existence, non-payment or amount of such Imposition.

13.3 Failure of Tenant to Pay Impositions. Notwithstanding anything to the contrary contained in this Lease and except as provided in Section 13.2 above, in the event Tenant fails to pay any Imposition payable by Tenant pursuant to the provisions of this Lease before the date the same becomes delinquent, Landlord may, after giving Tenant ten (10) calendar days' notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Tenant

shall, within thirty (30) calendar days following Landlord's demand and notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment in full by Tenant.

13.4 Net Lease.

13.4.1 No Landlord Obligations. Except for costs that Landlord has specifically agreed to pay pursuant to the express terms of this Lease, (i) Landlord shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease, the Premises or any Impositions and (ii) it is expressly understood and agreed that this is a completely net lease intended to assure Landlord the Rent herein reserved on an absolutely net basis.

13.4.2 Tenant's Obligations for Payment of Rent; No Termination.

(a) Tenant hereby acknowledges and agrees that (i) except for the express provisions of this Lease pursuant to which Tenant is entitled to a credit against or abatement of Rent, Landlord and Tenant have expressly negotiated that Tenant's covenants to pay Rent under this Lease are separate and independent from Landlord's obligations hereunder, including any covenant to provide repairs, services and other amenities, if any, hereunder, or the occurrence of any event, occurrence or situation during the Term, whether foreseen or unforeseen and howsoever extraordinary or beyond the contemplation of the Parties, including any Down Times (whether pursuant to Additional Work or otherwise) and (ii) had the parties not mutually agreed upon the independent nature of Tenant's covenants to pay all Rent hereunder, Landlord would have required a greater amount of Rent in order to enter into this Lease, if at all. **AS SUCH, EXCEPT FOR THE EXPRESS PROVISIONS OF THIS LEASE PURSUANT TO WHICH TENANT IS ENTITLED TO A CREDIT AGAINST OR ABATEMENT OF RENT, TENANT WAIVES ANY RIGHT NOW OR HEREAFTER CONFERRED UPON IT AT LAW OR IN EQUITY TO ANY ABATEMENT, DEDUCTION, SUSPENSION, DEFERMENT, DIMINUTION OR REDUCTION OF, OR SET-OFF OR DEFENSE AGAINST ANY RENT AND ANY OTHER SUMS FOR WHICH TENANT IS OBLIGATED UNDER THIS LEASE ON ACCOUNT OF SUCH EVENT, HAPPENING, OCCURRENCE OR SITUATION.**

(b) Tenant covenants and agrees that it shall remain obligated under this Lease in accordance with its terms, and that it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding the filing by Landlord of a voluntary petition in bankruptcy; adjudication of Landlord as a bankrupt; approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of Landlord under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; or appointment of a receiver, trustee or other similar official for Landlord or its Property.

ARTICLE XIV

REPAIRS AND MAINTENANCE; UTILITIES

14.1 Repairs and Maintenance.

14.1.1 Tenant's Obligation. Except to the extent any of the following are the obligations of Landlord pursuant to the express terms of this Lease, including pursuant to Section 14.1.5, Tenant shall, throughout the Term, at its own expense, at no cost or expense to Landlord and in compliance with Applicable Laws, do the following (collectively, the "**Maintenance and Repair Work**"):

(a) Keep and maintain, or cause to be kept and maintained, the Premises and all Tenant's Personal Property located within the Premises which are useful and necessary to operation of the Premises, in good working repair, order and condition so that the Premises may be operated in accordance with the Operating Standard, but in all events in a manner consistent with manufacturers' recommendations, the applicable Insurance Covenant and necessary to avoid or repair waste or structural damage to any of the foregoing;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Premises to keep them clean, in good working repair, order and condition so that that the Premises may be operated in accordance with the Operating Standard and in compliance with all Applicable Laws;

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Tower Public Areas necessary to keep them in a first-class condition consistent with the standards of Comparable Properties, including any capital expenditures necessary to accomplish same.

(d) Provide, maintain and repair all necessary water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities from the Utility Vault and throughout the Leased Premises so as to supply water, gas, sewer, telephone (including all local and long distance service), electricity, fuel and any other utility services necessary for Tenant's use, occupancy and operation of the Leased Premises pursuant to the terms of this Lease; *provided, however*, that notwithstanding the foregoing, Tenant shall (1) not be responsible for the main electrical buss system for the Tower from the Utility Vault to the top of the Tower at the point of buss termination and (2) shall be responsible for all telecommunications lines located within any conduits to the point of connection with the utility provider.

(e) Provide, maintain and repair any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities (but only to the point of connection with the utility provider) in the event such are (a) necessary to increase the capacity of existing facilities, (b) to provide service at locations not currently

provided with such service or (c) to provide new service not currently provided to serve Tenant's use of the Premises.

(f) Provide, maintain and repair any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities located underneath any above ground improvements constructed by Tenant.

(g) Keep, maintain and repair, or cause to be kept, maintained and repaired, in good working order and condition, the mechanical systems (including the cabs, elevator shaft and related components) for the Elevators and, when deemed necessary by Tenant's professional third party maintenance company, renovate or replace the same, subject to Landlord's Elevator capital and maintenance contribution obligations pursuant to Exhibit L. As part of its maintenance obligations, Tenant shall have at all times a maintenance contract with a professional, third party maintenance company with a national reputation, with said company, at a minimum, providing the following services: regular twice weekly examinations, the performance of any necessary adjustments and lubrications of the equipment by competent employees, and special examinations whenever trouble arises between regular examinations. Tenant shall maintain elevator maintenance logs of work thus performed and shall provide to Landlord quarterly reports which shall include a summary of all work performed, whether maintenance work, routine repairs or emergency repairs along with associated costs. The maintenance logs shall be open to reasonable inspection by Landlord at all other times. As consideration for Tenant's obligations contained in this Section 14.1.1(g), Tenant shall be entitled to credits against Base Rent and Participation Rent after the Effective Date as set forth on Exhibit L.

This Section 14.1 shall not apply to any damage or destruction by fire or other Casualty within the scope of Section 18.4 in the event Tenant is entitled to, and timely makes the election permitted under Section 18.4 to, terminate this Lease. Notwithstanding anything to the contrary contained in this Section 14.1.1 or elsewhere in this Lease, Tenant shall have no obligation to perform or pay for any repairs or maintenance to the extent caused by Landlord or any Person Related to Landlord.

14.1.2 Standards Required for Maintenance and Repair Work. The necessity for and adequacy of Maintenance and Repair Work pursuant to Section 14.1.1 shall be measured by the Operating Standard, *provided* that Tenant shall perform, or cause to be performed, all Maintenance and Repair Work in accordance with Section 9.3, Section 9.4, Section 9.5, ARTICLE XV and ARTICLE XIX.

14.1.3 No Services Provided by Landlord. Except to the extent Landlord has specifically agreed to do so pursuant to the express terms of this Lease, Landlord shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Premises.

14.1.4 Landlord's Right to Repair and Maintain in an Emergency. Subject to Section 16.1.3, in the event of an Emergency only, Landlord may, at its option, and in addition to any other remedies which may be available to it under this Lease, enter, or cause its authorized representatives to enter, the Premises and perform any Maintenance and

Repair Work that Tenant has failed to perform in accordance with the terms of this Lease, such Maintenance and Repair Work and such entry to be as reasonably necessary to address such Emergency. Tenant shall, within thirty (30) calendar days following Landlord's demand and notice, pay and reimburse Landlord for the costs of such Maintenance and Repair Work, together with interest at the Default Rate, from the date such costs were paid by Landlord until repayment in full by Tenant. This Section 14.1.4 shall in no way affect or alter Tenant's obligations for Maintenance and Repair Work under Section 14.1.1 and Section 14.1.2, and shall not impose or be construed to impose upon Landlord any obligation for such Maintenance and Repair Work inconsistent with the provisions of this Lease. Any Maintenance and Repair Work performed by or on behalf of Landlord pursuant to this Section 14.1.4 shall be prosecuted with due diligence and completed with all reasonable dispatch and constructed in a good and workmanlike manner in accordance with standard construction practice of improvements similar to Improvements in question.

14.1.5 Landlord's Maintenance Obligations. Notwithstanding the foregoing and subject to the qualifications and exclusions set forth in this Section 14.1.5, commencing on the Effective Date and continuing for the remainder of the Term, Landlord shall, at its sole cost and expense, at no cost or expense to Tenant and in compliance with Applicable Laws, keep, maintain and repair, or cause to be kept, maintained and repaired, in good working repair, order and condition and in compliance with Applicable Law, the following:

(a) *Landlord's Area of Responsibility.* Landlord's Area of Responsibility other than (i) any exterior architectural lighting, (ii) any fixtures, equipment, machinery, systems or other property which, in whole or in part, serves the remainder of the Premises or Tenant's use or operation thereof, (iii) any water/sewer pipes, chilled water lines, electric lines, gas pipes, conduits, mains or any other utility transmission facilities or systems, in, on, under or servicing the Premises except to the extent the responsibility of Landlord pursuant to clauses (c) and (d) below and (iv) with respect to the Pump Room only, Landlord shall only be obligated to maintain and repair same so as to keep it in its condition as of the Effective Date.

(b) *Top House.* The exterior walls, window gaskets and roof of the Top House (but not any windows themselves), the structural components of the flooring and the roof structure of the Top House and fire-proofing of the structural components of the Top House.

(c) *Electrical System.* The main electrical buss system for the Tower from the Utility Vault to the top of the Tower at the point of buss termination (but not any internal or secondary distribution or electrical lines, systems or switches) and the 300MW generator in the Pump Room.

(d) *Utility Lines.* Subject to clause (c) above, any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities servicing the Premises and (i) with respect to the Leased Premises, located between the Utility Vault and the point of connection with the utility provider and (ii) with

respect to the Licensed Premises, located between the Licensed Premises and the point of connection with the utility provider; *provided, however*, that notwithstanding the foregoing (i) with respect to any telecommunications lines, Landlord shall only be obligated to maintain the conduit in which such telecommunication lines are located, (ii) Landlord shall only be obligated to keep, maintain and repair, or cause to be kept, maintained and repaired the foregoing to the extent the foregoing are (x) located on real property owned by the City or to which the City otherwise possesses a right to access, (y) not maintenance or repair obligation of the utility provider and (z) not located underneath any new above ground improvements constructed by Tenant and (iii) Landlord shall not be obligated to maintain any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities required to be maintained by Tenant pursuant to Section 14.1.1(e) or Section 14.1.1(f).

Landlord shall not be obligated to perform or pay for any repairs, maintenance, replacements or upgrades with respect to the Premises, except (i) as specifically provided in this Section 14.1.5, (ii) as expressly stated elsewhere in this Lease and (iii) that Landlord shall repair, to its previous existing condition, any damage to the Premises caused by Landlord or its Related Parties. Notwithstanding anything to the contrary contained in this Section 14.1.5 or elsewhere in this Lease, Landlord shall have no obligation to perform or pay for any repairs or maintenance (i) to the extent caused by Tenant, any Person Related to Tenant or any guest or invitee of Tenant or any Person Related to Tenant or (ii) subject to Section 18.5 and Section 18.5.1, is necessary or required as a result of any Casualty or Condemnation Action.

14.2 Utility Costs. Tenant shall pay, or cause to be paid, for all gas, electricity, water, sewer, telephone (including all local and long distance service), fuel and any other utilities used or consumed at the Leased Premises, including any rents, charges fees or assessments related to such utilities other than any electricity consumed by Landlord's Communication Equipment (which shall be separately sub-metered by Landlord, at Landlord's sole cost and expense, and the payment of which will be Landlord's responsibility) whether such utilities are billed to Tenant directly by the utility provider or by Landlord, and, in the event billed by Landlord, Tenant covenants and agrees to promptly pay such bills upon receipt from Landlord as if Tenant had been billed directly by the utility provider. Landlord shall pay, or cause to paid, for all gas, electricity, water, sewer, telephone (including all local and long distance service), fuel and any other utilities used or consumed at the Licensed Premises, including any rents, charges, fees or assessments related to such utilities, so long as utility consumption in connection with the use and operation of the Parking Improvements by Tenant is consistent with the Parking License and the terms of this Lease as transient public parking spaces. Notwithstanding the foregoing or anything herein to the contrary, (i) Landlord shall have no obligation to furnish any utilities to the Premises and shall have no liability to Tenant for the failure of same to be provided or for any interruption in any utility service and (ii) no interruption or malfunction of any utility services shall constitute an eviction or disturbance of Tenant's possession of the Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in Rent but neither of the foregoing shall limit Landlord's obligations under Section 14.1.5 or this Section 14.2 or Tenant's rights under ARTICLE XXIV as a result of Landlord's breach of its obligations under Section 14.1.5 or this Section 14.2.

ARTICLE XV

OWNERSHIP OF IMPROVEMENTS AND TENANT'S PERSONAL PROPERTY; ADDITIONAL WORK

15.1 Title to the Tenant Improvements.

15.1.1 During Term; Upon Termination of Term. All construction materials and consumables that have been or will be incorporated into and constitute the Tenant Improvements constructed or to be constructed on the Premises, including all furniture, fixtures and equipment (other than Tenant's Personal Property, at Tenant's option), have been or will be donated to Landlord prior to the installation thereof (collectively, the "**Donated Construction Materials**"), and title to all of such Improvements shall be and remain in Landlord for and during the Term. Landlord's acceptance of such donation is made solely as the landlord hereunder and not as a developer or operator of the Improvements, and such acceptance shall in no way be deemed, interpreted or construed to modify, reduce or compromise in any manner whatsoever Tenant's indemnities set forth herein or relieve Tenant from any insurance requirements hereunder. Further, Landlord makes no representation or warranty whatsoever as to the tax consequences of Tenant's donations contemplated by the terms of this Section 15.1.1. As long as such Donated Construction Materials comply with Applicable Law and are consistent with the New Tenant Project Plans or the New Landlord Project Plans, as applicable (that have been Approved pursuant to the terms of this Lease, as and if required), incorporated into the Existing Improvements, installed in a good and workmanlike manner, and used in the operation of the Premises, Landlord shall not have the right to reject title to any of such Donated Construction Materials. All Tenant's Personal Property installed in, affixed to or placed or used in the operation of the Project Improvements throughout the Term shall be deemed to be the property of Tenant; *provided, however*, Tenant shall have the right to donate any portion of Tenant's Personal Property to Landlord by delivering Notice to Landlord of Tenant's intent to donate such Tenant's Personal Property to Landlord and describing such property (such property being referred to herein as "**Donated Personal Property**"). Notwithstanding the foregoing, Landlord shall have the right, exercisable by Notice to Tenant, within ninety (90) calendar days after Notice to Landlord of its intent to donate specified property to Landlord, to (a) make a determination that any of the Donated Personal Property is not acceptable to Landlord, whether or not necessary or desirable for the support or operation of the Improvements on the Premises, and (b) refuse to accept title to any discrete portion of said Donated Personal Property, in which event such property shall not be construed to be Donated Personal Property, title thereto shall not vest in Landlord, and title shall remain vested in Tenant. Although the provisions hereof are intended to be self-executing, Tenant hereby agrees upon the Lease Expiration Date to execute any further deed, bill of sale or other document reasonably requested by Landlord to confirm Landlord's ownership of and fee simple title to the Donated Personal Property, free and clear of all rights, titles and interests of any other Persons and Tenant's grant and conveyance thereof to Landlord hereby made.

15.1.2 Waste; Sale or Disposal of Equipment or Other Personal Property.

Tenant shall neither do nor permit nor suffer any waste to or upon the Premises. Provided that no Tenant Default then exists, Tenant shall have the right, at any time and from time to time, to sell, dispose of or replace any of Tenant's Personal Property or Donated Property located in the Improvements; *provided, however*, that (i) if such Tenant's Personal Property or Donated Property is necessary for operation of the Project Improvements at the Operating Standard, Tenant shall then, or prior thereto or as reasonably necessary thereafter, replace or substitute (x) such Tenant's Personal Property with property not necessarily of the same character but capable of performing the same function as that performed by the Tenant's Personal Property and (y) such Donated Property with Property of the same or better quality and just as suitable for its intended purpose and (ii) if such Donated Property is a fixture, Tenant shall then, or prior thereto, replace or substitute such Donated Property with Property with the same or better quality and just as suitable for its intended purpose.

15.2 Additional Work by Tenant.

15.2.1 Changes, Alterations, and Additional Improvements. Subject to the limitations and requirements contained elsewhere in this Lease, including those contained in Section 9.3, Section 9.4, Section 9.5, ARTICLE XI, and ARTICLE XXII, Tenant shall have the right at any time and from time to time to construct additional or replacement Improvements ("**Additional Improvements**"), at its sole cost and expense, and to make, at its sole cost and expense, changes and alterations in, to or of the Project Improvements, subject, however, in all cases to the terms, conditions and requirements of this Section 15.2; *provided* that Tenant shall only be entitled to make changes and alterations in, to, or of the New Tenant Improvements after the New Project Completion Date; and *provided further* that the New Tenant Improvements shall be excluded from the definition of "Additional Improvements." For purposes of this Lease, "**Additional Work**" collectively shall refer to (i) construction or installation of any such Additional Improvements and changes and alterations in, to or of the Project Improvements under this Section 15.2.1, (ii) Maintenance and Repair Work, (iii) any Casualty Repair Work, (iv) any Condemnation Repair Work, (v) Tenant's Remedial Work or (vi) any other construction, installation, repair or removal work in, to or of the Project Improvements required or permitted to be pursuant to the terms of this Lease, including pursuant to Tenant's Self-Help Rights; *provided* that New Tenant Improvements Work shall be excluded from the definition of "Additional Work." The performance of Additional Work shall, in all cases, comply with the requirements of this Section 15.2.1.

(a) Tenant shall not commence any Material Additional Work unless and until Tenant complies with the following procedures and requirements and obtains the Approvals specified below:

(i) Tenant shall obtain the Approval of Landlord with respect to the Material Additional Work Specifications and the Approval of the Landlord Representative, not to be unreasonably withheld, as to all other Material Additional Work Submission Matters;

(ii) Tenant shall deliver all Material Additional Work Submission Matters to the Landlord Representative at least one hundred twenty (120) calendar days prior to the commencement of any Material Additional Work. Upon receipt from Tenant of any Material Additional Work Submission Matters, the Landlord Representative shall review the same (which review shall be in accordance with Section 11.1) and shall promptly (but in any event within thirty (30) calendar days after receipt) give Notice to Tenant of the Approval or disapproval of (x) Landlord with respect to the Material Additional Work Specifications and (y) the Landlord Representative, such Approval not to be unreasonably withheld, with respect to all other Material Additional Work Submission Matters, and, if disapproval, setting forth in reasonable detail the reasons for any such disapproval;

(iii) Subject to Section 15.3 below, to the extent that, and from time to time as, the Landlord Representative gives Notice to Tenant of the Approval of Landlord or the Landlord Representative, as applicable, of any of the Material Additional Work Submissions Matters, Tenant shall have the right to proceed (upon issuance of all necessary Governmental Authorizations to so proceed) with the portion of Material Additional Work which has been Approved by Landlord or the Landlord Representative, as applicable. If the Landlord Representative gives Notice to Tenant of disapproval of any of the Material Additional Work Submission Matters by Landlord or the Landlord Representative, as applicable, Tenant shall have the right within sixty (60) calendar days after the date of such Notice to resubmit any such Material Additional Work Submission Matters to the Landlord Representative, altered as necessary in response to Landlord's or the Landlord Representative's, as applicable, reasons for disapproval, until the Material Additional Work Submission Matters shall be Approved by Landlord or the Landlord Representative, as applicable. All subsequent resubmissions of any Material Additional Work Submission Matter by Tenant must be made within thirty (30) calendar days after the date of Notice of disapproval from Landlord or the Landlord Representative, as applicable, as to the prior resubmission. Any resubmission shall be subject to review by Landlord or the Landlord Representative, as applicable, in accordance with Section 11.1 for the original Material Additional Work Submission Matter, except that the time period for review and response by Landlord shall be fifteen (15) calendar days and the submission procedures in Section 11.1.3 shall apply; and

(iv) All Material Additional Work shall, once commenced, be completed in accordance with all Material Additional Work Submission Matters which have been Approved by Landlord or the Landlord Representative, as applicable, and the Material Additional Work Plans and, subject to Excusable Tenant Delay, Tenant shall use commercially reasonable efforts to cause Final Completion of the Material Additional Work to occur on or before the date for the same specified in the Material Additional Work Construction Schedule which has been Approved by the Landlord Representative.

(b) Any Additional Work shall, when completed, be of such a character as not to reduce the value and utility of any Improvements below the value and utility immediately before such Additional Work and shall not weaken or impair the structural integrity of any Improvements.

(c) The cost of any Additional Work shall be paid in cash or its equivalent pursuant to customary construction disbursement procedures for the performance of such work, including taking commercially reasonable measures to cause the Premises to be free from all Liens and Encumbrances or security interests, subject to Tenant's right to dispute any Lien or Claim of Lien pursuant to Section 9.4.

15.3 Historic and Design Review Commission. Notwithstanding anything in this Lease to the contrary, any Additional Work shall be subject to the review and approval of the Historic and Design Review Commission to the extent required by Applicable Law or the Historic and Design Review Commission. As such, Tenant covenants and agrees that prior to commencing the construction of any Additional Work, or any part thereof, Tenant shall have obtained all necessary consents, approvals or authorizations from the Historic and Design Review Commission to construct all of the Additional Work to the extent required by Applicable Law or the Historic and Design Review Commission.

15.4 No Substitute for Permitting Processes or other Governmental Functions. The review for compliance by Landlord of any matter submitted to Landlord pursuant to Section 15.2 shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, all permitting processes of Governmental Authorities applicable to the Additional Work.

ARTICLE XVI

LANDLORD'S RIGHT OF ENTRY

16.1 Access to Premises by Landlord.

16.1.1 During Construction Work.

(a) *Leased Premises.* Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and all portions thereof (in addition to the City's access rights under its police powers), without charges or fees, during the period of the performance of any Construction Work for the purposes of assuring compliance with this Lease or for performing or undertaking any rights or obligations of Landlord pursuant to the terms of this Lease; *provided* that with respect to access other than in connection with a Tenant Default, Landlord shall (i) provide Notice to Tenant at least twenty-four (24) hours in advance of such proposed entry and such proposed entry shall be during normal Business Hours, (ii) not hinder or interfere with the Construction Work or the activities of Tenant's contractors, (iii) take such reasonable protective caution or measures as Tenant may reasonably request, given the stage of the Construction Work at the time of such entry and (iv) minimize interference with Tenant's use and operation of the Leased Premises pursuant to the terms of this Lease then being

undertaken by Tenant. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct any inspections or impose on Landlord any liability in connection therewith.

(b) *Licensed Premises.* Without limiting Landlord's rights with respect to the Licensed Premises Reservations except as expressly set forth in Section 4.5, Landlord shall have the right of access, for itself and its authorized representatives, to the Licensed Premises and any portion thereof (in addition to the City's access rights under its police powers), without charges or fees, during the period of the performance of any Construction Work; *provided* that Landlord shall (i) not hinder or interfere with the Construction Work or the activities of Tenant's contractors, (ii) take such reasonable protective caution or measures as Tenant may reasonably request, given the stage of the Construction Work at the time of such entry and (iii) minimize interference with Tenant's use and operation of the Licensed Premises pursuant to the terms of this Lease.

16.1.2 No Construction Work Ongoing.

(a) *Leased Premises.* Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3 and upon Substantial Completion of the New Tenant Improvements Work and as to areas where no Construction Work is then ongoing, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and any portion thereof (in addition to the City's access rights under its police powers), without charges or fees, at all reasonable times during the Term and upon reasonable Notice under the applicable circumstances for the purposes of (i) inspection (during Business Hours only), (ii) the performance of any maintenance and repair by Landlord under Section 14.1.5, (iii) exercising its rights under Section 17.3, (iv) the performance of Landlord's Remedial Work or (v) exhibition of the Project Improvements to others during the last eighteen (18) months of the Term (during Business Hours only); *provided, however*, that (x) such entry and Landlord's activities pursuant thereto shall be conducted in such a manner as to minimize interference with Tenant's use and operation of the Premises then being conducted in the Leased Premises pursuant to the terms of this Lease and (y) nothing herein shall be intended to require Landlord to deliver Notice to Tenant or to only enter during any specific period of time with respect to entry to the Tower Plaza, in connection with a Tenant Default, in order for Landlord to perform any of its obligations under this Lease or the performance of any maintenance and repair by Landlord under Section 14.1.5).

(b) *Licensed Premises.* Without limiting Landlord's rights with respect to the Licensed Premises Reservations except as expressly set forth in Section 4.5 and upon Substantial Completion of the New Tenant Improvements Work and as to areas where no Construction Work is then ongoing, Landlord shall have the right of access, for itself and its authorized representatives, to the Licensed Premises and any portion thereof (in addition to the City's access rights under its police powers), without charges or fees, at all reasonable times during the Term; *provided, however*, that Landlord's access to the Licensed Premises shall be conducted in a manner so as to minimize interference with Tenant's use and operation of the Licensed Premises pursuant to the terms of this Lease.

16.1.3 Access During an Emergency.

(a) *Leased Premises.* Without limiting Landlord's rights with respect to the Leased Premises Reservations except as expressly set forth in Section 3.3 and notwithstanding Section 16.1.1 and Section 16.1.2, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and any portion thereof (in addition to the City's access rights under its police powers), without charges or fees, in connection with an Emergency, so long as Landlord uses reasonable efforts to (i) notify Tenant by telephone of any such Emergency prior to entering the Leased Premises and as soon as reasonably possible, but in no event later than ten (10) calendar days after Tenant enters the Leased Premises and (ii) minimize interference with Tenant's use and operation of the Premises then being conducted in the Leased Premises pursuant to the terms of this Lease.

(b) *Licensed Premises.* Without limiting Landlord's rights with respect to the Licensed Premises Reservations except as expressly set forth in Section 4.5 and notwithstanding Section 16.1.1 and Section 16.1.2, Landlord shall have the right of access, for itself and its authorized representatives, to the Licensed Premises and any portion thereof (in addition to the City's access rights under its police powers), without charges or fees, in connection with an Emergency so long as uses reasonable efforts to minimize interference with Tenant's use and operation of the Licensed Premises pursuant to the terms of this Lease.

ARTICLE XVII

ADDITIONAL ENVIRONMENTAL PROVISIONS

17.1 No Hazardous Materials. Tenant shall not cause nor permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Premises by Tenant, its Related Parties or any of their invitees or guests; *provided, however* that (i) the foregoing shall not apply to an Environmental Event covered by Tenant's Remedial Work (same being governed by Section 9.1.1) and (ii) Tenant and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials as may be reasonably necessary for Tenant to conduct the Business Operations pursuant to the terms of this Lease so long as such Hazardous Materials are commonly used by Reasonable and Prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws. Upon the Lease Expiration Date, Tenant shall surrender the Leased Premises to Landlord in the conditions required by Tenant's Remedial Work and in compliance with Applicable Laws, but without limiting or reducing Landlord's obligations under this Lease including with respect to Landlord's Remedial Work or under Section 14.1.5. Landlord shall not cause nor permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Premises by Landlord or its Related Parties; *provided, however* that (i) the foregoing shall not apply to an Environmental Event covered by Landlord's Remedial Work (same being governed by Section 9.2.1) and (ii) Landlord and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials as may be reasonably necessary in connection with Landlord's exercise of its rights under this Lease with respect to the Premises or its obligations

under Section 14.1.5 of this Lease so long as such Hazardous Materials are commonly used in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Applicable Laws.

17.2 Notice of Environmental Event. During the Term, Tenant shall give the Landlord Representative immediate oral and follow-up Notice within seventy-two (72) hours of any actual or threatened Environmental Event, whether discovered by Tenant prior to the Effective Date or subsequent. Without limiting the foregoing, Tenant shall give Notice to any Governmental Authority only after using reasonable efforts to consult with the Landlord Representative and only to the extent required by Applicable Law. Tenant and Landlord shall thereafter promptly consult as to the steps to be taken to investigate and, if necessary, remedy such matter.

17.3 Environmental Audit. In accordance with the requirements of ARTICLE XVI, Landlord shall have the right, but not the obligation, to conduct, at its expense, periodic environmental audits of the Premises (including the air, soil, surface water and groundwater at or near the Premises) and Tenant's compliance with Environmental Laws with respect thereto. If any Governmental Authority requires testing or other action with respect to the Premises and Tenant fails to perform such testing or other action and Landlord incurs expenses in complying with such requirement, then Tenant shall pay to Landlord the reasonable costs therefor as Additional Rent, within ten (10) calendar days after written demand therefor.

17.4 Tenant Release. **WITHOUT LIMITING TENANT'S INDEMNITY OBLIGATIONS UNDER THIS LEASE, TENANT HEREBY AGREES TO RELEASE LANDLORD AND ITS RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT TENANT MAY HAVE WITH RESPECT TO THE PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF TENANT'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, OTHER THAN WITH RESPECT TO LANDLORD'S REMEDIAL WORK.**

17.5 Landlord Release. **LANDLORD HEREBY AGREES TO RELEASE TENANT AND ITS RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT LANDLORD MAY HAVE WITH RESPECT TO THE PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF LANDLORD'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS**

AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, OTHER THAN WITH RESPECT TO TENANT'S REMEDIAL WORK.

ARTICLE XVIII

CASUALTY DAMAGE

18.1 Damage or Destruction. If, at any time during the Term, the Premises or any part thereof shall be damaged or destroyed by Casualty, then Tenant shall promptly secure the area of damage or destruction to safeguard against injury to Persons or Property and, within a reasonable period of time thereafter, remediate any hazard and restore the Premises to a safe condition whether by repair or by demolition or removal of debris and screening from public view to the extent possible. Subject to Section 18.4 and Section 18.5, Tenant shall, to the extent allowed by Applicable Law, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and subject to Excusable Tenant Delay) to repair, restore, replace or rebuild the Premises as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such Casualty and in accordance with the terms of this Lease, including ARTICLE XIX, Section 9.3, Section 9.4 and Section 15.2. Such repair, restoration, replacement or rebuilding, including temporary repairs for the protection of other Property pending the completion of any such work, remediation of hazards and restoration of the Premises to a safe and presentable condition or any demolition and debris removal required are sometimes referred to in this Lease as the "**Casualty Repair Work**".

18.2 Casualty Proceeds.

18.2.1 Requirements for Disbursement when Lease is Not Terminated. Subject to Landlord's rights under Section 18.5 and provided that (i) no Tenant Default then exists and (ii) neither Landlord nor Tenant shall have terminated this Lease pursuant to Section 18.4.1 or Section 18.4.2, respectively, insurance proceeds paid pursuant to the policies of insurance required to be carried by Tenant under ARTICLE XIX for loss of or damage to the Leased Premises (other than Tenant's Business Interruption Policy) and any Landlord Casualty Proceeds, if any (collectively, the "**Casualty Proceeds**") shall be paid and delivered to Tenant, as follows and to be applied to the payment of the direct and out-of-pocket costs of the Casualty Repair Work:

(a) With respect to Casualty Proceeds other than Landlord Casualty Proceeds, Tenant shall be entitled to receive such Casualty Proceeds directly from the insurer; *provided, however*, that Tenant shall be required to deliver Notice to Landlord, executed by a Responsible Officer of Tenant, within fifteen (15) calendar days after Tenant's receipt of such Casualty Proceeds from the insurer stating that such Casualty Proceeds were advanced to Tenant by the insurer for payment of costs of Casualty Repair Work yet to be performed or that (x) such Casualty Proceeds represent amounts paid by Tenant for direct, out-of-pocket cost of Casualty Repair Work or which are then due and payable to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Casualty Repair Work,

giving a reasonably detailed description of the services and materials and the several amounts so paid or then due and (y) except for the amount stated in such Notice to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Casualty Repair Work known to the Persons signing such Notice which is then due to Persons being paid, after due inquiry; and

(b) With respect to Landlord Casualty Proceeds, Tenant shall be entitled to receive such Casualty Proceeds from Landlord no more frequently than once per month and within fifteen (15) calendar days after Tenant delivers a Notice to Landlord, executed by a Responsible Officer of Tenant, requesting such Casualty Proceeds and which Notice (x) states that such request represents amounts already paid by Tenant for direct, out-of-pocket cost of Casualty Repair Work or which are then due and payable to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Casualty Repair Work, (y) gives a reasonably detailed description of the services and materials and the several amounts so paid or then due and (z) states that except for the amount stated in such Notice to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Casualty Repair Work known to the Persons signing such Notice which is then due to Persons being paid, after due inquiry.

18.2.2 Disbursements of Excess Proceeds after Casualty Repair Work. If the Casualty Proceeds received by Tenant shall exceed the entire direct, out-of-pocket costs of the Casualty Repair Work, Tenant shall be entitled to retain any such excess Casualty Proceeds other than any Landlord Casualty Proceeds and only after Landlord has been furnished with reasonably satisfactory evidence that all Casualty Repair Work has been completed and that no Mechanic's Liens exist or may arise in connection with the Casualty Repair Work and after all Rent then due hereunder has been paid and after any Tenant Defaults hereunder have been cured.

18.2.3 Uninsured Losses/Policy Deductibles. As Casualty Repair Work progresses during the Term, Tenant shall be obligated to pay for all costs and expenses of any such Casualty Repair Work that are not covered by Casualty Proceeds or for which Casualty Proceeds are inadequate (collectively, "**Casualty Expenses**").

18.3 Abatement of Rent. In the event a Casualty occurs that materially interferes with Tenant's Business Operations at the Premises, as a whole, in accordance with the terms of this Lease, the following temporary adjustments will be made in the Rent payable during the period that commences on the date Tenant's Business Interruption Policy ceases to provide coverage to Tenant (other than any period during which a deductible is applicable) and ends on the earlier of (i) the date the relevant Casualty Repair Work is substantially complete, (ii) the Casualty or the related Casualty Repair Work no longer materially interferes with Tenant's Business Operations and (iii) the earliest date Tenant, acting as a Reasonable and Prudent Operator, should have caused Substantial Completion of the necessary Casualty Repair Work:

(a) Base Rent will be abated; and

(b) Participation Rent will be increased to be an amount equal to all Landlord's Participation Revenues.

In the event that Tenant shall fail to maintain in full force and effect Tenant's Business Interruption Policy at the time of a Casualty (and which provides coverage for the period after the occurrence of such Casualty) as required pursuant to the terms of this Lease, Tenant shall not be entitled to the foregoing adjustments in Rent until the date upon which Tenant's Business Interruption Policy, as required pursuant to the terms of this Lease, would have ceased to provide coverage to Tenant (other than any period during which a deductible would have been applicable) had Tenant in fact maintained same.

18.4 Option to Terminate.

18.4.1 Tenant's Right to Terminate.

(a) Subject to Section 18.4.1(b), in the event a Casualty occurs and:

(i) with respect to the Tenant Improvements (other than the Landlord Supported Improvements) only, it is reasonably determined by an independent contractor selected by Tenant that it will take longer than one (1) year from the commencement of the Casualty Repair Work to complete the Casualty Repair Work with respect to the Tenant Improvements (other than the Landlord Supported Improvements);

(ii) with respect to the Tenant Improvements (other than the Landlord Supported Improvements) only, a Casualty has occurred during the last two (2) Lease Years of the then existing Term and it is reasonably determined by an independent contractor selected by Tenant that the direct, out-of-pocket costs of the Casualty Repair Work with respect to the Tenant Improvements (other than the Landlord Supported Improvements) will exceed One Million and No/100 Dollars (\$1,000,000.00);

(iii) Landlord has (A) elected to not maintain in place a Landlord's Property Insurance Policy which affords coverage for the full replacement cost of the Existing Improvements (or Landlord Supported Improvements, as applicable) pursuant to Section 19.4 and has elected not to fund (having no obligation to do so) the amount of insurance proceeds that would have been received and the amount of the deductible that would have been payable with respect to such Casualty had Landlord maintained such a policy or (B) maintained in place a Landlord's Property Insurance Policy which affords coverage for the full replacement cost of the Existing Improvements (or Landlord Supported Improvements, as applicable) pursuant to Section 19.4 but has elected not to fund (having no obligation to do so) the amount of the deductible that is payable under such policy with respect to such Casualty;

(iv) with respect to the Existing Improvements (or Landlord Supported Improvements, as applicable) only, it is reasonably determined by an independent

contractor selected by Tenant that the cost of the Casualty Repair Work with respect to the Existing Improvements (or Landlord Supported Improvements, as applicable) will exceed Five Million and No/100 Dollars (\$5,000,000.00); or

(v) subject to Section 18.5.1, Tenant is unwilling to assume the risk that the Landlord Casualty Proceeds with respect to the Existing Improvements (or the Landlord Supported Improvements, as applicable), will be sufficient to perform the Casualty Repair Work with respect to same or that the insurance company from whom the Landlord Casualty Proceeds will be distributed is or will remain solvent;

then, in any such circumstance, Tenant may, at its option, exercised with reasonable promptness under the circumstances, but in all events within sixty (60) calendar days after such Casualty, terminate this Lease by serving Notice upon Landlord within such sixty (60) calendar day period setting forth Tenant's election to terminate this Lease as a result of such Casualty as of the end of the calendar month in which such Notice is received by Landlord. In such event, Tenant shall pay to Landlord, concurrently with the service of such Notice, all the Rent and other payments, including Impositions, which would otherwise have been payable up to the effective date of such termination. Upon the service of such Notice and the making of such payments within the period aforesaid, this Lease shall cease and terminate on the date specified in such Notice with the same force and effect as if such date were the date originally fixed as the Lease Expiration Date. In addition to Tenant's obligations under ARTICLE XXII, Tenant shall thereafter be obligated to demolish and remove all debris with respect to the Tenant Improvements (that are not Landlord Supported Improvements) which have been damaged by such Casualty in a manner consistent with Section 8.6.1, Section 9.3, and Section 9.4, if Landlord so requires, in its sole discretion. Failure by Tenant to terminate this Lease within the foregoing time period shall constitute an election by Tenant to keep this Lease in full force and effect, in which event Tenant shall commence to perform the Casualty Repair Work in accordance with the terms of this Lease.

(b) Notwithstanding anything to the contrary in Section 18.4.1(a), Tenant shall not have the right to terminate this Lease pursuant to Section 18.4.1(a) due to a Casualty occurring solely with respect to any New Tenant Improvements prior to the New Project Completion Date.

18.4.2 Landlord's Right to Terminate. In the event a Casualty occurs and it is reasonably determined by an independent contractor selected by Landlord that the cost of the Casualty Repair Work as to the Existing Improvements (or Landlord Supported Improvements, as applicable) will exceed Five Million and No/100 Dollars (\$5,000,000.00) or will take longer than eighteen (18) months from the date of the occurrence of the Casualty to complete the Casualty Repair Work with respect to the Existing Improvements (or the Landlord Supported Improvements, as applicable) then Landlord may, at its option, exercised with reasonable promptness under the circumstances, but in all events within sixty (60) calendar days after such Casualty, terminate this Lease by serving Notice upon Tenant within such sixty (60) calendar day period setting forth Landlord's election to terminate this Lease as a result of such Casualty

as of the end of the calendar month in which such Notice is received by Tenant. In such event, Tenant shall pay to Landlord, within thirty (30) calendar days of receipt of such Notice, all the Rent and other payments, including Impositions, which would otherwise have been payable up to the effective date of such termination. Upon the service of such Notice, this Lease shall cease and terminate on the date specified in such Notice with the same force and effect as if such date were the date originally fixed as the Lease Expiration Date. In addition to Tenant's obligations under ARTICLE XXII, Tenant shall thereafter be obligated to demolish and remove all debris with respect to the Tenant Improvements (that are not Landlord Supported Improvements) which have been damaged by such Casualty in a manner consistent with Section 8.6.1, Section 9.3, and Section 9.4, if Landlord so requires, in its sole discretion. Failure by Landlord to terminate this Lease within the foregoing time period shall constitute an election by Landlord to keep this Lease in full force and effect, in which event Tenant shall commence to perform the Casualty Repair Work in accordance with the terms of this Lease.

18.4.3 Payment of Rent Upon Termination. With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of any termination of this Lease as provided in Section 18.4.1 or Section 18.4.2, but which are not then capable of ascertainment, estimated amounts of such items shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimate as and when the same become determined.

18.4.4 Excess Proceeds Upon Termination. In the event this Lease is terminated pursuant to the provisions of Section 18.4.1 or Section 18.4.2 and the Project Improvements or any portion thereof are to be razed, Casualty Proceeds shall first be used to pay for demolition or debris removal resulting from the Casualty in question and shall be paid to Landlord, or to Tenant with respect to any demolition and debris removal that Tenant is required to undertake pursuant to the terms of this Lease, for that purpose, and all of the excess Casualty Proceeds, if any, payable in respect of such Casualty (the "**Excess Proceeds**") shall be payable to, and shall be applied as follows and in this order:

(a) *Project Improvements are Rebuilt.* In the event that Landlord elects to rebuild the Project Improvements located on the Leased Premises, (a) to Landlord, one hundred percent (100%) of the insurable replacement cost value of the Project Improvements (other than with respect to Tenant's Personal Property which is not an integral part of and used in connection with the maintenance or operation of the Project Improvements), (b) to Landlord, any unpaid Rent through the date of termination (and establishing a reasonable reserve to pay any that cannot then be determined), (c) to Landlord, to pay to release from the Premises and from any interest of Landlord hereunder any Mechanic's Liens and any other Encumbrances caused by Tenant or arising out of Casualty Repair Work performed with respect to the Premises by, or in satisfaction of any obligation of, Tenant hereunder, (d) to Landlord, any remaining Landlord Casualty Proceeds and (e) to Tenant any remaining Casualty Proceeds which are not Landlord Casualty Proceeds; *provided* that (i) in the event this Lease has been terminated at the election of Landlord pursuant to Section 18.4.2, clause (a) above shall exclude any Casualty Proceeds with respect to, but only to the extent of, the unamortized portion of the

Tenant Improvements or any Additional Improvements (with such amortization being calculated from the date of expenditure and over the remaining Term) and (ii) Tenant shall be entitled to request from Landlord, but no more frequently than once per calendar month, an accounting of Landlord's expenditures with respect to any Casualty Proceeds which are not Landlord Casualty Proceeds.

(b) *Project Improvements are Not Rebuilt.* In the event that Landlord does not elect to rebuild the Project Improvements located on the Leased Premises, (a) to Landlord, any unpaid Rent through the date of termination (and establishing a reasonable reserve to pay any that cannot then be determined), (b) to Landlord, to pay to release from the Premises and from any interest of Landlord hereunder any Mechanic's Liens and any other Encumbrances caused by Tenant or arising out of Casualty Repair Work performed with respect to the Premises by, or in satisfaction of any obligation of, Tenant hereunder, (c) to Landlord, any remaining Casualty Proceeds which are Landlord Casualty Proceeds and (d) to Tenant any remaining Casualty Proceeds which are not Landlord Casualty Proceeds.

18.5 Landlord Right to Perform and Fund Casualty Repair Work.

18.5.1 Landlord Right to Perform Casualty Repair Work. Notwithstanding anything herein to the contrary, to the extent that (i) it is reasonably determined by an independent contractor selected by Landlord that the cost of the Casualty Repair Work as to the Existing Improvements (or Landlord Supported Improvements, as applicable) will exceed Five Million and No/100 Dollars (\$5,000,000.00), then Landlord may, at its option but without any obligation and by delivering Notice to Tenant of such election within forty-five (45) calendar days of the occurrence of the Casualty in question, elect to perform any Casualty Repair Work with respect to all or any part of the Existing Improvements (or the Landlord Supported Improvements, as applicable) and (ii) Tenant has delivered a Notice of termination to Landlord pursuant to Section 18.4.1 solely as a result of Tenant being unwilling to assume the risk that the Landlord Casualty Proceeds with respect to the Existing Improvements (or the Landlord Supported Improvements, as applicable) will be sufficient to perform the Casualty Repair Work or that the insurance company from whom the Landlord Casualty Proceeds will be distributed is or will remain solvent, then Landlord may, at its option but without any obligation and by delivering Notice to Tenant of such election within forty-five (45) calendar days after receipt of Tenant's Notice of termination, elect to perform the Casualty Repair Work with respect to the Existing Improvements (or the Landlord Supported Improvements, as applicable) and in such circumstance Tenant's Notice of termination shall be deemed to be void and of no force and effect and Tenant shall no longer have a right of termination with respect to such Casualty. In the event, and only in the event, that Landlord shall so elect to perform any Casualty Repair Work with respect to all or any part of the Existing Improvements (or the Landlord Supported Improvements, as applicable), (i) Tenant's obligations under this ARTICLE XVIII with respect to undertaking Casualty Repair Work shall be limited to the Casualty Repair Work that Landlord has not elected to perform and Tenant shall not be entitled to receive any Landlord Casualty Proceeds with respect to Casualty Repair Work that Landlord has elected to undertake and (ii) Landlord shall restore the Existing Improvements (or the Landlord Supported Improvements, as applicable), in question to their condition prior to

such Casualty and shall cause such Casualty Repair Work with respect to same to be (a) prosecuted with due diligence and with all reasonable dispatch, (b) constructed and performed in a good an workmanlike manner in accordance with the standard construction practice for construction of improvements similar to the Improvements in question or the performance of the work in question, (c) constructed and performed in compliance with Applicable Law and (d) completed free of any Liens.

18.5.2 Landlord's Right to Fund. Notwithstanding anything herein to the contrary, Landlord shall have the option, but not the obligation, by delivering Notice to Tenant within forty-five (45) calendar days of the occurrence of a Casualty to (i) in the event that Landlord has elected to not maintain a Landlord's Property Insurance Policy which affords coverage for the full replacement cost of the Existing Improvements (or the Landlord Supported Improvements, as applicable), pursuant to Section 19.4, to fund the amount of insurance proceeds that would have been received with respect to such Casualty had Landlord maintained such a policy and the amount of any deductible that would have been payable with respect to such Casualty under such policy or (ii) in the event that Landlord has elected to maintain a Landlord's Property Insurance Policy which affords coverage for the full replacement cost of the Existing Improvements (or the Landlord Supported Improvements, as applicable), pursuant to Section 19.4, to fund the amount of the deductible that would have been payable with respect to such Casualty under such policy (along with any proceeds of Landlord's Property Insurance Policy), such amounts being referred to herein as the "**Landlord Casualty Proceeds.**"

ARTICLE XIX

INSURANCE AND INDEMNIFICATION

19.1 Policies Required.

19.1.1 Policies Required During Construction of Projects Improvements Work.

(a) *Builder's Risk Policies for New Tenant Improvements Work.* Prior to the commencement of any New Tenant Improvements Work and at all times during the performance of such New Tenant Improvements Work and for so long after the completion thereof that (i) the Project Contractor or any of Tenant's other contractors or subcontractors has not been paid in full with respect to the New Tenant Improvements Work, (ii) any Person has any repair obligations with respect to the New Tenant Improvements Work, Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "**Builder's Risk Policies for New Tenant Improvements Work**") affording coverage of such New Tenant Improvements Work, whether permanent or temporary, and all Insured Materials and Equipment and Contractors' Equipment related thereto and the New Tenant Improvements, against loss or damage due to Insured Casualty Risks by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time in San Antonio, Bexar County, Texas. The Builder's Risk Policies for

New Tenant Improvements Work shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of the New Tenant Improvements, and the cost of the New Tenant Improvements Work, using a completed value form (with permission to occupy upon completion of work or occupancy), naming Tenant as the insured and Landlord Insured as additional insureds, and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms; *provided, however*, that, in the case of demolition and debris removal coverage, Tenant shall carry coverage in not less than the full amount necessary to demolish the New Tenant Improvements, and to remove all debris that may exist after the occurrence of any Insured Casualty Risks. The Builder's Risk Policies for New Tenant Improvements Work shall also provide for reimbursement to the City for any City services expended or expenses incurred as a result of any loss due to any Insured Casualty Risks.

(b) *Auto Policies for New Tenant Improvements Work.* In the event any vehicles are to be used in connection with any New Tenant Improvements Work by the Project Contractor and Tenant's other contractors and subcontractors, prior to the commencement of the use of such vehicles in connection with such New Tenant Improvements Work, and at all times during such use through completion of such use, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain business automobile liability insurance policies (the "**Auto Policies for New Tenant Improvements Work**") covering all vehicles, whether owned or non-owned and hired or borrowed vehicles, used in connection with the New Tenant Improvements Work, naming Landlord Insured as additional insureds, affording protection against liability for bodily injury and death and/or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. In addition to the Auto Policies for New Tenant Improvements Work described above, in the event any Hazardous Materials will be transported, loaded or unloaded by the Project Contractor or Tenant's other contractors or subcontractors, prior to such transport, loading or unloading, and at all times during such transport, loading or unloading through completion thereof, Tenant shall cause the relevant contractor or subcontractor to obtain, keep and maintain in its Auto Policies for New Tenant Improvements Work a motor trucker or carrier pollution endorsement related to claims arising out of the transporting and loading or unloading of such Hazardous Materials.

(c) *Workers' Compensation Policies for New Tenant Improvements Work.* Prior to the commencement of any New Tenant Improvements Work and at all times during the performance of such New Tenant Improvements Work, and for so long after

the completion thereof that any Person has any repair obligations with respect to such New Tenant Improvements Work, in addition to Tenant's Workers' Compensation Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain workers' compensation insurance policies and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by the Project Contractor and Tenant's other contractors and subcontractors in connection with the New Tenant Improvements Work, and employers liability insurance policies with respect to same which afford protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Commercial General Liability Policy for New Tenant Improvements Work.* Prior to commencement of any New Tenant Improvements Work and at all times during the performance of such New Tenant Improvements Work, and for so long after the completion thereof that any Person has any repair obligations with respect to such New Tenant Improvements Work, in addition to Tenant's GL Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain keep and maintain a commercial general liability insurance policy ("**GL Policy for New Tenant Improvements Work**"), written on an occurrence basis and limited to the New Tenant Improvements Work, and the Premises naming such contractor or subcontractor as the insured and Tenant and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death and/or property damage occurring, in, upon or about the Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Premises and containing provisions for severability of interests. The GL Policy for New Tenant Improvements Work shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain the Excess/Umbrella Policy for New Tenant Improvements Work without gaps in coverage between the GL Policy for New Tenant Improvements Work and the Excess/Umbrella Policy for New Tenant Improvements Work (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy for New Tenant Improvements Work shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse

and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) [reserved], (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and endorsement providing for protection from pollution liability and providing for related clean-up of the Premises and any affected adjacent property.

(e) *Excess/Umbrella Policy for New Tenant Improvements Work.* Prior to the commencement of any New Tenant Improvements Work and at all times during the performance of such New Tenant Improvements Work, and for so long after the completion thereof that any Person has any repair obligations with respect to such New Tenant Improvements Work, in addition to Tenant's Excess/Umbrella Policies, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain an excess or umbrella liability insurance policy ("**Excess/Umbrella Policy for New Tenant Improvements Work**"), written on an occurrence basis, in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Tenant as insured and Landlord Insured as additional insureds.

(f) *Aviation Policies.* In the event any fixed or rotary wing aircraft is to be used in connection with any New Tenant Improvements Work by the Project Contractor or Tenant's other contractors and subcontractors, prior to the commencement of the use of such aircraft in connection with such New Tenant Improvements Work, as applicable, and at all times during such use through completion of such use, Tenant shall cause such Project Contractor and Tenant's other contractors or subcontractors, as the case may be, to obtain, keep and maintain aviation insurance policies, written on an occurrence basis naming Tenant as the insured and Landlord Insured as an additional insureds and which contain a waiver of hull damage in favor of Landlord Insured, affording protection of not less than Ten Million and No/100 Dollars (\$10,000,000.00).

(g) *Inland Marine Policies.* In the event any machinery, tools or equipment are to be used in connection with any New Tenant Improvements Work by the Contractor or Tenant's other contractors and subcontractors, and such machinery, tools or equipment are not or is not fully insured under the Builder's Risk Policies for New Tenant Improvements Work, then prior to the commencement of the use of any such machinery, tools or equipment in connection with any New Tenant Improvements Work, and at all times during such use through completion of such use, Tenant shall obtain, keep and maintain or cause to be obtained, kept and maintained inland marine insurance policies in amounts sufficient to protect such machinery, tools or equipment.

(h) *Additional Insurance.* Prior to the commencement of any New Tenant Improvements Work and at all times during the performance of such New Tenant Improvements Work, and for so long after the completion thereof that any Person has any

repair obligations with respect to such New Tenant Improvements Work, Tenant shall, or shall cause the Project Contractor and Tenant's other contractors and subcontractors to, obtain, keep, and maintain (i) such other and additional insurance as is, from time to time, required by all Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall, at the election of Landlord, name Landlord as loss payee or Landlord Insured as additional insureds in a manner consistent with their being named loss payees or additional insureds in the policies required above in this Section 19.1.1 and shall comply with all applicable requirements set forth in Section 19.4.

19.1.2 Property Insurance Policy. Commencing on the date when Tenant acquires such care, control or custody over any portion of the Project Improvements such that the insurance policies required under Section 19.1.1 and Section 19.1.3 are inadequate to protect the insurable interests therein of Tenant and Landlord (and in all respects no later than Substantial Completion of New Tenant Improvements Work, or Material Additional Work, as applicable), and at all times during the remainder of the Term, Tenant shall, at its sole cost and expense, obtain, keep, and maintain a special form (formerly "all risk") property insurance policy (the "**Property Insurance Policy**") providing for coverage of the Tenant Improvements (other than the Landlord Supported Improvements), the Donated Property, any Additional Improvements (other than to the extent constituting Existing Improvements or Landlord Supported Improvements) and Tenant's Personal Property against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time available in San Antonio, Bexar County, Texas, and affording coverage for, among other things, demolition and debris removal, losses from malicious acts of any employee or agent of an insured and terrorism, naming Tenant as the first named insured and Landlord as loss payee for a sum at least equal to one hundred percent (100%) of the insurable replacement cost of the Tenant Improvements (other than the Landlord Supported Improvements), the Donated Property, any Additional Improvements (other than to the extent constituting Existing Improvements or Landlord Supported Improvements) and Tenant's Personal Property (without reduction for physical depreciation or obsolescence), and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms. The Property Insurance Policy shall also include an agreed amount clause or waiver of coinsurance and shall not contain any exclusion for freezing, mechanical breakdown, loss or damage covered under any guarantee or warranty or any exclusion for resultant damage caused by faulty workmanship, design or materials.

19.1.3 Policies Required During Construction of Additional Improvements Work.

(a) *Builder's Risk Policy for Additional Work.* In the event the reasonably anticipated total cost of any Additional Work (calculated so as to include all sums payable

under any Material Additional Work Construction Contracts related thereto) is equal to or exceeds Fifty Thousand and No/100 Dollars (\$50,000.00), then prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that (i) the Material Additional Work Construction Contractor or any of Tenant's other contractors and subcontractors has not been paid in full in respect to the Additional Work and (ii) any Person has any repair obligations with respect to such Additional Work, Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "**Builder's Risk Policies for Additional Work**") affording coverage of all Additional Work, whether permanent or temporary, and all Insured Materials and Equipment and Contractors' Equipment related thereto against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time with respect to similar work in San Antonio, Bexar County, Texas. The Builder's Risk Policies for Additional Work shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the cost of the Additional Work, using a completed value form (with permission to occupy upon completion of work or occupancy), naming Tenant as the insured and Landlord Insured as additional insureds, with replacement cost coverage in an amount designated by Tenant, subject to the Approval of the Landlord Representative, and with any deductible not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms; *provided, however*, that, in the case of demolition and debris removal coverage, Tenant shall carry coverage in not less than the full amount necessary to demolish the Additional Work and to remove all debris that may exist after any Insured Casualty Risks. The Builder's Risk Policies for Additional Work shall also provide for reimbursement to the City for any City services expended or expenses incurred as a result of any loss due to any Insured Casualty Risks.

(b) *Auto Policies for Additional Work.* In the event any vehicles are to be used in connection with any Additional Work by the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors, prior to the commencement of the use of such vehicles in connection with such Additional Work, and at all times during such use through completion of such use, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain business automobile liability insurance policies (the "**Auto Policies for Additional Work**") covering all vehicles, whether owned, non-owned and hired or borrowed vehicles, used in connection with the Additional Work, naming Landlord Insured as additional insureds, affording protection against liability for bodily injury and death and/or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be

entitled to maintain the retention that is available on commercially reasonable terms. In the event any Hazardous Materials will be transported, loaded or unloaded by the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, prior to such transport, loading or unloading, and at all times during such transport, loading or unloading through completion thereof, Tenant shall cause the relevant contractor or subcontractor to obtain, keep and maintain in its Auto Policies for Additional Work a motor trucker or carrier pollution endorsement related to claims arising out of the transporting and loading or unloading of such Hazardous Materials.

(c) *Workers' Compensation Policies for Additional Work.* Prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, in addition to Tenant's Workers Compensation Policy, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain workers' compensation insurance policies and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors in connection with the Additional Work and employers liability insurance policies with respect to same which afford protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Commercial General Liability Policy for Additional Work.* Prior to commencement of any Additional Work and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, in addition to Tenant's GL Policy, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain keep and maintain a commercial general liability insurance policy ("**GL Policy for Additional Work**"), written on an occurrence basis and limited to the Additional Work and the Premises, naming such contractor or subcontractor as the insured and Tenant and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death or property damage occurring, in, upon or about the Additional Work or the Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Additional Work, the Premises, or the Improvements and containing provisions for severability of interests. The GL Policy for Additional Work shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain the Excess/Umbrella Policy for Additional Work

without gaps in coverage between the GL Policy for Additional Work and the Excess/Umbrella Policy for Additional Work (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy for Additional Work shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) [reserved], (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and endorsement providing for protection from pollution liability and providing for related clean-up of the Premises and any affected adjacent property.

(e) *Excess/Umbrella Policy for Additional Work.* Prior to the commencement of any Additional Work and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, in addition to Tenant's Excess/Umbrella Policies, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain an excess or umbrella liability insurance policy ("**Excess/Umbrella Policy for Additional Work**"), written on an occurrence basis, in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Tenant as insured and Landlord Insured as additional insureds.

(f) *Aviation Policies for Additional Work.* In the event any fixed or rotary wing aircraft is to be used in connection with any Additional Work by the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, prior to the commencement of the use of such aircraft in connection with such Additional Work, and at all times during such use through completion of such use, Tenant shall cause such Material Additional Work Construction Contractor and Tenant's other contractors or subcontractors, as the case may be, to obtain, keep and maintain aviation insurance policies, written on an occurrence basis naming Tenant as the insured and Landlord Insured as additional insureds and which contain a waiver of hull damage in favor of Landlord Insured, affording protection of not less than Ten Million and No/100 Dollars (\$10,000,000.00).

(g) *Inland Marine Policies for Additional Work.* In the event any machinery, tools or equipment are to be used in connection with any Additional Work by the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, and such machinery, tools or equipment are not or is not fully insured under the Builder's Risk Policies for Additional Work, then prior to the commencement of the use of any such machinery, tools or equipment in connection with any Additional Work, and at all times during such use through completion of such use, Tenant shall obtain, keep and maintain or cause to be obtained, kept and maintained inland marine insurance policies in amounts sufficient to protect such machinery, tools or equipment.

(h) *Additional Insurance.* Prior to the commencement of any Additional Work, whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Additional Work, Tenant shall cause the Material Additional Work Construction Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain (i) such other and additional insurance as is, from time to time, required by all Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall name Landlord as loss payee or Landlord Insured as additional insureds in a manner consistent with their being named loss payees or additional insured in the policies required above in this Section 19.1.3 and shall comply with all other requirements set forth in Section 19.4.

19.1.4 Policies Required by Tenant During the Term. Commencing on the commencement of the Term (unless otherwise provided below), and at all times during the remainder of the Term and continuing thereafter until Tenant has fulfilled all of its obligations under ARTICLE XXII (unless otherwise provided below), Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, the following insurance policies:

(a) *Commercial General Liability Policy.* A commercial general liability insurance policy ("**Tenant's GL Policy**"), written on an occurrence basis and limited to the Premises, naming Tenant as the named insured (with the effect that Tenant and its employees are covered) and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death or property damage occurring, in, upon or about the Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Premises and containing provisions for severability of interests. Tenant's GL Policy must specifically include host legal liquor liability and dram shop liability coverage; premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable; owners' and contractors' protective coverage; blanket contractual coverage; personal injury and advertising injury; broad form property damage coverage (including fire legal); incidental medical malpractice liability; broad form contractual liability; products/completed operations; independent contractors; cross liability endorsement and hoists and elevators or escalators, if exposure exists. Tenant's GL Policy shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard

and are adequate to maintain Tenant's Excess/Umbrella Policies without gaps in coverage between Tenant's GL Policy and Tenant's Excess/Umbrella Policies (but not less than \$5,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$5,000,000 completed operations aggregate, \$5,000,000 general aggregate, \$5,000 medical payments and \$250,000 fire legal liability) and (ii) the self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) [reserved], (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and endorsement providing for protection from pollution liability and providing for related clean-up of the Premises and any affected adjacent property.

(b) *Auto Policy.* A business automobile liability insurance policy ("**Tenant's Auto Policy**") covering all vehicles, whether owned, non-owned and hired or borrowed vehicles, used in connection with the construction, maintenance or operation of the Premises, naming Tenant as the insured and Landlord Insured as additional insureds, affording protection against liability for bodily injury and death or for property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms.

(c) *Workers' Compensation Policy.* A workers' compensation insurance policy and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage under the laws of the State of Texas for all Persons employed by Tenant in connection with the Premises and employers liability insurance policy (collectively, the "**Tenant's Workers' Compensation Policy**") affording protection of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Excess/Umbrella Policies.* An excess or umbrella liability insurance policies (**“Tenant’s Excess/Umbrella Policies”**), written on an occurrence basis, in an amount not less than (i) Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death or property damage liability combined, and (ii) Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for hazard and casualty coverage, such policies to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies.

(e) *Business Interruption Policy.* Commencing on the first date that Tenant is required to obtain a Property Insurance Policy, a business interruption insurance policy or, alternatively, sub-limit coverage under the Property Insurance Policy (the **“Tenant’s Business Interruption Policy”**) that is in an amount sufficient to cover one hundred percent (100%) of continuing normal operating expenses (including all Rent payable under this Lease, all debt service and payroll) naming Tenant as the insured and containing a deductible that meets the Insurance Standard.

(f) *Commercial Crime Policy.* A commercial crime insurance policy (**“Tenant’s Crime Policy”**) insuring against employee dishonesty, forgery or alteration, robbery (inside and outside) and computer fraud, naming Tenant as the insured and the Landlord as loss payees.

(g) *Special Policies for Contractor Engaged in Pollution or Hazardous Materials Related Activities.* At any time during the Term, in the event any Project Contractor, any Material Additional Work Construction Contractor or any other of Tenant’s other contractors and subcontractors is to remove and/or dispose of any Hazardous Materials from in, upon or about the Premises, then prior to the commencement of such removal and disposal, and at all times during such removal and disposal through completion thereof, Tenant shall cause to be obtained, kept and maintained, as a minimum, a pollution or environmental impairment liability insurance policy written on a claims made basis, that names Tenant as the insured and Landlord as additional insureds, insuring against liability for bodily injury and death or for property damage occurring in, upon or about the Premises as a result of the removal and disposal of any Hazardous Materials in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit per occurrence.

(h) *Employment Practices Liability Policy.* An employment practices liability insurance policy in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and in the aggregate, naming Tenant as the insured and Landlord Insured as additional insureds, with a self-insured retention not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms, and affording protection against liability arising out of, and indemnification for, claims or losses incurred from wrongful employment-related acts or practices by Tenant or any other operator of the Premises,

including violation of any Applicable Law regarding employment practices, resulting from, or in connection with, the employment of Persons for the construction, use, operation or occupancy of the Premises and containing provisions for severability of interests.

(i) *Additional Insurance.* In addition to all insurance policies and coverage required above in this Section 19.1, Tenant covenants, at its sole cost and expense, commencing on the Effective Date and at all times necessary during the Term and through the date Tenant has fulfilled its obligations under ARTICLE XXII, to obtain, keep and maintain or cause to be obtained, kept and maintained, all other additional insurance policies on the Premises, as they exist at all times from time to time (i) as required by Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall name Landlord as loss payees or and Landlord Insured as additional insureds in a manner consistent with their being named loss payees or additional insured in the policies required above in this Section 19.1.3 and shall comply with all other requirements set forth in Section 19.4.

19.1.5 Adjustments in Policies. Without limiting the other provisions of this Lease with respect to policy limits and coverage, Tenant covenants and agrees that at least every five (5) years during the Term, Tenant will review the policies that is required to carry pursuant to the terms of this Lease to insure that same meet the Insurance Standard. Upon completion of such analysis and review, Tenant shall deliver a Notice to Landlord which has been certified by a Responsible Officer of Tenant stating the results of such analysis and review and any adjustments to the policy limits, deductibles and coverages so as to meet the Insurance Standard.

19.2 Blanket or Master Policy. Any one or more of the types of insurance coverages required in Section 19.1 (except GL Policy for New Tenant Improvements Work, GL Policy for Additional Work and Tenant's GL Policy, which shall be site specific to the Premises) may be obtained, kept and maintained through a blanket or master policy or excess/umbrella policies insuring other entities (such as Guarantor or Affiliates of Tenant), *provided* that (a) such blanket or master policy or excess/umbrella policies and the coverage effected thereby comply with all applicable requirements of this Lease and (b) the protection afforded under such blanket or master policy or excess/umbrella policies shall be no less than that which would have been afforded under a separate policy or policies relating only to the Premises. If any excess or umbrella liability insurance coverage required pursuant hereto is subject to an aggregate annual limit and is maintained through such blanket or master policy, and if such aggregate annual limit is impaired as a result of claims actually paid by more than fifty percent (50%), Tenant shall immediately give Notice thereof to Landlord and, within sixty (60) calendar days after discovery of such impairment, to the fullest extent reasonably possible, cause such limit to be restored by purchasing additional coverage.

19.3 Failure to Maintain.

19.3.1 Landlord May Procure Insurance. If at any time and for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver to Landlord proof of,

any of the insurance required under Section 19.1 and such failure continues for twenty (20) calendar days after Notice thereof from Landlord to Tenant, Landlord may, but shall have no obligation to, procure single interest insurance for such risks covering Landlord Insured (or, if no more expensive, the insurance required by this Lease), and Tenant shall, within twenty (20) calendar days following Landlord's demand and Notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment of Landlord in full by Tenant.

19.3.2 Work Stoppage. If any time prior to the commencement of, or during, any Construction Work for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver the Landlord proof of, any of the insurance required hereunder, Landlord shall have the right to deliver Notice to Tenant of such failure and in the event that Tenant shall have failed to cure such failure within five (5) calendar days of delivery of such Notice, order Tenant, the Project Contractor, the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, as applicable, to stop such Construction Work until such time that the insurance policies required hereunder shall have been obtained, and proof furnished to Landlord that such policies are in full force and effect.

19.4 Landlord's Insurance Requirements. Landlord shall, at its sole cost and expense, obtain, keep and maintain a special form (formerly "all risk") property insurance policy ("**Landlord's Property Insurance Policy**") providing for coverage for the Existing Improvements and the Landlord Supported Improvements against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms to Landlord from time to time available in San Antonio, Bexar County, Texas, and affording coverage for, among other things, demolition and debris removal for one hundred percent (100%) of the insurable replacement cost of the Existing Improvements and the Landlord Supported Improvements, and with any deductible not exceeding Five Hundred Thousand and No/100 Dollars (\$500,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Landlord shall be entitled to maintain the deductible that is available on commercially reasonable terms; *provided, however*, that, notwithstanding the foregoing or anything herein to the contrary, in the event that Landlord determines, in its sole judgment, that it is not commercially reasonable to carry Landlord's Property Insurance Policy as required pursuant to this Section 19.4 (whether in whole or with respect to the coverage, deductibles or limits), then Landlord shall be relieved of its obligation hereunder to so carry Landlord's Property Insurance Policy and such shall not constitute a Landlord Default under this Lease.

19.5 Additional Policy Requirements.

19.5.1 Approval of Insurers; Certificate and Other Requirements.

(a) All insurance policies required to be carried by Tenant pursuant to the terms of this Lease shall be effected under valid policies issued by insurers Approved by the Landlord Representative, such Approval not to be unreasonably withheld, and which have an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of

not less than "VIII". Landlord's Property Insurance Policy shall be effected under valid policies by an insurer authorized to do business in the State of Texas and which have an Alfred M. Best Company, Inc. rating of "B+" or better and a financial size category of not less than "VII". In the event that Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time.

(b) Each and every insurance policy required to be carried by Tenant pursuant to this Lease in which Landlord is named as loss payee or Landlord Insured as additional insureds in accordance with the terms of this Lease shall (i) contain an endorsement to the effect that the "other insurance" clause which may appear therein is not applicable to Landlord Insured, (ii) join Landlord as loss payee and Landlord Insured as additional insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of the Landlord or Landlord Insured, as applicable;

(c) Each and every insurance policy required to be carried by or on behalf of Tenant pursuant to this Lease shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless Landlord shall have received Notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for Notice of cancellation due to non-payment of premiums) such Notice to be sent to Landlord not less than thirty (30) calendar days (or the maximum period of days permitted under Applicable Law, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. In the event any insurance policy required to be carried by or on behalf of Tenant pursuant to this Lease is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the Notice shall be sent to Landlord on the earliest possible date but in no event less than ten (10) calendar days prior to the effective date of such cancellation. In the event that Landlord's Property Insurance Policy is canceled or not renewed, Landlord shall send Notice of same to Tenant as soon as reasonably practicable after such cancellation or non-renewal.

(d) Except as otherwise provided for herein, each and every insurance policy required to be carried by either Party pursuant to this Lease shall provide that the policy is primary and that any other insurance of any insured or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing. Each of said insurance policies shall also provide that any loss shall be payable in accordance with the terms of such policy notwithstanding any action, inaction or negligence of the insured or of any other Person (including Tenant or Landlord Insured) which might otherwise result in a diminution or loss of coverage, including "breach of warranty", and the respective interests of Tenant and Landlord Insured shall be insured

regardless of any breach or violation by Tenant, Landlord Insured or any other Person of any warranty, declaration or condition contained in or with regard to such insurance policies.

(e) Tenant shall require all subcontractors performing any of the Construction Work to carry insurance naming Landlord Insured as an additional insured and otherwise complying with the requirements of Section 19.1 of this Lease; *provided, however*, the amount and type of such subcontractor's insurance must be commensurate with the amount and type of the subcontract, but in no case less than what would be required by a Reasonable and Prudent Developer or a Reasonable and Prudent Operator, as applicable. Tenant shall provide copies of all such subcontractor policies to Landlord.

(f) Tenant shall comply in all material respects with all rules, orders, regulations and requirements of the Board of Fire Underwriters or any other similar body having jurisdiction, in the case of fire insurance policies.

19.5.2 Delivery of Evidence of Insurance. With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Lease, on or before the date on which each such policy is required to be first obtained and at least thirty (30) calendar days before the expiration of any policy required hereunder previously obtained, the Party required to obtain, keep or maintain such policy shall deliver evidence reasonably acceptable to the other Party showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 27 form) issued by a Responsible Officer of the issuer of such policies, or in the alternative, a Responsible Officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, endorsements, term and termination provisions thereon and confirmation that the required premiums have been paid, and, in the case of Tenant only, along with a similar certificate executed by a Responsible Officer of Tenant.

19.5.3 Waiver of Right of Recovery. To the extent permitted by Applicable Law, and without affecting the insurance coverages required to be maintained hereunder, Landlord and Tenant each waive all rights of recovery, claim, action or cause of action against the other for any damage to Property, and release each other for same, to the extent that such damage (i) is covered (and only to the extent of such coverage without regard to deductibles) by insurance actually carried by the Party holding or asserting such Claim or (ii) would be insured against under the terms of any insurance required to be carried under this Lease by the Party holding or asserting such Claim (for purposes of this Section 19.5.3 and with respect to Landlord only, as if Landlord were required to maintain Landlord's Property Insurance Policy under this Lease). This provision is intended to restrict each Party (if and to the extent permitted by Applicable Law) to recovery against insurance carriers to the extent of such coverage and to waive (to the extent of such coverage), for the benefit of each Party, rights or claims which might give rise to a right of subrogation in any insurance carrier. Neither the issuance of any insurance policy required under, or the minimum limits specified herein shall be deemed to limit or restrict in any way

either Party's liability arising under or out of this Lease pursuant to the terms hereof. Tenant shall be liable for any losses, damages or liabilities suffered or incurred by Landlord Insured as a result of Tenant's failure to obtain, keep and maintain or cause to be obtained, kept and maintained, the types or amounts of insurance required under the terms of this Lease.

19.5.4 Landlord as Additional Insured under Liability Insurance of Subtenants. Tenant shall require that all Subtenants name Landlord Insured as an additional insured under their respective policies of liability insurance.

19.6 General Obligations with Respect to Policies. The Parties hereby agree as follows:

(a) To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained pursuant to this Lease

(b) To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;

(c) To ensure that all Casualty Proceeds (other than in respect of any insurance proceeds to be paid out in settlement of claims and respect of third Person liability) are paid to the Party entitled to receive same pursuant to the terms of this Lease, including, Section 18.4.4;

(d) Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Lease to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

(e) Promptly deliver Notice to the other Party of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

19.7 Proceeds of Insurance. Casualty Proceeds shall be payable in accordance with the provisions of ARTICLE XVIII.

19.8 Indemnity by Tenant.

19.8.1 Agreement to Indemnify. **SUBJECT TO SECTION 19.5.3 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT TO THE EXTENT SPECIFICALLY EXCLUDED HEREFROM PURSUANT TO SECTION 19.8.2, TENANT HEREBY AGREES AND COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD AND THE LANDLORD INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND**

LIABILITIES OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR SICKNESS OR DEATH OF ANY PERSON, OR FOR LOSS OR DAMAGE TO ANY PROPERTY (INCLUDING CLAIMS RELATING TO HAZARDOUS MATERIALS AND ENVIRONMENTAL CLAIMS) OR FOR ANY OTHER LOSS, LIABILITY OR DAMAGE, INCLUDING ANY CIVIL OR CRIMINAL FINES OR PENALTIES, DIRECTLY OR INDIRECTLY ARISING OR ALLEGED TO ARISE OUT OF OR ANY WAY INCIDENTAL TO (a) ANY USE, OCCUPANCY OR OPERATION OF THE PREMISES BY OR ON BEHALF OF TENANT, ANY OF ITS RELATED PARTIES OR ANY INVITEE OR GUEST OF TENANT OR ANY OF ITS RELATED PARTIES DURING THE TERM OR DURING ANY PERIOD OF TIME, IF ANY, BEFORE OR AFTER THE TERM THAT TENANT MAY HAVE HAD POSSESSION OF THE PREMISES, (b) ANY BREACH OF THE TERMS AND CONDITIONS OF THIS LEASE BY TENANT OR ANY OF ITS RELATED PARTIES OR ANY FAILURE BY TENANT TO PAY OR PERFORM ANY OF ITS OBLIGATIONS UNDER THIS LEASE, (c) ANY ENVIRONMENTAL EVENT WHICH IS REQUIRED TO BE COVERED BY TENANT'S REMEDIAL WORK, INCLUDING THIRD PERSON CLAIMS AND FINES OR PENALTIES BY ANY GOVERNMENTAL AUTHORITY RELATED TO ANY SUCH ENVIRONMENTAL EVENT, AND (d) ANY ACT OR OMISSION OF TENANT, GUARANTOR OR ANY PERSON RELATED TO ANY OF THE FOREGOING (COLLECTIVELY, THE "LIABILITIES"). THE FOREGOING INDEMNITY INCLUDES TENANT'S AGREEMENT TO PAY ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY LANDLORD OR ANY LANDLORD INDEMNITEE. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. ALTHOUGH TENANT HAS CAUSED LANDLORD AND LANDLORD INSURED TO BE NAMED AS LOSS PAYEES OR ADDITIONAL INSURED UNDER TENANT'S INSURANCE POLICIES, TENANT'S LIABILITY UNDER THIS INDEMNIFICATION PROVISION SHALL NOT BE LIMITED TO THE LIABILITY LIMITS SET FORTH IN SUCH POLICIES.

19.8.2 Exclusions. TO THE EXTENT ANY OF THE LIABILITIES FOR WHICH TENANT IS OBLIGATED TO INDEMNIFY LANDLORD AND LANDLORD INDEMNITEES PURSUANT TO SECTION 19.8.1 ARE CAUSED BY ANY OF THE FOLLOWING, SUCH LIABILITIES SHALL NOT BE COVERED BY SUCH INDEMNITY:

(a) ANY INJURY TO OR DEATH OF ANY INDIVIDUAL OR ANY PHYSICAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO

THE EXTENT, AND ONLY TO THE EXTENT, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY LANDLORD INDEMNITEE;

(b) LANDLORD'S OR LANDLORD INDEMNITEES' BREACH OF LANDLORD'S EXPRESS OBLIGATIONS UNDER THIS LEASE; OR

(c) AN ENVIRONMENTAL EVENT REQUIRED TO BE COVERED BY LANDLORD'S REMEDIAL WORK, INCLUDING THIRD PERSON CLAIMS AND FINES AND PENALTIES BY ANY GOVERNMENTAL AUTHORITY RELATED TO ANY SUCH ENVIRONMENTAL EVENT.

19.8.3 Conduct of Claims. Landlord shall, reasonably promptly after the receipt of written notice of any Action or Proceeding or claim against Landlord or Landlord Indemnitees in respect of which indemnification may be sought pursuant to this Section 19.8, notify Tenant of such Action or Proceeding or claim. In case any such Action or Proceeding or claim shall be made or brought against Landlord or Landlord Indemnitees, Tenant may, or if so requested by Landlord shall, assume the defense thereof with counsel of its selection reasonably acceptable to Landlord and which shall be reasonably competent and experienced to defend Landlord. In such circumstances, Landlord and Landlord Indemnitees shall (i) at no cost or expense to Landlord, cooperate with Tenant and provide Tenant with such information and assistance as Tenant shall reasonably request in connection with such Action or Proceeding or claim, and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice in any such action or with respect to any such claim. If Tenant assumes the defense of the relevant claim or action, (i) Tenant shall not be liable for any settlement thereof which is made without its Approval and (ii) Tenant shall control the settlement of such claim or action; *provided, however,* that Tenant shall not conclude any settlement which requires any action or forbearance from action or payment or admission by Landlord or any Landlord Indemnitee without the prior Approval of Landlord or such Landlord Indemnitee, as applicable. The obligations of Tenant under this Section 19.8 shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the acts of Landlord or Landlord Indemnitee (unless required by Applicable Law or applicable legal process) after the assertion of any claim which gave rise to the obligation to indemnify which prejudices the successful defense of the Action or Proceeding or claim without, in any such case, the prior written Approval of Tenant (such Approval not to be required in a case where Tenant has not assumed the defense of the Action or Proceeding or claim). If Tenant has assumed the defense of the relevant Action or Proceeding or claim, Landlord agrees to afford Tenant and its counsel the opportunity to be present at, and to participate in, conferences between Landlord and any Persons, including Governmental Authorities, or conferences between Landlord and representatives of or counsel for such Person, asserting any claim or action against Landlord or Landlord Indemnitees covered by the indemnity contained in this Section 19.8 to the extent such conference relates to the subject matter of the claim or action covered by the indemnity contained in this Section 19.8.

19.8.4 Failure to Defend. It is understood and agreed by Tenant that in the event that Landlord or any Landlord Indemnitee is made a defendant in any Action or Proceeding or claim for which it is indemnified pursuant to this Lease, and Tenant fails or refuses to assume the defense thereof, after having received Notice by Landlord or any Landlord Indemnitee of its obligation hereunder to do so, Landlord or said Landlord Indemnitee may compromise or settle or defend any such Action or Proceeding or claim, and Tenant shall be bound and obligated to reimburse Landlord or said Landlord Indemnitee for the amount expended by Landlord or Landlord Indemnitee in settling and compromising any such Action or Proceeding or Claim, or for the amount expended by Landlord or any Landlord Indemnitee in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by Landlord or any Landlord Indemnitee for defense or settlement of such Action or Proceeding or claim. Any judgment rendered against Landlord or any Landlord Indemnitee or amount expended by Landlord or any Landlord Indemnitee in compromising or settling such Action or Proceeding or claim shall be conclusive as determining the amount for which tenant is liable to reimburse Landlord or Landlord Indemnitee hereunder. To the extent that Landlord or any Landlord Indemnitee has the right to, and in fact does, assume the defense of such Action or Proceeding or claim, Landlord and each Landlord Indemnitee shall have the right, at its expense, to employ independent legal counsel in connection with any Action or Proceeding or claim, and Tenant shall cooperate with such counsel in all reasonable respects at no cost to Landlord or any Landlord Indemnitee.

19.8.5 No Third Party Beneficiary. The provisions of this Section 19.8 are solely for the benefit of Landlord and the Landlord Indemnitees and are not intended to create or grant any rights, contractual or otherwise, to any other person.

19.9 Qualifying Third Party Liability. Tenant shall, reasonably promptly after the receipt of Notice of any Action or Proceeding or claim against Tenant in respect of which Tenant may claim reimbursement from Landlord for a Qualifying Third Party Liability, deliver Notice to Landlord of such Action or Proceeding or claim. Landlord shall have no obligation to assume the defense of any such Action or Proceeding or claim. Landlord, at its own expense, shall have the right to participate and be represented by counsel of its own choice in any Action or Proceeding or with respect to any claim from which a Qualifying Third Party Liability may arise and Tenant shall, at no cost or expense to Tenant, cooperate with Landlord in connection with any such Action or Proceeding or claim. In no event shall Landlord have any liability to Tenant under this Lease for any Qualifying Third Party Liability and Landlord's failure to reimburse Tenant for any Qualifying Third Party Liability shall not constitute a default under this Lease. In the event Tenant incurs a Qualifying Third Party Liability and Landlord fails to reimburse Tenant for the amount of such Qualifying Third Party Liability within thirty (30) days after Landlord receives written Notice from Tenant demanding that Landlord reimburse Tenant for such Qualifying Third Party Liability, specifying the amount of such Qualifying Third Party Liability and providing reasonable details concerning the circumstance in which such Qualifying Third Party Liability arose, Tenant shall have the right and option, as Tenant's sole and exclusive remedy for such failure and upon the delivery of Notice thereof to Landlord within thirty (30) days after such failure by Landlord to reimburse Tenant, to elect to either terminate this Lease or receive a credit against the next occurring installments of Base Rent and Participation Rent for the amount of such Qualifying Third Party Liability, but in no event shall the aggregate amount of such credits plus any Rent

credits under Section 24.9 that occur in a particular Lease Year exceed the Tenant's Self-Help Remedy Cap. In the event Tenant exercises its right to terminate this Lease pursuant to this Section 19.9, this Lease shall terminate as if the Term had expired by its terms and not as a result of an Event of Default.

19.10 No Waiver of Governmental Immunity. NOTHING CONTAINED IN THIS LEASE SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER APPLICABLE LAW OR IN ANY WAY WAIVE OR LIMIT ANY DEFENSES OF LANDLORD OR ANY LANDLORD INDEMNITEE UNDER APPLICABLE LAW.

ARTICLE XX

CONDEMNATION

20.1 Condemnation of Substantially All of the Improvements.

20.1.1 Termination Rights. If, at any time during the Term, title to the whole or Substantially All of the Improvements shall be taken in any Condemnation Action (or conveyed in lieu of any such Condemnation Action), other than for a temporary use or occupancy that is for one (1) year or less in the aggregate, this Lease shall terminate (except as to Section 20.1.2 hereof) and expire on the date of such taking (or conveyance) and all the Rent and other payments, including but not limited to Impositions, shall be paid to the date of such taking (or conveyance). With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of such termination but which are not then capable of ascertainment, reasonable estimates of such items shall be made and such estimates shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimates as and when the same become determined.

20.1.2 Condemnation Awards. All Condemnation Awards payable as a result of or in connection with any taking of the whole or Substantially All of the Improvements shall be paid and distributed in accordance with the provisions of this Section 20.1.2, notwithstanding the division of the Condemnation Award by a court or condemning authority in a Condemnation Action. Tenant shall be entitled to the entire proceeds of the Condemnation Award, less the amount of Landlord's Interest, which shall be payable to Landlord. The term "**Landlord's Interest**" shall mean the sum of (i) the present value of the projected Rent to be received for the remainder of the Term (using the income approach to valuation) as of the date of the Condemnation Award, using a discount rate equal to the Federal Reserve Discount Rate, and (ii) the present value of Landlord's interest in the Premises, including the Existing Improvements, the Landlord Supported Improvements, and any Donated Property, assuming that the Term would have expired as provided in this Lease, using a discount rate equal to the Federal Reserve Discount Rate.

20.1.3 Definitions of Substantially All of the Improvements. For purposes of this ARTICLE XX, "**Substantially All of the Improvements**" shall be deemed to have been taken if, by reason of the taking of title to or possession of the Leased Premises or

any portion thereof by Condemnation Actions, an Untenantable Condition exists or is reasonably expected to exist for longer than one (1) year.

20.2 Condemnation of Part. In the event of a Condemnation Action affecting less than the whole or less than Substantially All of the Improvements, the Term shall not be reduced or affected in any way, and the following provisions shall apply:

20.2.1 Application of Condemnation Awards. The Condemnation Award payable to Landlord (including all compensation for the damages, if any, to the parts of the Premises not so taken, that is, damages to the remainder, but excluding the value of Tenant's Personal Property taken or damaged and any damage to, or relocation costs, of Tenant's business) ("**Landlord's Condemnation Award**") shall be paid to Landlord and applied by Landlord in the following order of priority: (a) payment of all Condemnation Expenses as provided in Section 20.2.2 and causing all Mechanic's Liens and any other Encumbrances caused by Tenant or arising out of work performed with respect to the Premises and (b) paying any remainder to Landlord. Any portion of the Condemnation Award payable to Tenant (including amounts Tenant is entitled to receive pursuant to Section 20.4 for the value of Tenant's Personal Property taken or damaged or for any damage to, or relocation costs of, Tenant's business) shall be paid to Tenant and applied by Tenant in the following order of priority; (i) payment of all Condemnation Expenses in excess of Landlord's Condemnation Award and (ii) paying any remainder to Tenant.

20.2.2 Restoration of the Leased Premises. Following a condemnation of less than the whole or Substantially All of the Improvements during the Term, Tenant shall, subject to the requirements of Section 15.2 and ARTICLE XIX, with reasonable diligence (subject to Excusable Tenant Delay), commence and thereafter proceed to repair, alter and restore the remaining part of the Premises to substantially their former condition to the extent that the same may be feasible and in accordance with the New Tenant Project Plans or the New Landlord Project Plans, as applicable, which have been Approved pursuant to the terms of this Lease, as and if required, to the extent practicable and permitted by Applicable Laws. Such repairs, alterations or restoration, including temporary repairs for the protection of Persons or Property pending the completion of any part thereof, and replacement or repair of any Donated Property lost or taken in the Condemnation Action, are sometimes referred to in this ARTICLE XX as the "**Condemnation Repair Work**". The term "**Condemnation Repair Work**" shall not include any obligation on the part of Landlord to acquire any additional property to replace any parking areas or parking improvements lost or taken in any Condemnation Action. Landlord shall be obligated to make payment, disbursement, reimbursement or contribution toward the costs of Condemnation Repair Work ("**Condemnation Expenses**") in an amount up to Landlord's Condemnation Award. Landlord shall make such payments or disbursements for Condemnation Expenses upon request from Tenant when accompanied by a certificate dated not more than fifteen (15) calendar days prior to such request, signed by a Responsible Officer of Tenant and any architect, engineer or construction manager in charge of the Condemnation Repair Work selected by Tenant, setting forth the following:

(a) That the sum then requested either has been paid by Tenant or is due to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Condemnation Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or due; and

(b) That except for the amount stated in such certificate to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Condemnation Repair Work known to the Persons signing such certificate which is then due to Persons being paid, after due inquiry.

Upon Tenant's compliance with the requirements of this Section 20.2.2, Landlord shall pay or cause to be paid to Tenant, or the Persons named in Tenant's request, the respective amounts stated therein to have been paid by Tenant or to be due to such Persons, as the case may be, but in no event shall the aggregate amount paid or payable by Landlord under this ARTICLE XX exceed the amount of Landlord's Condemnation Award. Amounts paid to Tenant by Landlord under this Section 20.2 shall be held by Tenant in trust for the purpose of paying Condemnation Expenses and shall be applied by Tenant to any such Condemnation Expenses or otherwise in accordance with the terms of this Section 20.2.2. All Condemnation Expenses in excess of Landlord's Condemnation Award shall be paid by Tenant.

20.3 Temporary Taking. If the whole or any part of the Premises or the Leasehold Estate shall be taken in Condemnation Actions for a temporary use or occupancy of one (1) year or less, the Term shall not be reduced, extended or affected in any way, and Tenant shall continue to pay in full the Rent, without reduction or abatement, in the manner and the time herein specified. Except to the extent that Tenant is prevented from doing so pursuant to the terms of the order of the condemning authority or because it is not possible as a result of such taking, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such temporary taking had not occurred. In the event of any such temporary taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such taking, whether such award is paid by way of damages, rent or otherwise, less any Condemnation Expenses paid by Landlord (and such Condemnation Award shall be included in Adjusted Gross Revenues to the extent the same constitutes compensation for loss of items included in Adjusted Gross Revenues), *provided* that if the period of temporary use or occupancy shall extend beyond the Lease Expiration Date, Tenant shall be entitled to receive only that portion of any Condemnation Award (whether paid by way of damages, rent or otherwise) allocable to the period of time from the date of such condemnation to the Lease Expiration Date, and Landlord shall be entitled to receive the balance of such Condemnation Award.

20.4 Condemnation Proceedings. Notwithstanding any termination of this Lease, (i) Tenant and Landlord each shall have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials and appeals therein and (ii) subject to the other provisions of this ARTICLE XX, Tenant shall have the right in any Condemnation Action to assert a separate claim for, and receive all condemnation awards for Tenant's Personal Property taken or damaged as a result of such Condemnation Action, and any damage to, or relocation costs of, Tenant's business as a result of such Condemnation Action. In

the event of the commencement of any Condemnation Action affecting less than the whole or Substantially All of the Improvements, Landlord and Tenant shall cooperate with each other in any such Condemnation Action and provide each other with such information and assistance as each shall reasonably request in connection with such Condemnation Action.

20.5 Notice of Condemnation. In the event Landlord or Tenant shall receive notice of any proposed or pending Condemnation Action affecting the Premises, the Party receiving such notice shall promptly notify the other Party hereto.

20.6 Condemnation by the City. The provisions of this ARTICLE XX for the allocation of any Condemnation Awards are not intended to be, and shall not be construed or interpreted as, any limitation on or liquidation of any claims or damages (as to either amount or type of damages) of Tenant against the City in the event of a condemnation by the City of any portion or all of the Leasehold Estate.

ARTICLE XXI

ASSIGNMENT, TRANSFER AND SUBLEASING

21.1 No Assignment or Subletting. Except as otherwise permitted by this ARTICLE XXI, Tenant may not (and Tenant agrees that it will not), (i) voluntarily or involuntarily sell, assign, transfer, pledge, mortgage or encumber this Lease or the Leasehold Estate, (ii) enter into or permit a Change in Control of Tenant, (iii) cease to be a wholly-owned subsidiary of Guarantor, in each case whether by operation of law or otherwise (each of clauses (i), (ii) and (iii) being a "**Transfer**"), or Sublease the Premises, without first obtaining the Approval of Landlord pursuant to this ARTICLE XXI. All Transfers or Subleases shall be subject to the Permitted Use and Prohibited Use limitations stated in Section 12.1 and Section 12.2. Notwithstanding the above and subject to the satisfaction of the other requirements of Section 21.3, Tenant may (each of the following being a "**Permitted Transfer/Sublease**") (i) assign or Sublease this Lease without the Approval of Landlord to an Affiliate of Guarantor; *provided* that such Affiliate or Guarantor is a Qualified Operator and neither Tenant or Guarantor shall be relieved of their obligations under this Lease and the Guaranty, respectively and (ii) Sublease a portion of the Premises in connection with operating a discrete and minor aspect of the Business Operations, but not the Restaurant Operations, the Observation Deck Operations, the operation of the Theater or all or substantially all of the Retail Operations, the Parking Operations, the Theater and Incidental Operations or the Telescope and Other Operations (a "**Space Lease**").

21.2 No Waiver of Rights by Landlord. The Approval of Landlord of any proposed Transfer or Sublease shall not be a waiver of any right to object to further or future proposed Transfers or Subleases, and the Approval of Landlord's of each such successive proposed Transfer or Sublease must be first obtained in writing from Landlord.

21.3 Conditions to Effectiveness of Any Transfer or Sublease. Any proposed Transfer or Sublease to which Landlord's Approval is required by this ARTICLE XXI shall be void and shall confer no right upon the proposed transferee unless and until (a) such Approval of Landlord is obtained or deemed to have been obtained, (b) the transferee or sublessee shall have

assumed in writing each and every one of the terms, covenants and provisions of Tenant contained in this Lease with respect to the period from and after the Transfer or Sublease, by an instrument delivered to Landlord, and (c) any then existing default under this Lease is fully cured (it being expressly acknowledged that Landlord may condition its Approval of any Transfer or Sublease on the cure of any and all such defaults existing at the time of such proposed Transfer or Sublease). Any such Transfer or Sublease Approved by Landlord shall not constitute a release of any liability, existing or future, under this Lease unless such Approval specifically includes an express written release by Landlord, which release Landlord has no obligation to provide.

21.4 Acceptance of Rent. If Tenant makes a Transfer or Sublease in violation of the provisions of this Lease, Landlord may collect rent from any such transferee or Subtenant. Landlord may apply the net rent collected to payment of the Rent due hereunder, but no such Transfer, Sublease or collection shall be deemed a waiver of any of the provisions of this ARTICLE XXI, an acceptance of the transferee or Subtenant or a release of Tenant from its obligations under this Lease.

21.5 Transfers by Landlord. Landlord may effect a Landlord Transfer of its interest in the Premises, or any part thereof or interest therein, or this Lease at any time or from time to time to any Person (a "**Landlord Transferee**"). For purposes of this Section 21.5, a "**Landlord Transfer**" shall mean any sale, conveyance, assignment or other transfer by Landlord of the Premises or this Lease or any part thereof or interest therein by Landlord. Landlord shall promptly give Notice to Tenant advising Tenant of the name of any Landlord Transferee. Any security given by Tenant to secure performance of Tenant's obligations under this Lease will be transferred by Landlord to the successor in interest of Landlord, and Landlord shall thereby be discharged of any further obligation relating thereto.

21.6 No Release.

21.6.1 Tenant. Notwithstanding any Transfer or Sublease, Tenant shall remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other obligations under this Lease (even if future Transfers and Subleases occur after the Transfer or Sublease by Tenant, and regardless of whether or not Landlord's Approval has been obtained for those future Transfers and Subleases), and Guarantor shall remain fully liable under the Guaranty.

21.6.2 Landlord. No Landlord Transfer shall relieve Landlord from any of its obligations under this Lease, except that Landlord shall be relieved from any obligations under this Lease relating to periods on and after the date of the Landlord Transfer in question and Tenant shall look solely to Landlord's successor in interest as to such obligations.

21.7 Tenant's Right to Terminate. In the event that a Landlord Transfer occurs, or is proposed to occur, and Landlord's successor in interest under this Lease as a result of such Landlord Transfer, or proposed Landlord Transfer, is not a Governmental Authority, then, in such event and only in such event, (i) Tenant shall have the right, on or before the date which is one hundred eighty (180) calendar days after Tenant's receipt of Notice of the Landlord Transfer, or

proposed Landlord Transfer in question, and which Landlord Transfer would result in the Landlord being a Person other than a Governmental Authority, to terminate this Lease by delivering written Notice to Landlord of Tenant's desire to so terminate this Lease; *provided* that in connection with a proposed Landlord Transfer and notwithstanding that Tenant has delivered a Notice that it desires to terminate this Lease, such termination shall not become effective until and if such Landlord Transfer actually occurs and (ii) in the event that Tenant elects not to terminate this Lease or fails to respond to such Notice within one hundred eighty (180) calendar days, upon the date that such Landlord Transfer shall become effective, Tenant shall be relieved of any obligation under Section 13.1 to pay for any Impositions with respect the Landlord's interest in the Premises.

21.8 Change in Control. Notwithstanding any provision of this ARTICLE XXI to the contrary, a Change in Control of Guarantor shall not be deemed to be an assignment of this Lease by Tenant for purposes of this ARTICLE XXI.

ARTICLE XXII

SURRENDER OF POSSESSION; HOLDING OVER

22.1 Surrender of Possession. Subject to Section 15.1, Tenant shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of subtenancies (including any Subtenants), and in a clean condition and free of debris or as otherwise provided for in this Lease, subject to the terms of ARTICLE XVIII and ARTICLE XX hereof. Upon such expiration or termination of this Lease, Tenant shall execute and deliver to Landlord a recordable termination of the Leasehold Estate, except as otherwise provided for herein.

22.2 Removal of Tenant's Personal Property.

22.2.1 Tenant's Obligation to Remove. All Tenant's Personal Property installed, placed or used in the operation of the Premises throughout the Term shall be deemed to be the Property of Tenant. All such Tenant's Personal Property shall be removed by Tenant within sixty (60) calendar days after the Lease Expiration Date, *provided* that Tenant shall promptly repair any damage to the Premises caused by such removal.

22.2.2 Landlord's Right to Remove. Any of Tenant's Personal Property which shall remain in the Premises after the Lease Expiration Date and said sixty (60) calendar day period may, at the option of Landlord, be deemed to have been abandoned by Tenant and either may be retained by Landlord as its Property or be disposed of, without accountability, in such manner as Landlord Representative may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Tenant, together with reasonable attorneys' fees, charges and costs.

22.3 Holding Over. In the case of any holding over or possession by Tenant after the Lease Expiration Date without the Approval of Landlord, Tenant shall pay Landlord rent at one hundred fifty percent (150%) of the Rent that would have been applicable during such period of time had this Lease been in effect, including any recalculation of Base Rent; *provided* that Base

Rent shall only be permitted to increase as a result of such calculation and not decrease from the Base Rent that was payable as of the Lease Expiration Date. Further, in the event Tenant shall hold over beyond any date for surrender of the Premises set forth in Landlord's written Notice demanding possession thereof, Tenant shall reimburse Landlord for all actual expenses and losses incurred by Landlord by reason of Landlord's inability to deliver possession of the Premises to a successor tenant, together with interest on such expenses at the Default Rate from the date such expenses are incurred until reimbursed by Tenant, together with Landlord's reasonable attorneys' fees, charges and costs. The acceptance of Rent under this Section 22.3 by Landlord shall not constitute an extension of the Term of this Lease or afford Tenant any right to possession of the Premises beyond any date through which such Rent shall have been paid by Tenant and accepted by Landlord. Such Rent shall be due to Landlord for the period of such holding over, whether or not Landlord is seeking to evict Tenant; and, unless Landlord otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of Landlord, whether or not Landlord has accepted any sum due pursuant to this Section 12.2. Notwithstanding anything to the contrary in this Section 22.3, Landlord hereby waives any and all rights accrued prior to the Effective Date to any increase in Rent, any reimbursement of expenses and losses, or any other amounts payable by Tenant under this Section 22.3.

ARTICLE XXIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

23.1 Tenant's Representations and Warranties. As an inducement to Landlord to enter into this Lease, Tenant represents and warrants to Landlord that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) *Organization.* Tenant is a Texas limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas. The business which Tenant carries on and which it proposes to carry on may be conducted by Tenant. Tenant is duly authorized to conduct business as a limited liability company in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) *Authority.* The execution, delivery and performance of this Lease by Tenant are within Tenant's powers and have been duly authorized by all necessary action of Tenant.

(c) *No Conflicts.* Neither the execution and delivery of this Lease nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Tenant nor any Applicable Laws to which Tenant is subject or any judgment, decree, license, order or permit applicable to Tenant, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Tenant pursuant to the terms of, any indenture,

mortgage, deed of trust, agreement or other instrument to which Tenant is a party or by which Tenant is bound, or to which Tenant is subject.

(d) *No Consents.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Tenant of this Lease.

(e) *Valid and Binding Obligation.* This Lease is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Tenant, threatened against or affecting Tenant, which the management of Tenant in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Tenant under, this Lease to perform its obligations under this Lease, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Tenant or on the ability of Tenant to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Improvements).

(g) *Conflict of Interest.* None of Tenant or any Affiliate of Tenant nor any of their officers, employees or agents are "officials or employees of the City" as defined in Part B, Section 10 of the Ethics Code and Tenant's execution and performance of this Lease shall not violate the Ethics Code.

23.2 Tenant's Covenants. As an inducement to Landlord to enter into this Lease, Tenant covenants and agrees as follows:

(a) *Ethics Code.* At all times during the Term and in connection with any activity under this Lease or with respect to the Premises, Tenant shall comply with the requirements of the Ethics Code.

(b) *Asbestos Plan.* At all times during the Term and in connection with any activity under this Lease or with respect to the Premises, Tenant shall comply with the requirements of the Asbestos Plan.

(c) *Structural/MEP Overload.* At all times during the Term and in connection with any activity under this Lease or with respect to the Premises and other than a result of Landlord's exercise of its rights or obligations under this Lease, Tenant shall not, and shall not allow, the structure or the mechanical, electrical or plumbing of the Tower to be overloaded or to exceed their recommended design tolerance or capacity.

(d) *Noise and Dust.* At all times during the Term and in connection with any activity under this Lease or with respect to the Premises and other than a result of Landlord's exercise of its rights or obligations under this Lease, Tenant shall not engage in (nor permit any Subtenant to engage in) any activities on or in the Premises which create dust, noise, traffic hazards or other effects, any of which unreasonably disturb the use of the public plazas and public areas located on the Premises; *provided* that during the pendency of any Construction Work in accordance with the terms of this Lease, Tenant's obligations with respect to the foregoing shall be limited to minimizing any dust, noise, traffic hazard or other effects that unreasonably disturb the use of the public plazas and public areas located on the Premises in a manner as would be undertaken by a Reasonable and Prudent Developer or Reasonable and Prudent Owner, as applicable and in all events in compliance with Applicable Laws.

(e) *Governmental Authorizations.* At all times during the Term, Tenant shall obtain and maintain all Governmental Authorizations then necessary for the development, use and occupancy of the Premises in accordance with the terms of this Lease.

23.3 Landlord's Representations and Warranties. As an inducement to Tenant to enter into this Lease, Landlord represents and warrants to Tenant that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) Landlord is a municipal corporation duly formed and validly existing under the laws of the State of Texas and its home-rule charter, with all necessary power and authority to enter into this Lease and to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by Landlord of its obligations hereunder will not violate or constitute an event of default under any material terms or material provisions of any agreement, document, instrument, judgment, order or decree to which Landlord is a Party or by which Landlord is bound.

(b) Upon the execution of this Agreement by Landlord, Landlord will have caused all governmental proceedings required to be taken by or on behalf of Landlord to authorize Landlord to make and deliver this Lease and to perform the covenants, obligations and agreements of Landlord hereunder. No Approval to the execution or delivery of this Lease by Landlord or the performance by Landlord of its covenants, obligations and agreements hereunder is required from any board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such Approval which already has been unconditionally given.

ARTICLE XXIV

DEFAULTS AND REMEDIES

24.1 Events of Default.

24.1.1 Tenant Default. The occurrence of any of the following shall be an "**Event of Default**" by Tenant or a "**Tenant Default**":

(a) The failure of Tenant to pay any Rent when due and payable under this Lease, if such failure continues for more than ten (10) calendar days after Landlord gives Notice to Tenant that such amount was not paid when due, but Tenant shall not be permitted to receive more than three (3) such notices per Lease Year under this subparagraph;

(b) The failure of Tenant to perform any Insurance Covenant, if such failure is not remedied within five (5) calendar days after Landlord gives Notice to Tenant of such failure;

(c) Subject to any Down Times or the New Tenant Improvements Closure permitted pursuant to the terms of this Lease, the failure of Tenant to cause the Premises to be operated continuously by a Qualified Operator within ten (10) calendar days after Notice from Landlord of such failure;

(d) The failure of Tenant to cause the Premises to be operated continuously in accordance with the requirements of Section 12.1, Section 12.2 or Section 12.3 (other than the failure referred to in clause (c) above) within fifteen (15) calendar days after Landlord gives Notice to Tenant of such failure;

(e) Any breach by Tenant of the terms or provisions of ARTICLE XXI, if such breach continues for fifteen (15) calendar days after Landlord gives Notice to Tenant of such breach;

(f) Any breach by Tenant of the terms or provisions of the Tower Name License, if such breach continues for fifteen (15) calendar days after Landlord gives Notice to Tenant of such breach;

(g) Any representation or warranty confirmed or made in this Lease by Tenant was untrue in any material respect;

(h) The failure of Tenant to keep, observe or perform any of the terms, covenants or agreements contained in this Lease on Tenant's part to be kept, performed or observed (other than those referred to in clauses (a) - (g) above) if: (1) such failure is not remedied by Tenant within thirty (30) calendar days after notice from Landlord of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) calendar days, Tenant fails to commence to cure such default within thirty (30) calendar days after such default, or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) calendar days but is otherwise reasonably susceptible of cure, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within one hundred eighty (180) calendar days after notice from Landlord of such default, (notwithstanding Tenant's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Lease;

(i) If any default by any Guarantor under any Guaranty shall have occurred and remain uncured after the elapse of the applicable notice and cure periods provided for under the terms of the Guaranty; or

(j) The (1) filing by Tenant or Guarantor of a voluntary petition in bankruptcy; (2) adjudication of Tenant or Guarantor as a bankrupt; (3) approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of Tenant or Guarantor under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (4) Tenant's or Guarantor's assets are levied upon by virtue of a writ of court of competent jurisdiction; (5) insolvency of Tenant or Guarantor; (6) assignment by Tenant or Guarantor of all or substantially of their assets for the benefit of creditors; (7) initiation of procedures for involuntary dissolution of Tenant or Guarantor, unless within ninety (90) calendar days after such filing, Tenant or Guarantor causes such filing to be stayed or discharged; (8) Tenant or Guarantor ceases to do business in any manner; and (9) appointment of a receiver, trustee or other similar official for Tenant or Guarantor, or Tenant's or Guarantor's property, unless within ninety (90) calendar days after such appointment, Tenant or Guarantor causes such appointment to be stayed or discharged.

24.1.2 Landlord Default. The occurrence of the following shall be an "**Event of Default**" by Landlord or a "**Landlord Default**": (a) The failure by Landlord to fund any payment of Landlord's New Capital Investment in excess of \$1,000,000 in the aggregate when due as provided in Section 8.8.2, and Landlord does not cure such payment failure within ten (10) days after notice from Tenant of such failure; or (b) the failure of Landlord to perform or observe any of the obligations, covenants or agreements to be performed or observed by Landlord under this Lease within sixty (60) calendar days after notice from Tenant of such failure; *provided, however*, that if such performance or observance cannot reasonably be accomplished within such sixty (60) calendar day period, then no Event of Default shall occur unless Landlord fails to commence such performance or observance within such sixty (60) calendar day period and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided further, however*, that if such performance or observance has not been accomplished within one hundred eighty (180) calendar days after notice from Tenant to Landlord of such failure (notwithstanding Landlord's diligent prosecution of its curative efforts), then same shall constitute an Event of Default hereunder.

24.2 Remedies. Subject to the provisions of this ARTICLE XXIV:

24.2.1 Landlord's Remedies. Subject to this ARTICLE XXIV, upon the occurrence of any Tenant Default, Landlord may, in its sole discretion, pursue any one or more of the following remedies without any Notice or demand whatsoever, other than any Notice expressly provided in this Lease:

(a) Landlord may (but under no circumstance shall be obligated to) terminate this Lease pursuant to Section 24.2.3 and upon such termination Landlord may forthwith

reenter and repossess the Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind and be entitled to recover, as damages under this Lease, a sum of money equal to the total of (i) the reasonable cost of recovering the Premises, (ii) the reasonable cost of removing and storing Tenant's Personal Property or any other occupant's Property, (iii) the unpaid Rent and any other sums accrued hereunder at the date of termination, (iv) a sum equal to the amount, if any, by which the present value of the total Rent which would have accrued to Landlord under this Lease for the remainder of the Term, if the terms of this Lease had been fully complied with by Tenant, exceeds the present value of the total fair market rental value of the Premises for the balance of the Term, and (v) any other sum of money or damages owed by Tenant to Landlord. In the event Landlord shall elect to terminate this Lease, Landlord shall at once have all the rights of reentry upon the Leased Premises, without becoming liable for damages or guilty of trespass.

(b) Landlord may (but under no circumstance shall be obligated to) terminate Tenant's right of occupancy of all or any part of the Premises and reenter and repossess the Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, without acceptance of surrender of possession of the Premises, and without becoming liable for damages or guilty of trespass, in which event Landlord may, but shall be under no obligation (except to the extent required by Applicable Law) to, relet the Premises or any part thereof for the account of Tenant for a period equal to or lesser or greater than the remainder of the Term on whatever terms and conditions Landlord, in Landlord's sole discretion, subject to commercially reasonable standards, deems advisable. Tenant shall be liable for and shall pay to Landlord all Rent payable by Tenant under this Lease plus an amount equal to (i) the reasonable cost of recovering possession of the Premises, (ii) the reasonable cost of removing and storing any of Tenant's or any other occupant's property left on the Premises after reentry, (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Premises, and (iv) any other sum of money or damages owed by Tenant to Landlord at law, in equity or hereunder, all reduced by any sums received by Landlord through any reletting of the Premises; *provided, however*, that in no event shall Tenant be entitled to any excess of any sums obtained by reletting over and above Rent provided in this Lease to be paid by Tenant to Landlord. For the purpose of such reletting, Landlord is authorized to make any repairs, changes, alterations or additions in or to the Premises that may be necessary. Landlord may file suit to recover any sums falling due under the terms of this Section 24.2.1(b) from time to time. No reletting shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such Tenant Default and exercise its rights under Section 24.2.1(a) of this Lease.

(c) Landlord may (but under no circumstance shall be obligated to) enter upon the Premises and do whatever Tenant is obligated to do under the terms on this Lease, including taking all reasonable steps necessary to maintain and preserve the Project Improvements; and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this

Lease (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. No action taken by Landlord under this Section 24.2.1(c) shall relieve Tenant from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

(d) Landlord may exercise any and all other remedies available to Landlord at law or in equity (to the extent not otherwise specified or listed in this Section 24.2), including enforcing specific performance of Tenant's obligation to construct the New Tenant Improvements in accordance with the terms of this Lease and to continuously operate the Premises in accordance with the Operating Standard and pursuant to Section 12.1, Section 12.2 and Section 12.3.

(e) Landlord may submit a claim or draft, as applicable, under the Performance Bond for the full amount of the Performance Bond and apply such proceeds towards Tenant's obligations under this Lease.

24.2.2 Tenant's Remedies. Subject to this ARTICLE XXIV, upon the occurrence of any Landlord Default, Tenant may, at its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Lease:

(a) In the case of Landlord failure to fund any portion of Landlord's New Capital Investment, immediately stop work;

(b) Tenant may terminate this Lease pursuant to Section 24.2.3;

(c) Tenant may exercise any and all other remedies available to Tenant at law or in equity; and

(d) Tenant may exercise its applicable rights under Section 24.9;

provided that notwithstanding the foregoing or anything else herein to the contrary, Tenant's rights under this Section 24.2.2 shall be subject to the waiver and release contained in Section 17.4.

24.2.3 Right to Terminate. Subject to Section 8.4, upon the occurrence of a Tenant Default or a Landlord Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a "**Final Notice**") of the non-defaulting Party's intention to terminate this Lease after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) calendar day period, if the Event of Default is not cured, this Lease shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) calendar day period the defaulting Party cures such Event of Default, then this Lease shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the

particular Event of Default covered by such Final Notice, the foregoing thirty (30) calendar day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding.

24.2.4 Cumulative Remedies. Subject to the provisions of this ARTICLE XXIV, each right or remedy of Landlord and Tenant provided for in this Lease shall be cumulative of and shall be in addition to every other right or remedy of Landlord or Tenant provided for in this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease or hereafter existing at law or in equity, by statute or otherwise.

24.3 No Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS LEASE OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; *PROVIDED THAT* (I) THE FOREGOING SHALL NOT APPLY TO ANY BASE RENT OR PARTICIPATION RENT (OR ANY CLAIMS THEREFORE) OR ANY LATE OPENING CHARGES AND (II) WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

24.4 Limited Recourse Against Landlord. Tenant covenants and agrees that any claim, judgment or decree of any court against Landlord and in favor of Tenant as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Lease on Landlord's part to be kept, observed and performed, shall be limited to the interest of Landlord in and to the Premises (including any proceeds of sale or assignment) and the interest of Landlord in and to Casualty Proceeds, condemnation proceeds and title insurance proceeds, in each case paid with respect to Landlord's interest in the Premises.

24.5 Right to Injunction. In addition to the remedies set forth in this ARTICLE XXIV, the Parties shall be entitled to seek injunctive relief prohibiting (rather than mandating) action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Lease (except a Rent Credit Dispute or Controversy) for which such remedy is available hereunder, at law or in equity. Without limiting the foregoing, in connection with a Tenant Default as a result of Tenant engaging in, or permitting to occur, a Prohibited Use, Landlord shall have the right, but not the obligation, to enjoin such use or occupancy **AND TENANT HEREBY WAIVES ANY RIGHT TO OBJECTION TO THE GRANTING OF ANY SUCH INJUNCTION OR FOR THE NECESSITY ON THE PARTY OF LANDLORD TO PROVE IRREPARABLE HARM OR TO POST A BOND.**

24.6 No Waivers.

24.6.1 General. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Lease or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Lease, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

24.6.2 No Accord and Satisfaction. Without limiting the generality of Section 24.6.1 above, the receipt by Landlord of the Rent with knowledge of a breach by Tenant of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to the Rent received). The payment by Tenant of the Rent with knowledge of a breach by Landlord of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach. No acceptance by Landlord or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. Landlord and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

24.6.3 No Waiver of Termination Notice. Without limiting the effect of Section 24.6.1 above, the receipt by Landlord of any Rent paid by Tenant after the termination in any manner of the Term, or after the giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such Rent or other consideration, unless so agreed to in writing and executed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Premises, excepting only an agreement in writing executed by Landlord accepting or agreeing to accept such a surrender.

24.7 Effect of Termination. If Landlord or Tenant elects to terminate this Lease, as provided herein (whether such termination occurs pursuant to this ARTICLE XXIV or any other provision hereof), this Lease shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Lease shall not alter the then existing claims, if any, of either Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

24.8 Performance Bond. In the event that at any time during the Term, Landlord shall draw all or any part of the Performance Bond pursuant to a Tenant Default or any other right of Landlord to draw from the Performance Bond pursuant to the terms of this Lease, Tenant shall, within fifteen (15) calendar days of such draw by Landlord, replenish the Performance Bond or provide an additional performance bond in the same form and subject to the same requirements as the Performance Bond, so that the aggregate amount of the Performance Bond is Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00). Tenant's failure to do so on within such time period shall constitute a Tenant Default.

24.9 Tenant's Self-Help Remedy – Landlord's Maintenance and Remedial Work Obligations. In the event (i) Landlord fails to timely keep, observe or perform any of Landlord's obligations under Section 9.2.1 or Section 14.1.5 of this Lease on Landlord's part to be kept, performed or observed and (ii) such failure has a material adverse affect on Tenant's ability to use and operate the Premises in accordance with the terms of this Lease, then, regardless of whether such failure has become or is a Landlord Default (any such event, circumstance or failure by Landlord being herein referred to as a "**Landlord Failure**"), Tenant shall have the right, but not the obligation, upon satisfaction of the requirements and conditions set forth in this Section 24.9, to take all commercially reasonable efforts and measures to remedy and cure such Landlord Failure (such rights of Tenant being herein referred to as "**Tenant's Self-Help Rights**"). Prior to exercising Tenant's Self-Help Rights, Tenant shall deliver Notice to Landlord of the relevant Landlord Failure and Tenant's intention to exercise Tenant's Self-Help Rights with respect to such Landlord Failure (a "**Tenant's Notice of Intent**"). Each Tenant's Notice of Intent shall describe, in reasonable detail, the particular Landlord Failure for which Tenant intends to exercise Tenant's Self-Help Rights. In the event all of the following do not occur on or before twenty (20) calendar days after the date Tenant delivers Tenant's Notice of Intent to Landlord and provided a Landlord Failure has occurred, Tenant shall have the right to exercise Tenant's Self-Help Rights with respect to the particular Landlord Failure described in Tenant's Notice of Intent upon Tenant's delivery of a second Notice to Landlord stating that the following have not occurred and that Tenant is exercising Tenant's Self-Help Rights with respect to the Landlord Failure described in Tenant's Notice of Intent:

(a) Landlord has (i) fully remedied or cured the Landlord Failure described in Tenant's Notice of Intent or (ii) delivered to Tenant a commercially reasonable remedial plan to fully remedy and cure the Landlord Failure described in Tenant's Notice of Intent in accordance with the terms of this Lease on or before the earliest reasonably possible date (a "**Remedial Plan**"); and

(b) Only if Landlord has delivered a Remedial Plan to Tenant pursuant to the above clause (a), Landlord has (i) commenced commercially reasonable efforts to fully cure and remedy the Landlord Failure described in Tenant's Notice of Intent in accordance with the Remedial Plan so that such failure may be fully cured and remedied in accordance with the terms of this Lease at the earliest reasonably possible date without regard to Landlord's access to, or the availability of, funds for same and (ii) thereafter continuously and diligently prosecutes the full cure and remedy of such Landlord Failure.

In the event Landlord timely delivers a Remedial Plan to Tenant pursuant to the above clause (a) and thereafter fails to continuously and diligently prosecute the full cure and remedy of the Landlord Failure described in Tenant's Notice of Intent so that such Landlord Failure may be fully cured and remedied at the earliest reasonably possible date, without regard to Landlord's access to, or the availability of any funds for the same, Tenant shall have the right to exercise Tenant's Self-Help Rights with respect to the particular Landlord Failure described in Tenant's Notice of Intent in question upon the delivery of a second Notice to Landlord stating that such failure has occurred.

Notwithstanding the foregoing, in the event of an Emergency that is either created or perpetuated by Landlord's failure to timely keep, observe or perform any of Landlord's obligations under Section 9.2.1 or Section 14.1.5 of this Lease on its part to be kept, performed or observed (in such circumstance, also being a "Landlord Failure" hereunder), Tenant's Self-Help Rights with respect to such Landlord Failure shall not be conditioned upon satisfaction of the above requirements or conditions, except that in such circumstances Tenant shall (i) use reasonable efforts to notify Landlord Representative by telephone of any such Landlord Failure prior to Tenant exercising Tenant's Self-Help Rights with respect to the same and (ii) as soon as reasonably possible, but in no event later than ten (10) calendar days after Tenant commences to exercise Tenant's Self-Help Rights, deliver Notice to Landlord of such Landlord Failure and Tenant's exercise of Tenant's Self-Help Rights with respect to the same. Such Notice shall also describe, in reasonable detail, the particular Landlord Failure and the steps Tenant has taken to cure or remedy the same.

In the event Tenant is entitled to exercise Tenant's Self-Help Rights pursuant to this Lease with respect to a particular Landlord Failure and thereafter commences to exercise Tenant's Self-Help Rights, (i) Tenant shall continuously and diligently prosecute the full cure and remedy of such Landlord Failure and perform all related Additional Work in accordance with the requirements of this Lease, (ii) Tenant's Self-Help Rights and right to receive a credit pursuant to the terms of this Section 24.9 shall be Tenant's sole and exclusive remedy and Tenant shall not be entitled to claim a Landlord Default on the basis of the relevant Landlord Failure, (iii) Landlord shall be relieved from any consequences or liabilities arising as a result of such Landlord Failure other than Tenant's right to the credit against Base Rent and Participation Rent specified in this Section 24.9 and (iv) provided Tenant first delivers Notice to Landlord of Tenant's intention to receive a credit pursuant to this Section 24.9, specifying the amount of such credit, and within thirty (30) days after Landlord's receipt of such Notice Landlord fails to deliver Notice to Tenant that Landlord disputes Tenant's right to receive the claimed credit, Tenant shall be entitled to receive a credit against the next occurring installments of Base Rent and Participation Rent for the documented, actual, reasonable, out-of-pocket costs incurred by Tenant in taking commercially reasonable efforts and measures to remedy and cure the relevant Landlord Failure (plus interest at the Default Rate commencing on the date such documented, actual, reasonable, out-of-pocket costs are paid by Tenant and continuing until Tenant is actually paid or reimbursed for same thorough such credit or otherwise), but in no event shall the aggregate amount of all Rent credits under Section 19.9 plus all such credits for all costs relating to all Landlord Failures that occur in particular Lease Year exceed (i) One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) with respect to credits against Base Rent and (ii) fifty percent (50%) of Participation Rent (collectively, the **"Tenant's Self-Help Remedy Cap"**); *provided, however*, that in the event the aggregate amount of all Rent credits under Section 19.9 plus such credits for all costs relating to all Landlord Failures that occur in particular Lease Year exceed Tenant's Self-Help Remedy Cap, Tenant shall be

entitled to claim such excess against the installments of Base Rent and Participation Rent occurring in the following Lease Year(s) so long as in no event shall the aggregate amount of any Rent credits under Section 19.9 plus such credits for all costs relating to any Landlord Failures exceed the Tenant's Self-Help Remedy Cap in any Lease Year.

24.10 Dispute Resolution.

24.10.1 General. In the event any dispute, controversy or claim between or among the Parties arises under this Lease or is related in any way to this Lease or the relationship of the Parties hereunder (a "**Dispute or Controversy**"), including a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Lease, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 24.10. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other Party that it has elected to implement the procedures set forth in this Section 24.10. Within fifteen (15) calendar days after delivery of any such Notice by one Party to the other Party regarding a Dispute or Controversy, the Landlord Representative and the Tenant Representative shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy; *provided, however* that Tenant acknowledges that certain Disputes or Controversies will require the approval of City Council as to any agreement or resolution. If a mutual resolution and settlement is not obtained within thirty (30) calendar days of the first meeting, or if a mutual resolution and settlement is reached between the Landlord Representative and the Tenant Representative but such Dispute or Controversy or resolution and settlement is of the nature that requires the approval of City Council and such approval is not granted within thirty (30) calendar days after the Landlord Representative and the Tenant Representative reach such agreement, then (1) with respect to any Dispute or Controversy regarding Tenant's right to receive a credit against Base Rent or Participation Rent, as applicable, Section 19.9, Section 24.9, or to the existence of a Landlord Failure under Section 24.9 (such Dispute or Controversy being herein referred to as a "**Rent Credit Dispute or Controversy**") such Rent Credit Dispute or Controversy shall be finally settled and resolved by binding arbitration in accordance with the provisions set forth in Section 24.10.2 and (2) with respect to any other Dispute or Controversy, either Party shall have the right to pursue any of their rights and remedies available to it pursuant to the terms of this Lease. Notwithstanding the foregoing or anything herein to the contrary, (i) neither Party shall have any liability to other Party in the event that the Landlord Representative and the Tenant Representative are unable to reach agreement or, in the alternative, for the failure of City Council to approve any resolution and settlement reached by the Landlord Representative and the Tenant Representative and, as such, each Party hereby waives the right to bring any Claim against the other Party for such failure, including a Claim for failure to negotiate in good faith, (ii) subject to the terms of Section 24.5, nothing shall prohibit or limit either Party from seeking injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in Bexar County, Texas, including during the pendency of meetings between the Landlord Representative and the Tenant Representative pursuant to this Section 24.10 and (iii) nothing shall prohibit or limit Landlord from exercising its rights or remedies under

Section 24.2.1(c). Only Rent Credit Disputes or Controversies are subject to arbitration and all other Disputes or Controversies are not subject to arbitration.

24.10.2 Limited Arbitration. Each Party hereby agrees that any Rent Credit Dispute or Controversy which is not resolved by mutual agreement pursuant to the provisions of Section 24.10.1 shall be submitted to binding arbitration hereunder and if submitted shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures. This Section 24.10 and Appendix C constitute a written agreement by the Parties to submit to arbitration any Rent Credit Dispute or Controversy arising after the Effective Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. With respect to any Rent Credit Dispute or Controversy under which Tenant claims it has a right to offset, reduce or fail to pay any Rent, Tenant shall not exercise such claimed right to offset, reduce or fail to pay such Rent until such Rent Credit Dispute or Controversy is finally resolved or settled in accordance with this Section 24.10 and then only in accordance with the result of such resolution or settlement.

ARTICLE XXV

TOWER NAME LICENSE

25.1 Tower Name License.

25.1.1 Tower Marks. Subject to the Tower Name License, Landlord shall retain all proprietary and other rights and interests in and to the **TOWER OF THE AMERICAS** Mark (the "**Tower Name**"), the **TOWER RESTAURANT** Mark, the **www.toweroftheamericas.com** domain name (the "**Tower Domain Name**"), composite marks thereof, design marks thereof and any other related Marks, including common-law rights as well as any applications for registrations which may be filed by Landlord, or registrations which may be issued to Landlord covering such Marks, whether state or federal, which have acquired or will acquire public recognition and goodwill appurtenant to the Tower Marks (the foregoing collectively referred to herein as "**Tower Marks**").

25.1.2 License. Tenant recognizes the goodwill appurtenant to the use of the Tower Name and desires a license to use Landlord's rights to the Tower Name, which Landlord is willing to grant. Subject to the terms and conditions of this Lease, including this Section 25.1, Landlord grants to Tenant, and Tenant hereby accepts, a non-exclusive, revocable license (but only pursuant to Section 25.1.4(a) below) (the "**Tower Name License**") during the Term to utilize Landlord's right, title and interest, if any, in and to the Tower Name and the Tower Domain Name in accordance with the Operating Standard and solely in connection with (i) Tenant's operation and use of the Premises pursuant to the terms and conditions of this Lease and (ii) the production, advertising and sale of products and the offering of restaurant and entertainment services solely at the Premises in accordance with the terms of this Lease.

25.1.3 Royalty. The grant of the Tower Name License has been made in consideration of Tenant's obligation to pay Rent to Landlord pursuant to the terms of this Lease and there shall be no separate royalty payment due from Tenant for the grant of the Tower Name License or the exercise of Tenant's rights pursuant thereto or otherwise.

25.1.4 Termination.

(a) The Tower Name License granted herein shall terminate automatically and immediately, without any action of Landlord being required, upon the Lease Expiration Date. In addition to and without limiting the foregoing, Landlord may terminate the Tower Name License (i) upon the occurrence of any Tenant Default or (ii) if Tenant, Guarantor or a Related Party of Tenant or Guarantor uses the Tower Marks in its corporate or trade name.

(b) Upon expiration or termination of the Tower Name License or this Lease, all rights granted to Tenant under the Tower Name License shall cease, and Tenant shall cease any further use of the Tower Name or any Mark confusingly similar to the Tower Marks in any manner. Tenant shall, following such expiration or termination, promptly deliver to the Landlord Representative all materials bearing the Tower Name in the possession of Tenant, Guarantor or either of their Related Parties, including, menus, advertising and promotional materials, paper goods and signage. Tenant acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to Landlord.

25.1.5 Nature of License. The Tower Name License granted to Tenant is personal, and no rights to or derived from the Tower Name License may be transferred by Tenant without the express prior written Approval of Landlord; *provided, however*, that the foregoing shall not prevent Tenant from (i) having products made for Tenant and to Tenant's specifications so long as same is in compliance with all of the terms and conditions of this Lease, including this ARTICLE XXV or (ii) prevent a transfer of the Tower Name License in connection with a Transfer of this Lease which has been Approved by Landlord pursuant to ARTICLE XXI or in connection with a Permitted Transfer/Sublease.

25.1.6 Goodwill.

(a) *Covenants.* Tenant agrees that the essence of the Tower Name License is founded on the goodwill associated with the Tower Marks and the value of that goodwill in the minds of the consuming public. Tenant agrees that it is critical that such goodwill be protected and enhanced, and, toward that end, Tenant shall not during the Term or thereafter (a) attack the title or any rights of Landlord in or to the Tower Marks; (b) apply to register or maintain any application or registration of the Tower Marks or any other Mark confusingly similar thereto; (c) misuse the Tower Marks; (d) take any action that would bring the Tower Marks into public disrepute; (e) use the Tower Marks, or any other Mark confusingly similar thereto, in its corporate or trade name; or (f) take any action that would tend to destroy, diminish, degrade or devalue the goodwill in the Tower Marks.

(b) *Benefit.* All goodwill arising from the use by Tenant of the Tower Marks shall inure to the benefit of Landlord.

(c) *Cooperation.* Tenant agrees to cooperate fully with Landlord in securing and maintaining the goodwill of Landlord in the Tower Marks.

25.1.7 Marking. Tenant agrees that it will designate the Tower Name and any use thereof in a manner as reasonably specified from time to time in writing by Landlord so as to indicate the rights of Landlord in and to the Tower Marks, including the registration status of the Tower Marks and the products and services offered thereunder. If requested by Landlord, Tenant will designate, in a manner reasonably specified by Landlord, that Tenant is a licensee of Landlord pursuant to the Tower Name License.

25.1.8 Web Site. Any web site operated by or on behalf of Tenant in connection with the Tower Name License or in any way related to Tenant's use, occupancy or operation of the Premises shall meet or exceed the Operating Standard in all respects.

25.2 Use of Tower Name. Tenant agrees during the Term to refer to and identify, and to cause Guarantor and Tenant's and Guarantor's Related Parties to refer to and identify, the Tower or any portion thereof (including the Tower Restaurant, the Theater and the Observation Deck Level) only by names which include the Tower Name. Tenant further agrees to use commercially reasonable efforts to cause all Persons involved in promoting, publicizing or reporting Tower or any portion thereof or events held at the Leased Premises to refer to and identify the Tower or such portion thereof by names which include the Tower Name. Commercially reasonable efforts for purposes of this Section 25.2 include requiring by contract that each Person using or providing services to the Premises for any purpose refer to and identify the Tower by names which include the Tower Name. All advertising and any other promotional material produced by or for Tenant with respect to the Tower or any portion thereof will contain the Tower Name.

25.3 Maintenance of Tower Name; Use of Tower Restaurant Mark. During the Term, Landlord agrees to (i) use commercially reasonable efforts, but in all events to take such action as required by Applicable Law, to maintain and defend the Tower Name and any registrations related thereto and (ii) on an on-going basis, keep Tenant apprised of all developments related to such actions with respect to the Tower Name. Landlord shall, at the earliest known date after Landlord's discovery of same, give Notice to Tenant of the grant, lapse, revocation, surrender, invalidation of or abandonment of the Tower Name. Should Landlord fail to perform its obligations under this Section 25.3, Landlord shall permit Tenant, in its sole discretion and upon thirty (30) days prior Notice to Landlord, to take such actions at Tenant's sole cost and expense. In addition, during the Term, Landlord shall not, and shall use commercially reasonable efforts to ensure that other Persons do not, use **THE TOWER RESTAURANT** Mark except in connection with use of such Mark in a historical context to describe and acknowledge the restaurant operation conducted pursuant to the Tower Lease.

25.4 Creation of any New Marks. In the event that during the Term, Tenant shall desire to create any Marks which include a likeness or depiction of the Tower or which include the Tower Name (each being a "New Tower Mark"), Tenant shall, prior to using any such Mark or

registering same, obtain the prior written Approval of the Landlord Representative, such Approval not to be unreasonably withheld. Further, upon the Lease Expiration Date, Tenant shall transfer to Landlord all of the rights and benefits, but not any liabilities related to any period prior to the Lease Expiration Date, associated with such New Tower Marks.

ARTICLE XXVI

NOTICES

26.1 General. Each provision of this Lease and other requirements with reference to the sending, mailing or delivery of any notice, consent, direction, Approval, instructions, request and other communication, request, reply or advice (hereinafter severally and collectively called "**Notice**"), or with reference to the making of any payment by Tenant to Landlord, shall have been complied with when and if the procedures described in Section 26.2 have been complied with by the Party giving such notice.

26.2 Notices. All notices given to a Party under this Lease shall be given in writing to such Party at their respective notice addresses as set forth in Appendix D or at such other address as such Party shall designate by written notice to the other Party to this Lease and may be (i) sent by pre-paid, registered or certified U.S. Mail with return receipt requested, (ii) delivered personally, (iii) sent by nationally recognized overnight courier (e.g. Federal Express) or (iv) sent by facsimile (with confirmation of receipt by the sending machine) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (i) in the case of U.S. mail in the manner provided above, three (3) Business Days after posting, (ii) if delivered personally, when actually delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, (iii) if sent by nationally recognized overnight courier, the next Business Day after depositing same with such overnight courier before the overnight deadline, and if deposited with such overnight courier after such deadline, then the next succeeding Business Day or (iv) in the case of facsimile (with confirmation of receipt by the sending machine), when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional Parties ("**Additional Addressees**") to whom notice thereunder must be given, by delivering to the other Party at least five (5) calendar days prior written notice thereof setting forth a single address for each such Additional Addressee; *provided, however*, that no Party hereto shall have the right to designate more than two (2) such Additional Addressees.

ARTICLE XXVII

GENERAL PROVISIONS

27.1 No Broker's Fees or Commissions. Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Lease.

27.2 City Council Approval. Notwithstanding anything to the contrary set forth in this Lease, Tenant recognizes and agrees that any contracts or agreements or amendments thereto contemplated to be entered into by Landlord under the terms of this Lease which are entered into after the date of this Lease will be subject to the prior Approval of the City Council, but not Approvals, Consents and confirmations expressly permitted in this Lease to be given by the Landlord Representative.

27.3 Non-Appropriation.

27.3.1 Current Expenses. The obligations of Landlord (so long as the City or a political subdivision of the State of Texas is the Landlord) under this Lease which require an expenditure or the payment of money is subject to an Appropriation and accordingly (a) shall constitute a current expense of Landlord in the fiscal year in which an obligation applies and (b) shall not constitute an indebtedness of Landlord within the meaning of any Applicable Law. Nothing herein shall constitute a pledge by Landlord (so long as the City or a political subdivision of the State of Texas is the Landlord) of any funds, other than funds designated pursuant to lawful Appropriations from time to time, to pay any money or satisfy any other obligation under any provision of this Lease.

27.3.2 Appropriation. Landlord (so long as the City or a political subdivision of the State of Texas is the Landlord) will (i) take such actions as may be reasonably necessary to include in its annual budget the sums necessary to satisfy its obligations hereunder and to make the necessary Appropriation of such amounts for such purposes and (ii) cause the appropriate officers of the City to include in its proposed annual budget the sums necessary to satisfy such payment obligations contemplated hereunder and request the City Council to make the necessary Appropriations of such sums for such purposes. Notwithstanding the foregoing or anything herein to the contrary, no provision of this Lease, including this Section 27.3.2, shall be construed to be an obligation of Landlord to obtain an Appropriation, or to obligate Landlord in any way which would result in the obligations of this Lease constituting indebtedness on the part of the City.

27.3.3 Results of Non-Appropriation. If a Non-Appropriation occurs in response to a request for a proposed Appropriation, Landlord shall provide Notice to Tenant of such Non-Appropriation within thirty (30) calendar days of the Non-Appropriation. Notwithstanding anything herein to the contrary, such Non-Appropriations shall not constitute a Landlord Default until such time as an Event of Default by Landlord shall have actually occurred hereunder pursuant to the terms of Section 24.1.2 and, in such event, Tenant's sole and exclusive remedies for such Landlord Default which arises out of a Non-Appropriation shall be to either (i) terminate this Lease by delivering Notice to Landlord, (ii) with respect to any Landlord Failure or a failure of Landlord to fulfill its obligations under Section 8.8.2, and in each case so long as the result of a Non-Appropriation, exercise its rights under Section 8.8.2 or Section 24.9, as applicable to such Landlord Default or (iii) with respect to any failure of Landlord to reimburse Tenant for any Qualifying Third Party Liability under Section 19.9, so long as the result of a Non-Appropriation, exercise its rights under Section 19.9, as applicable to such Landlord failure.

27.4 Recording of Memorandum of Lease. Tenant may file of record a Memorandum of Lease in substantially the form attached hereto as Exhibit C in the Real Property Records of Bexar County, Texas upon the Effective Date. Upon the Lease Expiration Date, Tenant shall execute such instruments reasonably requested by Landlord in recordable form which are sufficient to release of record any rights or interests of Tenant in and to the Premises or the Leasehold Estate. In this connection, Tenant irrevocably and unconditionally appoints Landlord as its attorney-in-fact, coupled with an interest, which appointment shall survive the bankruptcy, insolvency or other legal disability of Tenant, to take all actions necessary to perform Tenant's obligations under this Section 24.7.

27.5 Interest on Overdue Obligations. All past due Rent shall bear interest at the Default Rate from the date(s) due (whether or not Landlord has given Notice to Tenant that such Rent is past due) until paid. No breach of Tenant's obligation to pay Rent shall have been cured unless and until the interest accrued thereon under this Section 27.5 shall have been paid to Landlord. In the event that Landlord fails to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease on or before the date which is thirty (30) calendar days after Tenant delivers Notice to Landlord of such failure, then such amount shall bear interest at the Default Rate from the date due until paid. No breach of Landlord's obligation to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease shall have been cured unless and until the interest accrued thereon under this Section 27.5 shall have been paid to Tenant. All payments shall first be applied to the payment of accrued but unpaid interest.

27.6 Employment of Consultants. Landlord shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Landlord may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Landlord by Tenant under this Lease and, subject to ARTICLE XVI, to perform any inspection rights on behalf of Landlord. Tenant covenants and agrees to reasonably cooperate with such consultants in the same manner as Tenant is required to cooperate with Landlord pursuant to the terms of this Lease.

27.7 Small Business Economic Development Advocacy Policy Compliance. Tenant is hereby advised that pursuant to Ordinance 96754, approved on November 21, 2002 (the "**SBEDA Policy**"), it is the policy of the City that small, minority and woman-owned business enterprises shall have the maximum practical opportunity in the performance of public contracts. Tenant hereby agrees that, in connection with the Premises and so long the City or its Related Parties is the Landlord, it shall abide by all applicable terms and conditions of the SBEDA Policy.

27.8 Waiver of Liens. Notwithstanding anything contained in this Lease to the contrary, Landlord hereby expressly waives any statutory, constitutional or common law landlord's liens (as the same may be enacted or exist from time to time) and any and all rights granted under any present or future Applicable Laws to levy or distrain for Rent (whether in arrears or in advance) against the Property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver, at any time or times hereafter upon Tenant's reasonable request at Tenant's sole cost and expense and provided that the Landlord Representative has Approved such instrument in advance, such Approval not to be unreasonably withheld.

27.9 Alcoholic Beverage Permits. If at any time during the Term, Tenant is denied the issuance or renewal of any permit or license required by Applicable Law in order for alcoholic beverages (including wine, beer and mixed beverages) to be sold in or upon the Premises for consumption in or upon the Premises on the basis of the proximity of the Premises to any churches, schools, day care centers or other facilities or uses, Landlord, at Tenant's sole cost and expense, will reasonably cooperate with Tenant in its efforts to obtain a variance or exemption from any Governmental Authority necessary to obtain any such permit or license for the sale of alcoholic beverages.

27.10 Acknowledgement of Confidential Nature. The Parties acknowledge and agree that agreements entered into by Tenant, individually and jointly, with private entities pursuant to the rights of Tenant hereunder, together with any and all information and documents related hereto ("**Private Contract Rights**") may contain confidential, proprietary, and trade secret information. The Parties acknowledge that, subject to Applicable Law, third parties may restrict the distribution to or by the Parties of information, documents and contracts in order to protect confidential, proprietary, and trade secret information.

27.11 Open Records. If any Person requests Landlord to disclose any information of a confidential, proprietary or trade secret nature with respect to the Private Contract Rights under the Texas Public Information Act (Tex. Gov't. Code Ann. Sec.552.001 et seq.) or any equivalent or successor statute (the "**Open Records Act**") and such information is subject to, or potentially subject to, an exception under the Open Records Act, then prior to making any such disclosure and to the extent permitted under Applicable Law, Landlord shall send Notice to Tenant of such request within five (5) Business Days of Landlord's receipt of such request. Within three (3) Business Days of Tenant's receipt of such Notice from Landlord, Tenant shall notify Landlord in writing whether Tenant desires Landlord to request a determination from the Texas Attorney General (an "**Opinion Request**") as to whether the requested information must be disclosed pursuant to the Open Records Act; *provided* that Landlord shall only be required to comply with the foregoing to the extent that Landlord, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception under the Open Records Act and the Open Records Act permits Landlord to make an Opinion Request in the circumstance in question. Upon receipt of a request from Tenant for Landlord to make an Opinion Request and provided Landlord is required to act on same pursuant to the terms hereof, Landlord, at Tenant's sole cost and expense, shall provide all commercially reasonable assistance to Tenant necessary to draft the Opinion Request so that it may be completed and filed within the time period prescribed by the Open Records Act. After the Opinion Request is so filed, each Party shall cooperate with each other Party in preparing appropriate responses or filings to the Texas Attorney General and to any other Person with respect to the information request and the Opinion Request, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third Person whose privacy or property interests may be compromised by any such information request in order to enable Landlord to timely furnish to any such third Person any statutory notice required by the Open Records Act and to seek any applicable exceptions from disclosure under the Open Records Act.

[Signature Page Follows]

This Lease is executed to be effective for all purposes as of the Effective Date.

LANDLORD:

ATTEST:

CITY OF SAN ANTONIO, TEXAS

By: _____
City Clerk, City of San Antonio

By: _____
City Manager, City of San Antonio

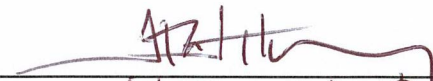
I, the undersigned, City Attorney for the City of San Antonio, Texas, hereby certify that I read, passed upon and approved as to form this Lease prior to its approval by the City Council.

By: _____
City Attorney, City of San Antonio

Signature Page to Amended & Restated Lease and
Development Agreement

TENANT:

WILLIE G'S POST OAK, LLC,
a Texas limited liability company

By: 
Name: Stanley L. Schenck
Title: VP



Signature Page to Amended & Restated Lease and
Development Agreement

APPENDIX A
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Rules as to Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) "Include", "includes" and "including" shall be deemed to be followed by ", but not limited to," whether or not they are in fact followed by such words or words of like import.

(2) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Lease and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(10) "Shall" and "will" have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in San Antonio, Texas.

(12) References to "\$" or to "dollars" shall mean the lawful currency of the United States of America.

(13) "Not to be unreasonably withheld" when used herein with respect to any Consent or Approval shall be deemed to be followed by ", conditioned or delayed" whether or not it is in fact followed by such words or words of like import.

GLOSSARY OF DEFINED TERMS

"50% Abatement Period" has the meaning set forth in Section 8.10.2.

"Accounting Standard" has the meaning set forth in Section 6.7.

"Action or Proceeding" means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"Additional Addressees" has the meaning set forth in Section 26.2.

"Additional Improvements" has the meaning set forth in Section 15.2.1.

"Additional Rent" means has the meaning set forth in Section 6.5.

"Additional Work" has the meaning set forth in Section 15.2.1.

"Adjusted Gross Revenues" shall mean, for any applicable period, the total of all value, compensation, interest, revenue and income, including proceeds of sales of every kind (whether in cash, checks, drafts, on credit, gift and merchandise certificates or "in kind") resulting from any Business Operations conducted on, in or from the Premises by or on behalf of Tenant, any Controlling Person of Tenant, any Affiliate of Tenant or of any Controlling Person of Tenant, or any Subtenant of Tenant (whether or not such Subtenant is an Affiliate of Tenant, a Controlling Person of Tenant or an Affiliate of a Controlling Person of Tenant), including the proceeds of Tenant's Business Interruption Policy actually received by Tenant with respect to the Premises or any Business Operations conducted on, in or from the Premises and all Condemnation Awards for the temporary taking of the Premises. "Adjusted Gross Revenues" shall not include: (1) gratuities paid by third party patrons directly over to employees of Tenant in the normal course of business; (2) state and municipal excise, sales and use taxes collected from patrons of the Premises as a part of or based upon the sales price of any goods or services (or payments in lieu thereof), whether such taxes are now in force or are later enacted; (3) Condemnation Awards (other than awards for

temporary taking), Casualty Proceeds or damage awards and other amounts received relating to claims for physical loss, physical taking or physical damage to the Premises, except for proceeds relating to Tenant's Business Interruption Policy; (4) financing proceeds; (5) the exchange of merchandise between stores or warehouses of Tenant where such exchanges are of merchandise of equivalent value and are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which has theretofore been made at, in, on or from the Premises; (6) sales of fixtures after use thereof in the conduct of Tenant's business in the Premises so long as such fixtures are replaced by fixtures of equivalent or higher value or utility; (7) non-cash sales, such as coupons, discounts and employee meals and discounts; (8) the selling price of all merchandise returned by customers which were purchased at or from the Premises and were returned for full credit or the amount of discounts or allowances made therefor; (9) refunds in the ordinary course of business; (10) receipts of vending, souvenir dispensing or arcade/game machines to the extent payable to a Person other than Tenant or any Person Related to Tenant; (11) receipts from public telephones, stamp machines or public toilet locks; (12) the amount of service charges paid to credit card issuers other than Tenant and its Related Parties; (13) amounts received from charitable collections and promotional sales in connection with charitable collections to the extent those amounts received are contributed to a public, tax-exempt charity that is not a Person Related to Tenant; (14) receipts payable to the licensee under the Telescope License Agreement; (15) proceeds from the sale of gift certificates (provided that the prices of goods or services sold in redemption of gift certificates shall be included in adjusted Gross Revenues at the time of redemption); and (16) revenue collected by Tenant in compliance with the requirements of Section 12.7.4.1. As used herein, "in kind" payments shall be deemed to be the full value to the customer/public of the goods or services provided or, in the event that the goods or services are of the type for which a regulated fee has been established, the said fee shall be such regulated value. For the avoidance of doubt, one hundred percent (100%) of the value, compensation, interest, revenue and income, including proceeds of sales of every kind (whether in cash, checks, drafts, on credit, gift and merchandise certificates or "in kind") resulting from any Sublease shall be included Adjusted Gross Revenues excepting only those matters which are excluded from Adjusted Gross Revenues as described above.

"Adjusted Monthly Landlord Participation Revenue" means, with respect to any Lease Year, an amount that is equal to the quotient obtained when the aggregate Landlord's Participation Revenues for such Lease Year are divided by the number of months in such Lease Year.

"Affiliate" of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

"Alcohol Beverage Service Policy/Plan" means the plan with respect to the sale, service and display of alcoholic beverages on the Premises.

"Antiquities Code" means the Antiquities Code of Texas as codified in Title 9, Chapter 191 of the Texas Natural Resource Code, as may be amended from time to time.

"Applicable Laws" means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include the City Codes, the Antiquities Code and Environmental Laws. Tenant acknowledges that there may be certain "Applicable Laws" that apply to the Premises or its operation thereon as a result of same being owned by a home-rule municipality.

"Appropriation" means with respect to any payment obligation or other monetary obligation of Landlord that may from time to time exist or arise under this Lease during a fiscal year, the approval and setting aside by the City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of the City.

"Approval," "Approve" or "Approved" means (a) with respect to any item or matter for which the approval of Landlord or the Landlord Representative, as the case may be, is required under the terms of this Lease, the specific approval of such item or matter by Landlord pursuant to a written instrument executed by Landlord or the Landlord Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed approval, and no approval by Landlord or the Landlord Representative pursuant to this Lease shall be deemed to constitute or include any approval required under any City Code or in connection with any Governmental Functions of the City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Tenant is required under the terms of this Lease, the specific approval of such item or matter by Tenant or the Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or the Tenant Representative, as permitted pursuant to the terms of this Lease, and delivered to Landlord, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Lease, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to Landlord or Tenant, as applicable, and shall not include any implied or imputed approval.

"Arbitration Procedures" means those procedures set forth on Appendix C to this Lease.

"Asbestos Plan" has the meaning set forth in Section 9.1.2.

"Asbestos Report" means that certain Asbestos Survey Report of the Tower of the Americas prepared by ATC Associates Inc. dated March 26, 2004 and being ATC Project Number 46.23683.1014 (Prepared and/or Reviewed by: John C. Tumbleson, TDH Licensed Asbestos

Inspector License #60-1940, Osanna Carrasco Rehfeld, Asbestos/Lead Department Manager, Catherine G. McLain, Individual Asbestos Consultant #10-5451).

"Auto Policies for Additional Work" has the meaning set forth in Section 19.1.3(b).

"Auto Policies for New Tenant Improvements Work" has the meaning set forth in Section 19.1.1(b).

"Base Rent" has the meaning set forth in Section 6.3.1.

"Builder's Risk Policies for Additional Work" has the meaning set forth in Section 19.1.3(a).

"Builder's Risk Policies for New Tenant Improvements Work" has the meaning set forth in Section 19.1.1(a).

"Business Day" shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in San Antonio, Texas.

"Business Hours" means 9:00 a.m. through 5:00 p.m. on Business Days.

"Business Operations" means, collectively, the Restaurant Operations, the Observation Deck Operations, the Parking Operations, the Retail Operations, the Telescope and Other Operations and the Theater and Incidental Operations.

"Café" means the restaurant/café at the Leased Premises existing as of the Effective Date, which contains approximately one thousand square foot (1,000 sq. ft.) of indoor seating space and approximately eight hundred square foot (800 sq. ft.) of outdoor seating space.

"Casualty" shall mean physical damage, physical destruction or other property casualty resulting from any fire or any other Force Majeure or other sudden, unexpected or unusual cause.

"Casualty Expenses" has the meaning set forth in Section 18.2.3.

"Casualty Proceeds" has the meaning set forth in Section 18.2.1.

"Casualty Repair Work" has the meaning set forth in Section 18.1.

"Change in Control" means with respect to any Person (a) the sale or other transfer of fifty percent (50%) or more of such Persons capital stock, partnership interest or membership units, as the case may be (or the power, directly or indirectly, to vote or direct the voting of securities constituting fifty percent (50%) or more of the ordinary voting power for the election of directors of Guarantor), (b) the sale of all or substantially all of such Persons assets, or (c) the merger, consolidation or other business combination with another entity.

"City" means the City of San Antonio, Texas, a Texas municipal corporation and home-rule city of the State of Texas principally situated in Bexar County, Texas.

"City Business Tours" means any tours in connection with any promotion, marketing or special event activities related to City economic development or to improving the name, goodwill or reputation of the City anywhere in the world, including as a tourist destination.

"City Codes" means all ordinances, codes and policies from time to time adopted by the City, including, any building codes, fire or life safety codes, development codes and zoning ordinances, as same may be amended from time to time.

"City Council" means the City Council of San Antonio, Texas.

"Claims" shall mean and include any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

"Comparable Properties" means, as applicable with respect to the relevant area of the Premises, whichever of the following has the highest operating standards and reputation: (i) the collective average of the operating standards and reputations of the Space Needle in Seattle, Washington, the Stratosphere in Las Vegas, Nevada and the CN Tower in Toronto, Ontario, Canada, (ii) a Specialty Group Destination, or (iii) a Signature Restaurant.

"Condemnation Actions" means a taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain or by appropriation and an acquisition by any Governmental Authority (or other Person with power of eminent domain) through a private purchase in lieu thereof, but shall not include the dedication of any portion of the Premises necessary to obtain Governmental Authorizations or to comply with any other applicable rule of a Governmental Authority respecting the construction of any Improvements on the Premises.

"Condemnation Award" means all sums, amounts or other compensation for the Premises payable to Landlord or Tenant as a result of or in connection with any Condemnation Action.

"Condemnation Expenses" has the meaning set forth in Section 20.2.2.

"Condemnation Repair Work" has the meaning set forth in Section 20.2.2.

"Conditions to Commencement of New Tenant Improvements Work" has the meaning set forth in Section 8.1.

"Conditions to Full Reopening" has the meaning set forth in Section 8.3.6.

"Consent" means (a) with respect to any item or matter for which the consent of Landlord or the Landlord Representative, as the case may be, is required under the terms of this Lease, the specific consent of such item or matter by Landlord pursuant to a written instrument executed by Landlord or the Landlord Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed consent, and no consent by Landlord or the Landlord Representative pursuant to this Lease shall be deemed to constitute or include any consent required under any City Code or in connection with any Governmental Functions of the City, unless such written consent shall so specifically state, (b) with respect to any item or matter for which the consent of Tenant is required under the terms of this Lease, the specific consent of such item or matter by Tenant or the Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or the Tenant Representative, as permitted pursuant to the terms of this Lease, and delivered to Landlord, and shall not include any implied or imputed consent and (c) with respect to any item or matter for which the consent of any other Person is required under the terms of this Lease, the specific consent of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to Landlord or Tenant, as applicable, and shall not include any implied or imputed approval.

"Construction Safety Plan" means the minimum security and safety standards and procedures to be followed in connection with the development and construction of any Construction Work, but which at a minimum (i) reflects the security and safety standards and procedures that would be followed by a Reasonable and Prudent Developer, (ii) takes into account the surrounding uses of the real property adjacent to the Premises and (iii) complies with all Applicable Laws.

"Construction Work" means, collectively, the New Tenant Improvements Work, and any Additional Work, including Maintenance and Repair Work, Tenant's Remedial Work, any Casualty Repair Work and any Condemnation Repair Work.

"Contractors' Equipment" shall mean and refer to all equipment used by any contractor in connection with the New Tenant Improvements Work, and the Additional Work, as applicable, whether owned, hired or leased.

"Controlling Person of Tenant" means any Person that directly or indirectly controls Tenant. As used in the definition of Controlling Person of Tenant, the term "control" shall mean the possession, directly or indirectly, of the power to either (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Tenant or (ii) direct or cause the direction of management, policies or Major Decisions of Tenant, whether through the ownership of voting securities or interests, by contract or otherwise (other than by the exercise of an approval right that prevents an action that constitutes a Major Decision). For the purposes hereof, the general partner of any partnership (either general or limited) and the manager, managing member or managing director of any limited liability company shall always be deemed to be a Controlling Person of such partnership or limited liability company.

"Convention Center" means the Henry B. Gonzalez Convention Center.

"Default Rate" means (i) as to amounts payable by Tenant, the Prime Rate plus three percent (3%) per annum and (ii) as to amounts payable by Landlord, the Municipal Index Rate plus three percent (3%) per annum; *provided* that in each case not to exceed the Maximum Lawful Rate.

"Dispute or Controversy" has the meaning set forth in Section 24.10.

"Donated Construction Materials" has the meaning set forth in Section 15.1.1.

"Donated Personal Property" has the meaning set forth in Section 15.1.1.

"Donated Property" means, collectively, the Donated Construction Materials and Donated Personal Property.

"Down Times" has the meaning set forth in Section 12.3.2.

"Effective Date" has the meaning set forth in the preamble to this Lease.

"Elevator Capital Expenditures" has the meaning set forth in Exhibit L.

"Elevator Capital Expenditures Credit" has the meaning set forth in Exhibit L.

"Elevator Maintenance Expenditures" has the meaning set forth in Exhibit L.

"Elevator Maintenance Expenditures Credit" has the meaning set forth in Exhibit L.

"Elevators" means the three (3) elevators located on the Leased Premises as of the Effective Date.

"Emergency" means any circumstance in which (i) Tenant, Landlord or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard lives, Property or the environment against the likelihood of injury, damage or destruction

due to an identified threat or (ii) Applicable Laws require that immediate action is taken in order to safeguard lives, Property or the environment.

"Emergency Vehicle Reservation" has the meaning set forth in Section 3.3.1.

"Encumbrances" means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Premises, whether evidenced by written instrument or otherwise evidenced.

"Engineering Report" means that certain Structural, Architectural, Mechanical and Electrical Analysis for the Tower of the Americas (Final Report) dated February 19, 2003 prepared by James T. Rodriguez Consulting Engineers, Inc. (2702 N. Loop 1604 East, Suite 101, San Antonio, Texas 78232-1706).

"Environmental Claim" means any Action or Proceeding regarding the Premises (i) arising under an Environmental Law or (ii) related to or arising out of an Environmental Event.

"Environmental Event" means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Premises caused by a third party; (iii) any event on, at or from the Premises or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law, (iv) an emergency environmental condition, (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Premises which may cause a threat or actual injury to human health, the environment, plant or animal life.

"Environmental Law(s)" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. ' 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. ' 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. ' 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. ' 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. ' 2601 et seq.; the Clean Air Act, 42 U.S.C. ' 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. ' 300f et seq.; the Endangered Species Act, as amended, 16. U.S.C. ' 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex.

Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. ' 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. ' 11001.

"Environmental Reports" means, collectively, (i) the Lead Report and (ii) the Asbestos Report.

"Ethics Code" means the Ethics Code of the City, as amended from time, and a copy of which is located at <http://www.sanantonio.gov/atty/ethics/codetext.htm> as of the Original Execution Date.

"Event of Default" has the meaning set forth in Section 24.1.1 and Section 24.1.2.

"Excess/Umbrella Policy for New Tenant Improvements Work" has the meaning set forth in Section 19.1.1(e).

"Excess Credit" has the meaning set forth in Exhibit L.

"Excess Proceeds" has the meaning set forth in Section 18.4.4.

"Excusable Landlord Delay" means any Landlord Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Landlord Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Landlord Delay.

"Excusable Landlord Delay Period" means with respect to any particular occurrence of Excusable Landlord Delay, that number of days of delay in the performance by Landlord of its obligations under this Lease actually resulting from such occurrence of Excusable Landlord Delay.

"Excusable Tenant Delay" means any Tenant Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Tenant Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Tenant Delay.

"Excusable Tenant Delay Period" means with respect to any particular occurrence of an Excusable Tenant Delay, that number of days of delay in the performance by Tenant of its obligations hereunder actually resulting from such occurrence of Excusable Tenant Delay, but not to exceed one (1) calendar year with respect to any deadline or time period with respect to any Construction Work other than the New Tenant Improvements Work.

"Existing Improvements" means any and all Improvements situated on the Premises on the Original Execution Date, including the Tower.

“Existing Landlord Supported Improvements” means the Improvements constructed on the Premises by Tenant prior to the Effective Date in accordance with the terms of the Original Lease that were identified as “Landlord Supported Improvements” in the Original Lease.

“Existing Tenant Improvements” means the Improvements constructed on the Premises by Tenant prior to the Effective Date in accordance with the terms of the Original Lease that were identified as “Tenant Improvements” in the Original Lease. The “Existing Tenant Improvements” include the Existing Landlord Supported Improvements.

“Expedited Procedures” has the meaning set forth in Section 1(a) of Appendix C.

“Expiration Date” has the meaning set forth in Section 2 of Appendix B.

“Federal Reserve Discount Rate” means the interest rate charged to individual banks for loans they obtain from central banks of the Federal Reserve System, as such rate is published from time to time by the *Wall Street Journal* or similar financial publication.

“Final Completion” means (i) with respect to the Material Additional Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the Material Additional Work Specifications, the Material Additional Work Plans, all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term “Substantial Completion,” (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Premises in accordance with the terms of this Lease, including but not limited to, all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease and (C) operation of all elements of the Premises in accordance with the terms of this Lease and all Applicable Laws, and (ii) with respect to the New Tenant Improvements Work or any component of the New Tenant Improvements Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the New Tenant Project Plans and the New Landlord Project Plans, as applicable (all of which have been Approved pursuant to the terms of this Lease, as and if required), all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term “Substantial Completion,” (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Premises in accordance with the terms of this Lease, including but not limited to, all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease and (C) Resumption of Operations as to all elements of the Premises in accordance with the terms of this Lease and all Applicable Laws. Substantial Completion of such work and Improvements is a prerequisite to Final Completion of the same.

“Final Notice” has the meaning set forth in Section 24.2.3.

“First Amendment” has the meaning set forth in the recitals to this Lease.

"Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Lease or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air, (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires, (vi) actions or omissions of a Governmental Authority (including, without limitation, the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Lease or any Applicable Law (including, without limitation, with respect to permitting), (vii) pandemics, and (viii) failure of either Party to perform any of its obligations under this Lease within the time or by the date required pursuant to the terms of this Lease for the performance thereof; *provided, however,* that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition, (C) any strike or labor dispute involving the employees of Tenant or any Affiliate of Tenant, other than industry or nationwide strikes or labor disputes; (D) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (E) the occurrence of any manpower, material or equipment shortages; or (F) any delay, default, or failure (financial or otherwise) of the Project Contractor or a subcontractor, vendor or supplier of Tenant or the Project Contractor that is not the result of an event that would otherwise be Force Majeure.

"GAAP" means generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors, which are applicable in the circumstances as of the date in question. Accounting principles are applied on a "consistent basis" when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

"Gift Shop" means the gift shop at the Leased Premises existing as of the Effective Date, which is approximately one thousand five hundred square foot (1,500 sq. ft.).

"GL Policy for Additional Work" has the meaning set forth in Section 19.1.3(d).

"GL Policy for New Tenant Improvements Work" has the meaning set forth in Section 19.1.1(d).

"Governmental Authority" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local

government corporation, whether formed under Section 431 of Subchapter D of the Texas Transportation Code or otherwise.

"Governmental Authorizations" means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

"Governmental Function" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Lease and the performance by Landlord of its obligations under this Lease shall not be considered a "Governmental Function."

"Ground Level" means the portion of the Premises depicted on Exhibit A-4.

"Guarantor" means Landry's Restaurants, Inc., a Delaware corporation.

"Guaranty" means the Guaranty dated November 18, 2004, by Guarantor in favor of Landlord, which Tenant delivered to Landlord contemporaneously with the Tenant's execution of the Original Lease.

"Hazardous Materials" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

"HemisFair Park" means HemisFair Park, San Antonio, Bexar County, Texas.

"Historic and Design Review Commission" means the Historic and Design Review Commission of the City of San Antonio, Texas.

"Holdover Agreement" has the meaning set forth in the recitals to this Lease.

"Impositions" means all Property Taxes, all personal property taxes and all possessory interest taxes imposed or assessed upon the Leasehold Estate (including any interest of Tenant or

Landlord hereunder) or any interest of Tenant or Landlord in the Premises or any Donated Property, on any items of real property or Tenant's Personal Property located on the Premises, all use and occupancy taxes, all excises, levies, license and permit fees, general and special, ordinary and extraordinary, foreseen and unforeseen, that are, with respect to this Lease, assessed, levied, charged, confirmed or imposed upon or with respect to or become payable out of or become a lien on the Leasehold Estate, the Premises, any Donated Property or the appurtenances thereto, or for any use or occupation of the Premises, or such franchises, licenses and permits as may be appurtenant or related to the use of the Premises, this transaction or any documents to which Tenant is a party, creating or transferring an interest or estate in the Leasehold Estate, or any real estate taxes, assessments, excises, levies or fees, general or special, ordinary or extraordinary, foreseen or unforeseen (including assessments for public improvements and betterment, and any mass transit, park, child care and art contributions, assessments or fees) that are levied, imposed or assessed upon the fee simple estate of Landlord in and to the Premises or any Donated Property (except any tax, assessment, excise, levy or fee payable with respect to the receipt of Rent or other sums due under this Lease). The term "Impositions" shall not mean or include, and Landlord shall pay, prior to delinquency, any municipal, state, county or Federal income, excess profits or sales taxes assessed against Landlord or any municipal, state, county or Federal capital, levy, estate, succession, inheritance or transfer taxes of Landlord (on a sale or other transfer of the fee estate in the Premises by Landlord other than a transfer to Tenant) or any franchise taxes imposed upon any corporate owner of the fee estate in the Premises or any part thereof; *provided, however*, that if, at any time during the Term, the methods or scope of taxation or assessment of real estate prevailing on the Original Execution Date shall be so changed that there shall be substituted for the whole or any part of the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or imposed on real estate and the Improvements thereon or upon the possessory interest of Tenant in the Leasehold Estate, or upon the Premises or any of Tenant's Personal Property described above in this definition, a capital levy or other tax levied, assessed or imposed on any of the Rent payable by Tenant to Landlord under this Lease, then all such capital levies or other taxes shall, to the extent that they are so substituted, be deemed to be included within the term "Impositions".

"Improvements" means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

"Insolvency Event" means, with respect to any Person, (a) such Person's or any of its Subsidiaries' (i) failure to not generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its Subsidiaries

(i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its Property and, in the case of any such proceeding instituted against such Person or any such Subsidiary, any such proceeding shall remain undismissed for a period of thirty (30) calendar days or any of the actions sought in such proceeding shall occur; or (c) such Person's or any of its Subsidiaries' taking any corporate action to authorize any of the actions set forth above in this definition.

"Insurance Covenant" means all of the covenants and agreements of Tenant with respect to insurance policies and coverages to be maintained by Tenant pursuant to and in accordance with this Lease.

"Insurance Expenses" has the meaning set forth in Exhibit L.

"Insurance Expenses Credit" has the meaning set forth in Exhibit L.

"Insurance Standard" means such insurance policies, coverage amounts, types of coverage, endorsements or deductibles, as applicable, that (i) in connection with any Construction Work, that a Reasonable and Prudent Developer, Reasonable and Prudent Operator or Reasonable and Prudent Owner, as applicable, would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained with respect to the Premises and such Construction Work and (ii) with respect to the operation and use of the Premises, that a Reasonable and Prudent Operator or Reasonable and Prudent Owner, as applicable, would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained with respect to the Premises and the ownership, operation and use thereof.

"Insured Casualty Risks" means physical loss or damage from fire, casualty, lightning, windstorm, hail, flooding, earth movement (including earthquake, landslide, subsidence and volcanic eruption), collapse, water damage, leakage from fire protection equipment or sprinkler systems, explosion (except steam boiler explosion), smoke, aircraft (including objects falling therefrom), motor vehicles, sonic shock wave, riot, riot attending a strike, civil commotion, sabotage, terrorism, vandalism, malicious mischief, theft, molten material, civil or military authority and all other peril (including resultant loss or damage arising from faulty materials, workmanship or design).

"Insured Materials and Equipment" means all materials intended for incorporation into the Premises, whether stored on-site or off-site, and all machinery, equipment and tools, whether owned, leased or borrowed and brought on-site and/or otherwise utilized but not incorporated into the Project Improvements, by Tenant or Tenant's other contractors and subcontractors, including temporary buildings, site huts, trailers and offices and their contents and all other property of the insured or in their care, custody or control while at the construction site or in storage facilities on- or off-site.

"Landlord" has the meaning set forth in the preamble to this Lease.

"Landlord Casualty Proceeds" has the meaning set forth in Section 18.5.2.

"Landlord Default" has the meaning set forth in Section 24.1.2.

"Landlord Delay" means any delay by Landlord in achieving any of its deadlines for performance of obligations under this Lease.

"Landlord Failure" has the meaning set forth in Section 24.9.

"Landlord Indemnitees" means any Person Related to Landlord.

"Landlord Insured" means Landlord and its Related Parties.

"Landlord Representative" has the meaning set forth in Section 2.1.

"Landlord's New Capital Investment" has the meaning set forth in Section 8.8.1.

"Landlord Transfer" has the meaning set forth in Section 21.5.

"Landlord Transferee" has the meaning set forth in Section 21.5.

"Landlord's Area of Responsibility" means, collectively, (i) the Tower Shaft, (ii) level Five of the Tower, (iii) Level Six of the Tower, (iv) the roof of the Tower and (v) the Pump Room (other than Tenant's Pump Room Area).

"Landlord's Communication Equipment" has the meaning set forth in Section 3.3.6.

"Landlord's Condemnation Award" has the meaning set forth in Section 20.2.1.

"Landlord's Emergency Communication Equipment" has the meaning set forth in Section 3.3.6.

"Landlord's Interest" has the meaning set forth in Section 20.1.2.

"Landlord's Participation Revenues" has the meaning set forth in Section 6.4.1.

"Landlord's Participation Revenue Percentage" has the meaning set forth in Section 6.4.1.

"Landlord's Property Insurance Policy" has the meaning set forth in Section 19.4.

"Landlord's Remedial Work" has the meaning set forth in Section 9.2.1.

"Landlord Supported Improvements" means, collectively, the Existing Landlord Supported Improvements and the New Landlord Supported Improvements.

"Lead Report" means Limited Lead Sampling Report of the Tower of the Americas prepared by ATC Associates Inc. for the City dated March 26, 2004 and being ATC Project Number 46.23683.1014, Task 46002 (Prepared and/or Reviewed by: John C. Tumbleson, TDH Lead Risk Assessor #2070601, Osanna Carrasco Rehfeld, Asbestos/Lead Department Manager).

"Lease" has the meaning set forth in the preamble to this Lease.

"Lease Expiration Date" means 11:59 p.m. CST on the last date of the month in which the fifth (5th) full Lease Year elapses after the earlier of (a) Substantial Completion of all of the New Tenant Improvements Work, or (b) sixteen (16) months following the Effective Date; *provided, however*, if this Lease is sooner terminated pursuant to any applicable provision hereof such date of termination shall be the "Lease Expiration Date."

"Lease Year" means each twelve (12) full calendar month period during the Term commencing on July 1st and ending on June 30th.

"Leased Premises" has the meaning set forth in Section 3.1.

"Leased Premises Reservations" has the meaning set forth in Section 3.3.

"Leasehold Estate" means, collectively, (i) the leasehold estate in the Leased Premises granted under this Lease and (ii) all other rights, titles and interest granted to Tenant under this Lease, including Tenant's rights to the Licensed Premises.

"Legal Holiday" means any day, other than a Saturday or Sunday, on which the City's administrative offices are closed for business.

"Liabilities" has the meaning set forth in Section 19.8.1.

"Licensed Premises" means, collectively, (i) the Parking Improvements, (ii) the Walkway Tracts, (iii) Tenant's Pump Room Area and (iv) the Donated Property and Additional Improvements, if any, located on or within any of the foregoing.

"Licensed Premises Reservation" has the meaning set forth in Section 4.5.

"Lien" means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether real or personal tangible or intangible, now owned or hereafter acquired.

"Maintenance and Repair Work" has the meaning set forth in Section 14.1.1.

"Major Decisions" shall mean and be limited to the approval of (i) any Transfer or Permitted Transfer/Sublease, (ii) any pledge or encumbrance of Tenant's assets as security for any debt, (iii) any amendment to this Lease and (iv) any operating or capital budgets of Tenant.

"Marketing Commitment" has the meaning set forth in Section 6.14.

"Marketing Expenditures" has the meaning set forth in Section 6.8.

"Marks" means (i) any trademark, service mark, trade dress or trade name and (ii) any name, slogan, logo, icon, domain name, likeness, depiction or other designation that (a) identifies goods or services as provided by a Person and distinguishes the goods or services from those provided by other Persons, even if that Person providing the goods or services is anonymous or (b) identifies any real or personal property and distinguishes it from other real or personal property.

"Master Plan" means the HemisFair Area Master Plan adopted pursuant to that certain City Ordinance No. 99009 passed and approved on March 25, 2004 (effective as of April 5, 2004) and being attached to such ordinance as Exhibit "A".

"Material Additional Work" means any Additional Improvements (i) that do not substantially conform in any material respect to the Permitted Uses, (ii) that include any structural changes (other than in connection with the exercise of Tenant's Self-Help Rights pursuant to the terms of this Lease) or would weaken or impair the structural integrity of the Tower, (iii) that constitute changes or alterations in, to or of the Project Improvements that do not conform to the New Project Specifications, New Tenant Project Schematics, or New Landlord Project Schematics, that have been Approved pursuant to the terms of this Lease or (iv) that constitute any changes or alterations in, to or any improvements covered by Landlord's obligations under Section 14.1.5 or any Improvements located in the Licensed Premises but for purposes of this clause (iv) only, any Additional Work performed by Tenant pursuant to Section 24.9 shall not be considered "Material Additional Work"; *provided* that New Tenant Improvements Work shall be excluded from the definition of "Material Additional Work."

"Material Additional Work Architect" means a Qualified Design Professional.

"Material Additional Work Construction Contract" means the construction contract to be entered into by Tenant with the Material Additional Work Construction Contractor for the construction of Material Additional Work.

"Material Additional Work Construction Contractor" means a Qualified Contractor.

"Material Additional Work Construction Schedule" means a schedule of critical dates relating to the construction of the Material Additional Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the proceeding task or event), which schedule, shall include the dates for (a) ordering and delivery of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or system of the

Improvements, (b) completion of the Material Additional Work Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of all necessary Governmental Authorizations), (c) issuance of all Governmental Authorizations prerequisite to commencement of the Material Additional Work, (d) commencement of the Material Additional Work and (e) Final Completion of the Material Additional Work. The "Material Additional Work Construction Schedule" shall be adjusted as appropriate to reflect the delay in the Material Additional Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of Section 10.2.

"Material Additional Work Design Contract" means the services contract to be entered into by Tenant with respect to the Material Additional Work Architect for the design of the Material Additional Work and preparation of the Material Additional Work Plans.

"Material Additional Work Plans" means individually and collectively, the concept drawings, schematic drawings, design development drawings and detailed working drawings for the Material Additional Work prepared by the Material Additional Work Architect.

"Material Additional Work Specifications" means schematic design plans for the Material Additional Work showing all elements of the Material Additional Work and their effect on the Project Improvements (including conceptual plans, schematic plans and design development plans and specifications), conforming in all respects to the usual and customary standards of the American Institute of Architects for schematic design plans and submitted to Landlord for its Approval.

"Material Additional Work Submission Matters" means all of the following:

- (a) the proposed Material Additional Work Construction Schedule, together with a statement of whether such Material Additional Work will require any Down Time and, if so, the duration and dates for such Down Time;
- (b) the name and qualifications of the proposed Material Additional Work Architect and the Material Additional Work Construction Contractor;
- (c) the Material Additional Work Specifications; and
- (d) the Material Additional Work Plans.

"Material Change" means any New Tenant Improvements that do not conform to the New Project Specifications, the New Tenant Project Schematics, or the New Landlord Project Schematics, as Approved by Landlord or the Landlord Representative, as applicable.

"Maximum Lawful Rate" means the maximum non-usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Lease, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent

permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

"Mechanic's Lien" has the meaning set forth in Section 9.4.

"Municipal Index Rate" means the weekly average municipal bond yield for the 11-Bond GO Index for the week preceding the week in question, as published for each week in *The Bond Buyer* under the table entitled Bond Buyer Indexes (but if, at any time, such weekly municipal bond yield for the 11-Bond GO Index is no longer published in such manner or is otherwise unavailable, the Parties shall agree on a substitute publication or methodology that is comparable or substantially similar to the manner in which such interest rate was determined).

"Naming Rights" means (i) the naming of the Premises, any portion thereof or any operation from, at, on or in the Premises, (ii) the assigning or designation of any Marks to designate and refer to the Premises or any portion thereof or any operation from, at, on or in the Premises, (iii) the giving or designating of any attributions for the Premises, any portion thereof or any operation from, at, on or in the Premises or (iv) any association of any Person or their products, services or intellectual property with the Premises, any portion thereof or any operation from, at, on or in the Premises, but advertising, branding, concession rights, pourage rights and service rights in the normal course of business operations at the Premises that does not designate a name for any area or part of the Premises shall not be "Naming Rights."

"New Landlord Project Drawings" means the design development plans and drawings and site elevations for the New Landlord Supported Improvements delivered by Landlord to Tenant in accordance with the terms of this Lease and which conform to the New Project Specifications and the New Landlord Project Schematics.

"New Landlord Project Plans" means the detailed working construction drawings for the New Landlord Supported Improvements delivered by Landlord to the Tenant in accordance with the terms of this Lease.

"New Landlord Project Schematics" means the concept drawings, schematic drawings and preliminary elevations for the New Landlord Supported Improvements delivered by Landlord to Tenant in accordance with the terms of this Lease, and which drawings shall (i) show in reasonable detail all proposed buildings, structures, fixtures, signage, entertainment facilities, equipment and other improvements to be constructed as part of the New Landlord Supported Improvements Work, (ii) identify in reasonable detail all uses to be made of each area of the Premises and (iii) be consistent with, and show in reasonable detail, all elements of the New Project Specifications and as may be modified by Material Additional Work Submission Matters that have been Approved by Landlord or the Landlord Representative, as applicable, pursuant to the terms of this Lease, as and if required.

"New Landlord Supported Improvements" has the meaning set forth in Section 8.5.2(b).

"New Landlord Supported Improvements Work" means the design, development and construction of the New Landlord Supported Improvements in accordance with the terms of this Lease.

"New Project Budget" means the total budget for all New Project Costs, broken down in reasonable detail by "hard" and "soft" cost categories, including separate line items for the amount payable under each of the New Project Construction Documents and allowances and contingencies, together with any amendments thereto up to the New Project Completion Date. Landlord has Approved the initial New Project Budget attached hereto as Exhibit H.

"New Project Completion Date" means the date upon which all of the obligations of Tenant provided in Section 8.3.7 have been satisfied.

"New Project Construction Contract" means the contract or contracts between Tenant and its construction contractors for the New Tenant Improvements.

"New Project Construction Documents" means any and all contracts, documents or other instruments entered into by or on behalf of Tenant or any other its Affiliates for the development, design or construction of the New Tenant Improvements, including any New Project Construction Contract and any New Project Design Contract.

"New Project Construction Schedule" means a schedule of critical dates relating to the New Tenant Improvements Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) ordering and delivering of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the New Tenant Improvements, (ii) completion of the New Tenant Project Plans and New Landlord Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (iii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the New Tenant Improvements Work, (iv) commencement of all New Tenant Improvements Work, and (v) Substantial Completion of the New Tenant Improvements. The New Project Construction Schedule shall be adjusted as appropriate to reflect the delay in the New Tenant Improvements Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of this Lease. Landlord has Approved the initial New Project Construction Schedule attached hereto as Exhibit G.

"New Project Costs" means all documented, direct, out-of-pocket third party costs incurred or to be incurred by Tenant in order for Tenant to fulfill its obligations under this Lease to cause Final Completion of the New Tenant Improvements Work, including all amounts payable a third party under any of the New Project Construction Documents. New Project Costs shall not include (i) general and administrative costs of Tenant or any Affiliate or Tenant in connection with the New Tenant Improvements Work, including payroll, rent and utility expense, office equipment and supplies, vehicles, postage and communication expenses, travel expenses and the like, (ii) fees, interest and other expenses of financing, (iii) working capital, (iv) the cost of any inventory,

merchandise, food or beverages, (v) Elevator Capital Expenditures, as defined in Exhibit L, or (vi) legal fees or other costs incurred in connection with negotiation or entering into this Lease.

"New Project Design Contract" means any services contract executed by Tenant with a Project Architect for the design of the New Tenant Improvements (other than the New Landlord Supported Improvements) and preparation of the New Tenant Project Plans.

"New Project Specifications" has the meaning set forth in Section 8.5.2.

"New Tenant Improvements" means the Improvements to be constructed on the Premises by Tenant after the Effective Date in accordance with the terms of this Lease, including all required Approvals of Landlord. The "New Tenant Improvements" include the New Landlord Supported Improvements.

"New Tenant Improvements Closure" has the meaning set forth in Section 8.10.1.

"New Tenant Improvements Closure Date" has the meaning set forth in Section 8.3.4.

"New Tenant Improvements Delivery Date" means a date that is the later of (i) the date on which all of the Conditions to Commencement of New Tenant Improvements Work have been fully satisfied and (ii) thirty (30) calendar days after the date Landlord receives written notice from Tenant stating that all of the Conditions to Commencement of New Tenant Improvements Work have been satisfied or will be fully satisfied within twenty (20) calendar days following the date of such notice.

"New Tenant Improvements Final Completion Certificate" has the meaning set forth in Section 8.3.7.

"New Tenant Improvements Late Opening Charge" means an amount equal to \$5,235.90 per diem.

"New Tenant Improvements Substantial Completion Certificate" has the meaning set forth in Section 8.3.6.

"New Tenant Improvements Work" means the design, development and construction of the New Tenant Improvements in accordance with the terms of this Lease.

"New Tenant Project Drawings" means the design development plans and drawings and site elevations for the New Tenant Improvements (other than the New Landlord Supported Improvements) delivered by Tenant to the Landlord Representative for Approval in accordance with the terms of this Lease, and which are sufficient in detail to allow the Landlord Representative to determine whether the same conform to the New Project Specifications and the New Tenant Project Schematics.

"New Tenant Project Plans" means the detailed working construction drawings for the New Tenant Improvements (other than the New Landlord Supported Improvements) prepared by the Project Architect and delivered by Tenant to the Landlord Representative for Approval in accordance with the terms of this Lease.

"New Tenant Project Schematics" means the concept drawings, schematic drawings and preliminary elevations for the New Tenant Improvements (other than the New Landlord Supported Improvements) delivered by Tenant to the Landlord Representative for Approval in accordance with the terms of this Lease, and which drawings shall (i) show in reasonable detail all proposed buildings, structures, fixtures, signage, entertainment facilities, equipment and other improvements to be constructed as part of the New Tenant Improvements Work (other than the New Landlord Supported Improvements Work), (ii) identify in reasonable detail all uses to be made of each area of the Premises and (iii) be consistent with, and show in reasonable detail, all elements of the New Project Specifications and as may be modified by Material Additional Work Submission Matters that have been Approved by Landlord or the Landlord Representative, as applicable, pursuant to the terms of this Lease, as and if required.

"New Tower Mark" has the meaning set forth in Section 25.4.

"New Year's Celebration" has the meaning set forth in Section 3.3.7.

"Non-Appropriation" means and shall be deemed to have occurred with respect to any payment obligation or other monetary obligation of the City (in any capacity) that may arise under this Lease during any fiscal year and for which the City is determined to have liability or responsibility, if the City fails to make an Appropriation within sufficient time to avoid a Landlord Default under this Lease.

"Notice" has the meaning set forth in Section 26.1.

"Observation Deck Level" means the portion of the Premises depicted on Exhibit A-6.

"Observation Deck Operations" means the sale of admission to the Observation Deck Level, or any portion thereof.

"Open Records Act" has the meaning set forth in Section 27.11.

"Operating Hours" has the meaning set forth in Section 12.7.3.

"Operating Standard" means the continuous operation of the Premises on a full-service basis in a first-class manner in accordance with the requirements of this Lease and consistent with the standards of operation that a Qualified Operator, acting as a Reasonable and Prudent Operator, would reasonably be expected to undertake and follow for the operation of a Comparable Property, but with respect to the maintenance and repair of (i) the Parking Improvements only, the maintenance and repair of the Parking Improvements so as to keep them in good working order and repair, in a neat and clean condition and in compliance with Applicable Laws, (ii) the portion

of the Premises that Landlord is obligated to maintain and repair pursuant to Section 14.1.5 only, as limited, if at all, by the standards for Landlord's obligations under Section 14.1.5 and (iii) Tenant's Pump Room Area only, the maintenance and repair of Tenant's Pump Room Area so as to keep it in at least the same condition as exists on the Effective Date and in compliance with Applicable Laws.

"Opinion Request" has the meaning set forth in Section 27.11.

"Original Execution Date" means the Effective Date as defined in the Original Lease.

"Original Lease" has the meaning set forth in the recitals to this Lease.

"Parking Improvements" means, collectively, (a) Tenant's Parking Spaces, (b) all driveways into, from and within the Parking Tract, (c) the exterior and interior surface of the Parking Tract, (d) the striping and surfacing of all Tenant's Parking Spaces, (e) the lighting for the Parking Tract, (f) the security system for the Parking Tract, (g) all signage located in, at or on the Parking Tract, and (h) any parking access control equipment at or for the Parking Tract.

"Parking License" has the meaning set forth in Section 4.1.1; *provided* that upon termination of the Parking License and relocation of Tenant's Parking Spaces pursuant to Section 4.1.2, the term "Parking License" shall refer to the license granted pursuant to the terms of Section 4.1 as to the relocated Tenant's Parking Spaces.

"Parking Operations" means the providing of automobile parking.

"Parking Tract" has the meaning set forth in Recital A.

"Parking Walkway" has the meaning set forth in Section 4.2.2.

"Participation Rent" has the meaning set forth in Section 6.4.1.

"Parties" or **"Party"** has the meaning set forth in the preamble to this Lease.

"Performance Bond" means either (i) a performance bond in the amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) issued by a Qualified Surety, which the Tenant delivered to Landlord contemporaneously with the Tenant's execution of the Original Lease, or (ii) an irrevocable letter of credit issued for the City by the Reference Bank, in each case in a form that has been Approved by the Landlord Representative.

"Permitted Exceptions" means (i) those certain Encumbrances upon and/or exceptions to the title to the Premises that are referenced and/or described on Exhibit B attached hereto and (ii) the Leased Premises Reservations, the Licensed Premises Reservations and all rights to use the Premises pursuant thereto.

"Permitted Transfer/Sublease" has the meaning set forth in Section 21.1.

"Permitted Uses" has the meaning set forth in Section 12.1.

"Person" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

"Person Related to" has the same meaning as "Related Party".

"Premises" means, collectively, the Leased Premises and the Licensed Premises and shall include all components thereof, including the Project Improvements.

"Prime Rate" means the rate of interest from time to time published or otherwise announced by the Reference Bank, as its "prime rate" or "base rate" of interest (or, if it does not announce such a rate of interest, the most comparable rate of interest announced by it from time to time).

"Private Contract Rights" has the meaning set forth in Section 27.10.

"Prohibited Improvements" has the meaning set forth in Section 12.6.

"Prohibited Uses" has the meaning set forth in Section 12.2.

"Project" means the undertaking of Tenant to design, develop, construct and pay for the New Tenant Improvements and the Recommencement of Operations and the continuation of the operation of the Premises, all as required pursuant to the terms of this Lease.

"Project Architect" means a Qualified Design Professional.

"Project Contractor" means a Qualified Contractor.

"Project Executive" means Jeffrey Cantwell or any other individual reasonably designated as such by Tenant.

"Project Improvements" means, collectively (i) the Existing Improvements, (ii) the Donated Property, (iii) any Additional Improvements, (iv) the Existing Tenant Improvements, and (v) the New Tenant Improvements.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Property Insurance Policy" has the meaning set forth in Section 19.1.2.

"Property Taxes" means any real estate ad valorem taxes and assessments, or any other similar form of tax or assessment now or hereinafter levied and assessed against the Premises.

"Public Plaza Reservation" has the meaning set forth in Section 3.3.1.

"Pump Room" means the fountain pump room located underneath the Pump Room Tract.

"Pump Room License" has the meaning set forth in Section 4.3.1.

"Pump Room Tract" means the Fountain Plaza South in HemisFair Park and being more particularly described on Exhibit A-7.

"Qualified Contractor" means a general contractor that, on the date its name and qualifications are submitted to Landlord, and if such general contractor thereafter becomes (or replaces the prior) Project Contractor, at all times until Final Completion of the New Tenant Improvements Work, shall satisfy all of the following criteria:

- (a) licensed and otherwise in compliance with all Applicable Laws to do business and act as a general contractor in the State of Texas and the City of San Antonio, Texas for the type of work proposed to be performed by such contractor;
- (b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent construction contract from a Qualified Surety;
- (c) well experienced as a general contractor in comparable work; and
- (d) neither such general contractor nor its Affiliate is in default under any material obligation to the City under any other contract between such contractor or its Affiliate and the City.

"Qualified Design Professional" means an architect that, on the date its name and qualifications are submitted to Landlord, and if such architect thereafter becomes the Project Architect, at all times until Final Completion of the New Tenant Improvements Work, satisfies all of the following criteria:

- (i) Licensed and otherwise in compliance with all Applicable Laws to do business and act as an architect in the State of Texas and in the City of San Antonio, Texas for the type of work proposed to be performed by such architect;
- (ii) Well experienced as an architect in comparable work; and
- (iii) Neither such architect nor any of its Affiliates is in default under any material obligation to the City under any other contract between such architect or any of its Affiliates and the City.

"Qualified Operator" means a nationally recognized combined restaurant and entertainment venue project operator that at all times during its operation of the Premises pursuant to the terms of this Lease (a) operates, on a full-service basis, at least three (3) restaurants (other

than the Tower Restaurant) of a quality equivalent to or better than a Signature Restaurant and three (3) first-class entertainment facilities (other than the Premises), (b) meets the Qualified Operator Financial Test and (c) an Insolvency Event with respect to such project operator does not exist. A "Qualified Operator" includes a wholly-owned, direct subsidiary of a Person who would qualify as a "Qualified Operator." Landlord hereby agrees that Guarantor, as of the Effective Date, is a Qualified Operator.

"Qualified Operator Financial Test" means for any Person, a requirement that such Person has a Tangible Net Worth of at least \$25,000,000.00 as of the end of the most recently ending fiscal year. All calculations for determining same shall be based upon the consolidated accounts of such Person and its Subsidiaries in accordance with GAAP.

"Qualified Surety" means any surety which has been approved by Landlord and which has an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VIII" (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

"Qualifying Third Party Liability" means the amount actually paid by Tenant to a third Person (and not to any Person that is a Related Party to Tenant) pursuant to a final judgment entered in an Action or Proceeding or pursuant to a settlement Approved by Landlord but only to the extent of any damages that are caused by any of the following:

- (a) Any injury to or death of any individual or any physical damage to real or tangible personal property to the extent a direct result of the negligence or willful misconduct of Landlord or any Landlord Indemnitee related to the Premises;
- (b) Landlord's breach of its express obligations under this Lease; or
- (c) An Environmental Event required to be covered by Landlord's Remedial Work, including third Person claims and fines and penalties by any Governmental Authority related to any such Environmental Event.

"Reasonable and Prudent Developer" means a developer of projects similar in scope, size and complexity to the Premises seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced developer of projects similar to the Premises complying with all Applicable Laws and engaged in the same type of undertaking.

"Reasonable and Prudent Operator" means a Qualified Operator of projects similar in scope, size and complexity to the Premises seeking in good faith to perform its contractual

obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator of Comparable Properties complying with all Applicable Laws and engaged in the same type of undertaking.

"Reasonable and Prudent Owner" means an owner of projects similar in scope, size and complexity to the Premises who in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced owner of Comparable Properties complying with all Applicable Laws and engaged in the same type of undertaking.

"Recommencement of Operations" or **"Recommence Operations"** means opening for business to the public and the actual recommencement of operation of all elements of the Premises after Substantial Completion of the New Tenant Improvements in accordance with the terms of this Lease and all Applicable Laws except such minor elements that do not prevent Tenant from operating the Premises as a whole in accordance with the Operating Standard.

"Recommencement of Operations Date" has the meaning set forth in Section 8.3.6.

"Reference Bank" Bank of America, N.A. (or its successor, by merger or acquisition) or, if none, a banking institution designated by Tenant, subject to the Approval of the Landlord Representative, not to be unreasonably withheld.

"Related Party" or **"Related Parties"** means with respect to any Person, such Person's partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), lessees, sublessees (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, lessees, and sublessees.

"Remedial Plan" has the meaning set forth in Section 24.9.

"Rent" has the meaning set forth in Section 6.2.

"Rent Credit Dispute or Controversy" has the meaning set forth in Section 24.10.1.

"Responsible Officer" means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Lease, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

"Restaurant Level" means the portion of the Premises depicted on Exhibit A-5.

"Restaurant Operations" means the sale, preparation, service or providing of any food or beverages, including (i) beer, wine and alcohol, (ii) catering and banquet services, (iii) snack foods, (iv) food or beverage vending machines and (v) rental charges which are incidental to the provision of food and beverage service.

"Restricted Area" has the meaning set forth in Section 12.6.

"Retail Operations" means the sale of any merchandise, goods, equipment, wares or other non-edible items, including (i) souvenirs, (ii) wearing apparel, (iii) pens and pencils, (iv) records, tapes and cassettes, (v) novelties and (vi) gifts.

"Review and Approval or Consent Rights" has the meaning set forth in Section 11.1.1.

"Reviewing Party" has the meaning set forth in Section 11.1.1.

"SBEDA Policy" has the meaning set forth in Section 27.7.

"Second Amendment" has the meaning set forth in the recitals to this Lease.

"Signature Restaurant" means a first-class, fine dining restaurant which at a minimum meets or exceeds the standards, as of the Original Execution Date, of the highest of Tenant's or its Affiliate's restaurants known as "Vic & Anthony's", "La Griglia", and "Grotto" located in Houston, Harris County, Texas. As of the date hereof, the Signature Restaurant is known as "Chart House."

"Space Lease" has the meaning set forth in Section 21.1.

"Specialty Group Destination" means a first-class entertainment destination which at a minimum meets or exceeds the standards, as of the Original Execution Date, of Guarantor's or its Affiliates entertainment destinations known as the "Houston Aquarium".

"Sublease" means any lease, sublease, license, concession or other occupancy agreement covering all or any part of the Premises other than this Lease.

"Submitting Party" has the meaning set forth in Section 11.1.1.

"Subsidiary" means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

"Substantial Completion" means, (i) when used with respect to Additional Work or any component of Additional Work, (A) the substantial completion of all aspects of such work and Improvements substantially in accordance with all Applicable Laws (and with respect to Material Additional Work only, the Material Additional Work Plans) and substantially in accordance with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to commence or resume, as applicable, operations of the Premises pursuant to the terms of this Lease, and (ii) when used with respect to the New Tenant Improvements Work or any component of the New Tenant Improvements Work, (A) the substantial completion of all aspects of such work and Improvements substantially in accordance with the New Tenant Project Plans and the New Landlord Project Plans, as applicable (as Approved pursuant to the terms of this Lease, as and if required) and all Applicable Laws and substantially in accordance with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to Recommence Operations pursuant to the terms of this Lease.

"Substantial Completion Deadline" means, with respect to the New Tenant Improvements Work, February 1, 2026, as may be extended by (i) an Excusable Tenant Delay Period or (ii) the provisions of Section 8.4, each in accordance with the terms of this Lease.

"Substantially All of the Improvements" has the meaning set forth in Section 20.1.3.

"Subtenant" means any Person in possession of any portion of the Premises pursuant to a Sublease.

"Tangible Net Worth" means, for any Person as of any date on which the amount thereof is being determined, the stockholders' equity of such Person determined in accordance with GAAP, minus the sum of (a) the amount of any write-up in the book value of any assets resulting from the revaluation thereof, or any write-up in the excess of the cost of the assets acquired, and (b) the aggregate of all residual values and intangible assets appearing on the asset side of that Person's statement of financial position (balance sheet) including all amounts for goodwill, patents, patent rights, trademarks, trade names, copyrights, design rights, franchises, bond discounts, underwriting expenses, treasury stock, organization expense and other similar items, if any.

"Tax Proceeding" has the meaning set forth in Section 13.2.1.

"Telescope and Other Operations" means (i) the use or providing of telescopes, binoculars or any other magnified or enhanced viewing devices or equipment of any kind, but not the permanent sale of any such equipment (ii) the sale of any advertising, branding rights,

concession rights, Naming Rights, pourage rights and service rights at the Premises, and (iii) rental charges which are not incidental to the provision of food and beverage service.

"Telescope License Agreement" means that certain License Agreement between the City of San Antonio and the Lions Club of San Antonio Charities, Inc. dated as of August 27, 1998, as may be amended from time to time pursuant to the terms of this Lease.

"Tenant" has the meaning set forth in the preamble to this Lease.

"Tenant Default" has the meaning set forth in Section 24.1.1.

"Tenant Delay" means any delay by Tenant in achieving performance of its obligations under this Lease, including any of the deadlines set forth in Section 8.1 or Section 8.3 with respect to the New Tenant Improvements Work.

"Tenant Improvements" means, collectively, the Existing Tenant Improvements and the New Tenant Improvements.

"Tenant Representative" has the meaning set forth in Section 2.2.

"Tenant's Auto Policy" has the meaning set forth in Section 19.1.4(b).

"Tenant's Business Interruption Policy" has the meaning set forth in Section 19.1.4(e).

"Tenant's Communication Equipment" has the meaning set forth in Section 3.3.6.

"Tenant's Crime Policy" has the meaning set forth in Section 19.1.4(f).

"Tenant's Excess/Umbrella Policies" has the meaning set forth in Section 19.1.4(d).

"Tenant's GL Policy" has the meaning set forth in Section 19.1.4(a).

"Tenant's New Capital Investment" means ordinary and reasonable New Project Costs directly incurred by Tenant after the Effective Date for the design, construction and development of the New Tenant Improvements (other than the portion of the New Landlord Supported Improvements funded by Landlord's New Capital Investment) that conform to the New Tenant Project Plans and New Landlord Project Plans, as applicable (as Approved pursuant to the terms of this Lease, as and if required) in accordance with the terms of this Lease, including the cost of such New Tenant Improvements, furniture, fixtures, equipment and other personal property, construction, architectural, engineering and design costs and fees, legal fees, contractor's fees, development fees, permits and approvals from Governmental Authorities, title examination and surveying costs; *provided, however*, in no event shall such costs and expenses be paid or internally allocated to Affiliates of Tenant or include any items that may not be capitalized in accordance with GAAP. "Tenant's New Capital Investment" shall be determined in accordance with GAAP and shall not include (i) any costs and expenses incurred in connection with or as a result of any

Force Majeure, (ii) any liquidated damages paid pursuant to Section 8.4, (iii) any Casualty Proceeds or (iv) the cost of Tenant's Remedial Work.

"Tenant's Notice of Intent" has the meaning set forth in Section 24.9.

"Tenant's Parking Spaces" has the meaning set forth in Section 4.1.1; *provided* that upon termination of the Parking License and relocation of Tenant's Parking Spaces pursuant to Section 4.1.2, the term "Tenant's Parking Spaces" shall refer to the relocated Tenant's Parking Spaces.

"Tenant's Personal Property" means any and all movable equipment, furniture, fixtures and other tangible personal property (including restaurant equipment, inventory, supplies and other personal property) that are owned by Tenant and located on or within the Premises and that (i) do not constitute fixtures and can be removed from the Premises without damage thereto and (ii) are not Donated Property.

"Tenant's Pump Room Area" has the meaning set forth in Section 4.3.1.

"Tenant's Remedial Work" has the meaning set forth in Section 9.1.1.

"Tenant's Self-Help Remedy Cap" has the meaning set forth in Section 24.9.

"Tenant's Self-Help Rights" has the meaning set forth in Section 24.9.

"Tenant's Workers' Compensation Policy" has the meaning set forth in Section 19.1.4(c).

"Term" has the meaning set forth in Section 5.1.

"Theater" means the theater at the Leased Premises existing as of the Effective Date, which is an approximately fifty (50) seat 4-dimension theater.

"Theater and Incidental Operations" means (i) the sale of admission to the Theater for the presentation of any theater or movie operations, including a 3-D or 4-D theater and (ii) any and all other activities, operations or services of any kind conducted or provided for any compensation or remuneration of any kind which are not Parking Operations, Restaurant Operations, Retail Operations or Telescope and Other Operations, including the operation of arcade games, souvenir dispensing machines and face painting as permitted pursuant to the terms of this Lease.

"Third Amendment" has the meaning set forth in the recitals to this Lease.

"Top House" means the circular building structure located at the top of the Tower which houses the Restaurant Level and the Observation Deck Level.

"Tower" means the tower structure located on the Tower Tract as of the Original Execution Date and commonly referred to as the "Tower of the Americas", and all appurtenances thereto.

"Tower Domain Name" has the meaning set forth in Section 25.1.

"Tower Lease" means that certain Concession Agreement dated May 12, 1986 by and between the City and Tower Foods, Inc., as amended by that certain The Tower of the Americas Concession Agreement Amendment No. 1 dated January 23, 2004 by and between the City and Tower Foods, Inc. and that certain The Tower of the Americas Concession Agreement Amendment No. 2 dated August 31, 2004 by and between the City and Tower Foods, Inc., as may be amended from time to time.

"Tower Marks" has the meaning set forth in Section 25.1.

"Tower Name" means the **TOWER OF THE AMERICAS** Mark.

"Tower Name License" has the meaning set forth in Section 25.1.

"Tower Plaza" means the portion of the Tower Tract outside of the Tower structure and the Theater.

"Tower Public Areas" means, collectively, (i) those portions of the Tower Plaza and the interior and exterior of the Tower to which the public has access and which do not constitute support or service areas for any Business Operation and (ii) HVAC and plumbing systems which directly serve the areas described in clause (i).

"Tower Restaurant" means the restaurant to be located on the Restaurant Level and the associated banquet facility, each in accordance with the terms and conditions of this Lease.

"Tower Shaft" means, collectively, the foundation, the concrete shaft (including the interior and exterior), concrete floors, stairs, mechanical chase and structural steel components of the Tower.

"Tower Tract" has the meaning set forth in Recital A.

"Transfer" has the meaning set forth in Section 21.1.

"Unforeseeable Cost Overruns" has the meaning set forth in Section 8.9.

"Unforeseeable Cost Overruns Credit" has the meaning set forth in Section 8.9.

"Untenantable Condition" means the existence of any one of the following conditions but only to the extent the same is not the result of the failure of Tenant to perform its obligations under this Lease:

(a) The operation of the Tower Restaurant, in Tenant's commercially reasonable business judgment, cannot be practically and profitably conducted in the remaining portion of the Premises (taking into account the amount of Condemnation Award available for restoration), due to physical constraints, Applicable Laws, provisions of any insurance policy required to be maintained by Tenant pursuant to the terms of this Lease or the terms, conditions and covenants of this Lease, in substantially the same manner as conducted immediately prior to such taking; or

(b) The operation of the Observation Deck Level, in Tenant's commercially reasonable business judgment, cannot be conducted in the remaining portion of the Premises (taking into account the amount of Condemnation Award available for restoration), due to physical constraints, Applicable Laws, provisions of any insurance policy required to be maintained by Tenant pursuant to the terms of this Lease or the terms, conditions and covenants of this Lease, in substantially the same manner as conducted immediately prior to such taking.

"Utility Vault" means the below grade utility room located on the Tower Tract at the base of the Tower and being where the primary utilities for the Tower enter from below the Tower Plaza for distribution throughout the Tower.

"Valet Parking Area" has the meaning set forth in Section 4.1.3.

"Valet Parking Spaces" has the meaning set forth in Section 4.1.3.

"Valet Turn-In Area" has the meaning set forth in Section 4.1.3.

"Walkway License" has the meaning set forth in Section 4.2.1.

"Walkway Tracts" has the meaning set forth in Recital A, as the same may be relocated in accordance with Section 4.2.2.

APPENDIX B
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Governing Provisions

The following Governing Provisions shall apply to and govern this Lease.

1. **Accounting Terms and Determinations.** Unless otherwise specified, all accounting terms used in this Lease shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

2. **Survival.** Upon expiration or termination of this Lease, Tenant's covenants, representations and agreements in Section 19.8, shall survive such expiration or termination and shall remain in full force and effect until the later of the date (the "**Expiration Date**") that is (i) two (2) years after the Lease Expiration Date and (ii) the date of payment in full of the Rent and all other amounts payable under this Lease for which claims have been made in writing by the Party due such payment on or before the date set forth in the preceding clause (i) of this Section 2; *provided, however*, that it is understood and agreed that this Lease shall continue in full force and effect with respect to all claims made in writing by either Party on or before the Expiration Date until such claims are paid in full. In addition, the following terms and provisions of this Lease shall survive any expiration or termination of this Lease: ARTICLE I, Section 4.7, Sections 6.1 through Section 6.12, (as to payments applicable to the periods included in the Term), ARTICLE VII, Section 9.1 (as to periods during the Term), Section 9.2, Section 9.4, Section 9.6, ARTICLE XIII (as to periods included in the Term), Section 15.1.1, Section 17.4, Section 17.5, Section 18.4.2, Section 18.4.3, Section 18.4.4, Section 19.5.3, Section 19.7, Section 20.1.2, Section 20.2.1, ARTICLE XXII, ARTICLE XXIV, Section 25.1.4(b), ARTICLE XXVI, Section 27.4, Section 27.5, Section 27.8, Appendix A (as to provisions that survive termination or expiration of this Lease), this Appendix B, Appendix C, Appendix D, and Sections 1.c and 1.d of Exhibit L.

3. **Severability.** If any term or provision of this Lease, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Lease, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

Appendix B

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4. **Entire Agreement; Amendment.** This Lease constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Except to the extent provided otherwise pursuant to the express terms of this Lease, neither this Lease nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

5. **Table of Contents; Headings; Exhibits.** The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Lease are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Lease. All Appendices and Exhibits attached to this Lease are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Lease and any Appendices or Exhibits, the text of this Lease shall control.

6. **Parties in Interest; Limitation on Rights of Others.** The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Lease, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Lease or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Lease.

7. **Counterparts.** This Lease may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

8. **Governing Law.** **THIS LEASE AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).**

9. **Court Proceedings.** Any suit, action or proceeding against any Party arising out of or relating to this Lease, any transaction contemplated hereby or any judgment entered by any court in respect of any thereof may be brought in any Federal or state court located in the City of San Antonio, Texas, and the Parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such Suit, action or proceeding. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consents to the service of process in any such Suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for Notice provided for in this Lease. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, action or proceeding in any Federal or state court located in the City of San Antonio, Texas, and any claim that any such Suit, action or proceeding brought in any such court has been

brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Lease or any transaction contemplated hereby except in a Federal or state court located in the City of San Antonio, Texas.

10. **Limitation to Capacity as Landlord.** The Parties acknowledge that all references to "Landlord" herein (which, for the purposes of this provision, shall be deemed to include any references in this Lease to Landlord as the owner of the fee interest in the Leased Premises) shall refer only to Landlord in its capacity as Landlord under this Lease. The term "Landlord" and the duties and rights assigned to it under this Lease, thus exclude any action, omission or duty of the City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of the City's Governmental Functions may prevent Landlord from performing its obligations under this Lease and shall not cause or constitute a default by Landlord under this Lease or give rise to any rights or Claims against the City in its capacity as Landlord, it being acknowledged that Tenant's remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of the City's Governmental Functions shall be governed by the laws and regulations concerning Claims against the City as a charter city and a Governmental Authority; *provided* that, with respect to any Excusable Tenant Delays, the Tenant shall have the rights that are set forth in this Lease. In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Tenant to Landlord under this Lease as a result of any action or omission of the City when performing its Governmental Function.

11. **Capacity of Persons Acting on Behalf of Landlord.** Notwithstanding anything to the contrary in this Lease, all references in this Lease to employees, agents, representatives, contractors and the like of Landlord shall refer only to Persons acting in the City's capacity as the "Landlord" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of the City's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of the City shall be deemed to be acting in connection with the performance of the City's Governmental Functions.

12. **No Limitation on City's Governmental Functions.** The Parties acknowledge that Landlord is a municipal corporation operating pursuant to a home-rule charter in addition to being the owner of the Premises, and that no representation, warranty, Consent, Approval or agreement in this Lease by Landlord shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Lease be deemed to waive any immunities granted to the City when performing its Governmental Functions, which are provided under Applicable Law, including Section 101.0215(a) of the Texas Civil Practice and Remedies Code, as may be amended or replaced. For example, Approval by "Landlord" or the "City" of plans for New Tenant Improvements or any Additional Work to be constructed shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, the City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department acting in connection with the performance of the City's Governmental Functions. Further, any consent to jurisdiction by Landlord is only with respect to matters arising

in its capacity as a Party to this Lease and expressly does not constitute a waiver of the City's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of the City's Governmental Functions.

13. **Non-liability of City Officials and Tenant's Employees.** No member of any legislative, executive, or administrative body of, or affiliated with, the City or its Related Parties, and no official, agent, employee or representative of the City or such body or any of their Related Parties (whether acting in the performance of the City's Governmental Functions or otherwise) shall be personally liable to Tenant or any Person holding by, through or under Tenant, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by Landlord, or for any amount which may become due to Tenant or any Person holding by, through or under Tenant, or for any other obligation, under or by reason of this Lease. No officer, director, shareholder, member, agent, employee or representative of Tenant or its Related Parties shall be personally liable to Landlord or any Person holding by, through or under Landlord, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Tenant, or for any amount which may become due to Landlord or any Person holding by, through or under Landlord, or for any other obligation, under or by reason of this Lease. The foregoing shall not limit, waive or release the obligations of the Guarantor under the Guaranty.

14. **Payment on Business Days.** If any payment under such instrument is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

15. **Time.** Times set forth in this Lease for the performance of obligations shall be strictly construed, time being of the essence of this Lease. All provisions in this Lease which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Lease to times or hours of the day shall refer to Central Standard Time.

16. **Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Lease or in the resolution of any ambiguity of any provision hereof.

17. **Attorneys' Fees.** If any Party to this Lease defaults in the performance of any covenants, obligations or agreements of such Party contained in this Lease and the other Party hereto places the enforcement of this Lease, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees

to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

18. **Joint and Several Liability.** If Tenant at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of Rent and for performance of every obligation of Tenant under this Lease.

19. **Relationship of the Parties; No Partnership.** The relationship of Tenant and Landlord under this Lease is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Lease to the contrary, neither the obligation to pay Landlord a rental based on Adjusted Gross Revenues nor any other aspect of this Lease shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Tenant and Landlord. As such, Landlord shall have no direct supervision of or obligation to the employees of Tenant and any communication of employee matters shall be through the Tenant Representative.

20. **Non-Merger of Estates.** The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises shall join in the execution of a written instrument effecting such merger of estates.

21. **Covenants Running with the Estates in Land.** The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Lease, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Premises, and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, Landlord and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Lease, such that this Lease shall always bind the owner and holder of any fee or leasehold interest in or to the Leased Premises or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

22. **Payments by Either Party.** All payments required to be made by either Party to the other Party pursuant to the terms of this Lease shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address for payments as set forth in Appendix D, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of Section 26.2. Notwithstanding the provisions of Section 26.2 and for the purposes of this Lease, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

APPENDIX C
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Arbitration

Section 1. Arbitration. Binding arbitration of Rent Credit Disputes or Controversies shall be conducted in accordance with the following procedures:

(a) The Party seeking arbitration hereunder shall request such arbitration by delivering Notice to the opposing Party which Notice shall include a clear statement of the Rent Credit Dispute or Controversy. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction (other than a proceeding for injunctive or ancillary relief) then such Notice of election under this Section 1(a) shall be delivered within ninety (90) calendar days of the date the electing Party receives service of process in such legal proceeding. Except to the extent provided in this Appendix C, the arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association (as supplemented and modified by the Expedited Procedures of the Commercial Arbitration Rules (the "**Expedited Procedures**") and provided that the procedures for large, complex, commercial disputes shall not apply) by a single arbitrator to be appointed upon the mutual agreement of the Parties within twenty (20) calendar days of the date the written request for arbitration was delivered to the opposing Party. In order to facilitate any such appointment, the Party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Rent Credit Dispute or Controversy to the opposing Party. In the event the Parties are unable to agree on a single arbitrator, then the arbitrator shall be appointed pursuant to the Expedited Procedures. The Party seeking arbitration shall make the Parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Rent Credit Dispute or Controversy.

(b) Within ten (10) calendar days of the date the arbitrator is appointed, the arbitrator shall notify the Parties in writing of the date of the arbitration hearing, which hearing date shall be not less than thirty (30) calendar days from the date of the arbitrator's appointment. The arbitration hearing shall be held in San Antonio, Bexar County, Texas. There shall be no evidence by affidavit allowed and each Party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the Party in the arbitration hearing at least ten (10) calendar days prior to the arbitration hearing. The arbitrator shall issue a final ruling within ten (10) calendar days after the conclusion of the arbitration hearing. Any decision of the arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and nonappealable by, the Parties (except as provided by Applicable Law as grounds for the vacating of an arbitration award) and judgment thereon may be entered or enforcement thereof sought by either Party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with this Appendix C.

(c) Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of this Lease.

Section 2. Further Qualifications of Arbitrators; Conduct. Every person nominated or recommended to serve as an arbitrator shall be and remain at all times neutral and wholly impartial, shall be experienced and knowledgeable in the substantive laws applicable to the subject matter of the Rent Credit Dispute or Controversy. All arbitrators shall, upon written request by either Party, provide the Parties with a statement that they can and shall decide any Rent Credit Dispute or Controversy referred to them impartially. No arbitrator shall currently be employed by either Party or a Related Party of either Party or currently have, or in the preceding two (2) calendar years had, any material financial dependence upon a Party or any Related Party of a Party, nor shall any arbitrator have any material financial interest in the Rent Credit Dispute or Controversy. Further, all arbitrators must meet the qualifications and adhere to the standards of Sections 154.052 and 154.053 of Chapter 154, Texas Civil Practice And Remedies Code.

Section 3. Applicable Law and Arbitration Act. The agreement to arbitrate set forth in this Appendix C shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act, Tex. Civ. Prac. & Remedies Code §§ 171.001 et seq. and any successor statute. In deciding the substance of any such Rent Credit Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. Except for an award of a credit against Rent, the arbitrator shall not have authority, power and right to award damages or provide for any other remedies of any kind, at law, in equity or otherwise.

Section 4. Consolidation. If the Parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the Parties hereby agree that all such proceedings may be consolidated into a single arbitral proceeding.

Section 5. Pendency of Dispute; Interim Measures. The existence of any Rent Credit Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Lease or any right, duty or obligation arising herefrom; *provided, however*, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a Party, the arbitrator may issue interim measures for preservation or protection of the status quo.

Section 6. Complete Defense. The Parties agree that compliance by a Party with the provisions of this Appendix C shall be a complete defense to any suit, action or proceeding instituted in any federal or state court, or before any administrative tribunal by the other Party with respect to any Rent Credit Dispute or Controversy which is subject to arbitration as set forth herein,

other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder and other than a suit or action to vacate the arbitration award as permitted by Applicable Law.

Section 7. Costs of Arbitration. The arbitrator may award attorneys' fees and the cost of the arbitration to the prevailing Party. Except as otherwise provided herein, the cost of the arbitration shall be shared equally among the participants to the arbitration.

APPENDIX D
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Address for Payment and Notices

A. LANDLORD: THE CITY OF SAN ANTONIO, TEXAS

- (1) Payment to Landlord. All payments to Landlord shall be given to Landlord at the following address:

City of San Antonio
Revenue Division
P.O. Box 839975
San Antonio, Texas 78283-3975

with sufficient information to identify the source of such funds.

- (2) Notices. All notices to Landlord shall be sent to:

If by hand or courier service, then to:

City of San Antonio
Center City Development & Operations
Real Estate & Facilities Division
100 Houston Street, 17th Floor
San Antonio, Texas 78205

If by mail or facsimile, then to:

City of San Antonio
Center City Development & Operations
Real Estate & Facilities Division
P.O. Box 839966
San Antonio, Texas 78283-3966
Facsimile Number: 210-207-8444

with copies of all notices to Landlord relating to defaults, remedies or indemnification being sent to:

If by hand or courier service, then to:

Office of the City Attorney
City of San Antonio
City Hall, 1st Floor, 100 South Flores
San Antonio, Texas 78205

Attention: City Attorney

If by mail or facsimile, then to:

Office of the City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: City Attorney
Facsimile Number: 210-207-4004

B. TENANT: WILLIE G'S POST OAK, LLC

- (1) Payments to Tenant. All payments to Tenant shall be given to Tenant at the following address:

Landry's LLC
1510 West Loop South
Houston, Texas 77027
Attention: Controller

- (2) Notices. All notices to Tenant shall be sent to:

Landry's LLC
1510 West Loop South
Houston, Texas 77027
Attention: Steven L. Scheinthal, EVP & General Counsel
Facsimile Number: 713-386-7070

with a copy to:

Landry's LLC
1510 West Loop South
Houston, Texas 77027
Attention: Jeffrey Cantwell, EVP Development
Facsimile Number: 713-961-4911

APPENDIX E
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Initial Prices for Certain Business Operations

Retail Operations

\$2 - \$75 non-apparel souvenirs

\$10 - \$250 apparel items

Theater

<u>Year</u>	<u>Adults</u>	<u>Children</u>	<u>Seniors/Military</u>	<u>Children (<4)</u>
Effective Date - 12/31/2024	\$ 10.95	\$ 8.95	\$ 9.95	Free
1/1/2025 - 12/31/2025	\$ 10.95	\$ 8.95	\$ 9.95	Free
1/1/2026 - 12/31/2026	\$ 11.95	\$ 9.95	\$ 10.95	Free
1/1/2027 - 12/31/2027	\$ 11.95	\$ 9.95	\$ 10.95	Free
1/1/2028 - 12/31/2028	\$ 12.95	\$ 10.95	\$ 11.95	Free
1/1/2029 - 12/31/2029	\$ 12.95	\$ 10.95	\$ 11.95	Free
1/1/2030 - 12/31/2030	\$ 13.95	\$ 11.95	\$ 12.95	Free
1/1/2031 - 12/31/2031	\$ 13.95	\$ 11.95	\$ 12.95	Free
1/1/2032 - 12/31/2032	\$ 14.95	\$ 12.95	\$ 13.95	Free
1/1/2033 - 12/31/2033	\$ 14.95	\$ 12.95	\$ 13.95	Free
1/1/2034 - 12/31/2034	\$ 15.95	\$ 13.95	\$ 14.95	Free

Observation Deck

Admission/Elevators to Observation Deck Level

<u>Year</u>	<u>Adults</u>	<u>Children</u>	<u>Seniors/Military</u>	<u>Children (<4)</u>
Effective Date - 12/31/2024	\$ 10.00	\$ 6.00	\$ 7.00	Free
1/1/2025 - 12/31/2025	\$ 10.00	\$ 6.00	\$ 7.00	Free
1/1/2026 - 12/31/2026	\$ 11.00	\$ 7.00	\$ 8.00	Free
1/1/2027 - 12/31/2027	\$ 11.00	\$ 7.00	\$ 8.00	Free
1/1/2028 - 12/31/2028	\$ 12.00	\$ 8.00	\$ 9.00	Free
1/1/2029 - 12/31/2029	\$ 12.00	\$ 8.00	\$ 9.00	Free
1/1/2030 - 12/31/2030	\$ 13.00	\$ 9.00	\$ 10.00	Free
1/1/2031 - 12/31/2031	\$ 13.00	\$ 9.00	\$ 10.00	Free
1/1/2032 - 12/31/2032	\$ 14.00	\$ 10.00	\$ 11.00	Free
1/1/2033 - 12/31/2033	\$ 14.00	\$ 10.00	\$ 11.00	Free
1/1/2034 - 12/31/2034	\$ 14.00	\$ 11.00	\$ 12.00	Free

Interactive kiosks on Observation Deck Level

No Fee

Theater/Observation Deck Combo

<u>Year</u>	<u>Adults</u>	<u>Children</u>	<u>Seniors/Military</u>	<u>Go*RIO Combo</u>
Effective Date - 12/31/2024	\$ 18.50	\$ 14.00	\$ 15.00	\$ 26.50
1/1/2025 - 12/31/2025	\$ 19.00	\$ 14.00	\$ 15.00	\$ 27.50
1/1/2026 - 12/31/2026	\$ 20.00	\$ 15.00	\$ 16.00	\$ 27.50
1/1/2027 - 12/31/2027	\$ 21.00	\$ 16.00	\$ 17.00	\$ 28.50
1/1/2028 - 12/31/2028	\$ 22.00	\$ 17.00	\$ 18.00	\$ 28.50
1/1/2029 - 12/31/2029	\$ 23.00	\$ 18.00	\$ 19.00	\$ 30.00
1/1/2030 - 12/31/2030	\$ 24.00	\$ 19.00	\$ 20.00	\$ 30.00
1/1/2031 - 12/31/2031	\$ 25.00	\$ 20.00	\$ 21.00	\$ 32.00
1/1/2032 - 12/31/2032	\$ 26.00	\$ 21.00	\$ 22.00	\$ 33.00
1/1/2033 - 12/31/2033	\$ 27.00	\$ 22.00	\$ 23.00	\$ 35.00
1/1/2034 - 12/31/2034	\$ 28.00	\$ 23.00	\$ 24.00	\$ 35.00

Parking

Non-Special Event Pricing:

\$10.00 per car

\$20.00 per car for valet

Special Event Pricing*:

\$20.00 per car

\$30.00 per car for valet

*Tenant will have the right to implement Special Event Pricing at any time when a public event is scheduled at the San Antonio Convention Center, Alamodome or Hemisfair Park, but may elect to offer validated or discounted prices to any customers of Tenant during these events.

Should Tenant enact Special Event Pricing, then Tenant will provide a monthly report that includes the specific hours under which special event pricing was implemented and the number of Tenant customers that received reduced or validated parking during that event, and the discounted amount. Tenant agrees to reasonably modify the report as required by the Director.

Discounts

Observation Deck and Theater

Group discount of ten percent (10%) at all times, excluding holidays. Group discounts shall apply to groups of people who purchase their admission tickets

together and of a size customary with Specialty Group Destination group discounts, and shall include groups of students from all Texas school districts.

Fifty percent (50%) discount every Monday and Tuesday from opening until 3:00 p.m., excluding holidays, for all residents of Bexar County, Texas and is not limited to groups or other specific categories of patrons.

EXHIBIT A-1
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Tower Tract

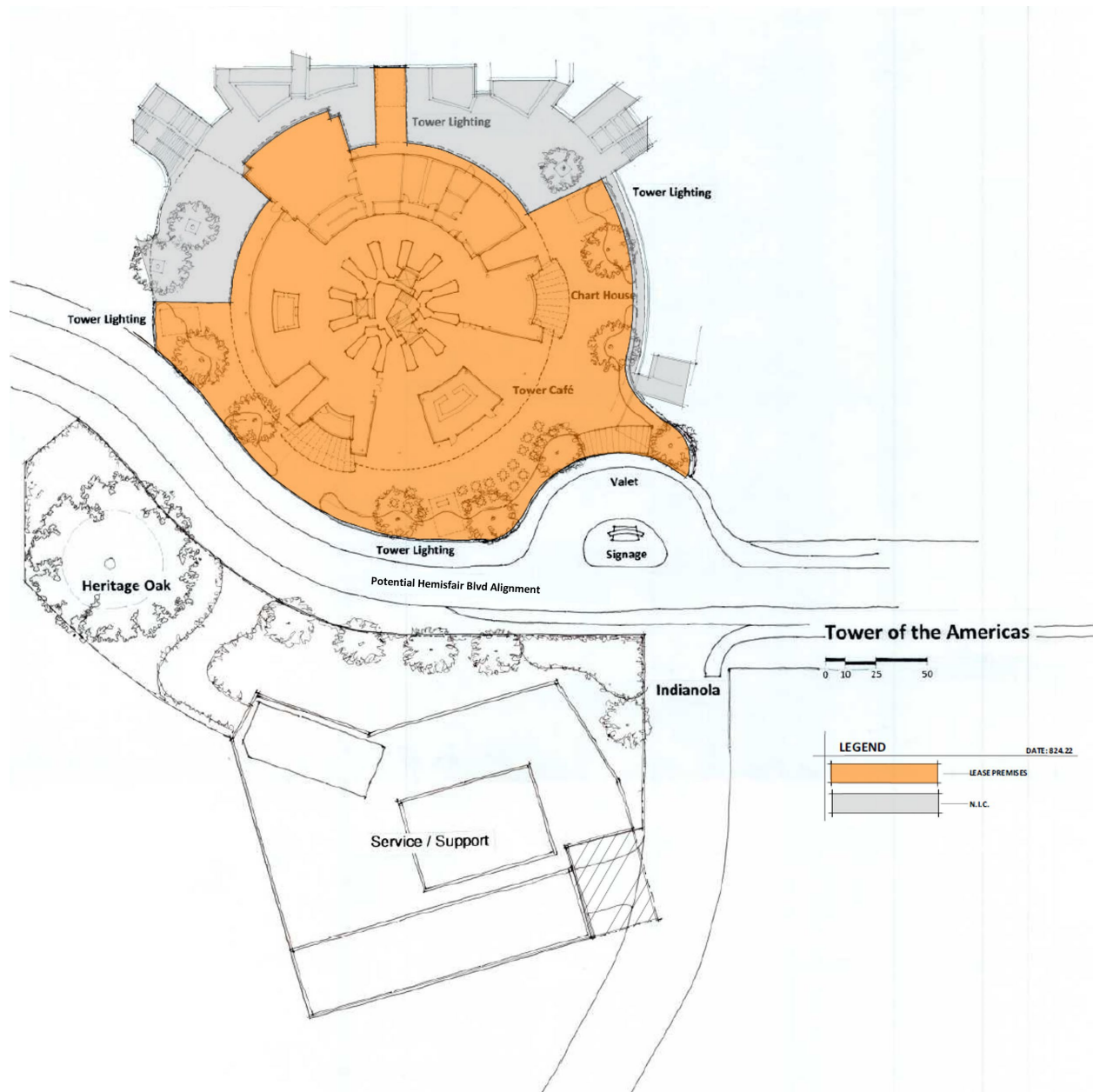


EXHIBIT A-2
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Walkway Tracts

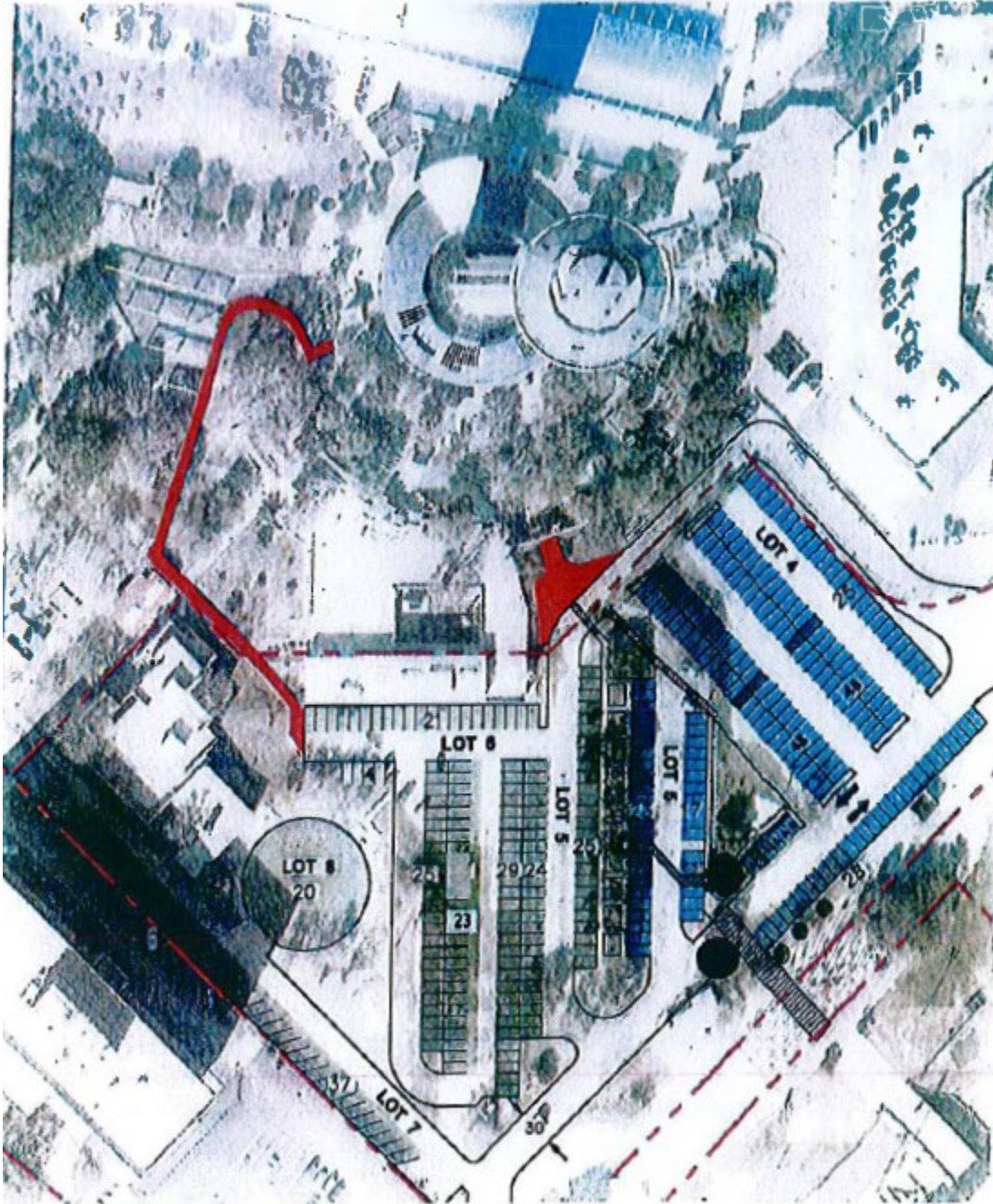


EXHIBIT A-3
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Parking Tract

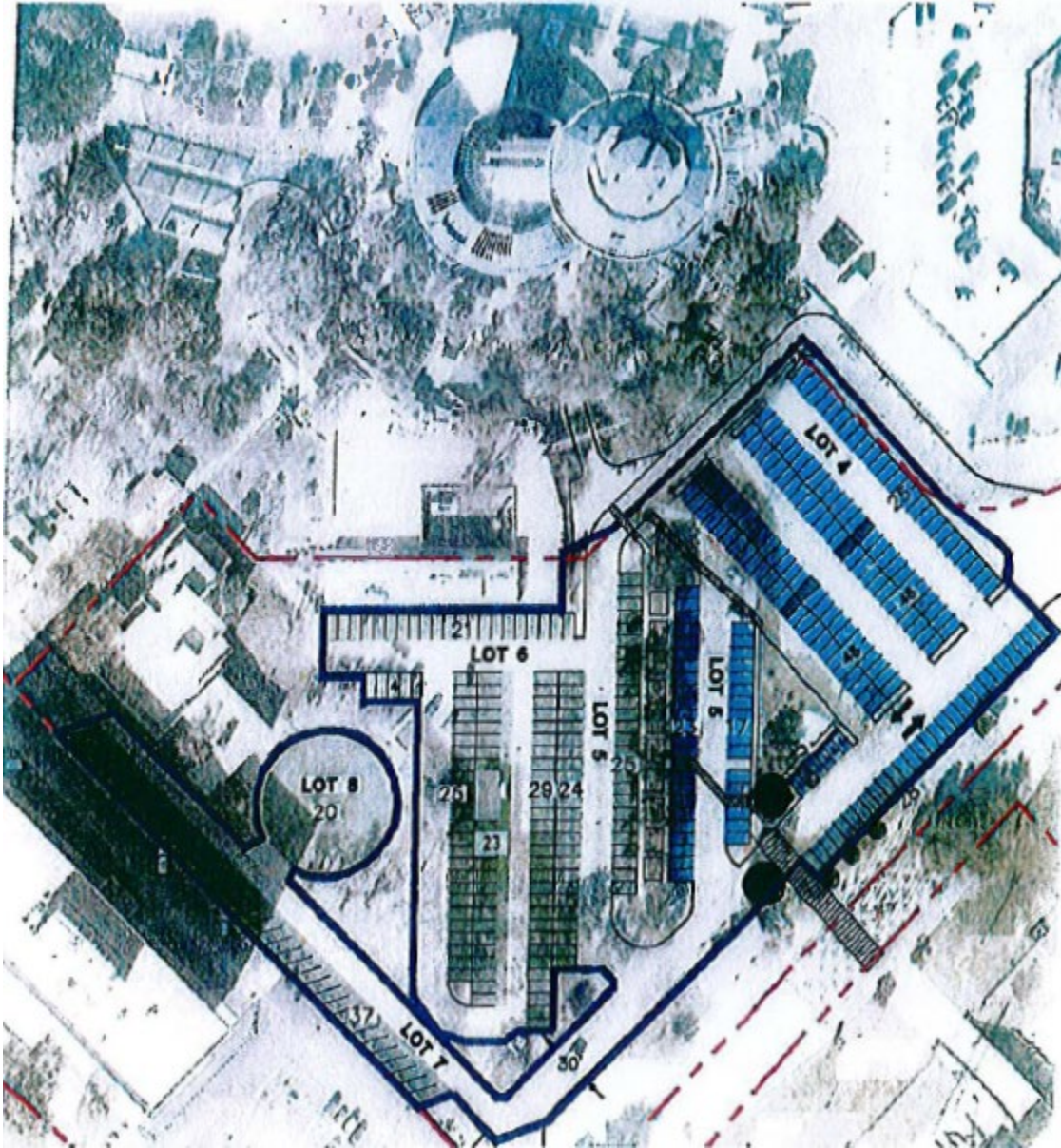


Exhibit A-3
Page 1 of 1

EXHIBIT A-4
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Ground Level

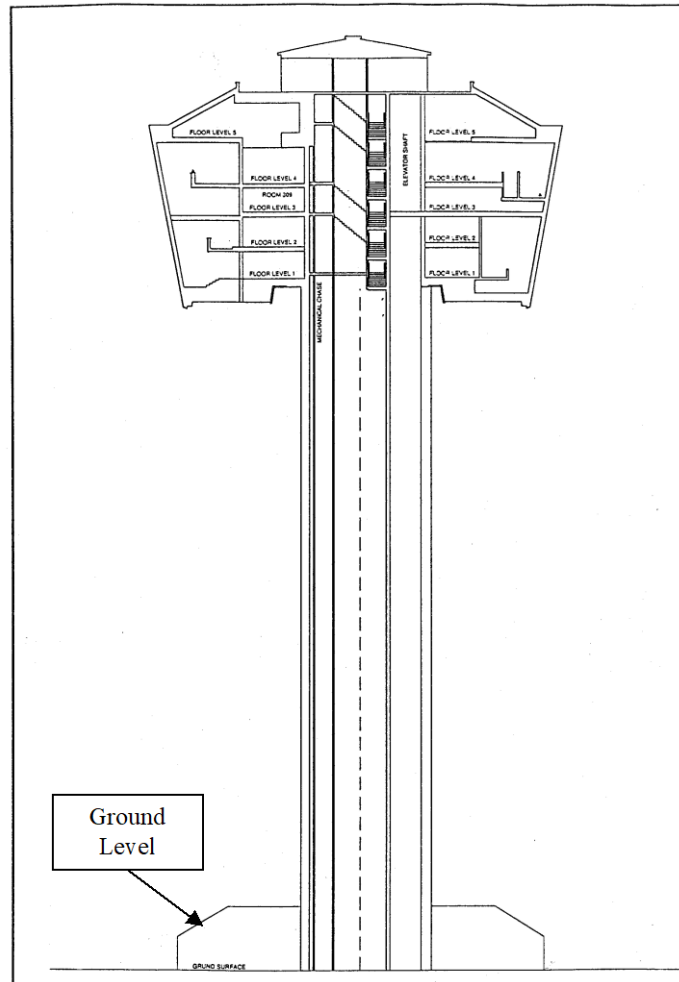


EXHIBIT A-5
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Restaurant Level

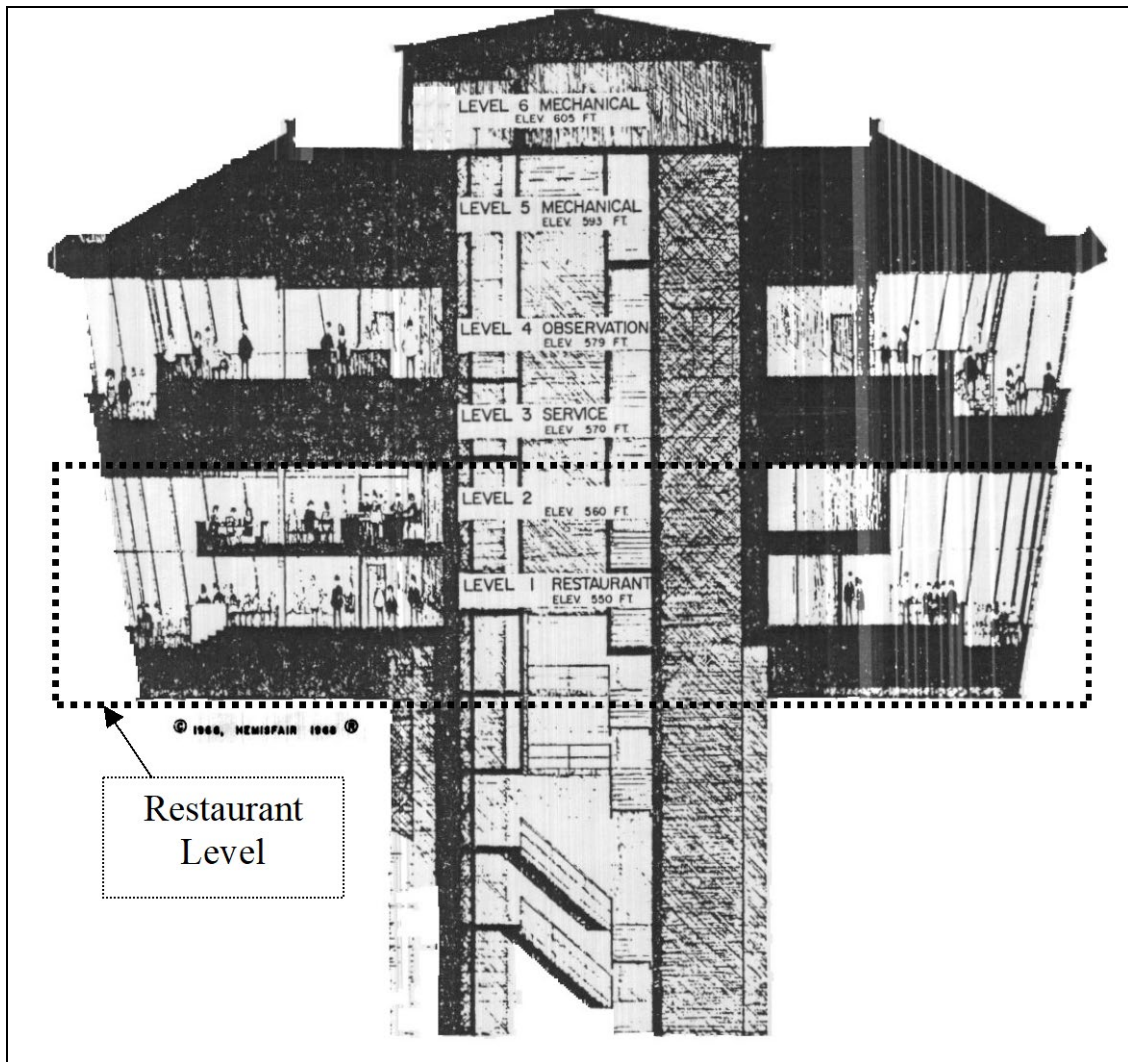
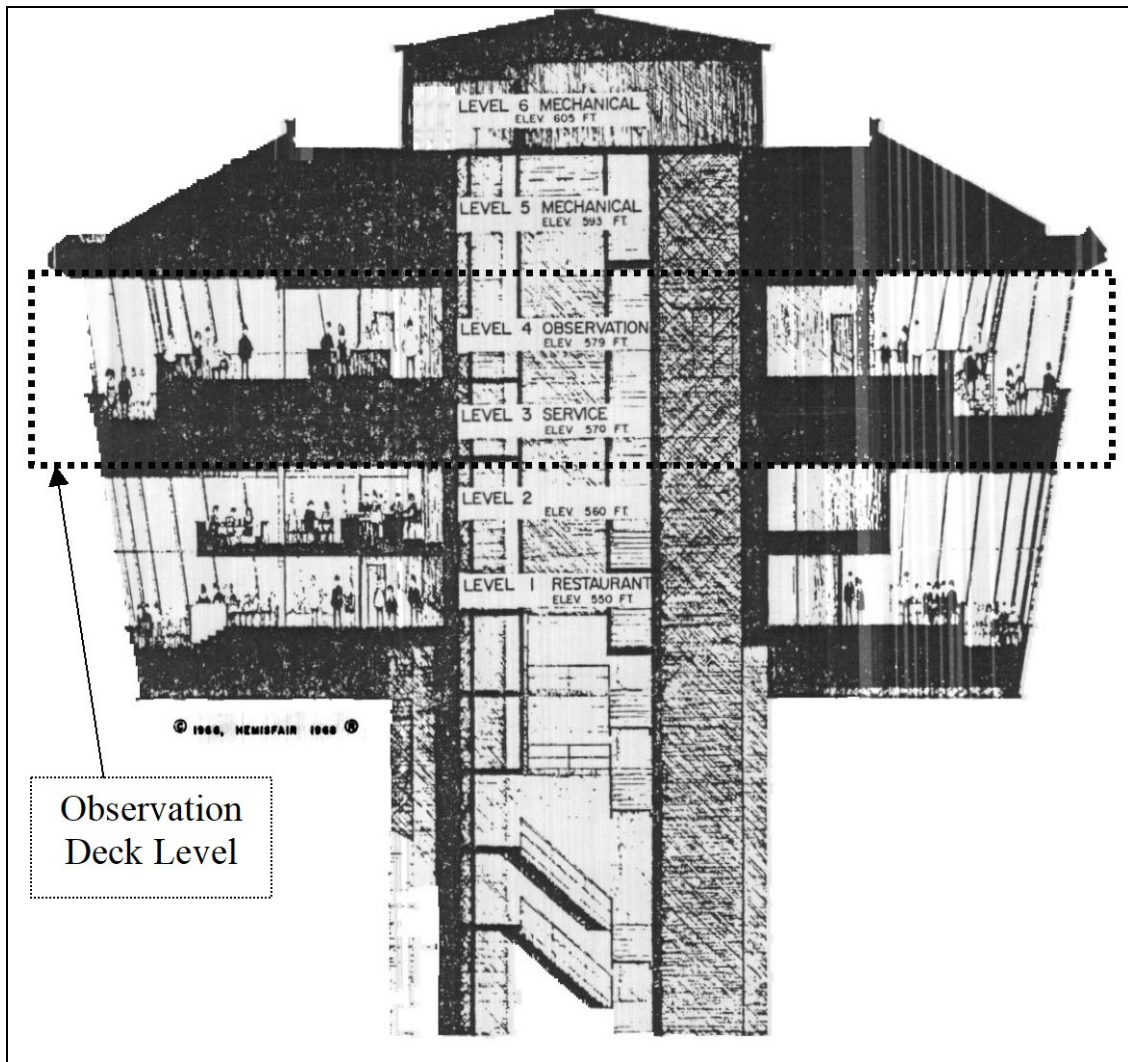


EXHIBIT A-6
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Observation Deck Level



**EXHIBIT A-7
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT**

Pump Room Tract

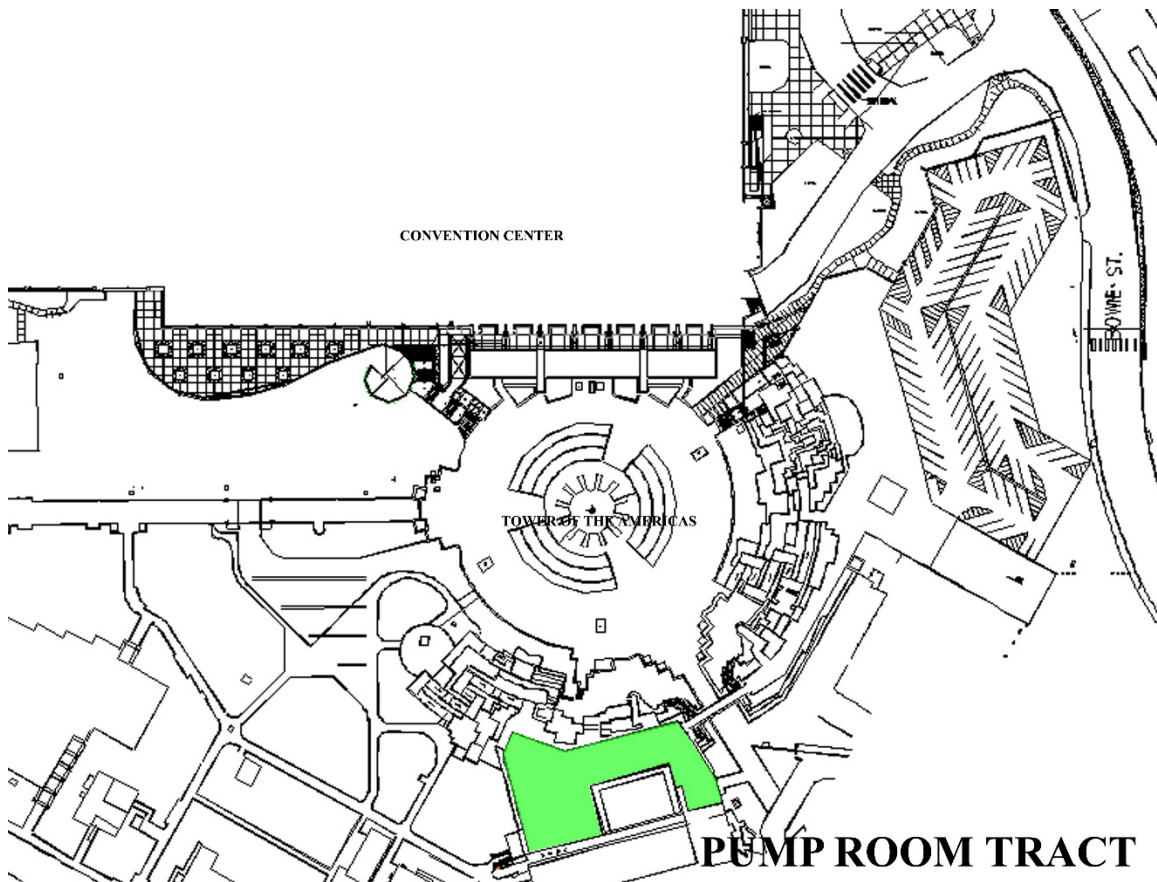


EXHIBIT B
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Permitted Exceptions

1. Any and all discrepancies, conflicts, shortages in area or boundary lines, or any encroachments, or overlapping of improvements and any and all other matters that a true, correct and complete survey of the Leased Premises or the Licensed Premises would reveal.
2. Liens securing Impositions not yet due and payable for the year 2004 and subsequent years.
3. License Agreement between Landlord and The Lions Club of San Antonio Charities, Inc. dated August 27, 1998.
4. The Master Plan.
5. The Uniform Development Code of the City of San Antonio.
6. Utility lines serving the Premises as of the Original Execution Date and the right to maintain, repair and operate such utility lines.
7. Subdivision Plat of Civic Center, Project No.5, Tex. R-83, Urban Renewal Agency, City of San Antonio, Texas filed February 9, 1988 as recorded in Volume 9518, Pages 122-126, Deed and Plat Records of Bexar County, Texas.
8. The terms and conditions of that certain Deed of Dedication by the City dated March 29, 1973 and recorded under Volume 7071, Page 886 of the Deed Records of Bexar County, Texas.
9. The terms and conditions of that certain Correction Deed by the City dated January 30, 1975 and recorded under Volume 7527, Page 778 of the Deed Records of Bexar County, Texas.
10. The following to the extent they are valid and subsisting and affect the Leased Premises or the Licensed Premises as of the Original Execution Date:
 - (a) The restriction to not discriminate upon the basis of race, color, creed, religion, sex, age or national origin in the sale, lease, or rental or in the use or occupancy of the Premises or any improvements erected or to be erected thereon, or any party thereof, as contained in those certain deeds recorded under (i) Volume 5711, Page 781, (ii) Volume 6205, Page 537, (iii) Volume 6433, Page 177 and (iv) Volume 7101, Page 565, each in the Deed Records of Bexar County, Texas.

EXHIBIT C
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Form of Memorandum of Lease

MEMORANDUM OF LEASE

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into effective as of the _____ day of _____, _____, by and between **THE CITY OF SAN ANTONIO**, a Texas municipal corporation and home-rule city of the State of Texas principally situated in Bexar County, Texas, acting by and through its governing body, the City Council ("**Landlord**"), and **WILLIE G'S POST OAK, LLC**, a Texas limited liability company ("**Tenant**").

A. Landlord and Tenant have entered into that certain Amended & Restated Lease and Development Agreement (the "**Lease**") having an execution date of _____, pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the real property located in Bexar County, Texas described on Exhibit A attached hereto together with all Project Improvements located thereon (collectively, the "**Leased Premises**") pursuant to the terms and conditions of the Lease; and

B. Landlord has licensed to Tenant the Walkway Tracts (as depicted on Exhibit []), the Parking Improvements (as defined in the Lease) located on the Parking Tract (as depicted on Exhibit []) and a portion of the Pump Room (as defined in the Lease) located on the Pump Room Tract (as depicted on Exhibit []) (being referred to therein collectively as the "**Licensed Premises**") for pursuant to the terms and conditions of the Lease.

C. Landlord and Tenant desire to execute this Memorandum to provide notice of Tenant's rights, titles and interest under the Lease and in and to the Leased Premises and the Licensed Premises.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Memorandum shall have the meanings assigned to them in the Lease, which also contains rules as to usage that shall be applicable herein.

Section 2. Lease. The Leased Premises have been leased, and the Licensed Premises licensed, to Tenant and pursuant to the terms and conditions of the Lease, which is incorporated

by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Lease, the Lease shall control.

Section 3. Lease Term. The Landlord has leased the Leased Premises, and licensed the Licensed Premises, to Tenant for an initial Term commencing at 12:00 a.m. on [____], and ending, unless sooner terminated in accordance with the provisions of the Lease, on the date which is [____]. In addition, Tenant, at its option and subject to the terms of the Lease including City Council approval, may extend the Term of the Lease for up to one (1) additional period of five (5) years.

Section 4. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject however, to the provisions of the Lease regarding assignment.

LANDLORD:

CITY OF SAN ANTONIO, TEXAS

By: _____
Name: _____
City Manager, City of San Antonio

TENANT:

WILLIE G'S POST OAK, LLC, a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF [_____] §
COUNTY OF [_____] §

This instrument was acknowledged before me on [_____] by [_____] City Manager of the City of San Antonio, Texas, a Texas municipal corporation and home-rule city of the State of Texas principally situated in Bexar County, Texas, acting by and through the governing body, the City Council, on behalf of said municipal corporation.

{SEAL}

Printed Name

Notary Public in and for the

State of Texas

My Commission Expires: _____

STATE OF [_____] §
COUNTY OF [_____] §

This instrument was acknowledged before me on [_____] by [_____] [_____] of Willie G's Post Oak, LLC a Texas limited liability company, on behalf of such limited liability company.

{SEAL}

Printed Name

Notary Public in and for the

State of Texas

My Commission Expires: _____

EXHIBIT D
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

[Reserved]

EXHIBIT E
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

[Reserved]

**EXHIBIT F
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT**

Restricted Area

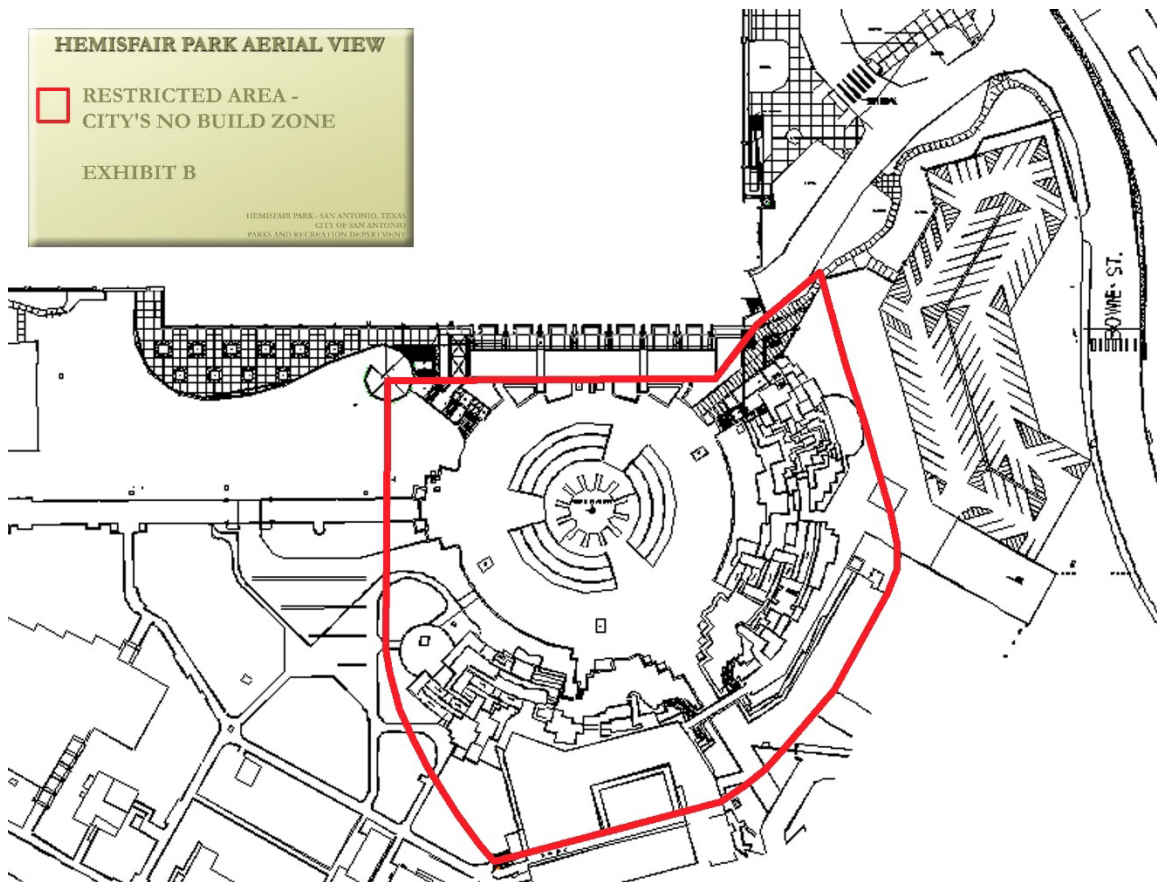
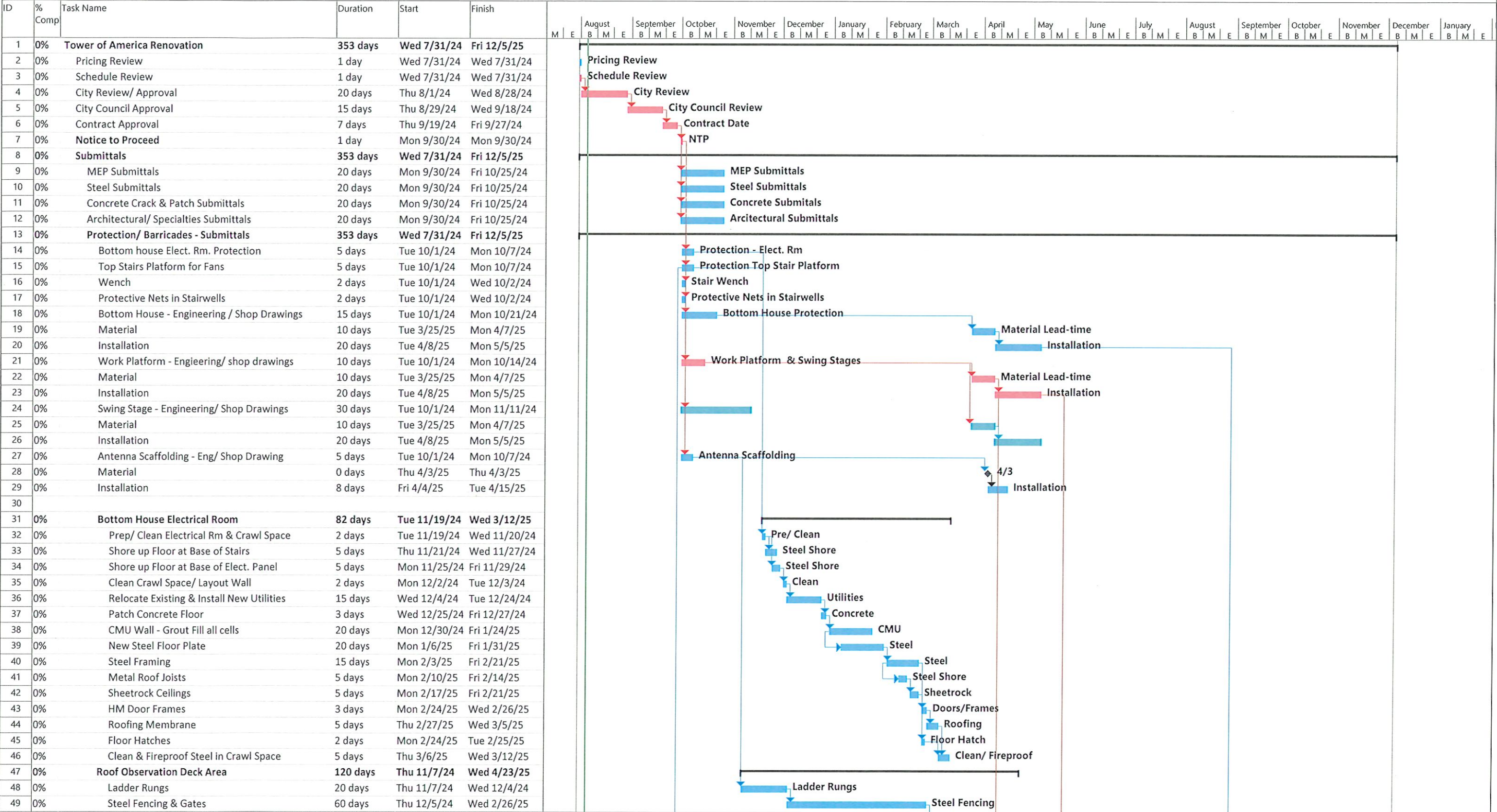


EXHIBIT G
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

New Project Construction Schedule

(see attached)

TOWER OF AMERICAS IMPROVEMENTS



Project: COPY Updated 7-31-
Date: Mon 8/5/24

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Critical

Critical Split

Progress

Manual Progress

TOWER OF AMERICAS IMPROVEMENTS

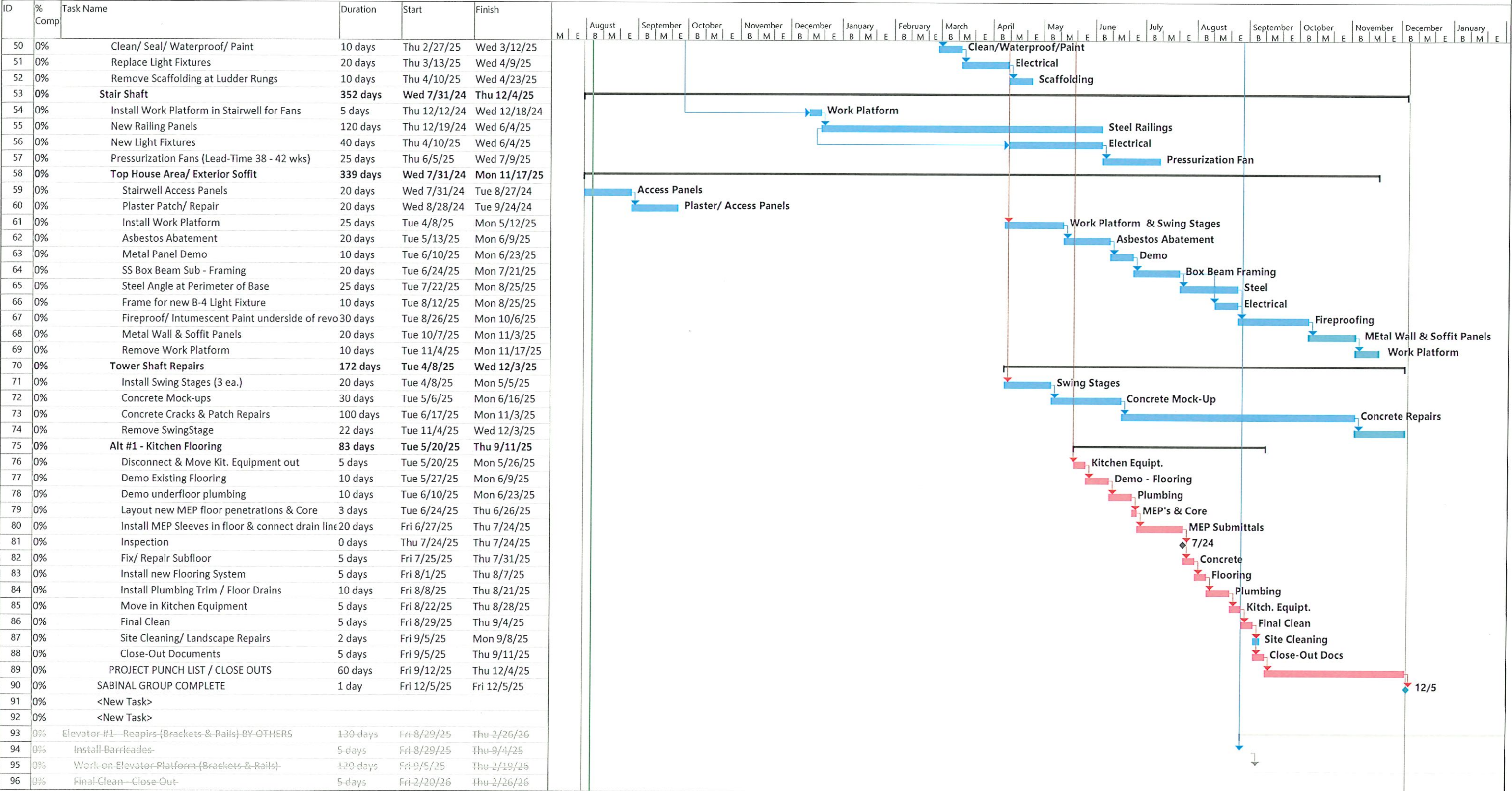


EXHIBIT H
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

New Project Budget

(see attached)

Exhibit H

Page 1 of 1

SABINAL GROUP

GMP PROPOSAL - BASED UPON DRAWINGS DATED: 11/1/2022 & Reissued 4/25/2023

Project : **Tower of Americas Improvements**

Address : 739 Tower of Americas Way

San Antonio, Tx. 78205

Architect : Beaty Palmer Architects

Bid Time : 2:30 PM

Bid Date : 9/13/2024

Floor Level : N/A

Square Footage : 10,000

NO.	COST CODE	AIA CAT	DESCRIPTION	FINAL BID AMNT	% OF TOTAL	\$ PER SF	REMARKS
1	02050		Asbestos Abatement	\$55,523	0.47%	\$5.55	Alamo One
2	01410		Testing	\$0	0.00%	\$0.00	NIC By Owner
3	02220		Demolition	\$97,000	0.82%	\$9.70	Sabinal/ JG
4	02650		Erosion Control / Temporary Fencing	\$10,000	0.08%	\$1.00	
5	02500		Site Utilities	N/A	0.00%	\$0.00	
6	02800		Site Improvements	\$20,000	0.17%	\$2.00	Sabinal/ JG
7	02820		Chainlink Fences & Gates	\$25,000	0.21%	\$2.50	Protection/ Barricades
8	02950		Landscaping/ Parking Lot Repairs	\$10,000	0.08%	\$1.00	Landscape Repairs
9	03001		Concrete (Turn-Key)	\$25,000	0.21%	\$2.50	RRD
10	03002		Concrete Cleaning	in Concrete	0.00%	\$0.00	
11	03110		Concrete Accessories	in Concrete	0.00%	\$0.00	
12	04200		Unit Masonry	\$38,850	0.33%	\$3.89	Mills
13	04900		Masonry Restoration & Cleaning	N/A	0.00%	\$0.00	
14	05100		Structural Steel Fabrication/ Erection / Misc. Steel	\$1,380,250	11.66%	\$138.03	Arc-Rite
15	05110		Structural Steel Erection	IN STEEL FAB	0.00%	\$0.00	
16	05500		Miscellaneous Metal Fabrications/ Metal Panels	IN STEEL FAB	0.00%	\$0.00	
17	06100		Rough Carpentry/ Protection/ Barricades	\$41,869	0.35%	\$4.19	Barricades/ Protection
18	06220		Millwork	\$12,500	0.11%	\$1.25	
19	07100		Waterproofing & Damproofing	\$2,182,217	18.44%	\$218.22	Epoxy Designs / LCR/ AR
20			Metal Wall & Soffit Panels	\$812,740	6.87%	\$81.27	VOGLER METALS
21	07810		Firestopping/ Fireproofing	in Waterproofing	0.00%	\$0.00	LCR
22	07500		Membrane Roofing	\$25,828	0.22%	\$2.58	Beldon
23	07700		Waterproofing - Alternates 2, 3, 4	in Roofing	0.00%	\$0.00	
24	07100		Waterproofing Scope	in Above	0.00%	\$0.00	
25	07900		Caulking & Sealants	\$45,000	0.38%	\$4.50	Winco/ CHM
26	08120		Doors/ Frames/ Hardware	\$123,036	1.04%	\$12.30	Wessely Thompson
27	08320		Access Panels / Doors/ Floor Hatch/ Ladder	\$29,660	0.25%	\$2.97	Mission City
28	08800		Glass & Glazing	\$10,000	0.08%	\$1.00	Door Lites / Misc.
29	09210		Lath & Plaster	\$69,880	0.59%	\$6.99	Mills Brol
30	09250		Drywall & Acoustical	\$69,000	0.58%	\$6.90	S. Tx. Drywall
31	09310		Ceramic Tile	N/A	0.00%	\$0.00	
32	09600		Flooring & Base (Alternate #1) A5.1 & A5.2	in Alternate #1	0.00%	\$0.00	
33	09900		Painting	\$92,500	0.78%	\$9.25	Tx Professional Paint
34	10200		Louvers & Vents	\$12,786	0.11%	\$1.28	TAP
35	10400		Signage	NIC - By Owner	0.00%	\$0.00	NIC By Owner
36	10520		Fire Extinguishers & Cabinets	\$0	0.00%	\$0.00	
37	11400		Food Service Equipment	NIC - Coordination Only	0.00%	\$0.00	Coordination Only
38	11450		Residential Appliances	N/A	0.00%	\$0.00	
39	12480		Entrance Mats	N/A	0.00%	\$0.00	
40	14200		Elevators	In Alt #7	0.00%	\$0.00	Coordination
41	15100		Mechanical	\$346,495	2.93%	\$34.65	Tezel & Cotter
42	15400		Plumbing	\$17,861	0.15%	\$0.00	Tezel & Cotter
43	15300		Fire Protection	\$44,290	0.37%	\$4.43	Siemens
44	16100		Electrical	\$1,257,500	10.63%	\$125.75	BL / Triple R
45	16700		Telephone / Data Cabling	\$0	0.00%	\$0.00	
46	16150		Fire Alarm	\$56,615	0.48%	\$5.66	Siemens
47	16750		Security Systems	\$50,000	0.42%	\$0.00	Jobsite
48			Scaffolding/ Barricades	\$70,000	0.59%	\$0.00	Material Hoist
49	21546		Quick Deck Platform	\$596,518	5.04%	\$0.00	Big City Access
50	21540		Swing Stage	\$172,572	1.46%	\$0.00	Big City Access
51			Antenna Mast Recoating	\$99,500	0.84%	\$0.00	Tx Professional Paint
52			Tophouse Exterior Lighting	\$335,000	2.83%	\$0.00	BL Elect.
53			Replace Elevator Rail Support Brackets (15 ea.)	\$213,000	1.80%	\$0.00	Elevated
54			Fire Protection - Fire Pump Replacement	NIC	0.00%	\$0.00	Siemens
55							
56		#1	Relocate MEP's not shown on plans	\$30,000	0.25%	\$3.00	
57		#2	Repair & insulate crawl space Lvl 1 & THS	\$30,000	0.25%	\$3.00	
58		#3	Steel repairs in THS/Crawl Space	\$50,000	0.42%	\$5.00	
59		#4	Additional Concrete patch/repairs not shown	\$50,000	0.42%	\$5.00	
60							
61			Builders Risk Insurance	\$250,000	2.11%	\$25.00	Alliant
62							
63			Subtotal (Hard Costs)	\$8,857,990	74.86%	\$885.80	
64			General Conditions	\$1,252,962	10.59%	\$125.30	
65						\$0.00	
66			Subtotal	\$10,110,952	85.45%	\$1,011.10	
67			Fee	\$505,548	4.27%	\$50.55	
68							
69			Subtotal	\$10,616,500	89.72%	\$1,061.65	
70		1.25%	P&P Bond Cost	\$140,552	1.19%	\$14.06	
71							
72			Construction Total	\$10,757,052	90.91%	\$1,075.71	
73		0.000%	Sales Tax (EXEMPT)	\$0	0.00%	\$0.00	
74							
75		10.00%	Owner's Contingency	\$1,075,705	9.09%	\$107.57	
76							
77			GRAND TOTAL	\$11,832,757	100.0%	\$1,183.28	per square foot
78							

ALTERNATE # 1 - Kitchen Floor and Crawl Space Plumbing (Sanitary) Separate AIA Contract

Total w/ Alt's 5 & 6 only \$11,832,757

EXHIBIT I
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Form of New Project Construction Contract

(see attached)

DRAFT AIA® Document A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Landry's Development, Inc.
1510 West Loop South
Houston, Texas 77027

and the Contractor:
(Name, legal status, address and other information)

« The Sabinal Group LLC » « »
« 237 W. Travis, Ste. 200 »
« San Antonio, Texas 78205 »
« Mark Wohlfarth »

for the following Project:
(Name, location and detailed description)

« The Tower of Americas Improvements »
« 739 Tower of Americas Way »
« San Antonio, Tx. 78205 »

The Architect:
(Name, legal status, address and other information)

« Beaty Plamer Architects » « »
« 110 Broadway, Ste. 600 »
« San Antonio, Texas 78205 »
« Clay Hagendorf »

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND FINAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ [« »] The date of this Agreement.

☐ [« »] A date set forth in a notice to proceed issued by the Owner.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Final Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[«X »] By the following date: «12/05/2025 »

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Final Completion of the entire Work, the Contractor shall achieve Final Completion of such portions by the following dates:

Portion of Work	Final Completion Date
FINAL	12/05/2025

§ 2.3.3 If the Contractor fails to achieve Final Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[«X »] Stipulated Sum, in accordance with Section 3.2 below

[« »] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[« »] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be «Twelve Million Eight Hundred Thirty Two Thousand Three Hundred Nineteen Dollars » (\$ «12,832,319.00 »), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Alternate #5 – Antenna Mast Recoating S5.03 & S5.01

Alternate #6 – Top-House Exterior Lighting E5.1 and E5.2

Alternate ? - Fire Supression System Replacement »

§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price #1A – Delete replacement Elevator Bracket	EA	NIC – By Others
Unit Price #1B – Remove & Reinstall existing Elevator Bracket	EA	NIC – By Others
Unit Price #2 – Crawl Space Metal Deck Repair	SF	Pending
Unit Price #3 – ST5JR4.5 Steel Members	???	Pending
Unit Price #4 – Concrete Shaft Crack Repairs	LF	\$ 175
Unit Price #5 – Concrete Shaft Patch Repair	SF	\$ 525

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
Owner's Contingency	\$ 1,166,574.00

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

« »

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«Alternate #5 – Antenna Mast Recoating S5.03 & S5.01

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price #1 – Elevator Brackets	EA.	NIC – By Others
Unit Price #1A – Delete replacement Elevator Bracket	EA	NIC – By Others
Unit Price #1B – Remove & reinstall existing Elevator Bracket	EA	NIC – By Others
Unit Price #2 – Crawl Space Metal Deck Repair	SF	Pending
Unit Price #3 – ST5JR4.5 Steel Members	???	Pending
Unit Price #4 – Concrete Shaft Crack Repair	LF	\$ 175
Unit Price #5 – Concrete Shaft Patch Repair	SF	\$ 525

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
Owner's Contingency	\$ 1,166,574.00

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« TBD »

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Contractor agrees and understands that time is of the essence and the Contractor has satisfied itself that the date of Final Completion set forth above has been determined so as to provide sufficient time for Contractor to finally complete the Work within such time period. The Contractor will provide sufficient supervision, labor, equipment and materials to assure the most efficient and expeditious construction process. If Contractor is behind schedule to such an extent that Contractor will be unable to meet the completion date set forth above, as such date may be extended pursuant to the terms of this Agreement, Contractor shall employ such additional forces, obtain such additional equipment, employ such additional supervision and pay such additional overtime wages as may be required to place the progress of the Work on schedule, as required for timely Final Completion. The cost of such additional forces, equipment and supervision and such overtime wages shall not cause an increase in the Contract Sum. If the Contractor fails to achieve Final Completion of the Work (excluding the portion of the Work relating to Elevator Shaft #1) on or before [REDACTED], the Contractor shall pay to the Owner for each calendar day that completion is delayed after that date, as liquidated damages for each such day, the sum of \$5,235.90 per day.

It is agreed that the harm that would be caused by Contractor's failure to complete the Work by the date indicated, which includes loss of expected use of the Project, is one that is incapable or very difficult of accurate estimation. However, it is hereby agreed that the liquidated damages to which the Owner are entitled hereunder are a reasonable forecast of just compensation for the harm that would be caused by the Contractor's failure to achieve completion of the Work on or before the date specified herein. Notwithstanding any term of the performance bond furnished by the Contractor pursuant to the terms of this Agreement, Contractor's performance bond surety, if any, expressly agrees and acknowledges that its obligations under the performance bond include the obligation to reimburse or pay the Owner for any unpaid or unreimbursed liquidated damages incurred by Contractor pursuant to the terms hereof, subject to the penal limits of the bond

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect and approved by Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

With each application for Payment, Contractor shall submit unconditional lien waivers from Contractor and each Subcontractor based on previous Applications for Payment which have been submitted to and paid by Owner, and conditional lien waivers from Contractor and any Subcontractors performing the Work for the amount of the current Application for Payment. The effectiveness of conditional lien waivers shall be conditioned only upon receipt by Contractor or the applicable Subcontractor of the amount set forth in the Application for Payment.

At least ten (10) days prior to each calendar month, Contractor shall submit to Owner an estimate of the expenses to be incurred for the following calendar month (the "Monthly Payment Estimate"), along with accompanying supporting documentation reasonably request by Owner.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 4.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect and Owner after the date fixed above, payment shall be made by the Owner not later than **Thirty** (30) days after the Architect and Owner receive the Application for Payment. Notwithstanding he foregoing, no Application for Payment shall exceed Contractor's Monthly Payment Estimate for the corresponding month. To the extend that the actual amount owed exceeds the Monthly Payment Estimate, Contractor shall include such excess in the next Monthly Payment Estimate, and will be entitled to payment in the next monthly Application for Payment submitted by Contractor.

§ 4.1.4 For each progress payment made prior to Final Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

10% (ten percent)

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

0% (zero percent)

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 Final Completion has occurred and the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 60 days after Final Completion has occurred and the issuance of the Architect's final Certificate for Payment, or as follows:

As an additional condition to final payment, Contractor shall furnish to Owner, in a form and substance reasonably acceptable to Owner:

1. A Final Waiver and Release of Lien from Contractor;
2. A final bills paid affidavit from Contractor;
3. Final Waivers and Releases of Lien from all Subcontractors requested by Owner.

In the event that (i) Contractor has a dispute with a Subcontractor for payment and the Subcontractor will not provide such a Waiver and Release or (ii) Contractor discloses the existence of an unresolved dispute with a Subcontractor for payment, or (iii) a Subcontractor or sub-subcontractor has asserted a claim for payment or a lien claim against the real property being improved under the Contract, and except to the extent that such dispute or claim is the result of Owner wrongfully withholding payment from Contractor in accordance with the Contract Documents, Owner may continue to withhold funds sufficient to pay each such claim and to indemnify Owner from any costs or expenses associated with any defense or payment of each such claim until Owner and its real property have been fully and unconditionally released, unless the Contractor has previously filed a proper payment bond with the County Clerk or the Contractor furnishes a lien release bond in full compliance with the requirements of applicable law, which indemnifies Owner from the claim for payment and which releases or replaces the Property relating to any liens asserted against the improvements and real property improved hereunder.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ [« »] Arbitration pursuant to Section 21.6 of this Agreement

☒ [X] Litigation in a court of competent jurisdiction

☐ [« »] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« Project Manual for Tower of Americas Improvements »

Section	Title	Date	Pages
Project Manual	The Tower of Americas Improvements	4/25/2023	

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« Tower of Americas Improvements – 100% Construction Documents »

Number	Title	Date
See attached List of Documents	Construction Documents	

§ 6.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

[☐] Exhibit A, Determination of the Cost of the Work.

[☐] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[☐] The Sustainability Plan:

Title	Date	Pages

[☐] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

« »

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are those enumerated in Article 6 and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

References in the Contract Documents to standards (e.g., ASTM, ACI, FS, NEMA) shall be deemed to refer to the latest or most current edition or promulgation in effect as of the date of the Contract, except as otherwise expressly noted. When specific products, systems or items of equipment are referred to in the Contract Documents, any customary ancillary devices necessary for the proper functioning which are typically furnished at no additional cost as part of an installation contract shall also be provided.

In the event of conflicts, explanatory notes in the Drawings take precedence over graphic indications, large scale drawings and details take precedence over smaller scale drawings, and figured dimensions take precedence over scaled dimensions. Where figured dimensions are not indicated, scaled dimensions may only be used upon approval by Architect. Contractor shall verify all figured dimensions, both figures and scaled, by measurements of conditions and of Work in place.

When alternative materials, brands or processes are provided or specified in the Specifications for a particular item or portion of the Work, Contractor shall have sole discretion as to which of such alternatives is to be used in the performance of such items or portion of the Work provided the use of such alternatives does not require modifications to the design. However, if such specification of alternate materials, brands or processes is accompanied in the Specifications by the designation "Alternate," a separate bid will be required for each such alternate material, brand or process, and Owner shall have sole discretion as to which such alternate material, brand or process will be used in the performance of the Work.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor, Subcontractor, and/or suppliers to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Further, the Contractor shall perform the Work so as not to unreasonably interfere with Owner's ongoing operations and business at the Project site.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Contractor, Subcontractors and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official

regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Section 7.6, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 7.7 Building Information Models Use and Reliance

Owner shall have no liability regarding the use of any building information model.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission with evidence of delivery.

« »

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site, if required.

§ 8.1.3 Subject to Section 9.1.4, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

In addition, Owner may suspend the Work by written notice to Contractor at any time upon discovery of unforeseen conditions which Owner believes may adversely affect the quality of the Work if the Work were to continue. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent, if any, that additional out-of-pocket costs are incurred by reason of such suspension. If Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if the Work were to continue, Contractor shall promptly notify Owner of such belief. In no event shall the Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents. The rights set forth in this Paragraph shall be in addition to, and not in limitation of, Owner's right under any other Paragraph of this Agreement and all other rights and remedies of Owner provided for in the Contract, or otherwise available at law or in equity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Owner may withhold payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner and the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner and the Architect may require.

§ 9.1.4 Contractor hereby represents to Owner that Contractor is familiar with (a) the character of construction equipment and facilities needed to prosecute the Work, and (b) the general and local weather conditions. Contractor represents that Contractor after examining and investigating the site and the Drawings and Specifications, and after making all other reasonable investigations, Contractor is familiar with (i) all phases of the Work as reflected in the Drawings and Specifications and (ii) the character, quality and approximate quantity of materials to be used. Neither any oral representation by, nor oral agreement with, any officer, agent, or employee of Owner or Architect before execution of this Contract shall affect or modify any of Contractor's rights or obligations hereunder. At the time it signs this Contract, Contractor is not aware of any errors or omissions in the Drawings or Specifications that Owner or Architect has furnished to Contractor.

Contractor shall verify existing conditions and all figures on the Drawings before laying out the Work; shall take field measurements and verify field conditions; shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities; and shall give prompt notice to Architect and Owner in writing, of all errors, inconsistencies, or omissions, which it discovered prior to commencing the Work and obtain specific instructions in writing with respect thereto before proceeding with the Work. Contractor shall not take advantage of any known error or omission in the Contract Documents, and shall cooperate in good faith with Owner and Architect to resolve any ambiguities, inconsistencies or defects in the Contract Documents. Contractor will endeavor to resolve such in a manner that will not unnecessarily result in an increase in the Contract Sum or delay in the progress of the Work. Contractor shall cooperate in good faith with Owner and Architect to resolve any ambiguities, inconsistencies or defects in the Contract Documents.

Contractor agrees with Owner that the construction means, methods, procedures, sequences and techniques necessary to perform the Work, will be consistent with (a) good and sound practices within the construction industry, (b) generally prevailing and accepting industry standards applicable to the Work and (c) requirements of any warranties applicable to the Work.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.2.3 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or constructed to (1) make Contractor the agent, servant, or employee of Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by owner in respect to the Work shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein. Further, the means, methods, techniques, sequences, procedures and safety measures utilized in the performance of the Work are the sole responsibility of Contractor and its Subcontractors. Any means, method, technique, sequence or procedures set forth in the Contract Documents is solely to specify the desired end product; and if Contractor discovers that such means, method, technique, sequence or procedure will not result in the desired end product or is unsafe or illegal because of some inherent defect in the Content Documents or the particular conditions under which the Work is being performed, it is Contractor's responsibility to select a more appropriate means, method, technique, sequence or procedure. Nothing in Architect's or Owner's review of the general quality and progress of the Work shall be construed as the assumption of authority or supervision over the performance of the Work.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor will use reasonable efforts to minimize disruption to, and interference with, Property guests and tenants at the Property. Contractor's personnel will be uniformed at all times and shall not smoke on the premises.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. Submittals of proposed substitutions must contain sufficient information to allow Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner and/or the City of San Antonio, or shall be transferable to the Owner and/or the City of San Antonio, and shall commence in accordance with Section 15.6.3.

Neither inspection nor payment (including Final Payment) by Owner shall be deemed to be a waiver or release of Contractor with respect to its obligations to remedy or bear the cost of any defect in the Work in accordance with the Contract Documents.

Contractor shall obtain from its Subcontractors and suppliers those warranties and guarantees specified or required by the Contract Documents and shall furnish and hereby assigns to Owner, where assignable, all such warranties and guarantees received by Contractor or any Subcontractor furnishing labor and material with respect to the Project.

Contractor shall not knowingly (unless directed to do so in writing by Owner), or by its negligence, waive, limit, or take any action as would prejudice or void any warranties as to materials or component parts used in the Work or as to any Subcontractor's work. In no event shall any Subcontractor warranty be less than one (1) year from the date of Final Completion. All warranties shall be fully assignable to the City of San Antonio.

§ 9.5 Taxes

~~The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ Exemption Certificates: Landlord agrees to provide confirmation of its tax exempt status to the Project Contractor related to any exemption certificates that the Project Contractor will file with the State of Texas claiming an exemption under Section 151.309 of the Texas Tax Code to Tenant and/or to the Project Contractor or its subcontractors related to any portion of the New Tenant Improvements Work that qualifies for a exemption under the new Texas Tax Code, including but not limited to any of the tangible personal property, fixtures and services therefor.

The remodel taxes on the project are to be exempted for this construction project per a 3rd party ownership, (COSA) and if IRS / (taxing authority) rejects the tax-exempt letter and demands payment of the taxes, then payment of taxes will be the responsibility of Landry's Inc.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Construction Permit have already been provided by the architect, so permit costs will not be included in this contract.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

If the actual cost of any allowance item is greater or less than is stated, the Contract Sum shall be adjusted appropriately by Change Order. All purchases of allowance items shall be subject to Owner's prior approval. Owner reserves the right to select alternate suppliers and Subcontractors for allowance items. If any item selected by Owner is not available when ordered, Owner shall have a reasonable period of time, not to exceed ten (10) days, to select a substitution. Contractor agrees to advise Owner whenever Owner's delay in selecting allowance items or other items will result in delay in the completion of the Work.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to and approved by the Owner and Architect.

§ 9.8.3 Contractor shall prepare a weekly schedule summary report in a form and of sufficient detail and character as approved by Owner. The report shall specify whether the Project is on schedule, and if not, the reasons therefor and the terms of the new schedule, all in comparative form. Progress of the Work shall be reported in detail with reference to construction schedules. When it appears to Owner or Contractor that a contract milestone or completion date cannot be met for reasons not the fault of Contractor, Contractor will develop with Owner a plan and a budget under the Change Order provision of the Contract Documents to meet such a situation either (at Owner's option) by accelerating the Work to overcome the delays, or suspending or otherwise slowing the Work to efficiently take advantage of any relaxation in Owner's need for the completed Work.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Owner and Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner and Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for

the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

Notwithstanding the foregoing, Contractor has inspected and reviewed all physical aspects of the project site and verified the general suitability of conditions at the project site for the work described by the Agreement. Contractor has used its best professional judgment to determine that the work described by the Agreement includes all labor, parts, supplies, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to carrying out and completing the renovation of guestrooms at the Project to a first-class standard without any additional costs to Owner other than those specifically described in the Agreement. Contractor is not aware of any errors or omissions in the specifications in order to complete the work as agreed and, upon completion, have a fully functional system in accordance with the terms of this Agreement.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Only material and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by Contractor. After equipment is no longer required by the Work, it shall be promptly removed from the Project site. Further, Contractor recognizes that Owner may occupy the Project site during the performance of the Work. Contractor agrees to accommodate such occupancy and recognizes that no such occupancy will constitute acceptance of the Work by Owner.

Contractor shall prepare and use a plan for efficient and effective use of the Project site and for secure storage of materials and equipment by Contractor and all Subcontractors.

Contractor shall not interrupt utility service to the site or to adjacent buildings, unless it is necessary for Contractor to do so in order to perform the Work. If Contractor is required to interrupt utility services to perform its Work, Contractor shall coordinate such interruption with Owner so as to avoid any damage to Owner.

Contractor shall exercise reasonable care to minimize any adverse impact of its Work on any operation of the business of Owner at the site and upon adjacent landowners and to closely coordinate any planned disruptions of streets or public rights of way providing access to adjacent landowners with the affected owners or their property managers.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

Contractor shall be responsible for damaged or broken glass (provided Contractor shall not be responsible for imperfections in the glass to the extent such imperfections are permitted by the Drawings and Specifications), and at Final Completion of the Work shall replace such damaged or broken glass. Contractor shall also perform the following final cleaning at Final Completion of the Work:

- .1 Remove all temporary protections;
- .2 Remove marks, stains, fingerprints and other soil or dirt from all surfaces and other work;
- .3 Remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials from all surfaces and other work;

- .4 Clean fixtures, cabinetwork and equipment, removing stains, paint, dirt and dust, leaving same in an undamaged and new condition; and
- .5 Clean all surfaces and other work in accordance with recommendations of the manufacturer.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

This indemnity provided by Contractor shall be in addition to and not in substitution for any other indemnity required to be provided by Contractor contained in the Contract and is not limited to, but is in addition to the insurance required to be obtained by Contractor under the Contract.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Section 9.15.1 hereof, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

Owner reserves the right, at any time, to appoint another representative to assume Architect's responsibilities to the extent set forth in written notice to Architect and Contractor. With respect to such assumed responsibilities as set forth in the notice to the Architect and Contractor, Architect shall no longer bear responsibility in those areas from and after the effective date of such notice, unless and only to the extent that Architect shall be directed to resume such responsibilities by Owner; provided, however, decisions made and actions taken by the Architect prior to the date of Owner's written notice shall remain in effect and shall not be negated or retracted by such notice. Architect

shall not be construed as a third-party beneficiary to the Contract and can in no way object to such appointed representatives assumption of any of its powers.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Contractor. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will not have authority to order changes in the Work. A field directive or field order, or any other orders, direction, instruction, clarification, information, or request by Owner or Architect shall not be recognized as having any effect upon the Contract Sum or the Contract Time, unless documented as a Change Order or Construction Change Directive, and Contractor shall not have any claims for adjustments to the Contract Sum or the Contract Time as a result thereof, unless Contractor shall, prior to complying therewith and in no event later than ten (10) days from the date such directive, order, etc. was given, submit a claim therefor, in accordance with the applicable provision of Article 15.

Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting a Change Order request. Contractor's failure to do so shall represent a waiver of any right to request a time extension.

Contractor acknowledges and expressly agrees that Owner may, without notice to the Contractor's surety company, if any, make changes in the Work, including additions, deletions or modifications to the Work or the Contract Time thereof. Owner and its representatives shall at all times have the right to participate directly in the negotiations of Change Orders with Subcontractors and material suppliers.

No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum, or a change in the Contract Time, unless and until such alteration or addition has been authorized by

a Change Order or Construction Change Directive executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unduly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis of any claim to an increase in the Contract Sum or change in the Contract Time.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Final Completion of the Work. With respect to the performance of the Work, unless specifically enumerated below in Section 14.5, a situation or condition shall not be considered *force majeure* or an excuse for Contractor to delay performance under this Agreement.

§ 14.3 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Final Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If Contractor is delayed in the performance of the Work by reason of, and only by reason of, (i) unusual and extreme weather, (ii) war or national conflicts of priorities arising therefrom, (iii) fire or other casualty, provided such fire or other casualty was not (1) caused by Contractor or any Subcontractor or sub-subcontractor or (2) the result of a failure of Contractor or any Subcontractor or sub-subcontractor to comply with the terms and conditions of the Contract Documents, (iv) the failure of Owner to provide information, materials or necessary instructions for carrying on the Work, (v) offsite labor disputes beyond the reasonable control of Contractor, or (vi) governmentally mandated closure orders due to pandemic conditions to the extent that such orders specifically prevent access to the project site, and in each case such delays had a material effect on portions of the Work that are on the critical path of the construction schedule, then the Contract Time may be extended for a period equal to the length of such delay, if, as a condition precedent to making any delay claim, within ten (10) days after such delay, Contractor requests such extension, in writing, for such delay. Within ten (10) days of such request, Owner shall notify Contractor in writing whether Owner reasonably agrees with Contractor’s request. If so, such change in the Contract Time shall be authorized by a Change Order. If not, Owner agrees to provide its reasons for denying such request in such written response and Contractor shall continue the Work in accordance with the Contract Documents. Before Contractor can request an extension in the Contract Time for delays caused by Owner as specified in item (iv) above, Contractor shall first give Owner written notice of such delay and three (3) business days to cure such delay. In the event of an extension of the Contract Time, Contractor shall not be reimbursed for any costs incurred as a result of the delay and no adjustment shall be made to the Contract Sum.

In the event inclement weather is the basis of a Claim for additional time, the Contract Time shall be extended by the number of days on which Work on the critical path could not proceed due to an inclement weather event. For the purposes of determining inclement weather days under the preceding sentences, inclement weather days will include a day where the Work cannot proceed because of the impact on the critical path of an immediately prior, inclement weather event. No adverse weather time extension will be allowed for periods when the weather does not have a significant effect on Contractor’s ability to perform critical path work. Contractor shall advise Owner monthly in writing of inclement weather days for the purpose of notice. Owner shall advise Contractor in writing within fourteen (14) days of such notice if Owner disputes the inclement weather Claim. The parties will “true-up” the Contract Time and schedule relating to inclement weather days upon the written request of either party.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect and Owner

before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, the date of Substantial Completion, and the date of Final Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress

payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

Provided that Contractor has been paid by Owner all sums (or the applicable portion thereof) due to Contractor pursuant to the Contract, Contractor shall not voluntarily permit any laborer's, materialmen's, mechanic's or other similar liens to be filed or otherwise imposed on any part of the Work or the property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed or otherwise imposed against the Property, Contractor, within ten (10) days of the filing of such lien or other imposition thereof, shall cause such lien to be released or otherwise discharged, except as to liens which Contractor is contesting in good faith by appropriate action diligently pursued, provided Contractor has notified Owner in writing of the nature of such lien and informed Owner of the type of action being pursued by Contractor and, if requested by Owner has provided Owner with a bond sufficient to cover such claim (or cause the surety to acknowledge in writing that the lien claim is covered by the payment bond) in the event Contractor is unsuccessful in contesting same or has made other arrangements satisfactory to Owner. If, however, Contractor, within the aforesaid ten (10) business day period, does not cause such lien either to be released and discharged forthwith or contests same in the manner provided hereinabove, then Owner shall have the right to deduct 150% of the amount of the lien claim from the next progress payment until Contractor shall have caused such lien to be released and discharged or otherwise contested same in the manner provided hereinabove. Contractor shall indemnify, defend and hold harmless Owner from all claims losses, demands, causes of action or suits of whatever nature arising out of any such lien or that part of the Work covered thereby.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Final Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for

Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to maintain insurance as required hereunder; or
- .9 any other material breach of the Contract.

If Contractor disputes any determination by Owner with regard to all or any part of a Certificate for Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work.

Notwithstanding the foregoing, Owner may refuse to make payment (including, without limitation, the final payment) for any default under the Contract Documents, including, but not limited to, those matters set forth in clauses 15.2.3.1 through 15.2.3.9 above. Owner shall not be deemed in default by reason of withholding partial payment while any of such defaults remain uncured.

No payment made to Contractor shall be an acceptance of the Work or materials or be construed or relied upon as any indication that the Work or materials are in accordance with the Contract Documents or that the amounts paid or certified therefor represent the correct cost or value of the Work or materials or that such amounts are in fact or law due Contractor.

If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have the right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier.

§ 15.6 Substantial Completion and Final Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work at which the Work is sufficiently complete for inspection and determination of any final items to be completed. Final Completion is the stage in the progress of the Work when the Work is finally complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and no punchlist items remain to be completed.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and specified, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of the systems has been completed, and all final finishes prescribed by the Contract Documents are in place. In general, the only remaining Work shall be minor in nature, so Owner could occupy the building on the date of Substantial Completion and the completion of the Work by Contractor would not materially interfere with or hamper Owner's (or those claiming by, through or under Owner's) normal occupancy and use. As a further condition of the Work being considered suitable for Substantial Completion review, Contractor shall certify that all remaining Work is solely of a "punchlist" nature and can be completed within thirty (30) consecutive calendar days.

§ 15.6.3 Upon receipt of the Contractor's list of punchlist items, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate (which time shall in no event be more than thirty (30) days after such certificate date). Final Completion will occur only upon Contractor's satisfactory completion of all punchlist items. Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Final Completion.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a Certificate of Final Completion and a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been finally completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final Completion shall not occur and final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees. In addition, Final Completion shall not occur and final payment shall not be due Contractor until Contractor also submits to Architect the following: (1) a final Certificate of Occupancy for the Work, unless the delay in the issuance of the final Certificate of Occupancy is due to deficiencies in the design documents (other than those prepared by Contractor or its Subcontractors), Owner's responsibilities or other causes beyond the reasonable control of Contractor, (2) as-built drawings for the Work depicting the exact locations of all Work on plan sheets and redlined specifications, (3) all written guaranties and warranties relating to the Work, (4) all operation and/or maintenance manuals and operating instructions relating to the Work, and Owner has been instructed in the proper use, maintenance and emergency repair of all mechanical systems or equipment.

- § 15.7.3** The making of final payment shall constitute a waiver of claims by the Owner except those arising from
- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents;
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
 - .5 indemnification obligations of Contractor.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 In no event shall Owner be responsible for any substance or material brought onto the Project site by Contractor, any Subcontractor, any sub-subcontractor or any entity for which any of them is responsible. Contractor agrees that it shall not, and its Subcontractors and Sub-subcontractors and any entity for which any of them is responsible shall not, transport to, use, generate, dispose of, or install at the Project site any hazardous materials or substances, except in accordance with applicable laws. Further, in performing the Work, Contractor shall not, and any Subcontractors and sub-subcontractors and any entity for which any of them is responsible shall not, cause any release of hazardous materials or substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water. The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor or any Subcontractor, Sub-subcontractor or any entity for which any of them is responsible brings to the site and negligently handles or (2) where the Contractor or any Subcontractor or any sub-subcontractor or any entity for which any of them is responsible causes any release of hazardous materials or substances unto, or contractor of, the environment, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

If Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Section 17, Owner may, but not be obligated to, upon five (5) days' written notice to Contractor, purchase such insurance on behalf of Contractor and shall be entitled to be reimbursed by Contractor upon demand.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than **Five Million Dollars (\$ 5,000,000.00)** each occurrence, **Five Million Dollars (\$ 5,000,000.00)** general aggregate, and **Five Million Dollars (\$ 5,000,000.00)** aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

Such insurance shall also contain the following endorsements: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) [reserved], (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and endorsement providing for protection from pollution liability and providing for related clean-up of the Premises and any affected adjacent property.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than **One Million Dollars (\$ 1,000,000.00)** per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than **One Million Dollars (\$ 1,000,000.00)** each accident, **One Million Dollars (\$ 1,000,000.00)** each employee, and **One Million Dollars (\$ 1,000,000.00)** policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than **One Million Dollars (\$1,000,000.00)** per claim and **Two Million Dollars (\$2,000,000.00)** in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Builder's Risk. Contractor shall purchase and maintain in force builders risk insurance, acceptable to Owner, on the entire Work. Such insurance shall be written on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of the Work. The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 100% of the total value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the total value for the entire Project at the site. This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and sub-subcontractors in the Work, and shall include coverage for business income and extra expense, including but not limited to, loss of rental income, loss of profits, and extra expenses incurred to avoid or minimize the interruption of the business. Owner and/or the City of San Antonio, as Owner's loss payee, shall be a loss payee on such insurance. Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism. This insurance shall cover the entire work at the site as required in this section, including, but not limited to, the following:

- i. Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, false work, and temporary buildings
- ii. Offsite Storage
- iii. Portions of the work in transit

- iv. Debris removal
- v. Extra Expense
- vi. Expediting Expenses
- vii. Demolition and Increased Cost of Construction
- viii. Pollutant Clean-Up and Removal
- ix. Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
- x. Errors & Omissions (applicable to purchase of Builders Risk policy only)

This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner. This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all subcontractors and sub-subcontractors in the work.

Excess/Umbrella Policy. Contractor shall keep and maintain an excess or umbrella liability insurance policy, written on an occurrence basis, in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Owner as insured and City of San Antonio and its related parties, as landlord, as additional insureds.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance in an amount reasonably determined by Owner. The property insurance shall be maintained until Final Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.

§ 17.2.2.2 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 Intentionally Deleted.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such specific defective condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Final Completion by the period of time between Final Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18. The corrective remedies set forth in this Article 18 are not exclusive and shall not deprive Owner of any action, right or remedy otherwise available to it under any of the provisions of the Contract Documents or at law or in equity.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to (a) a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents, and (b) any party acquiring the Project or any interest therein, by sale, lease or otherwise. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

Contractor shall bear the costs of all inspections necessitated by (i) such portion of the Work needing to be re-inspected as a result of Contractor's failure to perform the Work properly and/or (ii) such inspection having to be rescheduled as a result of any act or omission of Contractor or any individual or entity for whom Contractor is responsible hereunder (e.g., Contractor's employees, agents, Subcontractors or sub-subcontractors and/or consultants).

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

« Bevan Hebert »
Senior Project Manager
« Landry's Inc. »
« 1510 W. Loop South »
« Houston, Tx. 77027 »
« bhebert@ldryy.com »

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

« Mark Wohlfarth - Owner »
« The Sabinal Group »
« 237 W. Travis, Ste. 200 »
« San Antonio, Tex. 78205 »
« mark@sabinal-group.com »
« 210-226-3400 »

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If, after thirty (30) days written notice from Contractor, Owner fails to make payment to Contractor of any amounts validly due and owing not otherwise in dispute, without cause the Contractor may, as its sole remedy, upon thirty (30) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work properly executed prior to termination and for proven actual out of pocket costs and expenses incurred by Contractor prior to termination with respect to materials, equipment, tools and construction equipment and machinery.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 Upon seven (7) days' written notice to Contractor, Owner may terminate this Agreement for any of the following reasons: (a) if Contractor persistently utilizes improper materials or inadequately skilled workers, (b) if Contractor does not make proper payment to laborers, materialmen, suppliers or subcontractors, (c) if Contractor persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction over the Work, (d) if Contractor or anyone claiming by, through or under Contractor files or records a lien or other claim against Owner or the Property, (e) if Contractor otherwise breaches this Agreement, or (f) if Contractor files a petition in, or has a petition filed against it in, bankruptcy. If Contractor fails to cure its default within seven (7) days, Owner may, without prejudice to any other right or remedy, take possession of the Project site and complete the Work utilizing any reasonable means, in which event, Contractor will have no right to further payment until the Work is completed. To the extent the cost of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner promptly upon demand, which obligation for payment shall survive termination of this Agreement.

§ 20.3 Termination by the Owner for Convenience

In addition to Owner's right to remove Contractor from any part of the Work pursuant to the other terms of this Agreement, Owner may, at any time, at will and without cause, terminate all or any part of the Work for any reason or no reason by giving seven (7) days' prior written notice to Contractor specifying the Work to be terminated and the effective date of termination. Contractor will continue to prosecute the part of the Work not terminated. If all or

a portion of the Work is so terminated, Owner will incur no liability to Contractor whatsoever by reason of such termination, except that Contractor will be entitled to payment for Work properly done and executed in accordance with this Agreement prior to the effective date of the termination (the basis for such payment shall be as provided in this Agreement).

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract shall be resolved in a court of law.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Final Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be

joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 21.12 Confidentiality; No Publicity. Neither Contractor nor any of its suppliers nor Subcontractors shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Work, or the activities of Owner, Contractor or Contractor's suppliers or Subcontractors relating to the Project, unless such materials have first been reviewed and approved in writing by Owner.

Contractor shall keep confidential all information (written or oral) concerning the Project which it has obtained or received as a result of discussions leading up to the entry of this Agreement, or which it has obtained during the course of this Agreement, except information that is (a) subject to an obligation to disclose under applicable law, or that is required to be disclosed by any regulatory authority, by notice or otherwise, or (b) already in its possession other than as a result of a breach of this paragraph, or (c) in the public domain other than as a result of a breach of this paragraph. This obligation shall not apply to the extent Contractor is required to disclose such information to its employees, Subcontractors and suppliers in order to perform the Work. Contractor shall similarly bind its Subcontractors and suppliers. Contractor shall not erect any signage on the Project without Owner's permission.

§ 21.13 Supplemental Provisions.

§ 21.13.1 Representations. Contractor makes the following representations:

- a. Contractor is qualified to do business pursuant to the laws of the State in which the Project is located, and has, or through subcontractors shall have, all necessary construction and other licenses necessary to perform the Work;
- b. Contractor has due power and authority to enter into the transactions contemplated by this Agreement and other Contract Documents and to carry out its obligations hereunder;
- c. Contractor has duly authorized the execution and delivery hereof and, assuming due execution and delivery by Owner, this Agreement constitutes a legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms;
- d. To Contractor's knowledge and belief, neither the execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which Contractor is now a party by which it is bound or constitutes a default under any of the foregoing; and

- e. Contractor is financially solvent, able to pay its debts as they mature, possessed of sufficient working capital to complete this Agreement pursuant to the terms of this Agreement; is able to furnish the tools, materials, supplies, equipment and labor contemplated to be furnished by Contractor under the Agreement, is experienced in and competent to perform the Work contemplated by this Agreement pursuant to its terms and conditions.

§ 21.13.2 "As-Built" Drawings. Contractor shall maintain an accurate record of all deviations from the approved shop drawings, the Drawings and Specifications, which occur in the Work as actually constructed, and shall submit to Owner two (2) sets of red-lined drawings.

§ 21.13.3 Encroachments. Any encroachments made by Contractor or his subcontractors on adjacent properties due to construction as revealed by an as-built or improvement survey will be the responsibility of Contractor, and Contractor shall correct these encroachments within a reasonable period of time not to exceed fifteen (15) days after discovery of such encroachment and notification to Contractor thereof in the event of discovery by one other than Contractor, at the sole cost and expense of Contractor, either by the removal of the encroachments or satisfactory written agreement(s) with the adjacent property owner(s) affected by such encroachments, permitting such encroachments to remain.

§ 21.13.4 Owner's Right to Review Books and Records. In the event that any provision of the Contract Documents requires Owner to make a payment to Contractor for certain additional costs, Owner, at its sole cost and expense, upon reasonable notice to Contractor, shall have the right to review and copy Contractor's books, records, subcontracts, purchase orders, statements, invoices, bills, and other documents of any kind relating to such additional costs. Contractor shall cooperate with Owner and its representatives and agents during such review of Contractor's books, records, and related documents.

§ 21.13.5 Materials; Workmanship. Notwithstanding anything herein to the contrary, Contractor guarantees that all materials utilized by Contractor, its subcontractors, employees, laborers and materialmen and the workmanship of all such persons will be in accordance with the Contract Documents; and Contractor will construct and complete the Work in a good and workmanlike, first-class manner, to the best of Contractor's art and skill.

§ 21.13.6 Owner's Rights. Owner or Owner's representative reserves the right to make emergency repairs to the Work, after first notifying Contractor thereof, during the warranty period, if required, to prevent further damages. Contractor shall pay for such repairs when necessitated by defects in the Contractor's work.

§ 21.13.7 City of San Antonio Provisions. Contractor acknowledges that Owner is performing work as agent for and on behalf of the City of San Antonio (the "City") pursuant to that certain Lease and Development Agreement between the City, as landlord, and Willie G's Post Oak, LLC, as tenant (the "Tower Lease"). Accordingly, the following provisions are hereby included as material terms of this Agreement. In the event of any conflict between the terms of this Section 21.13.1 and any other provision of this Agreement or the Contract Documents, the terms of this Section 21.13.1 shall control.

§ 21.13.7.1 Contractor is hereby advised that pursuant to Ordinance 96754, approved on November 21, 2002 (the "SBEDA Policy"), it is the policy of the City that small, minority and woman-owned business enterprises shall have the maximum practical opportunity in the performance of public contracts. Contractor hereby agrees that, in connection with the Premises and so long the City or its Related Parties is the Landlord, it shall abide by all applicable terms and conditions of the SBEDA Policy.

§ 21.13.7.2 The City shall have the right to use (but not own) any plans and specifications to which Owner is entitled to use pursuant to the Contract Documents; *provided* that City assumes the future unperformed obligations of Owner under this Agreement including the obligation to pay any future sums due under this Agreement.

§ 21.13.7.3 All warranties in favor of Owner shall be fully assignable to, and enforceable by, the City of San Antonio, as the landlord under the Tower Lease to the same extent as if the City were party to this Agreement.

§ 21.13.7.4 Contractor shall at all times ensure that the Work is performed in accordance with the minimum security and safety standards and procedures to be followed in connection with the development and

construction of any construction work, but which at a minimum (i) reflects the security and safety standards and procedures that would be followed by a reasonable and prudent contractor, (ii) takes into account the surrounding uses of the real property adjacent to the work site and (iii) complies with all applicable laws.

§ 21.13.7.2 Contractor acknowledges that payments from Owner to Contractor hereunder shall be not be due and payable until seven (7) days after receipt by Owner of such funds from the City.

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

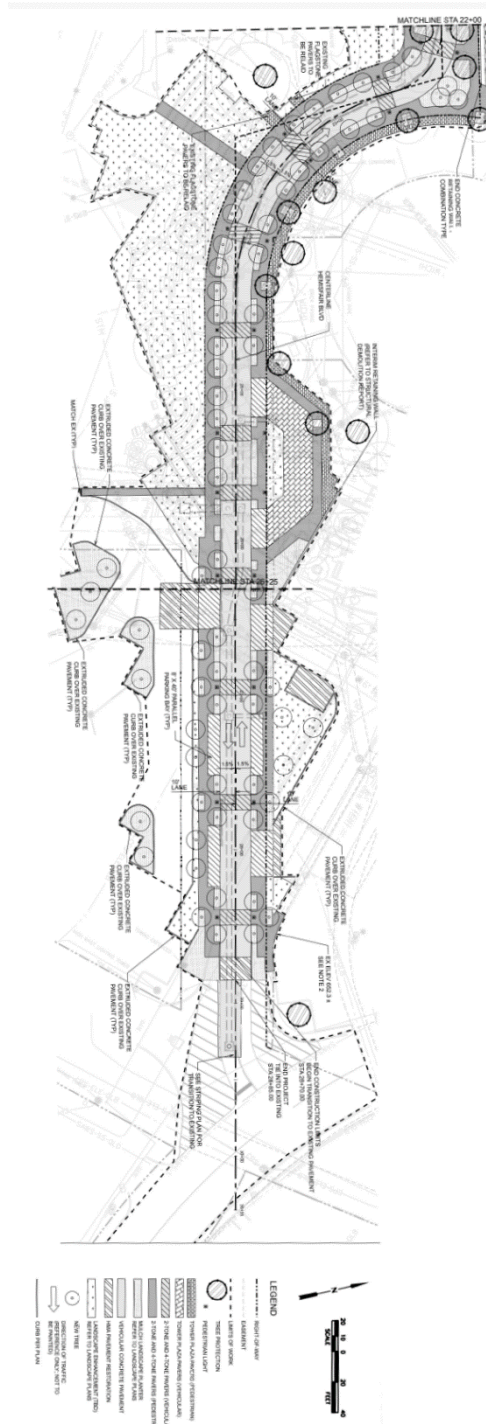
« Mark Wohlfarth – Owner »« »

(Printed name and title)



EXHIBIT J **TO** **AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT**

Valet Parking Area



Conceptual Plan – Valet Parking Turn-in
Hemisfair Blvd Phase III

Exhibit J
Page 1 of 1

EXHIBIT K
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

[Reserved]

EXHIBIT L
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Rent Credits

1. **Rent Credits.** As consideration for Tenant's agreement to assume the obligations contained in this Lease, and pursuant to the terms of this Lease, Tenant shall be entitled to credits against Base Rent and Participation Rent after the Effective Date as follows:

a. **Credits for Elevator Capital Expenditures.** Tenant shall be entitled to a credit against Base Rent and Participation Rent after the Effective Date in an aggregate amount of \$1,000,000 (the "**Elevator Capital Expenditures Credit**"). Following completion of the elevator capital improvements by EMR for Elevator 1, Tenant shall be entitled to a credit against Base Rent and Participation Rent in the amount of \$250,000 per Lease Year for four years, credited in equal monthly installments of \$20,833.33, for a period of 48 consecutive months. In addition to the Elevator Capital Expenditures Credit, Landlord will reimburse Tenant up to \$649,388 for any Elevator Capital Expenditures incurred by Tenant. The above Elevator Capital Expenditures Credit and the \$649,388 represent the EMR contract and the ATIS project management and inspection proposal, which tenant has agreed to execute for repairs to Elevator 1. Tenant is not entitled to any additional funds related to potential delay/escalation of labor or material, should any exist at the point in time that Landry's executes these agreements with the above-mentioned firms. The foregoing does not include any additional scope or other work with respect to Elevator 1 or other elevators which is not currently contemplated to be performed by EMR. From and after the Effective Date, Landlord shall disburse to Tenant on a monthly basis to pay Tenant for such Elevator Capital Expenditures to be incurred by Tenant during the following month for the Elevator Capital Expenditures, less a ten percent (10%) retainage, within thirty (30) calendar days of receipt from Tenant of an application for payment for the portion of the Elevator Capital Expenditures to occur in the following month, which application for payment must contain the following: (i) a description of the work relating to the Elevator Capital Expenditures for which payment is being requested, (ii) the parties to whom money will be owed by Tenant for such work relating to the Elevator Capital Expenditures and the amount that will be owed, (iii) a certification from the applicable Project Contractor that such amounts represent payments that will be due for services rendered or materials acquired or furnished in connection with the work relating to the Elevator Capital Expenditures and (iv) the percentage of completion of the work relating to the Elevator Capital Expenditures upon completion of the work covered by such payment application, as determined by the applicable Project Contractor. Landlord shall release to Tenant all retainage withheld within thirty (30) calendar days after final completion of the work relating to the Elevator Capital Expenditures. As used herein, "**Elevator Capital Expenditures**" means the costs paid to third parties in an amount not to exceed \$1,649,388, spent by or on behalf of Tenant, for the capital expenditure to repair Elevator 1.

b. **Credits for Elevator Maintenance Expenditures.** Tenant shall be entitled to a credit against Base Rent and Participation Rent after the Effective Date (the "**Elevator Maintenance Expenditures Credit**"). The Elevator Maintenance Expenditures Credit shall be

available to Tenant as a credit against Base Rent and Participation Rent in the amount of \$453,826.61 per year after the Effective Date, credited in equal monthly installments of \$37,818.88. As used herein, "**Elevator Maintenance Expenditures**" means any costs paid to third parties, spent by or on behalf of Tenant, to maintain and repair the Elevators, in connection with the routine maintenance for the Elevators during the Term. Within ninety (90) calendar days after the end of each Lease Year during the Term, Tenant shall provide Landlord with a written certification from Tenant's professional, third-party elevator maintenance company stating that all necessary and appropriate Elevator Maintenance Expenditures have been made by Tenant during the preceding Lease Year, with a detailed listing of all such work performed and the costs associated with such work. Within ninety (90) days after the end of the Term, Tenant shall certify in writing to Landlord all Elevator Maintenance Expenditures made by Tenant during the Term. In the event the total amount of funds paid by Tenant for Elevator Maintenance Expenditures during the Term does not equal or exceed the Elevator Maintenance Expenditure Credit, Tenant shall repay to Landlord, within ninety (90) days after the end of the Term, the difference between the Elevator Maintenance Expenditure Credit and the total amount of such Elevator Maintenance Expenditures paid by Tenant.

Notwithstanding the terms of Section 14.1(g), if Tenant's third party maintenance company identifies additional major capital expenditures with respect to any of the Elevators which are deemed reasonably required in order to keep one or more Elevators operational or extend the operational life of the Elevators beyond the then-current term (e.g. modernization or replacement), the costs of which cannot reasonably be reimbursed through the Elevator Maintenance Expenditures Credit, the Landlord will provide direction to Tenant on methods and means of repair and agrees to be responsible for the costs of such major capital expenditures.

c. **Credits for Insurance Expenses.** In connection with Tenant's assumption of the maintenance and repair obligations with respect to the Elevators after the Effective Date, Landlord hereby agrees to grant to Tenant a credit for extra insurance expenses against Base Rent and Participation Rent coming due under this Lease (the "**Insurance Expenses Credit**"). The Insurance Expenses Credit shall be taken in equal monthly installments over the number of months remaining in the then current year after the Effective Date once Tenant notifies Landlord of the insurance expenses for the then current year after the Effective Date based on actual payments to Tenant's insurance provider for general liability coverage for Tenant's operation and maintenance of the Elevators (the "**Insurance Expenses**"). As of the Effective Date, Landlord and Tenant agree that the monthly Insurance Expenses Credit to which Tenant is entitled is \$12,120.27 per month. Within ninety (90) days after the commencement of each year after the Effective Date, Tenant shall provide Landlord actual evidence of an insurance policy providing general liability coverage for the Elevators, along with evidence of the Insurance Expenses related thereto, for the then current year and such shall be the Insurance Expenses Credit for such year. Notwithstanding the foregoing, in no event shall the aggregate amount of Insurance Expenses Credits received by Tenant during any year after the Effective Date exceed \$1,350,000. Landlord shall have the right to audit Tenant's books and records related to the Insurance Expenses Credit, with any dispute between the Parties related to such credits and the results of Landlord's audit to be governed by Section 24.10.1 of this Lease as if such were a Rent Credit Dispute or Controversy as defined in Section 24.10.1 of this Lease.

d. **Annual Credits.** In the event that the sum of the credits against Base Rent and Participation Rent set forth in this Section 1 for any Lease Year after the Effective Date exceeds the sum of Base Rent and Participation Rent owing by Tenant during such Lease Year (the "**Excess Credit**"), then the Excess Credit shall be amortized over the immediately following Lease Year (if less than twelve (12) months remain in the immediately following Lease Year, then the number of months remaining therein) and taken as a credit against Base Rent and Participation Rent during such Lease Year.

2. **Operational Protocols for Elevator Stoppages.** Tenant shall follow the operational protocols for elevator stoppages as detailed in this Section 2.

- a. Landry's shall ensure the following sequence of calls in case any of the Elevators with patrons stops in between destination points:
 - i. Call 911 anytime an Elevator has ceased to operate and Tower patrons are onboard.
 - ii. Call the City's Point of Contact to inform of emergency, after 911 has been called.
- b. Landry's shall provide the City a reporting of all incidents/stoppages on a monthly basis, no later than the 10th day of the following month. This report shall include a detailed summary of all stoppages, length of time the Elevator was out of service, the cause of the stoppage, and the number of patrons or employees in the Elevator.
- c. Landry's shall notify the City when one Elevator has been scheduled for maintenance or other service which requires the Elevator to be out of service more than two hours for any repairs.
- d. Landry's shall provide training to elevator operators who are properly trained in the operations of the Elevators.
- e. Elevator operators shall be able to communicate with Tower facilities staff at all times during normal business hours, preferably via cell phones or radios with earphones.

Landlord Representative and Tenant Representative shall have the authority by mutual agreement to amend this Section 2 from time to time.

EXHIBIT M
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

Tenant's Renovation Plan

Landry's Planned Investment – Tower of Americas/Charthouse

FUTURE IMPROVEMENTS

Retail Store Upgrades
Signage Improvements
Restaurant Renovations
Observation Level Renovations
Observation Level Interactive Upgrades
Theatre Renovation
Ground Level Interior Renovation
Exterior Lighting Upgrades
Kitchen Flooring & Plumbing Replacement
Replace Nine (9) Air Handler Units Under Top House
Contingency
General Conditions

COMPLETED/IN PROGRESS TO DATE

Retail Area Flooring – Complete
New Theatre Projectors – Complete
Restaurant and Bar Level Flooring – Complete
Restaurant Booth Reupholstery – POs in Progress
Interactive Theatre Seat Upgrade – POs in Progress

Tenant shall design, develop and construct the New Tenant Improvements as identified herein within the Premises in accordance with the terms and conditions of this Lease at Tenant's sole cost, risk and expense.

EXHIBIT N
TO
AMENDED & RESTATED LEASE AND DEVELOPMENT AGREEMENT

New Landlord Supported Improvements

1. Construction of temporary traveling scaffolding (dance floor) on the exterior and interior of the Tower Shaft as well as protection screening for the bottom house.
2. Replacement of the stucco soffit panels immediately underneath the top house and central to the Tower Shaft, which work will include repair of rusted steel members, fireproofing, repair of fire sprinklers, and the replacement and upgrade of the lighting and controls attached to the panels.
3. Concrete repair on the exterior and interior of the Tower Shaft, which work will include patching and filling of spalls occurring on the Tower Shaft and the evaluation of elevator rail brackets to either replace or remount them in various locations.
4. Construction of a fire rated enclosure around the electrical room at the bottom of the Tower Shaft, which work will include the construction of walls, doors, ceilings and HVAC to contain any potential fire event.
5. Construction of a fire rated pressurized enclosure in the stairwells of the top house, which work will include installation of doors, patching of wall voids, and the installation of an air handling unit with associated ducting.
6. Installation of safety mesh along stairwell railings for the entire length of the Tower Shaft.
7. Implementation of fire upgrades, which will include egress lighting on stairs, repair and installation of sprinklers, a new fire panel, alarms, strobes and speakers. This work will also include the Pump Room.
8. Replacement of the perimeter guardrail on the outside of the upper roof walkway.
9. Repair to damaged ladder rungs on the primary antenna.
10. Application of a water-resistant or anti-carbonization coating to the Tower shaft.
11. Removal of rust from, and painting of, the entire mast.
12. Replacement of the pumps supporting the fire suppression system located in the Pump Room.

The list of New Landlord Supported Improvements contained herein is only a general description of the work to be performed and is subject to the design and bid documents provided by Landlord to Tenant.