

BUILD TO SUIT AGREEMENT

This Agreement is between ERF REAL ESTATE, INC., a Texas nonprofit corporation (“ERF”), and CITY OF CORPUS CHRISTI, TEXAS, a Texas municipal corporation (the “City”).

1. Project. ERF is the owner of the land and buildings formerly occupied and used as Lamar Elementary School located at 2212 Morris in Corpus Christi, Texas, and more particularly described and shown on EXHIBIT “A” hereto attached. ERF is also purchasing additional lots and tracts in the area. These lands and buildings are herein referred to as the “Project”.

2. Construction/Remodeling. ERF will at its expense remodel and construct new facilities, including landscaping, parking areas and driveways, according to plans and specifications approved by both ERF and the City in order that the Project may be leased to and utilized by the City; provided, ERF shall not be required to hereafter expand in excess of \$4,600,000.00 for the construction and remodeling. This \$4,600,000.00 shall not include any amounts previously expended by ERF for land purchase, nor any amounts expended by ERF previous to the execution of the Agreement for remodeling and/or construction. Construction costs to be included in the \$4,600,000.00 limited include both “hard” costs expended and paid to contractors, laborers and materialmen for construction and remodeling, as well as “soft” costs such as amounts paid to architects and engineers, and allocation of salaries of ERF or Ed Rachal Foundation employees working on the Project, permitting costs, and the like. ERF will not be responsible for the cost of furniture and office equipment to be housed in the Project, and such shall be provided by the City at its expense.

Before the final plans and specifications are approved by ERF and the City, ERF will obtain and furnish to the City the expected total construction costs for such, including a breakdown of costs. If such total amount exceeds \$4,600,000.00, then the excess shall be borne by the City. At the time of approving the final plans and specifications, ERF and the City will enter into an agreement specifying and agreeing to any excess costs to be borne by the City. Upon substantial completion of construction and obtaining a certificate of occupancy, ERF shall submit an invoice to the City for the total construction costs of the Project along with an invoice to the City for the construction costs in excess of \$4,600,000.00; provided the City shall not be required to pay an amount for excess costs which is greater than the amount agreed to when the final plans and specifications were agreed to as set forth above.

The City may request change orders after constructions commences, however such must be approved by and acceptable to ERF. At the time agreeing to any change order, the parties will also agree to an amended total cost of construction, and an amended excess costs, if any, to be paid by the City, by reason of the change order.

The construction and remodeling of the Project by ERF shall be commenced within 30 days after the final plans and specifications are approved by both ERF and the City as set forth in Section 3 below. ERF will cause all construction and remodeling to be performed in a good and workmanlike manner and in accordance with applicable laws and regulations. ERF will use reasonable efforts to substantially complete the construction and remodeling no later than 18

months after the final plans and specifications are approved by both parties. Provided, ERF shall be excused, and the time for construction and remodeling extended, for so long as performance is prevented, delayed, retarded or hindered by act of God, fire, flood, explosion, action of the elements, war, riot, mob violence, sabotage, strike, lockout, action of labor unions, requisitions, laws, orders of government or civil or military authorities or other force majeure.

3. Plan Approved. Lessor shall, upon execution hereof, engage architects and engineers to prepare plans and specifications for the Project to be leased to the City pursuant hereto, which plans and specifications shall be submitted to the City for review and approval or disapproval. The City shall promptly review such plans and specifications as submitted it, and the Lessor shall promptly cure and revise portions of the plans and specifications which are disapproved by the City (provided, any such revisions must be acceptable to ERF in its discretion). ERF and the City shall use reasonable efforts to reach agreement with respect to ERF's plans and specifications. In the event ERF and the City are unable to reasonably agree upon final plans and specifications within 60 days after ERF's initial submission thereof, then ERF may terminate this Agreement by providing written notice to the City at any time prior to the City's approval. In the event this Agreement is terminated because the parties cannot agree to the plans and specifications then all costs expended by ERF for such shall be borne by ERF and the City shall not be required to reimburse ERF for costs expended. The final plans and specifications approved by ERF and the City shall be signed by both parties and will then automatically deemed part of and incorporated into this Agreement. During construction and remodeling of the Project, the City shall have the right to inspect the Project for compliance with the final approval plans and specifications, and ERF will discontinue any work which the City deems to not be in compliance with the final approval plans and specifications.

4. Lease. Upon completion of construction and remodeling of the Project, and obtaining a certificate of occupancy therefor, ERF shall lease the Project to the City pursuant to the form of Lease attached hereto as EXHIBIT "B". The Commencement Date of the Lease shall be the day after the certificate of occupancy is issued.

5. Arbitration. The parties further agree as follows:

(a) Any and all controversies between the parties shall be settled by arbitration, in accordance with the commercial arbitration rules, then obtaining, of the American arbitration association. Any arbitration hereunder shall be before at least three arbitrators associated with the American arbitration association and selected in accordance with the commercial arbitration rules of the American arbitration association. The award of the arbitrators, or of a majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

(b) Arbitrable disputes include any and all controversies or claims between the parties of whatsoever type or manner, including any claim based on contract, tort, or statute, and including without limitation, any claim arising out of or relating to this agreement or any other proposed or actual loan or extension of credit, all past, present, and/or future agreements involving the parties , any transactions between or involving the parties and/or

any aspect of the past, present or future relationship of the parties, whether banking or otherwise, specifically including any alleged tort committed by either party.

(c) Depositions may be taken and other discovery obtained in any arbitration under this agreement. Within thirty (30) days of the date a responsive pleading is filed in any arbitration proceeding hereunder, all parties shall serve on all other parties an initial disclosure as would be required by rule 26, federal rules of civil procedure.

(d) For purposes of this provision, "the parties" means borrowers, guarantors, pledgers, lender, and each of them, and all persons and entities signing this agreement or any other agreements, security instruments and/or guarantees executed heretofore or contemporaneously with and as part of the same transaction with this agreement. "the parties" shall also include individual partners, officers, directors, employees, agents and/or representatives of any party to those documents, and shall include any other owner and holder of the loan documents.

(e) The parties shall have the right to invoke self-help remedies (such as set-off, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration and/or to request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after any arbitration. The parties need not await the outcome of the arbitration before using self-help remedies. Use of self-help or ancillary and/or provisional remedies shall not operate as a waiver of either party's right to compel arbitration.

(f) The parties agree that any action regarding any controversy between the parties shall either be brought by arbitration, as described herein, or by judicial proceedings, but shall not be pursued simultaneously in different or alternative forums. This provision shall not operate to limit the parties from pursuing self-help remedies before, during or after any arbitration as described in paragraph (e) above. A timely written notice of intent to arbitrate pursuant to this agreement stays and/or abates all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the arbitrators.

(g) Any aggrieved party shall serve a written notice of intent to arbitrate to any and all opposing parties within 60 days after dispute has arisen. A dispute is defined to have arisen only upon receipt of service of judicial process or of a complaint in arbitration. Failure to serve a written notice of intent to arbitrate within the time specified above shall be deemed a waiver of the aggrieved party's right to compel arbitration of such claim. The issue of waiver pursuant to this agreement is an arbitrable dispute.

(h) Active participation in pending litigation during the 60 day notice period, whether as plaintiff or defendant, is not a waiver of the right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.

(i) Any arbitrator selected shall be knowledgeable in the subject matter of the dispute. Qualified retired judges shall be selected wherever possible through panels maintained by the American arbitration association. Each of the parties shall pay an equal share of the arbitration costs, fees, and expenses, and of the arbitrators' costs, fees, and expenses.

(j) All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder and the commencement of any arbitration proceeding tolls such limitations.

(k) In any arbitration proceeding subject to these provisions, the arbitrators, or a majority of them, are specifically empowered to decide (by documents only, or with a hearing at the arbitrators' sole discretion) pre-hearing motions which are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication.

(l) The provisions of this agreement shall survive any termination, amendment, or expiration of the agreement in which this section is contained, unless all the parties otherwise expressly agree in writing.

(m) The arbitrators, or a majority of them, shall award attorney's fees and costs to the prevailing party pursuant to the terms of this agreement.

(n) Venue of any arbitration proceeding hereunder will be in Nueces County, Texas.

Dated: _____, 2020

ERF REAL ESTATE, INC.

CITY OF CORPUS CHRISTI, TEXAS

By: _____
Paul Altheide
Chief Executive Officer

By: _____
Name: Peter Zanoni
City Manager

APPROVED AS TO LEGAL FORM:

Myra K. Morris (Date)
Chief Legal Counsel
Ed Rachal Foundaiton

Buck Brice (Date)
Assistant City Attorney
For City Attorney

EXHIBIT "B"
FORM
OF
LEASE AGREEMENT

This Lease Agreement ("Lease") is made by and between **ERF REAL ESTATE, INC.**, a Texas nonprofit corporation, as owner and lessor ("Lessor"), and **City of Corpus Christi, Texas**, a Texas municipal corporation, as lessee ("Lessee").

1. Premises. For good and valuable consideration including mutual covenants and agreements herein, Lessor leases to Lessee, and Lessee leases from Lessor the real property in Nueces County, Texas, described and depicted on the site plan attached to as Exhibit "A" and incorporated herein ("Premises"). The Premises include the buildings and related improvements such as paving, curbing and landscaping (the "Improvements"). Except as specifically provided for elsewhere in this Lease, Lessor agrees not to create any exceptions to title against the Premises that would materially affect Lessee's use of the Premises or otherwise diminish Lessee's leasehold interest in the Premises without the prior written consent of Lessee.
2. Term. The initial term of this Lease commences on _____, 20__ (the "Commencement Date") and terminates on _____, 20__ (the "Termination Date"). The initial term is for 20 years.
3. Rent. Lessee shall pay to Lessor the following minimum rent ("Base Rent") in annual installments in advance on the first day of each Lease Year during the Term of this Lease at the address provided in **Section 17** of this Lease or such other address as Lessor may direct:

Base Rent. The Base Rent shall be \$200,000 per year, subject to periodic CPI adjustment as hereinafter set forth. Provided, at the beginning of the sixth (6th) Lease Year, and at the beginning of each fifth Lease year thereafter, the annual Base Rent shall be adjusted to be the greater of (i) \$200,000 or (ii) \$200,000 multiplied by a fraction, the numerator of which is the Consumer Price Index for "All Urban Consumers, U.S. City Average, All Items" issued by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the third month preceding the date the Base Rent is being adjusted hereof, and the denominator is the CPI for the month of the Commencement Date. The Base Rent shall be payable in advance on the first day of each Lease Year commencing on the Commencement Date hereof.

The term "Lease Year" as used herein means the period of one year after the Commencement Date of this Lease. The Base Rent for any fractional calendar month or year shall be prorated. In addition to the Base Rent, Lessee shall pay, as "Additional Rent", those other charges and expenses for which Lessee is responsible under this Lease. Base Rent and "Additional Rent" shall be prorated for any partial month and any partial calendar year during the term hereof. It is the intent of the parties hereto that the Base Rent payable under this Lease shall be an absolutely net return to the Lessor and that the Lessee shall

pay all costs and expenses relating to the use, operation, maintenance, repair, rebuilding and replacement of the Premises, and all systems thereon and a part thereof, and the business of Lessee carried on therein (including, without limitation, taxes and insurance, utility and maintenance costs) unless otherwise expressly provided in this Lease. Any amount or obligation herein relating to the use and occupancy of the Premises which is not expressly declared to be an obligation of Lessor shall be deemed to be an obligation of Lessee to be performed by Lessee at Lessee's expense. Except as expressly provided in this Lease to the contrary, Base Rent, Additional Rent, and all other sums payable hereunder by Lessee shall be paid without notice, demand, setoff, offset, counterclaim, abatement, suspension, deduction or defense.

4. Use.

- a. Permitted Use. The Premises shall be used solely for the purpose of operations by the City of Corpus Christi, or other governmental or tax exempt organizations designated by the City, and for no other purpose (the "Permitted Use"). Lessee shall cause all operations and activities conducted upon the Premises to be in compliance with all applicable laws, rules, regulations and restrictive covenants, and Lessee shall be responsible for acquiring all permits and authorizations with regard to all construction, operations and activities on the Premises. In the event the Lessee allows other governmental or tax exempt organizations to use the Premises, such shall not relieve Lessee from its obligations and duties hereunder.
- b. Continuous Operation. In the event Lessee ceases to operate the Permitted Use at the Premises for a period of 180 consecutive days or more, other than as a result of a Permitted Closure, then at anytime thereafter, and prior to a date Lessee gives Lessor written notice of its intention to re-open for business (which must indicate that Lessee intends to re-open within 90 days after the date of such notice, following which Lessee must actually re-open within such time period), Lessor may at its option terminate this Lease by giving Lessee written notice of such termination, whereupon this Lease shall terminate thirty (30) days after the date of such notice from Lessor to Lessee. For purposes hereof, a "Permitted Closure" is defined as a closure not exceeding two (2) years in the aggregate, due to approved reconstruction or rebuilding of the Premises as a result of casualty damage. Termination of the Lease under this **Section 4(b)** shall not relieve Lessee from its obligation to pay any sums then due to Lessor, or from any claim for damages that Lessor may have against Lessee, and Lessor may thereafter be entitled to exercise any other remedy for default as provided herein or available at law or in equity. If Lessor elects to not terminate this Lease under this **Section 4(b)**, then this Lease shall remain in full force and effect (provided that Lessor shall retain all rights hereunder in the event of a subsequent closure by Lessee), and Lessee shall be responsible for the continuing payment of all Base Rent and Additional Rent and all other obligations of Lessee under this Lease.
- c. Expenses and Liens. In making any repairs, reconstruction or rebuilding on the Premises, Lessee will not create or permit to remain beyond the period hereinafter

provided, and will discharge in the manner hereinafter provided, any mechanics or materialmen lien (being the liens of mechanics, laborers, artisans, or materialmen for work or materials done or furnished in connection with the Premises or personal property), encumbrance, or other charge upon the Premises or personal property or any part thereof, upon Lessor's interest therein, or upon Lessee's leasehold interest; provided, however, should any such lien be filed against the Premises or personal property or the leasehold estate created by this Lease, Lessee shall, within thirty (30) days after the filing of such lien (but in any case not later than fifteen (15) days prior to the date that any such lienholder may foreclose such lien), either discharge and cancel the lien of record or post a bond or furnish other security satisfactory to Lessor (in connection with which Lessee may contest any claims of any persons who have provided, or alleged to have provided, work to the Premises or personal property) in favor of Lessor. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PREMISES OR ANY PART THEREOF.

5. Expenses. Lessor shall not be responsible for any costs or expenses regarding the Premises or the Improvements. Lessee shall bear, and be responsible for the prompt payment of, all expenses of operation, maintenance, replacement, repair, and rebuilding of the Improvements and Premises, including but not limited to the following:

- a. Taxes. Lessee shall pay before they become delinquent or upon the earlier request of Lessor as set forth below, all federal, state, county or local governmental or municipal real estate taxes and assessments, association dues and other taxes of every kind and nature whatsoever related to the Premises, whether general and special, extraordinary and ordinary, foreseen and unforeseen, which may be levied or assessed against or arise in connection with ownership, use, occupancy, operation or possession of the Premises and Improvements (including, without limitation, any taxes imposed under Chapter 171 of the Texas Tax Code [including any successor statutory provision]), and property tax consulting services in any calendar year, and upon any and all Lessee's Property, fixtures, equipment and improvements located on the Premises, now or hereafter existing (collectively, "**Taxes**"). Lessee will pay any Taxes directly to the taxing authority.

In the event any local, state, federal, or other governmental authority shall levy and assess any surcharge, assessment, or any form of tax related directly or indirectly to the rental or any other payments as provided in this Lease to be paid by Lessee to Lessor, except income tax, Lessee shall pay as additional Taxes any such assessment or tax directly to the taxing authority when assessed and due. In the event such tax is assessed or levied directly against the Lessor, Lessor shall give written notice of such assessment to Lessee, attaching a copy of the statement of

such taxes, which amount shall be paid as additional Taxes by Lessee to Lessor within one month after the date of said notice.

- b. Insurance. Lessee shall be responsible for the payment of all premiums for the insurance coverages provided in **Section 10** below.
- c. Utilities. Lessee shall be responsible for the payment prior to delinquency of any and all charges and fees for all utilities serving the Premises.
- d. In the event Lessee fails to pay, prior to delinquency, any such charges (and fails to cure such non-payment within five (5) days after written notice of such non-payment from Lessor, except in instances where the required insurance coverage is lapsed, in which case no such notice is required) then Lessor shall be entitled (without obligation) to make such delinquent payment(s) and any applicable late charges or other penalties, and the amount so paid by Lessor, together with interest thereon at the Default Rate, shall be payable by Lessee to Lessor upon demand.

6. Maintenance and Repairs.

(a) Lessee shall be responsible for at all times maintaining the Premises and Improvements in good quality and clean operating condition. Lessee shall be responsible for all repairs and maintenance and rebuilding of the Improvements and Lessor shall not bear any responsibility for any services, maintenance, replacements or repairs to the Premises or Improvements. Should Lessee fail in its obligation to maintain and repair the Premises and Improvements in good and clean operating condition, and such failure shall continue for a period of sixty (60) days after written notice thereof by Lessor to Lessee, Lessor may (but is not required to) perform the maintenance and/or repairs on behalf of Lessee, and Lessee shall be liable for reimbursing Lessor for Lessor's costs for such maintenance and repair, together with interest thereon at the Default Rate, payable by Lessee to Lessor upon demand. Lessee's maintenance obligations shall include, without limitation, the following with respect to the Premises:

- Roofing
- HVAC system
- Plumbing
- Parking lot
- Elevators
- Maintaining a safe and clean condition during rebuilding or repairs;
- Prompt removal of all litter, trash and waste;
- Lawn mowing;
- Tree and plant trimming, pruning and fertilization;

- Watering of all lawn and garden areas and keeping the same alive and free of weeds, and replacing any and all damaged and dead vegetation and trees;
- Maintaining exterior lighting and mechanical facilities in good working order;
- Maintaining parking areas, walks, driveways, drainage areas, detention ponds, filtration and sedimentation systems, if any, and roads in a clean condition, and in good repair;
- Striping all parking and driveway areas and repainting all Improvements so all such painting is maintained in a neat fashion;
- Maintaining all required landscaped areas, buffers and screens, including replacement of any and all damaged landscaping;
- Repairing all damage (including the effects of ordinary wear and tear) to any Improvements from any cause whatsoever.
- Maintaining drainage channels, rights-of-way and/or easements, if any, on the Premises.

(b) Major Repairs. Repairs with cost in excess of \$100,000 will be performed by Lessor with City approval. Lessor shall, prior to repair, submit cost for the repair project to the City for review and approval or disapproval. If the City approves, the City will reimburse lessor for approved repair costs. If the City disapproves, City is responsible for all repairs in excess of \$100,000.

7. Alterations. Lessee shall not alter the Premises or Improvements (with the exception of any alterations that are made solely within the interior of the building on the Premises and which do not affect its structural integrity) without prior written consent of Lessor, and any alterations must be made pursuant to plans and specifications approved in advance in writing by Lessor.

8. Assignment and Subletting.

- a. Lessee shall not transfer, assign, sublet, enter into license or concession agreements, mortgage or hypothecate ("Transfer") this Lease or Lessee's interest in the Premises or any part thereof without (1), except as to other governmental or tax exempt organizations, the prior written consent of Lessor; (2) the furnishing to Lessor of copies of all documents pertaining to the Transfer; and (3) the consent by the other party to the Transfer ("Transferee Lessee") to be bound by the provisions of this Lease. The Lessee shall continue to be liable for the performance of all obligations of the Lessee under this Lease, including the payment of rent. Any attempted Transfer not in full compliance with this subparagraph shall be void and confer no rights upon any third person. Any transfer from Lessee by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an

assignment for the benefit of creditors, shall be included in the term "assignment" for the purposes of this subparagraph and shall be a violation of this subparagraph if the provisions of this subparagraph are not complied with.

- b. Lessor shall have the right to assign this Lease, collaterally or otherwise, without Lessee's consent. No assignment by Lessor shall alter the rights of Lessee hereunder, and all of the recitals, terms, covenants, and conditions of this Lease shall remain in full force and effect upon the assignment. Upon any assignment by Lessor, Lessee shall be entitled to continue making rental payments to the assignor unless and until the assignor actually delivers to Lessee a written notice directing rental payments to thereafter be made to the assignee.

9. DISCLAIMER OF WARRANTIES.

- a. CONDITION OF PROPERTY. THE PREMISES ARE BEING LEASED TO LESSEE, AND LESSEE ACCEPTS THE PREMISES, IN THEIR "AS-IS" CONDITION. LESSEE HAS MADE A THOROUGH INSPECTION OF THE PREMISES AND ACCEPTS THE PREMISES WITH ANY AND ALL DEFECTS, IF ANY. THE LESSEE ACKNOWLEDGES THAT LESSOR HAS MADE NO WARRANTIES OR REPRESENTATIONS WHATSOEVER REGARDING THE PREMISES, AND THE LESSEE IS NOT RELYING UPON ANY WARRANTIES OR REPRESENTATIONS BY OR ON BEHALF OF THE LESSOR. FURTHER, THE LESSEE WAIVES AND DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, FITNESS OR MERCHANTABILITY.

- b. HAZARDOUS SUBSTANCES.

- (1) Hazardous Substance. For purposes of this **Section 9**, "Hazardous Substance" means any substance, matter, material, waste, or pollutant, the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated, prohibited, or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("RCRA") (42 U.S.C. §§ 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended ("CERCLA") (42 U.S.C. §§ 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended ("CWA") (33 U.S.C. §§ 1251 et seq.), (iv) the Toxic Substances and Control Act, as now or hereafter amended ("TSCA") (15 U.S.C. §§ 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended ("CAA") (42 U.S.C. §§ 7401 et seq.), (vi) the Safe Drinking Water Act, as now or hereafter amended ("SDWA") (42 U.S.C. §§ 300(f) - 300(j)), and (vii) the Oil Pollution Act of 1990, as now or hereafter amended ("OPA") (33 U.S.C. §§ 2701 et seq.) (RCRA, CERCLA, CWA, TSCA, CAA, SPWA and OPA are collectively referred

to herein as the “Federal Toxic Waste Laws”), (viii) any present or future local, state or foreign law, statute, regulation, or ordinance analogous to any of the Federal Toxic Waste Laws, and (ix) any other present or future federal, state, local, or foreign law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting or governing the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (viii) and (ix) above, together with the Federal Toxic Waste Laws are collectively referred to herein as “Toxic Waste Laws”. The term “Hazardous Substances” shall also include, without limitation, (a) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum hydrocarbons, including any additives or other by-products associated therewith, excluding, however, asphalt and related products used in the construction of parking areas and flatwork on the Premises, (b) asbestos and asbestos-containing materials in any form, (c) polychlorinated biphenyls, and (d) any substance the presence of which on the Premises by virtue of its chemical composition: (x) requires reporting or remediation under any Toxic Waste Law; (y) causes or threatens to cause a nuisance on the Premises or poses or threatens to pose a hazard to the health or safety of persons on the Premises; or (z) which, if it emanated or migrated from the Premises, could constitute a trespass, nuisance or health or safety hazard to persons on adjacent property; provided that Hazardous Substances shall not include normal cleaning fluids and pest control products customarily used in operations permitted under the Permitted Use that are used and maintained in accordance with Toxic Waste Laws.

- (2) Hazardous Substances on Premises Prohibited. Lessee shall not conduct, permit, or authorize the use, distribution, manufacturing, emission, generation, transportation, storage, treatment, or disposal in, on or under the Premises, of any Hazardous Substance without prior written authorization by Lessor. Nothing contained herein shall be construed as imposing upon Lessee any responsibility for any Hazardous Substances located in, on, or under the Premises on or prior to the Effective Date (the “Pre-Existing Conditions”). Lessee agrees to notify Lessor in writing of any Pre-Existing Conditions disclosed in any reports or studies undertaken by Lessee and furnish copies of such reports or studies to Lessor promptly after completion of such reports or studies.

- (3) Compliance with Toxic Waste Laws.

- (i) Lessee shall, at its sole cost and expense, comply with all applicable Toxic Waste Laws, provided that nothing contained herein shall be construed as imposing upon Lessee any responsibility for

compliance with applicable Toxic Waste Laws in respect of Pre-Existing Conditions.

- (ii) Lessee shall promptly provide Lessor with copies of all written communications, permits, reports, sampling results, or agreements with and/or from any governmental authority or agency (federal, state, local, or foreign) or any business entity relating in any way to the presence, release, threatened release, placement on or in the Premises, or the manufacturing, emission, generation, transportation, storage, treatment, handling or disposal at or from the Premises, of any Hazardous Substance, including without limitation, the improper or unpermitted discharge of any substance into the local publicly owned water treatment facility (if any).
 - (iii) If Lessor reasonably believes that Lessee has not complied or is not complying with any applicable Toxic Waste Laws, rules or permits relating in any way to the presence of Hazardous Substances on the Premises, and Lessor has requested and Lessee has failed, within thirty (30) days after written request therefor by Lessor, to furnish Lessor with results of appropriate tests described in **Section 9(c)(2)**, then, subject to the provisions of **Section 9(c)(6)** below, Lessor and its agents and employees shall have the right subject to **Section 14** to enter the Premises and/or conduct appropriate audits or evaluations (including, without limitation, soil and/or surface or groundwater sampling) for the purpose of ascertaining that Lessee complies with this **Section 9**. Any such entry and audits or evaluations shall be done in a manner reasonably intended to minimize interference with Lessee's normal business operations and upon not less than two (2) days prior written notice. Lessor shall indemnify Lessee from any damage to Lessee's property, liability and reasonable expenses caused by such entry, excluding damage resulting from the gross negligence or willful misconduct of Lessee.
- (4) Clean Up and Mitigation. If the presence, release, threat of release, placement on or in the Premises, or the generation, transportation, storage, treatment, or disposal at or from the Premises of any Hazardous Substance that is not a Pre-Existing Condition (a) gives rise to liability (including, but not limited to, a response action, remedial action, removal action, or enforcement action) under the Toxic Waste Laws, or any common law theory based on nuisance or strict liability, (b) causes or is deemed by applicable governmental regulatory authorities to cause or contribute to a public health threat or harm, or (c) pollutes or threatens to pollute the environment, Lessee shall promptly take any and all remedial, removal, or other action required by any governmental authority or by any order of a court or arbitration panel to clean up or remediate the Premises, mitigate exposure to liability arising from such Hazardous Substance, as required by

law, or cease taking or cause requisite corrective action(s) to be taken to preclude any or further (as the case may be) adverse environmental effects, regulatory enforcement actions or civil or criminal actions or proceedings. If a violation of the Toxic Waste Laws other than in respect of Pre-Existing Conditions occurs during the term of this Lease, Lessee shall promptly take any and all remedial, removal, or other actions required by such regulatory authorities to correct the violation.

- (5) Lessor's Right of Entry. Lessor shall have the right but not the obligation, prior or subsequent to an event of default without in any way limiting Lessor's other rights and remedies under this Lease, to enter onto the Premises or to take such other actions as it deems reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substances or a violation of Toxic Waste Laws at the Premises. Any entry on the Premises or other action taken by Lessor must be done in a manner so as not to unreasonably interfere with Lessee's business at the Premises as prescribed by this Lease. If such entry has been made necessary by the failure of Lessee to perform its obligations under other portions of this **Section 9**. All reasonable costs and expenses paid or incurred by Lessor in the exercise of any such rights except in respect of Pre-Existing Conditions, shall be payable by Lessee within thirty (30) days after demand.

10. Insurance.

- a. Insurance Requirements. Lessor shall procure, and maintain throughout the term of this Lease, commercial general liability policy covering Lessee's operations on the Premises which includes premises and operations liability, and broad form property damage liability, and personal injury liability with limits of not less than \$3,000,000.00 combined single limit for bodily injury or property damage liability. Lessor shall also carry fire and extended casualty coverage, in the replacement value (100%) of building and subsequent improvements. Additional Rent. The Lessee is to pay the cost of the insurance required above in **Section 10(a)**.

11. Damage or Destruction.

- a. Lessee's Obligations. In the event the Premises shall be wholly or partially damaged or destroyed by fire or other casualty, Lessee shall, at its own expense, cause such damage to be repaired or restored to the condition of the Premises which existed immediately prior to such casualty. During the period of repair or restoration, Base Rent and Additional Rent shall not be reduced. Lessee shall have the right to utilize proceeds of insurance maintained by Lessee pursuant to **Section 10** to repair and restore the Premises. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease by delivering written notice to Lessor within sixty (60) days following the occurrence of such casualty and the insurance proceeds (or such amount that would have been available from insurance proceeds

in the event Lessee elects to self-insure) shall be paid to Lessor and this Lease shall terminate. Also if the damage is 50% or greater than the replacement cost of the buildings on the Premises, and such occurs during the last five (5) years of the initial term or during any renewal term, then Lessor may also elect to terminate this Lease within sixty (60) days of the casualty and be paid and receive the insurance proceeds (or said amount that would have been available from self-insurance if Lessee so elected).

- b. Time for Repairs. In the event of such repairs, Lessee shall (i) use commercially reasonable efforts to commence to repair any such damage or to restore the Premises within ninety (90) days after such damage or destruction, and (ii) diligently and continuously prosecute such repairs or restoration to completion, and (iii) complete such repairs or restoration as soon as reasonably practicable but in any case within one (1) year after commencement of such repairs or restoration.

12. Condemnation - Eminent Domain.

- a. Definitions. For purposes of this **Section 12**, the following terms shall have the respective meanings set forth below:
 - (1) “Award” means the amount of any award made, consideration paid, or damages ordered as a result of a Taking less any reasonable costs in obtaining such award, such as reasonable legal fees and costs, consultant fees, appraisal costs.
 - (2) “Improvements Award” means the positive difference, if any, between the Award and the Land Award (as hereinafter defined).
 - (3) “Date of Taking” means the date upon which title to the Premises, or a portion thereof, passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.
 - (4) “Land Award” means an amount equal to the positive difference, if any, between the fair market value of the Premises on the date that is one day before the Date of the Taking and the fair market value of the Premises on the date that is one day after the Date of the Taking.
 - (5) “Partial Taking” means any Taking which does not constitute a Total Taking, provided that nothing contained herein shall preclude or materially interfere with the right of Lessee to enter into a lease or other post-taking agreement with the condemnor for the occupancy or use of the portion taken after the Date of Taking, so long as such lease or post-taking agreement does not adversely affect Lessor’s rights under the condemnation proceeding.

- (6) “Taking” means a taking of the Premises or any damage related to the exercise of the power of eminent domain and including a voluntary conveyance to any agency, authority, public utility, person, or corporate entity empowered to condemn property in lieu of court proceedings.
- (7) “Total Taking” means the permanent Taking of more than twenty percent (20%) of the entire Premises (measured by land area of the Premises prior to and after the date of the Taking), a Taking of twenty percent (20%) of the parking spaces on the Premises or a Taking in Lessor’s reasonable opinion renders the building constructed on the Premises unusable for the Permitted Use.

b. Partial Taking.

- (1) In the event of a Partial Taking of the Premises during the term of this Lease which takes any portion of the Premises, the following shall occur: (i) the rights of Lessee under this Lease and the leasehold estate of Lessee in and to the portion of the Premises taken shall cease and terminate as of the Date of Taking; and (ii) this Lease shall otherwise continue in full effect, except that Base Rent shall be reduced as set forth below (however, Additional Rent or other sums payable by Lessee hereunder shall continue unreduced notwithstanding any such Taking). Lessee shall, promptly after any such Taking, at its expense, repair any damage caused thereby so that, thereafter, the Premises shall be, as nearly as reasonably possible, in a condition as good as immediately prior to such Taking. In the event of any such Partial Taking, and provided that no event of default exists hereunder, Lessor shall make the Improvements Award available to Lessee to make such repair. Lessor shall however be entitled to any and all proceeds of the Land Award during a Partial Taking. Any balance of the Improvements Award remaining after such repairs have been made shall remain the property of Lessor, and shall, to the extent previously paid by Lessor to Lessee, be repaid by Lessee to Lessor. As of the Date of Taking, Base Rent shall be reduced by the product of the Base Rent multiplied by a fraction (the “Rent Reduction Percentage”), the denominator of which is the total land area of the Premises prior to the Taking and the numerator of which is the total land area of the Premises taken in the Taking.
- (2) In the event of any temporary Partial Taking, Lessee shall be entitled to the entire Award and there shall be no reduction in Base Rent and Additional Rent.

- c. Notwithstanding anything herein to the contrary, Lessee shall have the right to terminate this Lease effective as of the date of the Taking in connection with a Partial Taking which occurs during the last two years of the Term, by delivering written notice to Lessor within sixty (60) days following the effective date of the Taking.

- d. Total Taking. In the event of a Total Taking, the Lessee's leasehold estate shall terminate as of the Date of Taking and all rights and obligations of Lessor and Lessee hereunder shall terminate except for the rights and obligations under this **Section 12(d)** and that otherwise survive termination of this Lease. Lessor shall be entitled to any and all proceeds of any Land Award and of any Improvements Award in the event of a Total Taking. Nothing contained herein shall limit Lessee's pursuit of any separate condemnation Award to which it may legally be entitled.
- e. Notice of Taking. Lessor shall immediately notify Lessee of any written offer from any entity with eminent domain authority to purchase any interest in the Premises. In any such negotiations or in actions in inverse condemnation, Lessee shall have the right to participate in such proceedings to establish the value of its improvements and the compensation to which Lessee is entitled hereunder. However, Lessor shall have total control of the procedural decisions in eminent domain proceedings. Lessor shall have exclusive control over the decision of whether to contest jurisdictional issues in condemnation, Lessor will notify Lessee of that decision, and Lessee agrees to (1) not appear or contest the matters of compensation at the Special Commissioner's Hearing, (2) not request to draw down any part of the Award deposited by the condemning authority in condemnation prior to final determination by the courts of jurisdictional issues or the abandonment of jurisdictional issue claims by the Lessor, and (3) not to file with the court or deliver to the condemning authority any waiver of jurisdictional claims in order to realign the parties for trial of any condemnation action. Lessor and Lessee agree and covenant to fully cooperate in any condemnation, eminent domain or similar proceeding in order to protest such condemnation to the extent possible and to maximize the total award receivable in respect thereof.

13. Mortgage Rights and Subordination.

- a. Subordination. Lessee's rights under this Lease shall be at all times subordinate and inferior to any liens established or permitted by Lessor upon the Premises, whether now existing or established in the future. Lessee or Lessee's successors or assigns shall attorn to such lienholder or the successor or assign of such lienholder in the event of a foreclosure or conveyance in lieu thereof. It is agreed that as to any currently existing deed of trust, mortgage or other instrument of security, as well as any currently existing ground lease or primary lease, that now or hereafter covers all or any part of the Premises (collectively, the "Lien Documents"), the terms and provisions of and the subordination provided herein shall extend only to such Lien Documents under which the beneficiary, lessor or holder thereof by agreement in the deed of trust, mortgage, instrument or lease, or in a separate instrument, agrees in substance to not disturb Lessee's occupancy so long as Lessee performs its obligations under the Lease. Lessor agrees to deliver to Lessee on or before the thirtieth (30th) day after the date this Lease a fully signed a Non-Disturbance, Attornment and Subordination Agreement in a mutually agreeable form executed by Lessor and by each and every beneficiary, lessor or holder of all

currently existing Lien Documents, and in the event Lessor fails to timely deliver to Lessee such agreement, Lessor or Lessee shall have the right (in their sole discretion) to terminate the Lease by written notice given to the other no later than the forty-fifth (45th) day after the date this Lease is fully signed. Lessor warrants and represents (i) that to the best of its knowledge that as of the date of the Lease it is not in default under any Lien Documents and (ii) that there are no ground leases encumbering the Premises as of the date of the Lease.

- b. Mortgage Rights. Lessee shall have the right at any time to grant a purchase money security interest in any goods or equipment owned by Lessee on the Premises. Upon expiration or termination of this Lease, Lessee or its successors and assigns shall cause the removal of any and all liens and encumbrances from the Premises.
- 14. Inspection Rights. Lessor shall during business hours, with a representative of Lessee if reasonably available, have the right of access and inspection of the Premises and Improvements for the purpose of insuring compliance with Lessee's obligations hereunder.
 - 15. Quiet Enjoyment. So long as Lessee fully and finally performs all of its obligations hereunder, Lessee shall have the quiet and peaceful possession of the Premises.
 - 16. Default.
 - a. Events of Default. The following are events of default ("Events of Default"):
 - (1) Rent. The failure of Lessee to pay when due any portion of any installment of Base Rent or any other monetary charge due from Lessee hereunder; provided, however, that not more than twice during any twelve (12) month period, Lessor shall provide Lessee written notice of such monetary default whereupon Lessee shall have thirty (30) days to cure such default before Lessor may exercise its remedies hereunder.
 - (2) Abandonment. Lessee abandons the Premises.
 - (3) Other Obligations. The failure of Lessee to comply with or to observe any terms, provisions, or conditions of this Lease performable by and obligatory upon Lessee, excluding the Rent and other payment provisions hereof, within thirty (30) days after written notice by Lessor, or such longer time as may be reasonable if such matter is not susceptible to cure within thirty (30) days provided that Lessee diligently pursues same, but in any event such cure period shall not exceed ninety (90) days.
 - (4) Bankruptcy. Lessee files in any court pursuant to any statute a petition in bankruptcy or insolvency or for reorganization or arrangement or makes an assignment for the benefit of creditors or any such petition is filed against Lessee and a receiver or trustee of all or any portion of Lessee's property is appointed and such proceeding is not dismissed or the trusteeship

discontinued within one month after such appointment.

- (5) The assignment of this Lease, subletting of the Premises, or other transfer made in violation of the terms of **Section 8(a)**.

b. Remedies. Upon any Event of Default, in addition to all other rights and remedies given hereunder or by law or equity, Lessor may, at its option have one or more of the following remedies:

- (1) Termination. Lessor may terminate this Lease by notice to Lessee. No re-entry or other act performed or omitted by Lessor shall be deemed to have terminated this Lease or any obligation of Lessee for payment of money or otherwise unless Lessor shall expressly notify Lessee in writing that Lessor has elected to terminate this Lease. In such event, Lessee shall be entitled to recover from Lessor all loss and damage which Lessor may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, specifically including, but not limited to (i) all reasonable expenses necessary to relet the Premises, which shall include the cost of renovating, repairing, and altering the Premises for a new tenant or tenants, advertisements, and brokerage fees and (ii) any increase in insurance premiums caused by the vacancy of the Premises. Nothing contained in this Lease shall limit or prejudice the right of Lessor to seek and obtain in proceedings under any section or chapter of the Bankruptcy Code by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the proceedings in which the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.
- (2) Re-entry. Lessor may re-enter the Premises and remove Lessee or cause Lessee to be removed with or without legal process and with such force as Lessor deems necessary.
- (3) Reletting. Lessor may, without terminating this Lease, terminate Lessee's right of possession of the Premises by giving notice to Lessee that Lessee's right of possession and use shall end on the date stated in the notice, whereupon the right of Lessee to the possession and use of same will terminate, and Lessee covenants to peaceably and quietly yield and surrender the Premises to Lessor in the condition required herein on such termination date. Lessor may (but shall be under no obligation to) relet the Premises or any part thereof for the account of Lessee in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term), and on such conditions (which may include concessions or free rent), and for such uses as Lessor in its absolute discretion may determine, and Lessor may collect and receive any rents

payable by reason of such reletting. Lessee agrees to pay Lessor on demand all reasonable expenses necessary to relet the Premises, which shall include the cost of renovating, repairing, and altering the Premises for a new tenant or tenants and advertising and brokerage fees, and Lessee further agrees to pay Lessor on demand any deficiency that may arise by reason of such reletting. The word "deficiency" as used herein shall mean the negative difference, if any, between the average effective monthly rental from all sources received or to be received by Lessor during the term of any reletting during the remainder of the term after taking consideration and spreading all concessions, and the amount of Base Rent and other amounts payable per month that Lessor would have received had there been no termination times the number of months remaining in the term (excluding any extension terms not exercised). To the extent required by law, Lessor hereby agrees to use reasonable efforts to relet the Premises.

- (4) Rent. Lessor may recover rent from Lessee for what would be the balance of the Term in accordance with the following provisions:
- (a) Monthly Default Gross Rent. The amount of monthly default gross rent ("Monthly Default Gross Rent") shall be the sum of (i) Minimum Rent, and (ii) all other items of rent or other amounts due to Lessor hereunder.
 - (b) Collection as Due. At Lessor's option, Lessor may receive or recover from Lessee from time to time the Monthly Default Gross Rent less the amount by which (i) the total Base Rent and other items of Rent actually received for a period by Lessor under a reletting of the Premises exceeds (ii) reasonable expenses of Lessor in connection with the Premises, including any repairs, remodeling costs in making the Premises leasable, brokerage commissions, attorney's fees and court costs, whether or not such expenses in (ii) exceed the total (i).
 - (c) Collection in Advance. At Lessor's option, Lessor may at any time after an Event of Default receive or recover from Lessee in advance the entire Monthly Default Gross Rent for the balance of the stated Term less the reasonable rental value of the Premises for the balance of the stated Term based on its condition at the time such option is exercised.
 - (d) Interest. Any amounts due from Lessee under this Lease shall bear interest at the rate of 18% per annum or the highest lawful rate, whichever is lower (the "Default Rate").
 - (e) Bankruptcy. If the event of Default is related to bankruptcy as described in **Section 16(a)(4)**, and this Lease is terminated, neither

Lessee nor any person claiming through or under Lessee by virtue of any statute or order of court shall be entitled to possession of the Premises but shall promptly surrender the Premises, and Lessor, in addition to all other rights and remedies Lessor may have under other provisions of this Lease or of any statute or rule of law, may retain as liquidated damages any Rent or monies received by Lessor from Lessee or from others in behalf of Lessee. In no event, without the express approval of Lessor, shall this Lease be considered an asset of Lessee's estate in bankruptcy or insolvency or of any receiver or trustee. Any action or adjudication with respect to the property or affairs of any guarantor of this Lease which, if taken by, against or with respect to Lessee, its property or affairs, would entitle Lessor to exercise any remedy specified herein, may be treated, at Lessor's sole option and discretion, as though such action were so taken by, against or with respect to Lessee and Lessor may thereupon pursue against Lessee the remedies set forth in this subparagraph.

- (f) Other Remedies. Lessor shall have the right to an injunction and to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for. In such event Lessor shall be entitled to recover from Lessee and have paid as Rent all reasonable expense Lessor may incur in connection with its efforts to secure such injunctive relief or other remedy such as court costs, printing costs and attorneys' fees. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical meanings.
- (5) Waiver. No waiver, express or implied, by Lessor as to any breach of a covenant, condition or duty of Lessee shall be construed as a consent or waiver to take any action on account of such default if such default persists or is repeated. No express waiver shall affect any default other than the default specified therein. The receipt and acceptance by Lessor of any Rent with knowledge of any breach by Lessee shall be deemed not to be a waiver of such breach. One or more waivers by Lessor of any breach of any covenant, term or condition of this Lease by Lessee shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar acts by Lessee. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws.
- (6) Lessor's Lien Waiver. Lessor hereby waives and releases any Landlord's or other lien for all rentals and other sums of money becoming due hereunder from Lessee.
- (7) Curing by Lessor. Lessor at any time and without notice, may, but shall not be

obligated to, cure any default by Lessee. All costs and expenses incurred by Lessor in curing a default, including reasonable attorneys' fees and interest from the date such costs and expenses were incurred, shall be paid by Lessee to Lessor on demand and shall be recoverable as Rent.

17. Notice. "Notice" shall mean any notice, notification, consent, approval, request, designation, submission, specification, election or other communication required or permitted under this Lease. All notices shall be in writing and shall be deemed to have been given and received the earlier of (1) the date the notice is delivered by one party to the other party personally or delivered to the party's address by a party or by a delivery service which records delivery dates, or (2) three days after the notice is placed in the mail addressed to the other party at the party's address, properly stamped, certified or registered mail, return receipt requested. A party's address shall be as follows or as set forth in a notice to the other party:

Lessor: ERF Real Estate, Inc.
 555 N. Carancahua, Suite 700
 Corpus Christi, Texas 78401
 Attn: CEO
 Phone: (361) _881-9040_____

Lessee: City of Corpus Christi
 1201 Leopard Street
 Corpus Christi, Texas 78401
 Attn: City Manager
 Phone: (361) 826-3220

18. Commissions. Lessee hereby represents that it has not utilized the services of any real estate agent or broker in connection with this Lease.
19. Holding Over. Any holding over, whether or not consented to by Lessor, shall cause a tenancy at will and the Base Rent payable by Lessee during such period shall be two hundred percent (200%) of the Base Rent payable pursuant to Section 2 above.
20. Limitation of Liability. No constituent member or partner in or agent of Lessor (or any successor Lessor), nor any advisor, trustee, director, officer, employee, beneficiary, shareholder, member, manager, partner, participant, representative or agent of any partnership, limited liability company, corporation, trust or other entity that has or acquires a direct or indirect interest in Lessor (or any successor Lessor), shall have any personal liability, directly or indirectly, under or in connection with this Lease or any agreement made or entered into under or pursuant to the provisions of this Lease, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Lessee and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Lessor's interest in the Premises for the payment of any claim or for any performance, and Lessee, on behalf of itself and its successors and assigns and

person or entity claiming through Lessee, hereby waives any and all such personal liability. Any and all covenants and agreements of Lessor contained in this Lease shall be binding upon Lessor and its successors and assigns only with respect to breaches occurring during its or their respective periods of ownership of the Lessor's interest hereunder. The liability of Lessor to Lessee for any default by Lessor under the terms of this Lease shall be limited to Lessor's interest in the Premises, and Lessee agrees to look solely to Lessor's interest in the Premises for recovery of any judgment from Lessor, it being the intention of Lessor and Lessee that Lessor shall not be personally liable for any judgment or deficiency rendered against it in connection with this Lease. To the maximum extent permitted by law, Lessee hereby waives any lien (whether statutory, contractual or constitutional) rights it may have or acquire as a result of a breach by Lessor under this Lease. Lessee also waives and releases any statutory lien and all offset rights it may have against Lessor, including, without limitation, the rights conferred upon Lessee pursuant to Section 91.004(b) of the Texas Property Code, as amended or superseded from time to time, or other applicable law. Notwithstanding anything to the contrary in this Lease, in no event shall Lessor be liable for consequential, special or punitive damages, including without limitation lost profits and business interruption, in connection with a breach or default under this Lease or otherwise.

21. Miscellaneous.

- a. Entire Agreement. Lessee acknowledges that neither Lessor nor any one in Lessor's behalf has made any representation, warranty or promise with respect to the Premises except as expressly set forth in this Lease. This Lease and its Exhibits embodies the entire agreement and understanding between the parties and supersedes all prior negotiations, agreements and understandings. Any provision of this Lease may be modified, waived or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver or discharge is sought.
- b. Governing Law. The law governing this Lease shall be the laws of the State of Texas.
- c. Binding Effect. This Lease shall be binding upon and inure to the benefit of Lessor, Lessee and their successors and assigns.
- d. Headings. The references in the headings of the paragraphs in this Lease are used for convenience only and shall have no substantive meaning or effect.
- e. Amendments. This Lease may be amended only by a writing signed by Lessor and Lessee.
- f. Remedies Cumulative. No remedy conferred upon or reserved to Lessor or Lessee shall include any other remedy herein or by law provided, but each shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

- g. Force Majeure. Each party shall be excused from performing an obligation or undertaking provided for in this Lease other than of the obligations of Lessee to pay Rent and other payments as they become due under this Lease for so long as such performance is prevented, delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, strike, lockout, action of labor unions, requisitions, laws, or orders of government or civil or military authorities.
- h. Surrender. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall surrender the Premises to Lessor. If Lessee is not then in default under this Lease, Lessee may remove all trade fixtures, inventory, stock-in-trade, furniture and other personal property which are not fixtures ("Lessee's Property") installed by Lessee. All other installations or improvements, including all Utility Facilities, paneling, decorating, partitions, railings, mezzanine floors, and galleries made by either party shall be and become upon installation the property of Lessor and shall be surrendered with the Premises at the expiration or termination unless Lessor notifies Lessee to the contrary, in which event Lessee shall remove such property at its expense. Whether or not Lessee is then in default, Lessee shall remove at its expense any of Lessee's Property specified to be removed in a notice by Lessor to Lessee. Any property not promptly removed by Lessee under the provisions of this subparagraph may, at Lessor's option, be deemed to have been abandoned by Lessee and may be retained by Lessor without any claim by Lessee. Lessee shall in any event repair any damage to the Premises caused by the removal of Lessee's property.
- i. Late Charges. In the event Lessee fails to pay to Lessor within 30 days after when due any installment of rental or other sum to be paid to Lessor which may become due hereunder, Lessee shall pay Lessor on demand a late charge equal to the accrued interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Failure to pay such late charge upon demand therefore shall be an event of default hereunder. Provision for such late charge shall be in addition to all other rights and remedies available to Lessor hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Lessor's remedies in any manner.
- j. Computation of Charges. Lessor and Lessee each agree that each provision of this Lease for determining charges, amounts and additional rent payable by Lessee (including, without limitation payments for Taxes and Insurance Charge) is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for the purposes of Section 93.012 of the Texas Property Code.

- k. Applicable Law, Venue, Construction. The laws of Texas shall govern the validity, performance and enforcement of this Lease. Venue shall be in Nueces County, Texas for the purposes of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. If any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, the provision shall have the meaning which renders it valid. The submission of this document for examination does not constitute an offer to lease, this document being effective only upon execution and delivery by Lessor, Lessee and any guarantors. It is the intent of Lessor and Lessee to conform strictly to all applicable state and federal usury laws and any requirements hereunder for the payment of interest, fees or charges shall be deemed modified to the extent necessary to comply with any such usury laws.
- l. Time of the Essence. Time is of the essence with respect to each provision, term and covenant of this Lease.
- m. Captions. The captions are for convenience and do not limit or define the provisions of this Lease.
- n. Gender, Number. Whenever the sense of this Lease requires it, the use of (1) singular number shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine or neuter gender, and (3) the neuter gender shall be deemed to include the masculine or feminine gender.
22. Survival. All obligations of Lessee shall survive the termination of this Lease.
23. Memorandum of Lease. If requested by either party, Lessor and Lessee shall execute for purposes of recordation in the appropriate real property records, a memorandum of this Lease containing the names of the parties, a description of the Premises, and the term of the Lease in a form agreed upon by both parties. The cost and expenses of recording the memorandum of the Lease, shall be borne by the party asking for the memorandum to be recorded. Upon the expiration or earlier termination of this Lease, Lessee shall, at its expense, within five (5) business days following said expiration or termination, file a release of this Lease in the Official Public Records of Real Property the County in which the Premises is located. This obligation shall survive the expiration of the Term or earlier termination of this Lease.
24. Estoppel Certificates. The parties hereto shall each furnish to the other party, upon request from the other party, from time to time, with a certificate signed by the non-requesting party to the effect that the Lease is then presently in full force and effect; that the rent payable is fully paid; that the non-requesting party is not then in default under the Lease and the non-requesting party does not claim any right or lien against Lessee's property for past due rent; that the non-requesting party is not in default under the Lease; and that the non-requesting party has not accepted any prepaid rent under the Lease except as stated in the Lease.

25. Arbitration. The parties further agree as follows:

(a) Any and all controversies between the parties shall be settled by arbitration, in accordance with the commercial arbitration rules, then obtaining, of the American arbitration association. Any arbitration hereunder shall be before at least three arbitrators associated with the American arbitration association and selected in accordance with the commercial arbitration rules of the American arbitration association. The award of the arbitrators, or of a majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

(b) Arbitrable disputes include any and all controversies or claims between the parties of whatsoever type or manner, including any claim based on contract, tort, or statute, and including without limitation, any claim arising out of or relating to this agreement or any other proposed or actual loan or extension of credit, all past, present, and/or future agreements involving the parties, any transactions between or involving the parties and/or any aspect of the past, present or future relationship of the parties, whether banking or otherwise, specifically including any alleged tort committed by either party.

(c) Depositions may be taken and other discovery obtained in any arbitration under this agreement. Within thirty (30) days of the date a responsive pleading is filed in any arbitration proceeding hereunder, all parties shall serve on all other parties an initial disclosure as would be required by rule 26, federal rules of civil procedure.

(d) For purposes of this provision, "the parties" means borrowers, guarantors, pledgers, lender, and each of them, and all persons and entities signing this agreement or any other agreements, security instruments and/or guarantees executed heretofore or contemporaneously with and as part of the same transaction with this agreement. "the parties" shall also include individual partners, officers, directors, employees, agents and/or representatives of any party to those documents, and shall include any other owner and holder of the loan documents.

(e) The parties shall have the right to invoke self-help remedies (such as set-off, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration and/or to request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after any arbitration. The parties need not await the outcome of the arbitration before using self-help remedies. Use of self-help or ancillary and/or provisional remedies shall not operate as a waiver of either party's right to compel arbitration.

(f) The parties agree that any action regarding any controversy between the parties shall either be brought by arbitration, as described herein, or by judicial proceedings, but shall not be pursued simultaneously in different or alternative forums. This provision shall not operate to limit the parties from pursuing self-help remedies before, during or after any arbitration as described in paragraph (e) above. A timely written notice of intent to arbitrate

pursuant to this agreement stays and/or abates all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the arbitrators.

(g) Any aggrieved party shall serve a written notice of intent to arbitrate to any and all opposing parties within 60 days after dispute has arisen. A dispute is defined to have arisen only upon receipt of service of judicial process or of a complaint in arbitration. Failure to serve a written notice of intent to arbitrate within the time specified above shall be deemed a waiver of the aggrieved party's right to compel arbitration of such claim. The issue of waiver pursuant to this agreement is an arbitrable dispute.

(h) Active participation in pending litigation during the 60 day notice period, whether as plaintiff or defendant, is not a waiver of the right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.

(i) Any arbitrator selected shall be knowledgeable in the subject matter of the dispute. Qualified retired judges shall be selected wherever possible through panels maintained by the American arbitration association. Each of the parties shall pay an equal share of the arbitration costs, fees, and expenses, and of the arbitrators' costs, fees, and expenses.

(j) All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder and the commencement of any arbitration proceeding tolls such limitations.

(k) In any arbitration proceeding subject to these provisions, the arbitrators, or a majority of them, are specifically empowered to decide (by documents only, or with a hearing at the arbitrators' sole discretion) pre-hearing motions which are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication.

(l) The provisions of this agreement shall survive any termination, amendment, or expiration of the agreement in which this section is contained, unless all the parties otherwise expressly agree in writing.

(m) The arbitrators, or a majority of them, shall award attorney's fees and costs to the prevailing party pursuant to the terms of this agreement.

(n) Venue of any arbitration proceeding hereunder will be in Nueces County, Texas.

26. Option to Renew.

(a) Provided Lessee is not then in default hereunder, Lessee shall have the option to extend this Lease for one renewal term of 20 years. All terms and conditions for a renewal term shall be the same as during the initial term with the Base Rent to continue to be adjusted at the beginning of the first, sixth, eleventh and sixteenth years of the renewal term for changes in the CPI.

- (b) During each renewal term the Tenant shall also continue to pay the Additional Rent.

To exercise its option to renew, Tenant must deliver written notice to Landlord at least twelve (12) months prior to the end of the term then in effect.

27. Non-Appropriation. The continuation of this agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

28. Certificate of Interested Parties. Lessor agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement. Form 1295 requires disclosure of "interested parties" with respect to entities that enter contracts with cities. These interested parties include:

- (1) persons with a "controlling interest" in the entity, which includes:
 - a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;
 - b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The form must then be printed, signed, notarized and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

29. **CONFLICT OF INTEREST.** Developer/Owner agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>

[Signature Page to Follow]

EXECUTED as of the _____ day of _____, 2020.

LESSOR:

ERF REAL ESTATE, INC.
a Texas nonprofit corporation

By: _____
Name: Paul Altheide
Its: Chief Executive Officer

LESSEE:

City of Corpus Christi, Texas
a Texas municipal corporation

By: _____
Name: Peter Zanoni
Its: City Manager

APPROVED AS TO LEGAL FORM:

Myra K. Morris Date
Chief Legal Counsel
Ed Rachal Foundation

Buck Brice (Date)
Assistant City Attorney
For City Attorney

EXHIBIT “A”
REAL PROPERTY DESCRIPTION OF PREMISES
[TO BE INSERTED]