

RESOLUTION NO. R-2018-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE TERMS OF AN ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AND 921 BASTROP, LLC; APPROVING THE TERMS OF AN AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS TO THE LOT AT 921 MAIN STREET WITH 921 BASTROP, LLC, IN AN AMOUNT EXCEEDING TEN THOUSAND DOLLARS (\$10,000) ATTACHED AS EXHIBIT A; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in recognition of the positive economic benefits which will accrue, and pursuant to the terms of Texas Local Government Code Section 501.158, the Board of Directors of the Bastrop Economic Development Corporation ("BEDC") has authorized an Economic Development Performance Agreement with 921 Bastrop, LLC, to facilitate the remediation and improve infrastructure of a lot located at 921 Main Street in Bastrop, Bastrop County, Texas, through the BEDC's funding of said remediation and relocation of certain utilities; and

WHEREAS, the development of an approximate 9,000 square foot building on the vacant lot, owned by the Bastrop Economic Development Corporation, requires certain incentives; and

WHEREAS, the total cost of the improvements is estimated to be \$210,000, including the current value of the lot, remediation, and relocation of certain utilities; and

WHEREAS, the Board of Directors of the BEDC has authorized the approval of a Performance Agreement with 921 Bastrop, LLC, to formalize the terms and conditions under which 921 Bastrop, LLC, shall cause the necessary improvements to the lot located at 921 Main Street in Bastrop, Bastrop County, Texas; and

WHEREAS, the BEDC and City Council by separate resolutions shall authorize the 921 Main Street Project as a qualified infrastructure and site improvement project pursuant to the authority of Texas Local Government Code Section 501.103; and

WHEREAS, pursuant to Texas Local Government Code Section 505.158(b) City Council has been asked by the BEDC to approve the aforementioned Performance Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, THAT:

SECTION 1. To the extent required by Texas Local Government Code Section 505.158(b) the following are authorized:

- The Performance Agreement, attached hereto as "Exhibit A".

SECTION 2. Open Meeting. The City Council hereby finds and determines that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place and purpose at which it was read was given in accordance with Chapter 551, Texas Government Code.

SECTION 3. Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

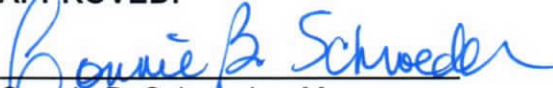
SECTION 5. Two Readings Required. Pursuant to Texas Local Government Code Section 505.158(b), this Resolution shall take effect immediately from and after its passage upon a subsequent second reading and passage, and it is duly resolved.

This resolution shall be in full force and effect from and after its final adoption.

READ and ACKNOWLEDGED on First Reading on the 9th day of October 2018.


READ and APPROVED on the Second Reading on the 23rd day of October 2018.

APPROVED:



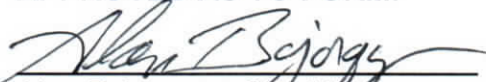
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Performance Agreement ("Agreement") is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Bastrop Economic Development Corporation, located in Bastrop County, Texas (hereinafter called "Corporation"), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and 921 Bastrop, LLC, a Texas corporation (hereinafter called "Company"), otherwise known as the "Parties" to this Agreement.

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq., Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, Company desires to develop infrastructure improvements and construct a retail and professional businesses Building on Main Street in downtown Bastrop, Texas; and

WHEREAS, the location of the Building, as proposed, will contribute to the infrastructure needs and economic development of the City of Bastrop by creating new jobs and increasing employment, promoting and developing expanded business enterprises, increasing development, increasing real property values and tax revenues for the City of Bastrop, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, the Corporation desires to offer an incentive to Company to enable Company to construct and operate the Building pursuant to this Agreement in substantial conformity with the Act; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings, if any, have been conducted in accordance with Texas law; and

WHEREAS, on September 17, 2018 at the Corporation's regularly scheduled meeting of the Board of Directors the Corporation voted unanimously to authorize the Corporation's Executive Director into this Agreement; and,

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

1. **Recitals.** The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. **Authority.** The Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that Company is acting in reliance upon the Corporation's performance of its obligations under this Agreement in making the decision to commit substantial resources to the establishment of the Project, hereinafter established.

2. **Term.** This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

3. **Purpose.** The purpose of this Agreement is to formalize the agreements between the Company and the Corporation for the granting of property and funds to cover certain costs associated with the Project and specifically state the covenants, representations of the Parties, and the incentives associated with Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement, which has been approved by the Corporation and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Company may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the Corporation unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation, or its designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Building/Property” these terms, interchangeably, mean the approximately 9,000 square foot commercial building (“Building”) and leased area proposed for construction or occupancy as retail, restaurant and/or professional businesses; more specifically, the term “Property” or “Real Property” references the unimproved lot that is 0.1439 acres located at 921 Main Street, Bastrop, Texas.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Bastrop Planning & Development Department granting the Company the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

“Commencement Date” means the date the Property is legally deeded and transferred from the Corporation to the Company.

“Default”. unless otherwise specifically defined or limited by this Agreement, shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant.

“Effective Date” shall be the date of the last signing by a party to the agreement.

“Expiration Date” shall mean date of termination, provided for under Article VII of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Infrastructure Improvements” means the infrastructure, utilities, sidewalk, drainage, telecommunications and other capital improvements the Company is making to the Property as incentive for the dedication of the Property as part of this Project.

“Lease Agreement” means the lease to be entered into as part of this Performance Agreement by and between Company and Corporation (Exhibit A hereto).

“Project” shall mean the infrastructure improvements, construction, and leasing of the retail business Building on the lot with 0.1439 acres located at 921 Main Street, Bastrop, Texas.

ARTICLE IV CORPORATION OBLIGATION

1. Capital Investment.

Corporation shall convey, transfer and dedicate the Real Property to the Company and pay ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED THIRTY-FIVE DOLLARS AND (\$123,535.00) ZERO CENTS to Company as a Capital Investment and Infrastructure Improvements upon the Property. Corporation shall also dedicate, convey and transfer to Company title to the Property within thirty (30) days the Effective Date.

2. Confidentiality. The Corporation agrees to the extent allowed by law to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information, Corporation will not disclose the information unless required to do so by the Attorney General of Texas.

3. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the Corporation. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

4. Reservation of Public Use Easement & Sidewalk Construction. Corporation will reserve out of any dedication and transfer of the Property to Company a public use easement for the exclusive use and benefit for the City of Bastrop, of which, Company is to construct and maintain a sidewalk on that portion of Real Property on 921 Main Street in conformance with the downtown plan of Bastrop and recommendation from the City’s engineer.

ARTICLE V PERFORMANCE OBLIGATIONS OF COMPANY

The obligation of the Company is to Commence Operations and repay the funds in the form of a Capital Investment in Real Property and needed Infrastructure Improvements set forth below in this Agreement.

1. Commencing Operations.
 - (a) Within ninety (90) days of the Commencement Date, Company must secure all necessary financing to begin construction of the Building; and,
 - (b) Within twelve (12) months of the Commencement Date obtain a Certificate of Occupancy for the Building.
2. Real Property Dedication & Infrastructure Improvement. Commencing upon the receipt the ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED THIRTY-FIVE DOLLARS AND (\$123,535.00) ZERO CENTS, Company is to immediately begin all necessary pre-construction processes to construct the Building; but, in no event shall the architectural and engineering documents be finished no later than one hundred twenty (120) days after receipt of any said funds. The Building is to be constructed as follows:
 - (a) Minimum two-story commercial building with masonry and steel construction in a historic style to match downtown Bastrop with design to be approved by the Corporation within thirty (30) days of presentment by Company for approval;
 - (b) Relocation of utilities, foundation slab work, and possible roof top deck;
 - (c) Common area elevator with stair wells both to serve the second story tenant and possible rooftop area;
 - (d) Exterior is to be brick with glass storefront to be designed in conjunction with the tenant and to keep with the historic look of downtown Bastrop; and,
 - (e) A balcony on the second floor overlooking Main Street.
3. Payment of Legal Fees. Company commits to reimburse the Corporation for the necessary legal fees in the preparation of any amendment to this Agreement requested by Company. Timely payment shall be made within sixty (60) days of submittal of invoice to Company by the Corporation or its assigns. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement.
4. Extension beyond Term. In recognition of the fact that the verification of Company's compliance hereunder is, by necessity, verified in the calendar year following the Company's obligations herein, the Expiration Date of this Agreement will be extended until any and all verification of Performance Obligations and covenants have been satisfied. The Parties hereto agree that the Corporation's right to the Recapture Amount shall survive the Expiration Date of this Agreement.
5. Lien Execution. In recognition of the \$123,535.00 cash payment and dedication of the Real Property, Company shall execute a Lien in the amount of TWO HUNDRED TEN THOUSAND (\$210,000.00) DOLLARS within thirty (30) days of obtaining financing on the Project. This lien shall be subordinate to any liens, deeds of trust, and/or mortgages necessary to construct the Project that are made the basis of the Company's financing of the Project. This lien shall remain in full force and effect as security for the completion of the Project and shall be enforced and foreclosed upon immediately upon default by Company.

**ARTICLE VI
COVENANTS AND DUTIES**

1. Company's Covenants and Duties. Company makes the following covenants and warranties to the Corporation, and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.
 - (a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
 - (b) The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.
 - (c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.
 - (d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Bastrop and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
 - (e) Company shall timely and fully comply with all of the terms and conditions of this Agreement.
 - (f) Company agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City of Bastrop and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Building.
 - (g) Company shall be responsible for paying, or causing to be paid, to the City of Bastrop and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City of Bastrop in effect on the date the Project was designated, unless specified otherwise in this Agreement. Company, in its sole discretion, may choose to comply with any or all City of Bastrop rules promulgated after the Effective Date of this Agreement.

- (h) Company agrees to commence and complete the Project in strict accordance with the Agreement.
 - (i) Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.
 - (j) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default (subject to the obligations in Article V and the remedies in Article VIII). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.
 - (k) Company shall not be in arrears and shall be current in the payment of all City taxes and fees.
 - (l) Corporation has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement.
2. Corporations' Covenants and Duties. Corporation agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Corporation.
3. Compliance and Default. Failure by Company to timely comply with any performance requirement, duty, or covenant shall be considered an act of Default and shall give the Corporation the right to terminate this Agreement and collect the Recapture Amount, as determined by the Board of Directors of the Corporation.

ARTICLE VII TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:
- (a) The written agreement of the Parties; or
 - (b) Twelve (12) months following the Certificate of Occupancy being issued on the Project; or,
 - (c) Default by Company, whichever occurs first.

**ARTICLE VIII
DEFAULT**

1. Company Events of Default.

- (a) Failure of Company to perform any term, covenant or agreement contained in Article V; or
- (b) Corporation determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to Corporation in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
- (c) Any judgment is assessed against Company or any attachment or other levy against the property of Company with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of thirty (30) days; or
- (d) Company makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of Company or any substantial part of its property, commences any action relating to Company under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against Company any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or Company by any act indicates its consent to or approval of any trustee of Company or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or
- (e) Company substantially changes its present ownership without written notification to Corporation within thirty (30) days of such change; or
- (f) Company changes the general character of the Business as conducted at the date hereof, or engages in any type of business not reasonably related to its business as presently and normally conducted.

2. Corporation Events of Default.

- (a) Corporation materially fails to fulfill an obligation set forth within Article IV.

3. Remedies for Default.

- (a) Company's sole remedy under this Agreement is specific performance for Corporation's default of its obligation under Section IV of this Agreement, and only in the event Company has met all obligations satisfactory to Corporation.

- (b) Corporation may foreclose upon its Lien under Section V and/or request Company to immediately repay Corporation the sum of TWO HUNDRED TEN THOUSAND (\$210,000.00) DOLLARS secured by the Lien.

4. Limitation on Use of Funds & Property in the Event of Default.

- (a) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City of Bastrop or the Corporation.
- (b) Corporation shall have the right to rescind and is no longer legally obligated under the Lease Agreement between the Parties in the event the Company defaults herein.

**ARTICLE IX
MISCELLANEOUS**

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director or Board Chair of the Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the Corporation, on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of Bastrop at the Building under the terms of this Agreement.
2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
3. Representations and Warranties. The Corporation represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement.
4. Assignment. Company shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the Corporation. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Company of any liability to the Corporation, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The Corporation may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

5. Independent Contractors.

- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the Corporation and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the Corporation will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the Corporation.
 - (b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
 - (c) No employee of the Corporation, or any board member, or agent of the Corporation, shall be personally responsible for any liability arising under or growing out of this Agreement.
6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If intended for BEDC: Bastrop Economic Development Corporation
Attention: Executive Director
301 Highway 71 W, Suite 214
Bastrop TX 78602

With a copy to: Denton, Navarro, Rocha, Bernal, & Zech PC
Attention: Charles E. Zech
2517 North Main Avenue
San Antonio, TX 78212

If to the Company: 921 Bastrop, LLC.
5900 Balcones Drive, Suite 160
Austin, Texas 78731

Any Party may designate a different address at any time upon written notice to the other Parties.

7. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.
 - (a) **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Bastrop County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
 - (b) **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation and paid for by the Company.
8. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the Corporation.
10. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
11. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
12. **Exhibits.** Any Exhibits attached hereto are incorporated by reference for all purposes.
13. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

14. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CORPORATION AND THE CITY OF BASTROP ("CITY"), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CORPORATION HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF BASTROP, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CORPORATION OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID AND PROPERTY GRANTED TO COMPANY HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CORPORATION.

15. **Additional Instruments.** The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
16. **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by the Company, the Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

[SIGNATURE PAGE FOLLOWS]

Executed on this 25 day of September, 2018

COMPANY

921 Bastrop, LLC, a Texas corporation

By: 

Edward E. Dudley, III

Title: Managing Member

STATE OF TEXAS }
COUNTY OF TRAVIS }

This information was acknowledged before me on this 25th day of September, 2018, by Edward E. Dudley, III, Managing Member of 921 Bastrop, LLC a Texas corporation, on behalf of said agency.


Notary Public, State of Texas



MARK BRADLEY
Notary's typed or printed name

04-28-2019
My commission expires

Executed on this 26th day of September, 2018.

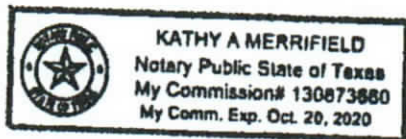
**BASTROP ECONOMIC
DEVELOPMENT CORPORATION**

By: 
Mike Kamerlander
Title: Executive Director

STATE OF TEXAS)
COUNTY OF BASTROP)

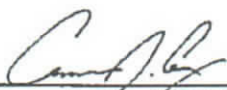
This information was acknowledged before me on this 26th day of September 2018 by Mike Kamerlander, Executive Director for the Bastrop Economic Development Corporation, a Texas non-profit industrial development corporation, on behalf of said agency.


Notary Public, State of Texas



Kathy Merrifield
Notary's typed or printed name
10-20-2020
My commission expires

APPROVED AS TO FORM:

By: 
Cameron J. Cox, BEDC Counsel
DNRB&Z P.C.

**Performance Agreement
Exhibit A**

LEASE AGREEMENT

BEGINS ON NEXT PAGE

**OFFICE LEASE AGREEMENT
BETWEEN**

**921 BASTROP, LLC.
(Landlord)**

AND

**BASTROP ECONOMIC DEVELOPMENT CORPORATION
(Tenant)**

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LEASE AGREEMENT

(Office)

This lease agreement (this "Lease") is made effective _____, 2018 between 921 BASTOP, LLC., a Texas Corporation ("Landlord"), and BASTROP ECONOMIC DEVELOPMENT CORPORATION, a Texas Corporation ("Tenant"), who hereby agree as follows:

§1. LEASE OF PREMISES

On the terms and subject to the conditions described in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, approximately 4,500 square feet of rentable area, to be exactly determined upon completion and measurement of a final space plan prepared by Tenant and submitted to Landlord, measured in accordance with the current standards for measuring Rentable Area as established by the Building Owners and Managers Association ("BOMA"). The location of the 4,500 rentable square feet is the real property commonly known as 921 Main Street, Bastrop, Texas 78602 (the "Real Property"). Wherever used in this Lease, the term Leased Premises shall include the non-exclusive use of and access to the parking areas, and sidewalks adjoining or proximate to the Building. A depiction of the Leased Premises is attached hereto as Exhibit A.

§2. TERM; RENEWAL OPTIONS

- (a) Term. The term of this Lease (the "Term") shall commence on the Commencement Date (_____ 1, 2019) and shall end ten years to the date on _____, 2029 (the "Termination Date").
- (b) Renewal Options. Provided no "event of default" (as hereinafter defined) shall have occurred and remain uncured at the time of Tenant's exercise of its renewal right, Tenant shall have the right and option to extend the Term for one (1) additional consecutively occurring five (5)-year renewal term exercisable at the end of the Term. The Renewal Term shall be exercisable by delivery of a notice not later than one hundred twenty (120) days prior to the expiration of the Term, which states that Tenant thereby exercises its right and option to extend the Term for the Renewal Term under this Section 2(b). All terms and conditions of this Lease applicable during the Term shall also be applicable during the Renewal Term except that (i) no further renewals beyond the renewal granted herein shall be permitted, and (ii) the Rent for the Renewal Term shall be at a "Base Rent", hereinafter defined, of \$25.50 per square foot ("psf") per year (\$2.125 psf per month) for the Leased Premises.

§3. BASE RENT

During the Term, Tenant shall pay to Landlord base rent in United States dollars (the "Base Rent"), based upon the rentable square footage of the Leased Premises, in the following amounts:

	<u>Per Square Foot</u>
Months 1-60 (and any partial month at the beginning of the Term)	\$22.50 annually/ \$1.875 monthly
Months 61-120	\$24.00 annually/ \$2.00 monthly

All payments of Base Rent due under this Lease shall be due and payable in advance on or before the Commencement Date for the first month during the Term and on or before the first day of each calendar month thereafter, shall be made by normal business methods without demand, set-off, or deduction

whatsoever except as specifically permitted herein, and shall be paid and addressed to Landlord at c/o Stone Development Group, Inc., 5900 Balcones Drive, Suite 160, Austin, Texas 78731, or at such other address as Landlord may designate to Tenant in writing from time to time. If the Commencement Date is not the first day of a calendar month, the Base Rent for the first month of the Term shall be prorated on a daily basis. Base Rent shall be determined based on the per square foot rent multiplied by the rentable square feet in the Leased Premises as finally determined pursuant to §1 hereof.

§4. ADDITIONAL RENT

In addition to the Base Rent, Tenant shall pay to Landlord as additional rent, in the manner provided for in §5, below, in United States dollars, during the Term, Tenant's Pro Rata Share (defined below) of all Operating Costs (defined below) relating to the Building and the Real Property ("Additional Rent"). For purposes of this Lease: (i) "Tenant's Pro Rata Share" shall be the percentage which the rentable square footage of the Leased Premises (i.e. 4500 sf) bears to the total rentable square footage of the Building (i.e., 9,000 sf), which Landlord and Tenant agree shall be exactly determined upon completion and measurement of the Space Plans and certification by Landlord's architect as contemplated in Section 1 subject to Tenant's right to confirm pursuant to §1 hereof; (ii) Base Rent and Additional Rent shall be referred to collectively hereinafter as "Rent"; and (iii) "Operating Costs" shall mean the costs of operating the Building and the Real Property including, but not limited to, all of the following:

- (a) all real estate taxes and assessments relating to the Building and/or the Real Property ("Real Estate Taxes and Assessments") becoming due during the Term (and with respect to assessments, only those installments of assessments becoming due over the Term of the Lease based on payment of the assessment over the longest period of time permitted by the appropriate governmental agency), or any taxes which may be levied upon or assessed in lieu of such taxes or assessments (but only payable by Tenant as they become due during the Term), but excluding any penalties or interest payable by reason of failure of Landlord to pay such taxes and assessments, unless such failure results from Tenant's failure to timely pay Additional Rent to Landlord and further excluding any net income taxes, capital gains taxes, stock taxes, succession taxes, transfer taxes, franchise taxes, gift taxes, estate taxes or inheritance taxes;
- (b) all reasonable costs of insurance maintained by Landlord relating to the Building and the Real Property including, without limitation, all-risk/hazard insurance, flood insurance, rent loss insurance, fire and extended coverage insurance, and comprehensive public liability insurance, including umbrella coverage in amounts and with insurance companies acceptable to Landlord;
- (c) all bills and charges for gas, electricity, water (but not those utilities that are separately metered for the Tenant's Premises), sewage, trash disposal, and all other utility services consumed or used in connection with the Building or Real Property;
- (d) maintenance and repair of the Building (including but not limited to electrical, plumbing, heating, air conditioning and mechanical equipment) or Real Property and all parking areas and access drives, sidewalks and grounds; and,
- (e) subject to the exclusions and limitations set forth below, improvements, including capital improvements, or repairs undertaken to maintain the value and condition of the Building and Real Property as a first-class facility or to comply with all applicable laws, ordinances or orders.
- (f) a building management fee not to exceed 3.5% of the Base Rents collected for the Building.

Notwithstanding anything in this Lease to the contrary, the term "Operating Costs" shall not include: (1) the cost of any addition to the Real Property or alterations or refurbishment of space leased to other tenants; (2) real estate commissions or brokerage fees; (3) legal fees and all other costs in connection with tenant leases and enforcing tenant obligations; (4) marketing and advertising expenses incurred with the leasing of the Building; (5) costs incurred by Landlord which are reimbursed by insurance; (6) financing transactions; (7) refinancing fees and any late penalties; (8) interest or amortization; (9) any payments under ground leases or master leases relating to the Real Property; (10) except to the extent permitted below, depreciation and amortization of the Building and any equipment; (11) special services performed by Landlord for the benefit of individual tenants; (12) charitable contributions; (13) expense for artwork; (14) except as permitted by (f) above, off site management and overhead and wages and salaries of supervisory and executive personnel; (15) all amounts paid to subsidiaries or affiliates of Landlord that are in excess of competitive costs for such services; (16) costs, penalties, fines or awards and interest incurred as a result of Landlord's negligence in Landlord's operation of the Real Property, violations of law, negligence or inability or unwillingness to make payments and/or to file any income tax or other tax or informational returns when due; (17) costs which are reimbursable under any contractor, manufacturer or supplier warranty or service contract; (18) the costs of installing, operating and maintaining any specialty service, observatory, broadcasting facilities, luncheon club, athletic or recreational club or child care facility; the cost of installing, operating and maintaining any other service operated or supplied by third party and Landlord; the cost arising from any commercial concession operated by Landlord; (19) the cost of any parties, ceremonies or other events for tenants or third parties which are not tenants of the Building, whether conducted in the Building, Real Property or other location; (20) reserves of any kind; (21) costs incurred by Landlord in connection with rooftop communications equipment of Landlord or other persons, tenants or occupants of the Building if such communications equipment is not generally available to all tenants or occupants of the Building; (22) lease "takeover" expenses, including but not limited to, the expenses incurred by Landlord with respect to space located in another building of any kind or nature in connection with the leasing of space in the Building; (23) any costs, fees, dues, contributions or similar expenses for industry associations or similar organizations in which the Real Property, Landlord of building manager is a member; (24) the entertainment and travel expenses of Landlord, its employees, agents, partners and affiliates; (25) any costs for which Landlord receives a reimbursement, credit, refund or discount; (26) costs of any removal, abatement, remediation or containment of any toxic or hazardous material; (27) costs and expenses incurred for repairs and replacements due to faulty workmanship or materials used in the construction of the Building, or due to structural or design defects; and (28) other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management or operation expenses.

All Operating Costs shall be determined on a modified accrual basis.

All Operating Costs shall initially be charged based on Landlord's reasonable estimates with a final reconciliation based on actual cost with no mark-up and Landlord shall in no event be entitled to recover more than one hundred (100) percent of the actual Operating Costs. Any savings by Landlord with respect to any tax abatements received by Landlord with respect to the Building or the Real Property will be appropriately passed through to Tenant.

Notwithstanding the foregoing, the total expenses computed for determining the Operating Costs relating to the Leased Premises shall not include any expenses charged or chargeable or directly related to another tenant in the Building because of such tenant's disproportionate consumption of any utilities (as determined by Landlord) or such tenant's breach of its lease agreement with Landlord.

§5. OPERATING COSTS BUDGET

Additional Rent shall be paid by Tenant to Landlord in accordance with this section.

(a) Annual Budget. Prior to the Commencement Date, Landlord shall provide to Tenant an estimate of the total projected Operating Costs and Tenant's Pro Rata Share thereof for the Building and Real Property for the first year of the Term, which is estimated to be approximately \$2,250.00 per month.

(i) For each calendar year after 2019, Landlord shall deliver to Tenant not later than sixty (60) days prior to each such calendar year a detailed estimate of the total projected Operating Costs and Tenant's Pro Rata Share thereof for the Building and Real Property for the next calendar year.

(ii) Tenant shall pay in advance on or before the first day of each calendar month during the Term at the time and in the manner of payment for the Base Rent described above, its Pro Rata Share of such projected Operating Costs in equal monthly installments.

(b) Reconciliation of Costs. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall provide Tenant an accounting of the actual Operating Costs incurred for the prior year ("Operating Cost Reconciliation").

(i) For purposes of reconciling the projected Operating Costs actually paid by Tenant versus the actual Operating Costs incurred by Landlord for each year which relate to the Leased Premises, if Tenant's Pro Rata Share of such actual costs exceeds the amount paid by Tenant for Additional Rent pursuant to this section (the "Deficiency"), Tenant shall pay to Landlord the Deficiency within thirty (30) days after notice from Landlord to Tenant detailing an accounting of the Deficiency and requesting payment of the Deficiency.

(ii) In the event the amounts actually paid by Tenant for Additional Rent exceeds Tenant's Pro Rata Share of such actual Operating Costs incurred by Landlord for that year which relate to the Leased Premises (the "Excess"), Landlord shall pay to Tenant the Excess within thirty (30) days after completing such accounting. In no event shall either party be required to pay any interest on any overpayment or under-payment made under this section. Landlord's and Tenant's obligations under this section shall survive the expiration or termination of this Lease.

(c) Tenant's Right to Audit. Landlord shall keep its books and records regarding Operating Costs for four (4) years after the end of the year to which such books and records relate.

(i) Upon reasonable notice to Landlord and by making request within sixty (60) days of receipt of the Operating Cost Reconciliation package, Tenant may elect to review the books and records of Landlord from the prior calendar year, and may elect to retain a licensed auditor or certified public accountant to perform an audit of such expenses ("Audit"). Such reviews and Audit will be performed during normal business hours.

(ii) In no event shall Landlord be obligated to cooperate with any party which engages in contingency-based audits, such parties herein stipulated by the Parties herein as being outside of the scope of the audit rights detailed herein. However, Landlord agrees to cooperate with a non-contingency based Audit paid for by Tenant as outlined in subsections (i) and (iii) herein.

(iii) Landlord shall reimburse Tenant for any overcharges revealed in the Audit regardless of the percentage overcharged. If the Audit reveals Landlord overcharged ten percent (10.00%) or more of the Operating Costs for the prior year, Landlord shall reimburse for the auditor's fees not to exceed Three Thousand Five Hundred Dollars (\$3,500.00). In the event the Audit reveals an overcharge of less than ten percent (10%), then Landlord shall reimburse all overpayments, but shall not reimburse Tenant for the costs of the Audit.

§6. SECURITY DEPOSIT

"Intentionally Omitted."

§7. INSURANCE

(a) Landlord Requirements. At all times during the Term and the Renewal Terms, if any, Landlord shall maintain all of the following insurance coverages: (i) fire and special perils coverage insurance insuring the full replacement value of the Building and all other

improvements to the Real Property, and (ii) commercial general liability insurance having a combined limit of not less than \$1,000,000, per occurrence. Each such insurance policy shall be issued by a reputable insurance company licensed to sell such insurance in the State of Texas. Landlord shall deliver to Tenant certificates evidencing that such insurance is in full force and effect.

- (b) Tenant Requirements. At all times during the Term, Tenant shall obtain and maintain: (i) workers' compensation insurance in compliance with statutory requirements; (ii) fire and extended coverage for Tenant's personal property on a replacement cost basis; and (iii) commercial general liability insurance written on an occurrence basis (including bodily injury, broad form property damage and blanket contractual liability), insuring Tenant's liability for loss of, damage to, property and injury to or death of third parties with a limit of at least \$1,000,000 combined single limit bodily injury and \$500,000 property damage for each such occurrence. All such insurance must be issued by reputable insurance companies licensed to sell such insurance in the State of Texas and include waivers of subrogation, provide that it may not be canceled except upon at least thirty (30) days prior written notice to Landlord, and name Landlord (and, if requested by Landlord, any mortgagee of the Building) as an additional insured or loss payee, as appropriate. Evidence of such insurance must be delivered to Landlord before Tenant is permitted to enter the Leased Premises and must be provided not less frequently than annually thereafter.

If Tenant does or permits anything to be done in the Leased Premises, Building, or Real Property, or brings or keeps anything therein which may in any way increase the rate of fire or other insurance on the Building or on the Real Property kept therein, or conflict with any insurance policy upon the Building or any part thereof, or with any statutes, rules or regulations enacted or established by the appropriate governmental authorities, then Tenant shall pay to Landlord as Additional Rent all amounts necessary to reimburse Landlord for such increase or otherwise remedy such situation.

- (c) Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other, its agent, officers, managers, directors, partners, members, shareholders or employees, for any loss or damage that may occur to the Leased Premises, the Building, the Common Areas and the Real Property, or any property therein, by reason of fire, the elements or any other cause which is insurable under fire and special perils coverage insurance policies, regardless of cause or origin, including negligence, and each covenants that no insurer shall hold any right of subrogation against such other party.

§8. QUIET ENJOYMENT

Provided that Tenant observes and performs the covenants and agreements under this Lease, Tenant shall, at all times during the Term and all Renewal Terms, peacefully and quietly have and enjoy possession of the Leased Premises without encumbrance, molestation or hindrance from Landlord, or any person or entity claiming by, through or under Landlord. Landlord represents that it has the full right and authority to enter into this Lease and the person executing this Lease on behalf of Landlord is authorized to bind Landlord.

§9. USE OF LEASED PREMISES; COMPLIANCE WITH LAWS

Tenant shall use the Leased Premises for general office use only, including uses incidental or related thereto, and shall not permit the Leased Premises to be used for any other purpose without the prior written consent of Landlord to that specific use, which shall not be unreasonably withheld. Tenant shall occupy and use the Leased Premises only in a careful, safe, and proper manner and shall not commit or permit any waste of or on the Leased Premises. Except to the extent the rules and regulations materially interfere with the exercise by Tenant of the benefits granted under this Lease, Tenant shall comply with the Rules and Regulations

attached hereto as Exhibit B and with all modifications adopted by Landlord from time to time, provided that such rules and regulations are enforced uniformly against all tenants in the Building. In the event that the terms of this Lease and the rules and regulations conflict, the terms of the Lease shall govern.

Landlord represents and warrants that the Leased Premises, the Building, the Common Areas and the Real Property shall comply with all applicable local, state and federal laws, regulations, orders, requirements and rules, including without limitation the Americans With Disabilities Act (the "Laws") and any covenants, conditions, restrictions and easements (the "Covenants") applicable to the Real Property on the Commencement Date. Landlord shall cause the Building, Common Areas and Real Property to comply with all Laws and Covenants during the term of this Lease. Landlord shall make all additions, alterations or improvements to the Leased Premises, Building, Common Areas and Real Property required by Laws and Covenants, except to the extent required as a result of Tenant's use which is not typical for an office use or as a result of alterations made by Tenant to the Leased Premises. The costs of any such additions, alterations or improvements that are required by Laws or Covenants which are not applicable on the Commencement Date shall be treated as Operating Costs. Except as is Landlord's obligation as aforesaid, Tenant shall, in its use of the Leased Premises, promptly comply or cause compliance with the Laws and Covenants.

Except as specifically set forth herein, no abatement or interruption in Rent or other charges required to be paid by Tenant pursuant to this Lease shall be claimed by or allowed to Tenant for any inconvenience or interruption or loss of business caused directly or indirectly by any present or future laws, ordinances, regulations, requirements, or orders of any lawful authority whatsoever.

§10. TEXAS LOCAL GOVERNMENT CODE CHAPTER 501 PERFORMANCE AGREEMENT

THIS LEASE IS SUBJECT TO THE TERMS OF THE CHAPTER 501 PERFORMANCE AGREEMENT ENTERED INTO BY THE PARTIES IN CONJUNCTION WITH THIS LEASE AND SECTION 501.160 OF THE TEXAS LOCAL GOVERNMENT CODE. SHOULD ANY PROVISIONS IN THIS LEASE CONFLICT WITH THE PROVISIONS OF THAT PERFORMANCE AGREEMENT, THEN THE TERMS OF THE PERFORMANCE AGREEMENT, AND ANY AMENDMENTS THERETO, CONTROL AND ARE BINDING UPON LANDLORD AND TENANT HEREIN.

§11. FORCE MAJEURE

In the event Landlord or Tenant shall be delayed or hindered or prevented in the performance of any obligations required under this Lease by reason of strike, lockout, fire, or acts of God, restrictive governmental laws or regulations, riots, insurrection, war or any other reason not within the reasonable control of Landlord or Tenant (herein called "Excused Causes"), the failure of performance of such obligations for such period of delay shall not be deemed a breach of or default under this Lease, and the period for the performance of any such act shall be extended for a period equivalent to the period of any such delay. Excused Causes shall not include (a) causes which result from a substantial fault or negligence of a party, or (b) the lack of sufficient funds.

§12. SUBLEASE PERMITTED

Landlord agrees to allow Tenant the exclusive right to sublease all or any portion of the Leased Premises. Tenant shall notify Landlord at least thirty (30) days prior to any sublease agreement being entered into and any subleasing tenant begins to occupy space within the Leased Premises, whichever shall occur first. The attached Exhibit C sublease shall be executed between Tenant, Landlord and the subleasing tenant within thirty (30) days of receipt by Landlord.

§13. MAINTENANCE AND REPAIRS

Except as is Landlord's obligation hereunder, Tenant shall maintain the interior of the Leased Premises and all Tenant's fixtures, signs, equipment, and personal property therein in good order and condition of repair, safety, cleanliness, and appearance, ordinary wear and tear excepted, and shall promptly make all repairs and replacements necessary or appropriate to so maintain the Leased Premises and such Tenant's fixtures, signs, equipment, and personal property. At the expiration or other termination of this Lease, Tenant shall

surrender and deliver up the Leased Premises in good order and condition as it shall be upon completion of construction of the Building, the Leased Premises and the Tenant Improvements, ordinary wear and tear, damage by fire, other casualty or condemnation or repairs required of Landlord, excepted.

Landlord shall keep and maintain in good order and condition of repair, in accordance with all applicable Laws, the Real Property, the Common Areas (and all improvements thereon) of the Building and all structural portions of the Leased Premises and all mechanical and utility facilities and systems serving the Leased Premises, or any portions of the foregoing, including without limitation any corridors, reception areas for the Building, common area restrooms, and other common areas available for use by all tenants and their invitees and the exterior sidewalks, owned parking lot (as applicable), and any grounds adjacent to the Building which are subject to this Lease.

§14. ALTERATIONS

For the purpose of this Lease, Alterations shall be herein defined as any amendment, modification, installation, construction, addition, or demolition of the Leased Premises, any portion thereof, or of the Building which touches, attaches to, or connects to the Building systems or structure. No Alteration or other change shall be made to the Building or to the Leased Premises by Tenant without Landlord's specific written permission. In the event the Tenant desires to undertake such Alterations, Tenant shall notify Landlord so that Landlord's engineer can review and advise the parties herein appropriately, and so that Landlord may conduct its own review of the impact of such Alteration prior to the commencement of work. In the event such Alteration is approved by Landlord, such approval not being unreasonably withheld, Tenant shall first obtain and pay for the cost of all designs, permits, and other costs to obtain authorization from all governmental authorities having jurisdiction.

Tenant shall cause such Alteration to be made promptly and in a good and workmanlike manner and in compliance with all Laws, keeping the Leased Premises free of all liens and claims for work, labor, or materials supplied or claimed to have been supplied to the Leased Premises. Any Alteration that requires Landlord's approval shall immediately become and remain the property of Landlord, unless Landlord otherwise agrees, in writing, subject to the rights of Tenant under this Lease; provided that upon termination of this Lease, Tenant shall remove any Alterations and restore the Leased Premises to the same condition as before the Alteration was made to the extent Landlord required such removal in its written consent to the Alterations. The provisions of this Section 14 shall not apply to the Tenant Improvements.

§15. DAMAGE OR DESTRUCTION TO LEASED PREMISES

(a) **Definition.** "Relevant Space" means:

- (i) the Leased Premises;
- (ii) access to the Leased Premises; and
- (iii) any part of the Building or the Real Property that provides Essential Services, as hereinafter defined, to the Leased Premises.

(b) **Repair of Damage.** If the Relevant Space is damaged in whole or in part from any cause and the Relevant Space can be substantially repaired and restored not later than one hundred fifty (150) days following the date of the damage using standard working methods and procedures, Landlord shall at its expense promptly and diligently repair and restore the Relevant Space to substantially the same condition as existed before the damage. This repair and restoration shall be completed not later than one hundred fifty (150) days following the date of the damage unless the delay is due to causes described in Section 11 hereof.

If it is determined that the Relevant Space cannot be repaired and restored not later than the expiration of the one hundred fifty (150) day period, which determination will be made within thirty (30) days after the date of such damage or destruction, then either party may cancel this Lease by giving notice to the other party.

- (c) **Abatement.** Unless the damage is caused by Tenant's willful misconduct, Rent shall abate in proportion to that part of the Leased Premises that is not reasonably fit for use in Tenant's business. The abatement shall consider the nature and extent of interference to Tenant's ability to conduct business in the Leased Premises and the need for access and Essential Services. The abatement shall continue from the date the damage occurred until ten (10) business days after Landlord completes the repairs and restoration to the Relevant Space and notice to Tenant that the repairs and restoration are completed, provided Landlord is receiving payments under its rent loss insurance policy through said date. Tenant shall have reasonable access to the Leased Premises during the repair or restoration in order to enable Tenant to repair or replace any equipment, wiring or cabling originally installed by Tenant.
- (d) **Tenant's Property.** Notwithstanding anything else in this Section 15, Landlord is not obligated to repair or restore damage to Tenant's trade fixtures, furniture, equipment, or other personal property.
- (e) **Damage to Building. If:**
- (A) more than forty (40) percent of the Building is damaged and Landlord decides not to repair and restore the Building;
 - (B) any mortgagee of the Building shall not allow adequate insurance proceeds for repair and restoration;
 - (C) the damage is not covered by Landlord's insurance required by Section 7(a); or
 - (D) the Lease is in the last twelve (12) months of its Term,
- then Landlord may cancel this Lease. To cancel, Landlord must give notice to Tenant not later than thirty (30) days after Landlord knows of the damage. The notice must specify the cancellation date, which shall be at least thirty (30) but not more than sixty (60) days after the date notice is given.
- (f) **Cancellation.** If either party cancels this Lease as permitted by this Section 15, then this Lease shall end on the day specified in the cancellation notice. The Rent and other charges shall be payable up to the cancellation date and shall account for any abatement. Landlord shall promptly refund to Tenant any prepaid, unaccrued Rent accounting for any abatement, if any, less any sum then owing by Tenant to Landlord.

§16. CONDEMNATION

If all or a material part of the Leased Premises are taken by any condemning authority under the power of eminent domain or by any purchase or other acquisition in lieu thereof, this Lease shall terminate as of the date possession is required by the condemning authority. In addition, if any portion of the Building (other than the Leased Premises) is so taken, and in Landlord's reasonable opinion the Building should be restored in a manner that materially alters the Leased Premises, Landlord shall have the right at its option to terminate this Lease at any time not later than thirty (30) days after the date possession is required by the condemning authority. In the event of any such termination, the Rent payable by Tenant shall be apportioned as of the termination date. In any event, Landlord shall be entitled to receive the entire appropriation award or consideration paid by the condemning authority, other than any part of such award or consideration which relates to Tenant's occupancy of the Leased Premises, or its moving and relocation expenses. In the event that any portion of the Leased Premises, the Building or the Common Areas are taken by any condemning authority under the power of eminent domain or by any purchase or other acquisition in lieu thereof, and such taking or acquisition results in a material interference with Tenant's ability to use the remaining portion of the Leased Premises, the Building or the Common Areas, Tenant may, at any time not later than thirty (30) days following Tenant's receipt of written notification from Landlord regarding such taking or acquisition, terminate

this Lease. In the event that this Lease is not terminated by either Landlord or Tenant as permitted hereunder, Landlord shall proceed to promptly and expeditiously repair the Leased Premises, the Building and the Common Areas to, as nearly as practicable, the condition existing prior to the condemnation or taking such that the Leased Premises, the Building and the Common Areas are a complete architectural unit. All Rent shall be equitably abated during the period of repair.

For purposes of this section, any negotiated sale to a public or quasi-public authority under the threat of condemnation shall be deemed to constitute a taking by such public or quasi-public authority under the power of eminent domain.

§17. SERVICES

During the Term and the Renewal Terms, if any, Landlord shall provide the following services:

- (a) landscaping,
- (b) maintenance of the structure, roof, mechanical and electrical equipment and architectural finish of the Building, and
- (c) air conditioning filters.

During the Term and Renewal Terms, if any, Tenant shall provide the following services for its Leased Premises:

- (a) electricity which will be metered separately to the Tenant;
- (b) water, which will be metered separately to the Tenant;
- (c) janitorial services; and,
- (d) interior maintenance including light bulbs.

The Parties agree that the services essential to the operation of the Building and the Leased Premises ("Essential Services") are elevator service, water and wastewater service, HVAC service and electrical service. If any Essential Services are interrupted for more than five (5) consecutive business days for any reason other than Tenant's negligence or willful misconduct, Landlord shall abate Rent retroactively to the date of such interruption, and such abatement shall continue until the Leased Premises can be used for the purposes established herein. If any Essential Service is interrupted for more than one hundred twenty (120) consecutive days for any reason other than Tenant's negligence or willful misconduct (if such interruption is not otherwise covered by Section 15 of the Lease), Tenant shall have the right but not the obligation to terminate this Lease by delivering written notice to Landlord.

Notwithstanding the foregoing, Landlord shall not be required to provide or maintain to the Leased Premises any specialized utility services. Tenant shall be solely responsible for obtaining any such specialized utility services but may do so only with the prior written consent of Landlord, which shall not be unreasonably withheld, and Landlord shall cooperate with Tenant to obtain such specialized utility services. Tenant shall be responsible for all damages resulting from any interruption of normal utility services caused by Tenant's specialized services.

§18. SUBORDINATION OF LEASE

This lease and Tenant's rights under this Lease are and shall at all times be subordinate to all mortgages, ground leases or master leases (collectively, "Mortgages") now encumbering or that may hereafter encumber the Building and/or the Real Property and to all advances made or to be made thereon and all renewals, modifications, consolidations, replacements or extensions thereof to the full extent of all sums secured thereby, but only if a subordination, non-disturbance and attornment agreement in form reasonably satisfactory to Tenant is entered into between Tenant and the holder of any such Mortgage. Prior to the Commencement Date, Landlord shall obtain from the holder of any Mortgages a nondisturbance agreement in form and substance reasonably satisfactory to Tenant. Tenant shall upon request of Landlord, or the holder of any such mortgage, execute and deliver to Landlord within ten (10) days after Landlord's request any instrument that would affect a subordination of this Lease to any Mortgages, provided such agreement is reasonably

satisfactory to Tenant, does not amend any provisions of this Lease and contains nondisturbance provisions reasonably satisfactory to Tenant.

§19. ESTOPPEL CERTIFICATES

Landlord and Tenant shall from time to time during the Term and Renewal Terms, if any, within fourteen (14) days following the request of the other, execute and deliver to the other a statement certifying that this Lease is in full force and effect, the date through which Base Rent, Additional Rent, and other charges under this Lease have been paid, and any other factual matter reasonably requested by the other.

§20. INDEMNIFICATION

Except to the extent provided in Section 7(c), Tenant shall indemnify and save harmless Landlord from and against any and all claims, liabilities, losses, damages, injuries, costs, and expenses that hereafter may occur or arise from or out of: (a) any cause whatsoever, on or in connection with Tenant's business on the Leased Premises during the Term, however or by whomever caused (except for Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements), including without limitation any use, misuse, possession, occupancy, or unoccupancy of the Leased Premises by anyone during the Term (except for Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements), or any failure by Tenant to perform and observe all obligations and conditions to be performed and observed by it under this Lease, and (b) any reasonable costs or expenses incurred or paid by Landlord in connection with the foregoing, including reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing whether litigated or unlitigated. Notwithstanding anything to the contrary in this Section 20 or the Lease, Tenant shall not be liable to Landlord for any consequential or incidental damages.

Except to the extent caused by the act or omission of Landlord, its agents, employees, contractors, subcontractors, licensees or invitees or occurring in connection with the construction of the Tenant Improvements, Landlord shall not be liable to Tenant for any losses, damages, injuries, costs, or expenses whatsoever relating to the Leased Premises, including without limitation any interruption or cessation of the business of Tenant or any subtenant or loss incurred as a consequence of damage to or destruction of the Leased Premises.

Tenant shall defend (including without limitation arbitrations and administrative proceedings) with respect to claims for losses, costs, expenses, or damages covered by Tenant's indemnification above, and shall pay all judgments and settlements relating thereto.

Except to the extent provided in Section 7(c), Landlord shall indemnify and save harmless Tenant from and against any and all claims, liabilities, losses, damages, injuries, costs and expenses that may hereafter occur or arise from or out of: (a) any failure by Landlord to make any payment to be made by Landlord hereunder or fully to perform or observe any obligation or condition to be performed or observed by Landlord hereunder, (b) any damage, personal injury, death or other matter arising out of any acts or omissions by Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements, and (c) any reasonable costs or expenses incurred or paid by Tenant in connection with the foregoing, including without limitation reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing whether litigated or unlitigated. Notwithstanding anything to the contrary in this Section 20 or the Lease, Landlord shall not be liable to Tenant for any consequential or incidental damages. Landlord shall defend all lawsuits (including without limitation arbitrations and administrative proceedings) with respect to claims or losses, costs, expenses or damages to which Landlord's indemnification hereunder applies, and shall pay all judgments and settlements relating thereto.

§21. LIMITATION OF LIABILITY

Notwithstanding any provision in this Lease to the contrary or any general rule of law, in no event whatsoever shall Landlord or any member, partner, director, officer, employee, agent, or other principal have any personal

liability whatsoever with respect to this Lease. Any liability of Landlord under this Lease shall be enforced solely against Landlord's equity interest in the Real Property, and any proceeds therefrom, and no other assets of Landlord shall be subject to this Lease, provided however that this limitation of liability shall not apply to any liabilities arising out of the gross negligence or wrongful misconduct of Landlord, its agents, employees, licensees, invitees, contractors or subcontractors.

§22. MUTUAL WAIVER OF SUBROGATION

All waivers of any claims and/or releases described within this Lease shall not be limited to the liability of Landlord and Tenant to each other; rather, such waivers shall also apply to the liability of any person claiming by, through, or under either Landlord or Tenant pursuant to a right of subrogation.

§23. PERSONAL PROPERTY

All personal property of Tenant used or located within the Leased Premises or in the Building shall be at the sole risk of Tenant. Landlord shall not be liable for any accident or damages to property of Tenant resulting from the use or operation of elevators or of the heating, cooling, electrical, mechanical, hydraulic, plumbing or other Building systems or components. Landlord shall not be liable for damages to property resulting from water, steam, or other causes.

§24. LIABILITY RELATING TO TENANT'S OPERATIONS

Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Leased Premises. Except to the extent caused by a defect in the Building, the Leased Premises or the Tenant Improvements or to the extent caused by the act or omission of Landlord, its agents, employees, licensees, invitees, contractors and subcontractors (as limited by the provisions of Section 7(c)), Landlord shall not be liable for any accident or injury to any person(s) or property in or about the Leased Premises which are caused by the conduct and operation of that business or by virtue of equipment or property of Tenant in the Leased Premises. The foregoing does not exculpate Landlord from its gross negligence or willful misconduct.

§25. EVENTS OF DEFAULT/REMEDIES UPON DEFAULT

Each of the following shall be deemed an "event of default" under this Lease:

- (a) failure by Tenant to make any payment of Rent to Landlord within seven (7) days after Tenant receives written notice from Landlord of Tenant's failure to pay Rent;
- (b) Tenant's failure to pay Rent within seven (7) days after such payment is due, at any time during any twelve (12) consecutive month period in which Tenant has already received a notice of its failure to pay Rent under paragraph (a) above;
- (c) failure by Tenant to make any other payment or perform or observe any other obligation or condition to be performed or observed by Tenant under this Lease and failure by Tenant to correct such default within thirty (30) days after Landlord gives Tenant notice to do so or, if because of the nature of such default it cannot be corrected within such thirty (30)-day period, failure by Tenant to commence correction within such thirty (30)-day period and thereafter to expeditiously and continuously prosecute the correction to completion;
- (d) the filing or execution or occurrence of any one or more of the following:
 - (i) petition in bankruptcy by or against Tenant and if against Tenant the failure to terminate such petition within sixty (60) days after filing;
 - (ii) petition or answer against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or relief relating thereto, under

any provision of the Bankruptcy Act or any statute of like tenor or effect and the failure to remove such petition within sixty (60) days after filing;

- (iii) adjudication of Tenant as a bankrupt or insolvent;
- (iv) assignment for benefit of creditors of Tenant, whether by trust, mortgage, or otherwise, or the execution of a composition agreement with Tenant's creditors;
- (v) petition or other proceeding by or against Tenant for the appointment of a trustee, receiver, guardian, conservator, or liquidator of Tenant, with respect to all or substantially all of Tenant's property and if against Tenant the failure to terminate such petition within sixty (60) days after filing;
- (vi) petition or other proceeding by or against Tenant resulting in the dissolution or termination of existence of Tenant and if against Tenant the failure to terminate such petition within sixty (60) days after filing; or
- (vii) the creation of a lien upon Tenant's leasehold interest under this Lease and the failure to remove such lien within sixty (60) days after Tenant has notice of the creation of such lien.

Immediately upon the occurrence of any event of default or at any time thereafter, unless that event of default has been cured with the written consent of Landlord or expressly waived by Landlord in writing, Landlord may at its option elect either to: (a) continue this Lease in full force and effect notwithstanding the occurrence of such event of default; or (b) terminate this Lease.

If Tenant fails to pay any Rent on or before the seventh (7th) day after any such payment becomes due and payable more than twice during any calendar year during the Term or any Renewal Term, Tenant shall pay to Landlord a late charge of ONE HUNDRED FIFTY-FOUR DOLLARS AND (\$154.00) ZERO CENTS.

The provisions of this section shall be cumulative in nature and nothing contained in this section shall in any manner impair or otherwise affect adversely any right, recourse, or remedy which otherwise would be available to Landlord at law or in equity. Notwithstanding anything in this Lease to the contrary, Landlord shall use commercially reasonable efforts to mitigate damages upon the occurrence of an event of default by Tenant.

§26. RIGHT TO CURE DEFAULTS

(a) Tenant Default. If Tenant fails to perform and observe all obligations and conditions to be performed and observed by it under this Lease, then Landlord may, but shall not be obligated to, cause the performance and observance of such obligations or conditions after written notice to Tenant and Tenant's failure to promptly commence to cure such failure or continue such cure with due diligence and in good faith and provided Tenant has not raised a bona fide dispute in connection with such failure, and all reasonable, actual costs and expenses incurred by Landlord in connection therewith and shall thereupon be due and payable immediately from Tenant to Landlord, with interest thereon from the time such costs and expenses were paid by Landlord until Landlord is reimbursed in full by Tenant at a rate equal to five (5) percent per annum.

(b) Landlord Default. If Landlord fails to make any necessary repairs to a) the structural components of the Building, b) preserve at least one functioning means of access to the Leased Premises, or c) major systems serving the Leased Premises and such failure continues for thirty (30) days after written notice from Tenant (as such thirty (30)-day period may be extended if it is not reasonably practicable for Landlord to complete such repairs within such period provided further that the provisions of Section 11 shall not extend such period for more than thirty (30) days in the aggregate irrespective of the actual duration of the force majeure event(s)), and provided Landlord has not raised a bona fide dispute in connection with such failure, then Tenant may make such repairs (so long as Landlord has not commenced and diligently pursued such repairs before Tenant). If Tenant makes such repairs, Landlord

shall reimburse Tenant for the actual, reasonable cost of such repairs, including without limitation attorneys' fees, together with interest thereon from the time such costs and expenses were incurred by Tenant until Tenant is reimbursed by Landlord at the rate of five (5) percent per annum. If Landlord fails to reimburse Tenant within thirty (30) days after notice from Tenant, Tenant shall be entitled to offset such amount against Rent becoming due thereafter.

§27. CUMULATIVE RIGHTS AND REMEDIES

Each right or remedy of Landlord under this Lease or now or hereafter available to Landlord by statute, at law, in equity, or otherwise shall be cumulative and concurrent and shall be in addition to every other such right or remedy, and neither the existence, availability, nor exercise of any one or more of such rights or remedies shall preclude or otherwise affect the simultaneous or later exercise by Landlord of any or all such other rights or remedies.

§28. HOLDING OVER

If Tenant retains possession of the Leased Premises or any part thereof after the expiration of the term of this Lease without the consent of Landlord, such holdover shall be deemed a month to month tenancy and Tenant shall pay to Landlord Base Rent in an amount equal to one hundred (100) percent of the monthly Base Rent rate in effect immediately prior to the termination of the Term for the first ninety (90) days Tenant retains possession of the Leased Premises and one hundred five (105) percent of the monthly Base Rent rate in effect immediately prior to the termination of the Term for the remaining time Tenant retains possession of the Leased Premises thereafter. Tenant shall also pay Additional Rent as required under Section 4, above. In the event Tenant pays the holdover monthly rate described above, Tenant shall not be liable to Landlord for consequential damages sustained by reason of Tenant's holding over. The provisions of this section do not exclude Landlord's rights of re-entry or any other right provided under this Lease or available at law or in equity. No such holding over shall be deemed to constitute a renewal or extension of the term hereof; however, all other provisions of this Lease, including the payment of Additional Rent, shall remain in full force and effect.

§29. ASSIGNMENT

Subject to the permitted transfers hereinafter set forth in this paragraph, Tenant shall be able to sublease the Leased Premises in accordance with Section 12 above. A sale or other conveyance of all or substantially all of the assets of Tenant or of a sufficient amount of the ownership in Tenant to constitute a change in control, shall constitute an assignment for purposes of this section. If Tenant desires to transfer or assign any of its rights under this Lease, Tenant shall give to the Landlord thirty (30) days written notice of Tenant's intention to do so, except with respect to assignments or subleases which are permitted hereunder without Landlord's consent. In no event whatsoever, and without limiting Landlord's right to reasonably reject any proposed assignment, shall this Lease be assigned in part without Landlord's prior written consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Tenant shall have the right (i) to assign the lease in all or any portion of the Leased Premises without Landlord's approval to a) any organization resulting from a merger or consolidation with Tenant, b) any organization succeeding to substantially all of the business and assets of Tenant, or c) any subsidiary or other entity controlling, controlled by or under common control with Tenant, provided, with respect to the transfer contemplated in c), the financial strength of such entity is comparable to that of Tenant, and (ii) sublease portions of the Leased Premises to vendors or others doing business with Tenant. Landlord will not unreasonably withhold, delay or condition its approval to an assignment to an unrelated party if the financial strength of such unrelated party is satisfactory to Landlord.

If the Leased Premises or any part thereof are sublet or occupied by anybody other than Tenant as permitted above, Landlord may, after default by Tenant, collect rent from the subtenant or occupant, and apply the net amount so collected to the Rent due from Tenant under this Lease, but no such subletting, occupancy or collection shall be deemed a waiver of any of Tenant's covenants contained in this Lease or the acceptance of such subtenant or occupant as Tenant, or a release of Tenant from further performance by Tenant of its covenants under this Lease. Tenant shall remain fully liable for all of its obligations under this Lease unless otherwise agreed to in writing to the contrary by Landlord, provided that Tenant shall be released by Landlord

from its duties and obligations under the Lease in the event of an assignment of the Lease approved by Landlord. Further any such subtenant or occupant shall unconditionally pay to Landlord all such rent in the event Landlord delivers notice to such subtenant, or occupant demanding the payment of rent to be made to Landlord.

Landlord shall have the right to assign or otherwise transfer any or all of its rights under this Lease without Tenant's approval, subject to the terms and notice provisions of the Performance Agreement.

§30. ACCESS AND OTHER RIGHTS OF LANDLORD

Tenant shall permit Landlord, its agents or employees, or any mortgagee of Landlord, to enter the Leased Premises, in such a manner so as to minimize any disruption of Tenant's use of the Leased Premises, at reasonable times after forty-eight (48)-hour prior notice to Tenant and, subject to the right of Tenant to have a representative of Tenant accompany such persons while on the Leased Premises, (a) to examine, inspect or protect the Leased Premises, (b) to make such repairs to the Leased Premises as Landlord is obligated to hereunder or has the right to do pursuant to Section 26(a), (c) to exhibit the Leased Premises to prospective tenants during the last six (6) months of the Term or following the commencement of any action to evict Tenant, and (d) to exhibit the Leased Premises to prospective mortgagees, purchasers and any other interested parties.

In addition to the foregoing, Tenant acknowledges that Landlord shall have the right at any time in the event of an emergency (without prior notice) to enter the Leased Premises to make all inspections, repairs, alterations, additions, and improvements to the Building, including without limitation the Leased Premises, as may be necessary for the safety, protection, or preservation of the Leased Premises or the Building or Landlord's interest therein.

In connection with this section, Tenant acknowledges that Landlord shall have the right to maintain a key (along with any key card or access codes) necessary to access the Leased Premises and that Tenant shall not change the locks or other security access cards or codes to the Leased Premises without providing Landlord with new keys and/or other access cards or codes necessary to enable Landlord such access. Notwithstanding anything herein to the contrary, Landlord shall have no right to keys to Tenant file cabinets or other personal property or to inspect Tenant's file cabinets or other personal property.

§31. FINANCIAL STATEMENTS

"INTENTIONALLY OMITTED"

§32. HAZARDOUS MATERIALS

- (a) For purposes of this Lease: (i) "CERCLA" means The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; (ii) "Hazardous Material" or "Hazardous Materials" means and includes petroleum (including, without limitation, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, oil mixed with wastes and any other petroleum related product), flammable explosives, radioactive materials, any substance defined or designated as a "hazardous substance" under Sections 101(14) and 102 of CERCLA or any other materials defined or designated as hazardous under any federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree; (iii) "Release" shall have the meaning given such term, or any similar term, in Section 101(22) of CERCLA; and (iv) "Environmental Law" or "Environmental Laws" shall mean any "Superfund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be in effect and as amended from time to time, including without limitation, the following (amended or replaced from time to time) and all regulations promulgated thereunder or in connection therewith: CERCLA; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); The Clean Air Act ("CAA"); The Clean Water Act ("CWA"); The Toxic Substances Control Act ("TSCA"); The Solid Waste Disposal Act ("SWDA"), as amended by the Resource

Conservation and Recovery Act ("RCRA"); and the Occupational Safety and Health Act of 1970 ("OSHA").

- (b) Tenant hereby covenants and agrees that (i) no activity shall be undertaken on the Leased Premises, nor shall any activity be undertaken within the Building or on the Real Property, by Tenant or its agents, employees, contractors, or invitees, which would in any event cause (A) the Leased Premises or the Building to become a hazardous waste treatment, storage or disposal facility regulated or subject to regulation under any Environmental Law, (B) a Release of any Hazardous Material into the environment at, on, in, under, above, through, or surrounding the Leased Premises or the Building, or (C) the discharge of pollutants or effluents into any water source or system, which would require a permit under any federal law, state law, local ordinance or any other Environmental Law pertaining to such matters; (ii) Tenant shall at its sole cost and expense comply with, and ensure compliance by its agents, employees, contractors, or invitees with, all applicable Environmental Laws relating to or affecting Tenant's business on the Leased Premises, and Tenant shall keep the Leased Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws arising out of Tenant's use of the Leased Premises, all at Tenant's sole cost and expense; (iii) Tenant will, at Tenant's sole cost and expense, obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with all applicable Environmental Laws which relate to Tenant's business (the "Permits") and Tenant at all times shall remain in full compliance with the terms and provisions of the Permits; (iv) Tenant shall immediately give Landlord oral and written notice in the event that Tenant receives any communication from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Leased Premises or the Building or on the Real Property or otherwise with respect to Tenant's use and occupancy of the Leased Premises or the operation of Tenant's business therein; and (v) Tenant shall, at Tenant's sole cost and expense, conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Leased Premises or on the Real Property to the extent resulting from acts or omissions of Tenant or its agents, employees, contractors and invitees in accordance with all applicable Environmental Laws.
- (c) Tenant hereby indemnifies Landlord and agrees to hold Landlord harmless from and against any and all liens, demands, suits, actions, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Landlord and/or the Leased Premises, the Building for, with respect to, or as a direct or indirect result of: (i) the Release or presence from, in, on, over or under the Leased Premises of any Hazardous Materials regardless of quantity where caused by Tenant or its agents, employees or contractors; (ii) the Release or presence from, in, on, over or under the Building or on the Real Property of any Hazardous Materials regardless of quantity where caused by Tenant or its agents, employees or contractors; (iii) the violation of any Environmental Laws relating to Tenant's business on the Leased Premises; and (iv) the failure by Tenant to comply fully with the terms and provisions of this section, provided that nothing contained in this section shall make Tenant liable or responsible for conditions (I) existing prior to the Commencement Date or first occurring after the expiration of the Term of this Lease except where caused by Tenant or its agents, employees or contractors, or (ii) not caused by Tenant, its agents, employees or contractors. Nothing in this Section 32 shall prohibit the use by Tenant of office supplies which may fall within the definition of Hazardous Materials.
- (d) Landlord hereby indemnifies, agrees to hold Tenant harmless and defend Tenant from and against any and all liens, demands, suits, actions, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including without limitation attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Tenant with respect to, or as a direct or indirect result of: (i) the Release or presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials regardless of quantity to the extent caused by

Landlord or its agents, employees or contractors; and (ii) the violation of any Environmental Laws relating to or affecting the Leased Premises, the Building or the Real Property to the extent caused by Landlord or its agents, employees, or contractors. Landlord represents to Tenant that, to its knowledge after due investigation except as set forth in the "Reports," as hereinafter defined (for purposes of this representation, due investigation shall be limited to Landlord's review of the Reports), there are no Hazardous Materials on the Real Property, and the Building and the Common Areas will not be constructed with any Hazardous Materials in violation of any applicable Environmental Laws. In the event of a breach of the foregoing representations, Landlord shall cure such breach at its sole cost and expense and no cost to Tenant.

- (e) Landlord shall be responsible, at its sole cost and expense, for paying all of the cleanup costs and expenses incurred in complying with an order of a governmental agency or entity with respect to a Release or the presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials or any violation of any Environmental Laws, except to the extent caused by Tenant, its agents, employees, contractors, invitees or anyone else related to Tenant's building operations. Landlord, on behalf of itself and its successors and assigns, hereby waives any and all rights it may have to sue or otherwise make a claim against Tenant under any applicable Environmental Laws, or otherwise, with respect to the costs of any cleanup required by order by a governmental agency or entity of any Release or presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials not caused by Tenant or its agents, employees, contractors, invitees or anyone else related to Tenant's building operations.
- (f) The obligations and liabilities of Tenant and Landlord under this section shall survive the expiration of the Term or earlier termination of this Lease.

§33. SIGNAGE

Landlord shall have the right to install and maintain a sign (or signs) on the Real Property identifying the Building, which signage shall be professionally designed and constructed and consistent with quality signage for office buildings in Bastrop, Texas. The name of the Building shall not be the same as or similar to the name of a competitor of Tenant or a disreputable person or entity. No painted signage will be permitted. Landlord shall, at its sole cost and expense, on or before the Commencement Date, provide signage reasonably acceptable to Tenant on the directory of the Building, on or beside the door which enters into the Leased Premises and in elevator lobbies on entire floors occupied by Tenant; subject to reasonable standard signage criteria for the Building and in compliance with all applicable laws and ordinances. Landlord shall have the right to approve the location and type of signage which shall not be unreasonably withheld, conditioned or delayed. The cost for, and installation of, such signs shall be at Tenant's sole cost and expense, or, at Tenant's election, may be funded out of the Allowance. Tenant shall not have the right to maintain any other signs on the Real Property or within the Building without the prior written consent of Landlord (in Landlord's sole discretion). Landlord agrees, so long as Tenant is leasing not less than an entire floor of the Building, not to permit any other company to place a sign on the exterior of the Building.

§34. NOTICES

All notices and other communications required or desired to be given to either party under this Lease shall be in writing and shall be deemed given three (3) days after having been mailed by certified United States mail, postage prepaid (return receipt requested) to that party at the address for that party (or at such other address for such party as shall have specified in a notice to the other party), or one day after having been properly delivered to Federal Express, UPS, or any similar nationally-recognized express delivery service for overnight delivery to that party at that address:

If to Tenant:

BASTROP ECONOMIC DEVELOPMENT CORPORATION
921 Main Street

Bastrop, Texas 78602
ATTN: Executive Director

If to Landlord:

921 BASTROP, LLC.
c/o Stone Development Group, Inc.
3307 Northland Drive, Suite 240
Austin, Texas 78731

§35. SURVIVAL OF OBLIGATIONS

No termination of this Lease and no repossession of the Leased Premises or any part thereof shall relieve Tenant and Landlord of their respective liabilities and obligations accruing hereunder prior to the date of such termination, all of which shall survive such termination or repossession.

§36. MEMORANDUM OF LEASE

This lease shall not be recorded; however, at the request of either Landlord or Tenant, the other party shall execute, acknowledge, and deliver a memorandum of this Lease (which would exclude all economic terms of this Lease) in recordable form for purposes of giving public notice of the rights and obligations of Landlord and Tenant under this Lease.

§37. NON-WAIVER

No failure by Landlord to exercise any option hereunder or to enforce its rights or seek its remedies upon any default, and no acceptance by Landlord of any rent accruing before or after any default, shall affect or constitute a waiver of Landlord's rights to exercise that option, enforce that right, or seek that remedy with respect to that default or any prior or subsequent default

§38. NO THIRD-PARTY BENEFIT

This lease is intended for the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, their respective successors and assigns, and nothing contained in this Lease shall be construed as creating any rights or benefits in or to any third party.

§39. LITIGATION

"INTENTIONALLY OMITTED"

§40. SEVERABILITY

The intention of the parties to this Lease is to comply fully with all laws governing leases, and this Lease shall be construed consistently with all such laws to the extent possible. If and to the extent that any court of competent jurisdiction is unable to so construe part or all of any provision of this Lease, and holds that part or all of that provision to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

§41. GOVERNING LAW; VENUE

This Lease has been negotiated and executed in the State of Texas and relates to real property located in the State of Texas.

All questions concerning the validity or intention of this Lease shall be resolved under the laws of the State of Texas. The parties to this Lease hereby designate Bastrop County, Texas, as the court of proper jurisdiction

and exclusive venue for any actions or proceedings relating to this Lease; hereby irrevocably consent to such designation, jurisdiction and venue; and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceeding initiated in Bastrop County, Texas.

§42. EXHIBITS

All exhibits attached to this Lease are incorporated herein by reference.

§43. COMPLETE AGREEMENT

This document (with its exhibits, which are hereby incorporated herein by reference) contains the entire Lease between the parties and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes, alterations, modifications, additions, or qualifications to this Lease shall be made or be binding unless made in writing and signed by each of the parties. EXCEPTION: The Performance Agreement supersedes this Lease and its terms control any conflicting terms between the Performance Agreement and this Lease.

§44. COUNTERPARTS

This lease may be executed in several counterparts and each executed counterpart shall be considered an original of this Lease.

§45. GENDERS AND NUMBERS

When the context permits, each pronoun used in this Lease includes pronouns of the same person in other genders or numbers and each noun used in this Lease includes the same noun in different numbers.

§46. TIME OF THE ESSENCE

Time is of the essence for this Lease and the performance of all obligations hereunder by all parties.

§47. CAPTIONS

The captions at the beginnings of the sections of this Lease are not part of the context of this agreement, but are merely labels to assist in locating those sections, and shall have no effect on the interpretation of this Lease.

§48. SUCCESSORS IN INTEREST

Except as otherwise provided in this Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this Lease.

§49. RIGHT OF FIRST OFFER

"INTENTIONALLY OMITTED"

§50. ROOF RIGHTS

"INTENTIONALLY OMITTED"

§51. EXCLUSIVITY

"INTENTIONALLY OMITTED"

§52. BROKERS

"INTENTIONALLY OMITTED"

[Signatures appear on the following page]

Signed and Acknowledged
in the presence of:

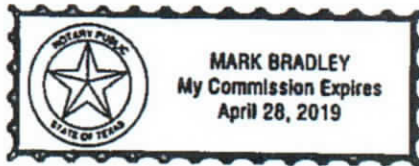
921 BASTROP, LLC.

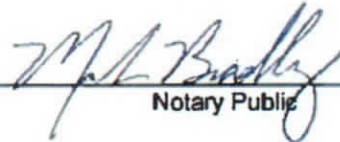
As to Landlord:

By 
Edward E. Dudley, III, Managing Member

STATE OF TEXAS
TRAVIS COUNTY

This document was acknowledged before me on September 25th, 2018, by Edward E. Dudley, III, the managing member of 921 BASTROP, LLC., a Texas Limited Liability Corporation, on behalf of the Company.




Notary Public

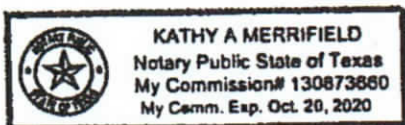
BASTROP ECONOMIC DEVELOPMENT
CORPORATION

As to Tenant:

By 
Mike Kamerlander, Executive Director

STATE OF TEXAS
BASTROP COUNTY

This document was acknowledged before me on September 27th, 2018, by Mike Kamerlander the Executive Director of BASTROP ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation, on behalf of said agency.




Notary Public

**This lease was prepared by:
The 921 BASTROP, LLC., 3307 Northland Drive, Suite 240, Austin, Texas 78731**

EXHIBITS

Exhibit A	Description of Leased Premises
Exhibit B	Building Rules and Regulations
Exhibit C	Sublease Agreement

EXHIBIT A
Description of Leased Premises

EXHIBIT B
Building Rules and Regulations

The sidewalks, entrances, passages, corridors, vestibules, halls, elevators or stairways in or about the Building shall not be obstructed by Tenant.

Tenant shall not place objects against glass partitions, doors or windows which would be unsightly from the Building corridor or from the exterior of the Building. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or fixed by Tenant on any window or part of the outside or inside of the Buildings without prior consent of Landlord.

Tenant shall not place a load upon any floor of the Building exceeding the lesser of the floor load which such floor was designed to carry or that allowed by law.

Tenant shall not waste electricity or water in the Building and shall cooperate fully with Landlord to assure the most effective operation of the Building HVAC system. All regulating and adjusting of HVAC equipment shall be done by the Landlord's agents or employees.

No additional or different locks or bolts shall be affixed on doors by Tenant. Tenant shall return all keys to Landlord upon termination of Tenant's lease. Tenant shall not allow peddlers, solicitors or beggars in the Building and shall report such persons to the Landlord.

Tenant shall not use the Premises so as to cause any increase above normal insurance premiums on the Building.

No bicycles, vehicles or animals of any kind shall be brought into or kept in or about the Premises. No space in the Building shall be used for manufacturing or for the sale of merchandise of any kind at auction or for storage thereof preliminary to such sale unless expressly authorized by Landlord in writing.

Tenant shall not engage or pay any employees of the Building without approval from the Landlord. Tenant shall not employ any persons other than the janitor or employees of Landlord for the purpose of cleaning Premises without the prior written consent of Landlord.

All removals from the Building or the carrying in or out of the Building or the Premises of any freight, furniture or bulky matter of any description must take place at such time and in such manner as Landlord may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of the rules and regulations or provisions of Tenant's lease.

Normal Building Operating Hours are 7:00 a.m. to 6:00 p.m. Mondays through Fridays and 8 a.m. to 12 p.m. on Saturdays excluding New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day (and the applicable weekday when any such day occurs on a weekend day) and all other federal, state, county or municipal holidays and all Sundays. Any day (other than a Saturday) on which Normal Building Operating Hours shall occur shall be a "Business Day". Outside of Normal Building Operating Hours, Landlord reserves the right to exclude from the Building all persons connected with or calling upon Tenant who do not present a pass to the Building signed by Tenant. Landlord will furnish passes to persons designated by Tenant and Tenant shall be responsible to Landlord for all acts of such persons.

Tenant shall cooperate with Landlord in minimizing loss and risk thereof from fire and associated perils.

Tenant shall, at Tenant's expense, provide artificial light and electric current for the Landlord and/or its contractors, agents and employees during the making of repairs, alterations, additions or improvements in or to the Leased Premises.

The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed and constructed and no sweepings, rubbish, rags, acid or like substance shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant.

Tenant may request HVAC service outside of Normal Building Operating Hours by submitting a request in writing to the Landlord by noon of the preceding workday. Landlord reserves the right to adjust the cost of providing after-hours air service to the tenants of the Building from time to time.

Landlord reserves the right to establish, modify and enforce parking rules and regulations.

All refuse from the Premises shall be disposed of in accordance with the requirements established therefore by Landlord and no dumpster shall be overloaded by Tenant.

Landlord reserves the right at any time to rescind, alter or waive any rule or regulation at any time prescribed for the Building and to impose additional rules and regulations when in its judgment Landlord deems it necessary, desirable or proper for its best interest and for the best interest of tenants and other occupants and invitees thereof. No alteration or waiver of any rule or regulation in favor of one Tenant shall operate as an alteration or waiver in favor of any other Tenant. Landlord shall not be responsible to any Tenant for the non-observance or violation by any other Tenant however resulting of any rules or regulations at any time prescribed for the Building.

EXHIBIT C
Sublease Agreement