

AN ORDINANCE **HPPFC 2016-01-28-0001**

**OF THE HEMISFAIR PARK PUBLIC FACILITIES CORPORATION APPROVING A DEVELOPMENT SUBLEASE AGREEMENT BETWEEN HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION (HPARC) AND AREA REAL ESTATE, LLC ON APPROXIMATELY 1.1 ACRES OF LAND IN THE SOUTHWEST QUADRANT OF HEMISFAIR OWNED BY THE HEMISFAIR PARK PUBLIC FACILITY CORPORATION.**

\* \* \* \* \*

**WHEREAS**, Hemisfair Park Area Redevelopment Corporation (HPARC) was established in 2009 to manage and oversee the redevelopment and management of Hemisfair consistent with the Hemisfair Master Plan approved by City Council in 2012; and

**WHEREAS**, the Hemisfair Park Public Facilities Corporation (HP PFC) was created by City Council in 2013 to assist with the redevelopment and towards this end, the City conveyed development parcels to the HP PFC in 2014 which in turn authorized a Master Lease Agreement with HPARC to allow for long-term ground leases of the HP PFC properties.; and

**WHEREAS**, pursuant to the Master Lease Agreement, and with City Council authorization, HPARC solicited proposals for public-private partnerships to develop the southwest quadrant parcel, located at Hemisfair Boulevard and E. Nueva Streets, as depicted on Exhibit A; and

**WHEREAS**, based on the evaluation of proposals by a committee comprised of 2 HPARC Board members and 3 City staff, a Development Sublease with Area Real Estate, LLC for a mix-use development consisting of an 8 story, 160 apartment complex wrapped around a 400 space garage with retail space at the ground level (the "Project"), is recommended for approval by the HP PFC, whose Board of Directors consists of City Council; **NOW THEREFORE:**

**BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE HEMISFAIR PARK PUBLIC FACILITY CORPORATION:**

**SECTION 1.** A Development Sublease with Area Real Estate, LLC for the Project is hereby approved.

**SECTION 2.** The City Manager or her designee, in her role as the Executive Director of the Hemisfair Park Public Facilities Corporation, is authorized to execute the Development Sublease, a copy of which, in substantially final form, is attached as Exhibit I.

**SECTION 3.** This Ordinance shall become effective immediately upon passage by the Board.

VZ  
1/28/16  
Item No. 31

**PASSED AND APPROVED** this 28<sup>th</sup> day of January, 2016.

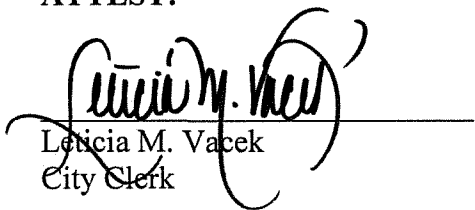
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**HEMISFAIR PARK  
PUBLIC FACILITY CORPORATION**



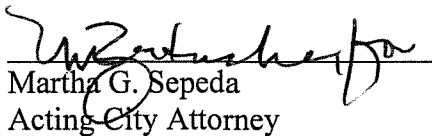
Ivy R. Taylor  
President, Board of Directors

**ATTEST:**



Leticia M. Vacek  
City Clerk

**APPROVED AS TO FORM:**



Martha G. Sepeda  
Acting City Attorney

<b>Agenda Item:</b>	31						
<b>Date:</b>	01/28/2016						
<b>Time:</b>	10:04:03 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance of the Hemisfair Park Public Facility Corporation approving a Development Sublease Agreement between Hemisfair Park Area Redevelopment Corporation and local real estate developer AREA Real Estate, LLC on approximately 1.1 acres of land in the southwest quadrant of Hemisfair owned by the Corporation.[Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development & Operations].						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x				

# **EXHIBIT I**

**DEVELOPMENT SUBLEASE AGREEMENT  
BY AND BETWEEN  
HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION  
AND  
AREA REAL ESTATE, LLC**

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**EXHIBITS:**

- Exhibit "A" - Legal Description of Premises
- Exhibit "B" - Permitted Exceptions
- Exhibit "C" - Memorandum of Lease
- Exhibit "D" - Limited Guaranty
- Exhibit "E" - Attornment and Non-Disturbance Agreement
- Exhibit "F" - Plan Approval Process
- Exhibit "G" - Retail Use Restrictions
- Exhibit "H" - Project Timeline
- Exhibit "I" - Parking Sublease
- Exhibit "J" - Certification

## DEVELOPMENT SUBLEASE AGREEMENT

This **DEVELOPMENT SUBLEASE AGREEMENT** (this "**Lease**") is entered into to be effective the 1st day of February, 2016 (the "**Effective Date**"), by and between the **HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION**, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("**HPARC**"), and **AREA Real Estate, LLC**, a Texas limited liability company ("**Developer**"). In consideration of the mutual covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, HPARC and Developer agree as follows:

### 1. CERTAIN DEFINITIONS.

(a) "**Affiliate**" means, of a specified Person, a Person who (a) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (b) owns directly or indirectly twenty-five percent (25%) or more of the equity or voting interests of the specified Person; (c) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (a) or (b); or (d) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

(b) "**Approved Plans**" means the plans and specifications for the Project that will be approved by HPARC pursuant to the process described on the attached **Exhibit "F"**.

(c) "**Base Rent**" means the annual base rent to be paid by Developer to HPARC under this Lease pursuant to Section 4.

(d) "**Business Days**" means any weekday on which national banks may be lawfully open for business.

(e) "**City**" means the City of San Antonio, a Texas home rule municipality.

(f) "**Construction Rent Commencement Date**" means the earlier of (i) the date upon which Developer commences construction, or (ii) January 1, 2017 (subject to extension pursuant to the terms of this Lease).

(g) "**CPI**" shall mean the Consumer Price Index for all Urban Consumers – all city average - (1982-1984 = 100) of the Bureau of Labor Statistics of the United States Department of Labor. If the Consumer Price Index ceases to use the 1982-1984 average equaling 100 as the basis of calculation, or if a material change is made in the term or number of items contained in the Consumer Price Index, or if the Consumer Price Index is altered, modified, converted or revised in any other material way, then CPI shall be adjusted to the figure that would have resulted had the change in the manner of computing the Consumer Price Index in effect at the date of this Lease not been so altered. If such Consumer Price Index shall no longer be published by said Bureau, then any substitute or successor index published by said Bureau or other governmental agency of the United States, and similarly adjusted as aforesaid, shall be used. If such Consumer Price Index (or a successor or substitute index similarly adjusted) is not available, a reliable governmental or other reputable publication selected by HPARC and approved by Developer, which approval may not be unreasonably withheld, and evaluating the information theretofore used in determining the Consumer Price Index shall be used.

(h) "**Excusable Delay**" means a delay by Developer in achieving any of the deadlines of the Project Timeline to the extent caused by (i) a Force Majeure Event, (ii) gross negligence

or willful misconduct of HPARC, (iii) any act or omission of HPARC (including any Person employed by HPARC or of any agent, contractor or subcontractor of HPARC) that unreasonably interferes with or delays Developer's construction activities but does not result from (i) the lawful exercise of HPARC's rights or obligations under this Lease, or (ii) the refusal, failure or inability of Developer, a Leasehold Mortgagee or any other Person to make funds available for any purpose unless such refusal, failure or inability results from other facts or circumstances which constitute an Excusable Delay.

(i) "**Full Base Rent Commencement Date**" is the date that is the earlier of either (i) the first day of the calendar month following the date upon which Developer achieves Substantial Completion of the Project, or (ii) the first day of the calendar month following the thirtieth (30<sup>th</sup>) full calendar month after the Construction Rent Commencement Date.

(j) "**Guarantor**" means David M. Adelman.

(k) "**Guaranty**" means that certain Limited Guaranty entered into by Guarantor in favor of HPARC in the form attached hereto as **Exhibit "D"**.

(l) "**Governmental Authority**" means any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, office or instrumentality or any of them.

(m) "**Improvements**" has the meaning ascribed to such term in Section 2(a).

(n) "**HemisFair District**" means land that was formerly a part of HemisFair, a world exposition recognized by the Bureau International des Expositions.

(o) "**Laws**" means all laws, ordinances, rules, regulations and requirements of a Governmental Authority.

(p) "**Lease Year**" means each consecutive period of twelve (12) full calendar months, following the Full Base Rent Commencement Date. If the Full Base Rent Commencement Date is a date other than the first day of a calendar month, the first Lease Year will include that fractional portion of the calendar month in which the Full Base Rent Commencement Date occurs and the first full twelve (12) months thereafter, and the last Lease Year will end on the expiration or earlier termination of this Lease.

(q) "**Master Lease**" means that certain Master Lease Agreement by and between the PFC, as landlord, and HPARC, as tenant, dated effective as of December 11, 2014.

(r) "**Parking Garage**" means that certain parking garage to be constructed by Developer on the Premises as part of the Project, and a portion of which is to be subleased to HPARC pursuant to the Parking Sublease.

(s) "**Parking Sublease**" means that certain Parking Sublease Agreement to be entered into between Developer and HPARC in the form attached hereto as **Exhibit "J"** with such modifications as may be mutually agreed upon in writing between Developer and HPARC and pursuant to which Developer is agreeing to sublease a portion of the Parking Garage to HPARC, subject to the terms, conditions and provisions set forth in such Parking Sublease.

(t) "**Permitted Exceptions**" means those matters affecting title to the Premises and described in **Exhibit "B"** hereto.



(u) “**Person**” means any individual, corporation, partnership, limited liability company, trust or other legal entity.

(v) “**PFC**” means the Hemisfair Park Public Facilities Corporation, a Texas non-profit public facilities corporation.

(w) “**Premises**” means the approximately 1.097 acres of land in the City of San Antonio, Texas, more particularly described in Exhibit “A” hereto (the “**Land**”), and all improvements now or hereafter situated thereon other than the structure commonly known as the Amaya House, which is to be relocated in accordance with and subject to the Section 3(g) of this Lease. The parties expressly acknowledge that the Premises described on Exhibit “A” includes a certain \_\_\_\_\_ area (the “**New Premises Area**”) that is depicted on the attached Exhibit “A-1” and that is currently not a part of the premises leased to HPARC under the Master Lease but that HPARC anticipates being added to such premises through an amendment to the Master Lease following approval of such amendment by the PFC Board of Directors on \_\_\_\_\_, 2016. Notwithstanding any other provision contained herein, the Premises shall not be deemed to include such New Premises Area until such time as the Master Lease is amended to add such New Premises Area to the premises leased to HPARC under the Master Lease, whereupon the Premises shall be deemed to include such New Premises Area for all purposes hereunder.

(x) “**Project**” means a mixed-use commercial building constructed to Substantial Completion on the Premises in accordance with the Approved Plans and containing approximately 158 apartment units, approximately 5 live/work units, approximately 3,200 square feet of restaurant or retail space on the ground floor, and the Parking Garage.

(y) “**Project Timeline**” means the development milestones for the construction and Substantial Completion of the Project set forth on Exhibit “H”, subject to extension following an Excusable Delay.

(z) “**Substantial Completion**” means the first day on which (a) the construction and equipping of the Project has been completed (exclusive of “punch list” items, landscaping and tenant improvement work), (b) all utilities are installed and operating (excluding wireless internet and cable television), and (c) a certificate of compliance or temporary certificate of occupancy has been lawfully issued permitting the use and occupancy of the Project for its intended purpose.

## 2. DEMISE; SUBLEASE.

(a) Demise. As of the Effective Date, HPARC hereby leases to Developer, and Developer hereby leases from HPARC, the Premises, together with all improvements on the Premises (“**Improvements**”) and all rights, easements and appurtenances that belong to the Premises.

(b) Master Lease and Sublease. Notwithstanding any other provision contained in this Lease, this Lease is hereby made expressly subject and subordinate in all respects to the Master Lease. For ease and convenience, however, the term “**Lease**” is used herein to refer to this Development Sublease Agreement notwithstanding the fact that this Development Sublease Agreement is in fact a sublease. HPARC shall comply with all of its obligations under the Master Lease during and at all times during the Term of this Lease.

## 3. TERM.

(a) The term of this Lease (“**Initial Term**”) shall commence on the Effective Date and shall end at midnight on the day prior to the forty-fifth (45<sup>th</sup>) year anniversary of the Full Base Rent

Commencement Date (the “*Expiration Date*”), unless sooner terminated or extended in accordance with the provisions of this Lease.

(b) Extension Options. The Term of this Lease shall be automatically extended for three (3) successive periods of ten (10) years (each, an “*Extension Period*”) unless Developer delivers to HPARC written notice electing not to exercise such option, such notice to be delivered to HPARC on or before the two hundred seventieth (270<sup>th</sup>) day preceding the expiration of the Initial Term or the Extension Period then in effect. References to the word “*Term*” in this Lease shall include the Initial Term and each effective Extension Period, collectively.

(c) Due Diligence Period. Developer shall have a period commencing on the Effective Date and ending at 5:00 p.m. San Antonio, Texas time on that date that is one hundred twenty (120) days following the Effective Date (the “*Due Diligence Period*”) to inspect the Premises and perform such engineering and/or architectural examinations, including soils and environmental tests, as Developer may deem reasonably necessary in connection with its proposed use and/or development of the Premises; obtain, review and approve a title commitment, survey, environmental report and such other reports as Developer may desire to obtain; and to determine in Developer’s sole and absolute discretion the suitability of the Premises for Developer’s intended use. If Developer notifies HPARC prior to the expiration of the Due Diligence Period that the Premises are not suitable for Developer’s intended purposes in Developer’s sole discretion, then this Lease shall terminate, and neither party shall have any further rights or liabilities hereunder, except for those obligations which expressly survive termination hereof. As obligations that shall survive any termination, (A) Developer shall restore and repair the Premises or any adjacent property to the extent any damage is caused by Developer or Developer’s permittees during such access; (B) the indemnities set forth in this Lease shall apply during the Due Diligence Period; (C) Developer and/or its permittees shall comply with the insurance requirements set forth in this Lease during the Due Diligence Period, as applicable, and provide evidence thereof to HPARC; and (D) upon any termination permitted under this Section 3, at HPARC’s request and at no cost to HPARC and to the extent not restricted by confidentiality or other counterparty restrictions, Developer shall deliver to HPARC copies of all third party reports, studies, or assessments relating to all tests conducted at the Premises by Developer or its permittees on an “AS IS, WHERE IS” basis. During the Due Diligence Period, Developer shall give HPARC at least one (1) business day prior notice of the time, place and purpose of all such tests and shall permit a representative of HPARC access to the Premises when each such test is conducted.

(d) Independent Consideration. Within two (2) Business Days of the Effective Date, Developer shall pay HPARC a one-time fee of One Thousand Five Hundred Dollars (\$1,500.00) as non-refundable independent consideration for Developer’s rights under this Lease (the “*Independent Consideration*”).

(e) Permit Period Deposit. If Developer does not terminate this Lease during the Due Diligence Period, then within five (5) Business Days following expiration of the Due Diligence Period, Developer shall deposit the sum of One Hundred Thousand Dollars (\$100,000.00) with Chicago Title Company, LLC, Attn: Doug Becker acting as an escrow agent (the “*Permit Period Deposit*”).

(f) Permit Period. The period of time between the expiration of the Due Diligence Period and the Construction Rent Commencement Date is referred to herein as the “*Permit Period*.” During the Permit Period, Developer shall exercise commercially reasonable efforts to obtain a building permit (the “*Building Permit*”) for the Project. For purposes hereof, Developer shall be deemed to have exercised commercially reasonable efforts to obtain the Building Permit so long as Developer (i) submits Final Plans to HPARC for approval on or before the Final Plan Submittal Deadline (as defined in Exhibit “F”), and (ii) submits an application for the Building Permit to the City of San Antonio complying with

all requirements under the City of San Antonio Unified Development Code within thirty (30) days following HPARC approval of the Final Plans. If, despite exercising commercially reasonable efforts to obtain the Building Permit, Developer is unable to obtain the Building Permit on or before November 30, 2016 (the "**Permit Deadline**") (as such deadline may be extended for Excusable Delay), then Developer may elect to terminate this Lease by written notice to HPARC delivered within five (5) Business Days following the Permit Deadline, whereupon this Lease shall terminate, the Permit Period Deposit shall be refunded to Developer and neither party shall have any further rights or liabilities hereunder, except for those obligations which expressly survive termination hereof. Failure by Developer to terminate this Lease within the time period specified in the preceding sentence shall constitute a waiver of Developer's right to terminate this Lease pursuant to this Section 3(f).

(g) **Historic Structures Contingency.** On or before October 31, 2016 (the "**Historic Permit Target Date**"), HPARC shall use commercially reasonable efforts to obtain all approvals required from state and local governmental authorities for purposes of (a) relocating that certain structure commonly known as the Amaya House to another location within Hemisfair District, and (b) developing the Project around that certain structure commonly known as the Smith House (collectively, the "**Historic Permit Contingency**"). The relocation of the Amaya House and all development around the Smith House shall be at the sole expense of Developer. Developer shall cooperate, at its expense, with HPARC's efforts to satisfy the Historic Permit Contingency and shall provide all supplemental information concerning the Project and the development as may be required by such state and local governmental authorities. If HPARC has not satisfied the Historic Permit Contingency on or before the Historic Permit Target Date, then the outside date for the Construction Rent Commencement Date (i.e., January 1, 2017) shall be extended one day for each day past the Historic Permit Target Date until the Historic Permit Contingency has been satisfied. If HPARC does not satisfy the Historic Permit Contingency on or before December 31, 2016, then either HPARC or Developer may elect to terminate this Lease by written notice to the other party delivered on or before January 31, 2017, whereupon this Lease shall terminate, the Permit Period Deposit shall be refunded to Developer, and neither HPARC nor Developer shall have any remaining obligations hereunder except for those that expressly survive the termination hereof. HPARC shall have no liability of any kind or character to Developer or its Affiliates or any other Person for its inability to satisfy the Historic Permit Contingency.

(h) **Commencing Construction.** Developer shall commence construction of the Project promptly following receipt of the Building Permit. If Developer has not commenced construction on or before January 1, 2017 (as such deadline may be extended for Excusable Delay), then HPARC may elect to terminate this Lease by written notice to Developer at any time prior to the date upon which Developer commences construction on the Project, whereupon this Lease shall terminate, the Permit Period Deposit shall be released to HPARC and neither party shall have any further rights or liabilities hereunder, except for those obligations which expressly survive termination hereof. For the purposes hereof, Developer will be deemed to have commenced construction on the Project when site grading of the Premises shall have commenced in good faith; provided, that upon request from Developer, HPARC shall promptly confirm in writing that Developer has commenced construction on the Project in good faith.

#### 4. **RENT.**

(a) **Base Rent.** Base Rent is payable as follows:

(i) From the Construction Rent Commencement Date until the Full Base Rent Commencement Date, annual Base Rent will be Seventy-Seven Thousand Five Hundred and No/100 Dollars (\$77,500.00), payable in monthly installments in the amount of Six Thousand Four Hundred Fifty-Eight and 33/100 Dollars (\$6,458.33), each.

(ii) Commencing on the Full Base Rent Commencement Date and for the first Lease Year thereafter, annual Base Rent will be One Hundred Fifty-Five Thousand and No/100 Dollars (\$155,000.00), payable in monthly installments in the amount of Twelve Thousand Nine Hundred Sixteen and 66/100 Dollars (\$12,916.66), each.

(iii) On each year anniversary of the Full Base Rent Commencement Date (each, an "**Adjustment Date**"), the annual Base Rent shall be increased to equal the greater of (i) the annual Base Rent in effect during the immediately preceding Lease Year, and (ii) the product of (x) the initial Base Rent in effect under this Lease multiplied times (y) the sum of one (1) plus the applicable CPI Increase Percentage. For purposes hereof, the "**CPI Increase Percentage**" shall mean the percentage increase in the CPI for the last calendar month preceding such Adjustment Date over the CPI for the last calendar month preceding the Full Base Rent Commencement Date. For example, commencing on the first anniversary of the Full Base Rent Commencement Date, if the CPI for the last month preceding the Full Base Rent Commencement Date were 200 and the CPI for the twelfth (12th) month following the Full Base Rent Commencement Date (such 12th month being the last calendar month preceding the Adjustment Date) were 220, then the CPI Increase Percentage for such period would be 10% and the annual Base Rent would increase from \$155,000.00 per year to \$170,500.00 per year.

(b) Payment of Base Rent. Beginning with the Construction Rent Commencement Date, the applicable Base Rent specified in Section 4(a) above will be payable by Developer to HPARC in monthly installments in advance throughout the Term. All monthly payments of Base Rent shall be made on or before the first day of the applicable calendar month by check or, at Developer's option, wire transfer to an account identified by HPARC, without notice, offset or demand. Base Rent for any period less than a calendar month shall be prorated.

(c) Percentage Rent.

(i) Percentage Rent. In addition to the Base Rent, commencing on the twenty-fifth (25<sup>th</sup>) year anniversary of the Full Base Rent Commencement Date (such anniversary referred to herein sometimes as the "**Percentage Rent Commencement Date**") and continuing throughout the remainder of the Term (including any extension of the Term by Developer's exercise of one or more Extension Options), Developer shall pay to HPARC (in addition to Base Rent) percentage rent ("**Percentage Rent**") equal to two percent (2%) of the Gross Project Revenues (as defined below) pursuant to the terms, conditions and provisions set forth herein.

(ii) Gross Project Revenues. The term "**Gross Project Revenues**" means the sum of all of the following revenues received by Developer or any Affiliate or agent of Developer (collectively, the "**Collecting Parties**") in relation to the Premises: (A) any and all rents or other payments received for the lease, use and/or occupancy of the apartment units, retail units (including percentage rents) or parking spaces located on the Premises, (B) any and all other fees or payments for the use of parking on the Premises, or amenities located within the apartment building located on the Premises (such as workout facilities, party or event space rentals), and (C) revenues received for all goods, services, wares and merchandise sold from the Premises by the Collecting Parties. Notwithstanding any other provision contained herein, the Gross Project Revenues shall not include the rents received by Developer or its Affiliates from HPARC pursuant to the Parking Sublease or the revenues received by HPARC under the Parking Sublease. Notwithstanding any other provision contained herein, the Gross Project Revenues shall not include any of the following: revenues received by the Collecting Parties: (i) from the sale, assignment, transfer or other disposition of any aspect of the Lease or any other of Developer's Improvements (and any interest therein) or the financing of the Lease or Developer's interest in the Premises or Improvements, if any, in accordance with this Lease; (ii) from any payment received by Developer in exchange for Developer's assigning, mortgaging or otherwise transferring all or any interest

of Developer in this Lease in accordance with this Lease; (iii) from any governmental tax credit, benefit or incentive such as government grants, tax abatements or exemptions, or any other current or future created governmental tax credit, benefit or incentive, (iv) from any tenant or subtenant who is merely reimbursing or otherwise paying for any of Developer's tax costs or insurance premiums, (v) from or in connection with any dispute or lawsuit with any contractor, subcontractor, lender, architect, engineer, or other consultant, if for payment or collection of any sums other than as described in (A) through (C) above, inclusive, (vi) warranty claim, insurance claim, or settlement of any warranty claim or insurance claim. Notwithstanding any other provision contained herein, the Gross Project Revenues shall not include (x) any revenues received under the Parking Sublease, nor (y) any revenues received by any other subtenants of Developer except to the extent that such other subtenant is receiving rents or other revenues that would be payable to Developer but for the existence of such other sublease.

(iii) Payment of Percentage Rent. Commencing with the first calendar month that follows the calendar month in which the Percentage Rent Commencement Date falls, Percentage Rent shall be paid in quarterly payments, due on or before the forty-fifth (45<sup>th</sup>) day after the end of each calendar quarter, equal to the sum of Percentage Rent that accrued during the prior calendar quarter. Such payments shall be made by check or, at Developer's option, wire transfer payable to HPARC, without notice, offset or demand. Percentage Rent for any period less than a calendar quarter shall be prorated.

(iv) Statements of Gross Project Revenues. At the same time as Developer delivers payment of the Percentage Rent, Developer shall deliver to HPARC a certified statement of Gross Project Revenues for the preceding calendar quarter. In addition, within sixty (60) days after the expiration of each calendar year following the Percentage Rent Commencement Date and within sixty (60) days after the termination of this Lease, Developer shall prepare and deliver to HPARC a statement of Gross Project Revenues during the preceding calendar (or partial calendar year), certified to be correct by Developer. Developer shall keep an accurate set of books and records of all the Gross Project Revenues, and all supporting records such as tax reports and banking records. All such books and records shall be retained and preserved for at least forty-eight (48) months after the end of the calendar year to which they relate, and shall be subject to inspection and audit by HPARC and its agents upon reasonable advance notice and no more often than once per year. From time to time but no more often than once per year, HPARC shall have the right to have auditors selected by HPARC audit all books, records and work papers, wherever located, pertaining to the Gross Project Revenues. If such audit determines that any of Developer's statements are found to be incorrect to an extent of a deviation of three percent (3%) or more from the statement of the Gross Project Revenues submitted by Developer, Developer shall pay for the reasonable out of pocket costs of HPARC for such audit. In addition, Developer shall promptly pay to HPARC any deficiency which is established by such audit and HPARC shall promptly reimburse to Developer any over payment established by such audit.

(d) Additional Rent. All amounts, if any, which Developer is required to pay or discharge pursuant to this Lease, in addition to Base Rent and Percentage Rent, together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute additional rent hereunder ("**Additional Rent**"; Additional Rent together with Base Rent and Percentage Rent are sometimes collectively referred to as "**Rent**"). HPARC and Developer agree that each provision of this Lease for determining charges, amounts and other Additional Rent payable by Developer is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 of the Texas Property Code. ACCORDINGLY, DEVELOPER VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS, IF ANY, AVAILABLE TO DEVELOPER UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED, SUCCEEDED AND/OR RENUMBERED.

(e) All Sums Rent. Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Developer to or on behalf of HPARC under this Lease, whether or not expressly denominated as rent, shall constitute Rent for all other purposes hereunder.

(f) Net Lease. The Developer shall pay all costs and expenses relating to the use, operation, maintenance and repair of the Premises including, without limitation, (i) taxes, (ii) insurance expenses, (iii) utility expenses, (iv) the cost of structural and non-structural repairs, replacements and maintenance as hereinafter provided, and (v) all amounts payable by HPARC under the Master Lease during the Term of this Lease that are directly related to the Premises, such obligations being hereby expressly assumed by Developer. Any amount or obligation herein relating to the use and occupancy of the Premises which is not expressly declared to be an obligation of HPARC in this Lease shall be deemed to be an obligation of Developer to be performed by Developer at Developer's expense. Except as expressly provided in this Lease to the contrary, Rent, and all other sums payable hereunder by Developer shall be paid without notice, demand, setoff, offset, counterclaim, abatement, suspension, deduction or defense. It is the intent of the parties hereto that the Rent payable under this Lease shall be an absolutely net return to HPARC unless expressly stated in this Lease to the contrary; provided, however, that the parties agree that HPARC has no rights under this Lease to impose any expenses except for those expressly authorized by the Lease and such expenses as may be otherwise levied against the Premises under applicable law (excluding any such expenses created by HPARC or the PFC).

(g) No Abatement of Rent. Except as expressly provided in this Lease, this Lease shall not terminate, nor shall Developer have any right to terminate this Lease, nor shall Developer be entitled to any abatement of Rent, nor shall the obligations of Developer under this Lease be affected by reason of any damage to or destruction of all or any part of the Premises from whatever cause;. It is the intention of the parties hereto that the obligations of Developer hereunder shall be separate and independent covenants and agreements, that the Rent shall continue to be payable in all events and that the obligations of Developer hereunder shall continue unaffected, unless the requirements to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

(h) Termination Rights. Except for the termination and other rights expressly provided to Developer under this Lease, Developer agrees that it will remain obligated under this Lease in accordance with its terms, provisions and conditions and that it will not (except as expressly permitted herein or under applicable law) take any action to terminate, rescind, modify, or avoid this Lease.

(i) Late Charge. In addition to any other remedies available to HPARC pursuant to this Lease, in the event that Developer shall fail to pay any portion of any installment of Base Rent or any other sum due hereunder by the date which is ten (10) days after such payment is due, there shall be added to such unpaid amount a late charge in the amount of Five Hundred Dollars for the first late payment in any 12-month period and \$1,000 for any additional late payments in the same 12-month period, in order to compensate HPARC for the extra administrative expenses incurred by HPARC. In addition, if such installment is not paid within thirty (30) days after the date such payment is due, the total amount then due shall bear interest at the rate per annum which is the lesser of (a) twelve percent (12%) per annum, or (b) the highest lawful rate (the "*Default Rate*"), until paid.

## 5. CONSTRUCTION.

(a) Delivery of the Premises. Without limiting Developer's option to terminate this Lease during the Due Diligence Period and Permit Period as provided in Section 3(c) or Section 3(f) above, Developer accepts the Premises from HPARC (i) in its "AS IS", "WHERE IS" condition, without any representation or warranty by HPARC or PFC and with all faults, and (ii) subject to the Permitted Exceptions, any facts which a survey or a physical inspection of the Premises would show, and to all

applicable laws and legal requirements. Developer acknowledges that neither HPARC nor PFC has any obligation to perform any site work, construction, repairs, tenant improvement work, finish-out work or other work whatsoever and that Developer shall be solely responsible for all site work, all impact, utility, connection and use fees, site investigations, utility connections, and improvements to the Premises. Prior to the expiration of the Due Diligence Period, Developer shall have inspected the Premises and be thoroughly familiar with its condition and if this Lease is not sooner terminated, as of the expiration of the Due Diligence Period, Developer shall be deemed to accept the Premises as being in good and satisfactory condition and suitable for Developer's intended purposes. Developer acknowledges that it is developing in a historic area and that there are historic buildings, structures and artifacts on or about the Premises that may affect its ability to develop, and except as provided in Section 3(g) of this Lease, Developer, from and after the expiration of the Due Diligence Period, assumes all risk relating to the presence of any historic buildings, structures or artifacts in or about the Premises. Neither HPARC nor PFC shall be under any obligation whatsoever to undertake any repairs or maintenance of any kind with respect to the Premises. In the event of any defect or deficiency of any nature in the Premises or any portion thereof, whether patent or latent, neither HPARC nor PFC shall have any responsibility or liability with respect thereto. THE PROVISIONS OF THIS SECTION 5 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF, AND, EXCEPT AS EXPRESSLY STATED ABOVE, DEVELOPER DOES HEREBY DISCLAIM, ANY AND ALL WARRANTIES BY HPARC AND PFC, EXPRESS OR IMPLIED, RELATED TO THE CONDITION OF THE PREMISES, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(b) Construction of Project.

(i) Construction Requirements. All Improvements (whether constructed on the Premises initially, as a permitted alteration or following a casualty) shall be constructed with due diligence and in accordance with the Approved Plans, and all construction work shall be performed in a good and workmanlike manner and in accordance with good industry practices for the type of work in question. All construction work shall be in compliance with all provisions of the Permitted Exceptions, applicable Laws, requirements of all insurers of the Project and all issued permits. The work shall be completed with reasonable dispatch, free of any monetary liens other than any permitted Leasehold Mortgage(s), and shall be initiated, prosecuted and substantially completed in accordance with the Project Timeline, with respect to the initial Improvements, or in accordance with reasonable mutually agreed upon timelines with respect to any work undertaken with respect to a permitted alteration or following a casualty. Developer shall take all reasonably necessary measures to minimize damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all Persons affected thereby.

(ii) Permits, Licenses. Developer will obtain all certificates of occupancy, permits and licenses as may be necessary to permit Developer to use the Premises for the Permitted Use, and no construction work shall commence prior to the receipt of all required licenses, permits and authorizations required by all Governmental Authorities for the prosecution of the construction. It is understood and agreed that, to the extent permitted by applicable Laws, such licenses, permits and authorizations may be procured in stages. Developer shall, promptly upon HPARC's written request, provide HPARC with copies of all permits or similar documents relating to the construction of the Project and/or the use and occupancy of the Premises.

(iii) Substantial Completion; Excusable Delay. Developer shall cause Substantial Completion to occur in accordance with the Project Timeline, subject to any extensions of the Project Timeline due to an Excusable Delay. The Project Timeline shall be adjusted as appropriate to reflect the delay in achieving the deadlines therein due to an Excusable Delay. With respect to each event

that Developer believes to be an Excusable Delay, Developer shall within ten (10) days after the occurrence of such event, give HPARC notice of the facts and circumstances of such event and Developer's good faith estimate of the resulting delay to the deadlines of the Project Timeline and reasonable documentation of such facts, circumstances and estimate. If HPARC agrees with Developer, it shall confirm in writing the existence of an Excusable Delay and the corresponding revision of the Project Timeline. If HPARC disagrees with Developer, HPARC shall give notice of the reasons for such disagreement and any deficiencies in the documentation provided by Developer. Following such notice, Developer will have a reasonable period of time to supplement such documentation. If, upon receipt of such supplemental documentation, HPARC continues to disagree with Developer, HPARC shall give written notice to Developer within thirty (30) days following receipt of such supplemental documentation and Developer and HPARC shall attempt in good faith for a period of thirty (30) days to resolve such dispute. Upon any Excusable Delay, Developer shall endeavor to continue to construct the Project as far as reasonably practicable, using all reasonable efforts to prevent, minimize and mitigate, as applicable, the effect of an Excusable Delay. The parties agree that the Project Timeline has been calculated in a manner to estimate the time periods needed for obtaining required permits and inspections under City Codes and that any delay due to the normal and customary exercise of the police powers of the City and the normal and customary periods for obtaining required permits and inspections under City Codes for the Project shall not be considered Excusable Delay.

(iv) As-Built Plans. Within one hundred twenty (120) days following Substantial Completion of the Project and any future buildings or structures on the Premises, Developer shall furnish HPARC with a full set of the as-built plans and specifications for the Project.

(v) Infrastructure and Related Costs. Developer shall be solely responsible for all infrastructure required for the Project, including alterations to existing infrastructure. Without limiting the generality of the foregoing, Developer shall be responsible for all costs incurred in the construction of the Project including utility connection fees, all costs and fees payable to Governmental Authorities for building permits, platting and zoning fees, street closure fees and all other related costs. Developer shall be solely responsible for the costs of constructing new utility service lines and infrastructure improvements for the Project and the costs to relocate all utility lines and other lines (including chilled water or steam lines) crossing the Premises and for all other site preparation costs, fees or expenses incurred in connection with the development and construction of all elements of the Project.

(vi) Conditions. Dust, noise and other effects of the construction work shall be reasonably controlled using commercially reasonable accepted methods so as to substantially comply with all Laws and not to unreasonably interfere with the continuous use or occupancy of nearby structures. DEVELOPER SHALL INDEMNIFY HPARC AND PFC FROM ALL DAMAGES, LAWSUITS AND CLAIMS ATTRIBUTABLE TO THE PERFORMANCE OF SUCH WORK, IN ACCORDANCE WITH THE INDEMNIFICATION PROVISIONS APPLICABLE TO ALL INDEMNIFIED PERSONS AS SET FORTH IN SECTION 13(b) OF THIS LEASE.

(vii) Contract Requirements. To the extent permitted by Developer's Leasehold Mortgagee, other lenders and contracting counterparties, Developer shall ensure that the contracts with any architect or other design professionals or any general contractor for the construction of the Project shall provide for the assignment thereof (which provision for assignment shall be subordinate to the rights of the Developer's lenders and Leasehold Mortgagee(s) providing funding for such construction, operations, refinance, or any other aspect of the Project) to HPARC as security to HPARC for Developer's performance under this Lease, and HPARC (and, upon its request, City) shall be furnished with a true, correct and complete copy of all such contracts. To the extent permitted by Developer's Leasehold Mortgagee, other lenders and contracting counterparties, Developer shall obtain the further agreement of the parties to each contract (x) to perform such contract for HPARC, at its



election, if this Lease is terminated for any reason other than a default by HPARC, and (y) following the termination of this Lease for any reason other than a default by HPARC, to permit HPARC to use and own any plans and specifications to the extent that Developer is so entitled under such contract, subject to HPARC's assumption of the obligations of Developer under such contract, including the obligation to pay any sums due thereunder.

(viii) Drawing and Other Documents. Upon completion of any improvements to the Premises, Developer shall furnish to HPARC three (3) complete, legible, full-size sets of all "record drawings" in accordance with accepted industry standards, to the extent appropriate considering the work performed, regarding all Improvements, and certified, true copies of all approvals, permits and certificates, including (if applicable), but not limited to, a certificate of occupancy or its equivalent, which shall be then required by any Governmental Authority.

(ix) Safety. Without limiting any other provision of this Lease, Developer will conduct the construction of the Improvements, and require all of its contractors, subcontractors and agent to do likewise, in accordance with the safety standards and procedures that would be followed by a reasonable and prudent developer and shall adopt a project safety plan reasonably designed to ensure safe working conditions and practices.

(c) Ownership of Improvements. If Developer has not previously elected to forgo the property tax exemption it anticipates receiving for the Project under Section 303.042 of the Texas Local Government Code (such tax exemption referred to herein sometimes as the "*Tax Exemption*"), then Developer agrees that all Improvements constructed by Developer on, under or over the Premises shall become the property of the PFC immediately upon the attachment of such Improvements to the Premises, and Developer agrees and acknowledges that it may not be entitled to deduct any depreciation on such investment. If Developer has elected to forgo the Tax Exemption, all Improvements shall be, automatically and without the need for the execution of any additional instrument, owned by Developer during the Term, and upon the expiration or earlier termination of this this Lease, the Improvements will be the sole property of the PFC. Developer shall execute, acknowledge (as necessary) and deliver to the PFC such conveyances, deeds, or other instruments, at Developer's sole cost and expense, as may be necessary for purposes of vesting the PFC with ownership of the Improvements constructed by Developer at the times set forth above.

6. ALTERATIONS. Developer shall have the right, at any time and from time-to-time during the Term, to make such interior alterations to the Premises as Developer shall deem necessary or desirable, including any replacements thereof, provided that the same (a) shall be performed in a good and workmanlike manner, (b) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Premises are subject, and (c) shall be completed in compliance with all Laws applicable thereto as well as the provisions of Section 5(b) above. Developer shall not perform any alterations to the exterior of the buildings on the Premises that are materially inconsistent with the Approved Plans without obtaining HPARC's prior written consent, such consent to be given or withheld in HPARC's sole discretion (provided, however, that HPARC shall not act arbitrarily and capriciously), and which alterations (if approved) shall also conform to the requirements of (a), (b) and (c) in the preceding sentence; and further provided, that HPARC shall be commercially reasonable in granting approvals to any alterations to the façades on the ground floor of the Improvements that comply with all applicable laws. Developer shall promptly pay all costs and expenses of each such improvement, discharge all liens arising therefrom and procure and pay for all permits and licenses required in connection therewith. All such alterations or improvements constructed by Developer shall be treated the same way as other improvements are treated under this Lease.

7. MECHANICS' AND MATERIALMEN'S LIENS. With respect to any contract for work performed by Developer or any permitted subtenant of all or any part of the Premises, or caused to be performed by Developer or any such subtenant in, on or to the Premises, Developer or such subtenant shall act as a principal and not as the agent of HPARC, and HPARC expressly disclaims any liability for the cost of labor performed by Developer or such subtenant or materials furnished to Developer or such subtenant. Developer shall pay or cause to be paid promptly when due the entire cost of any work affecting the Premises so that the Premises shall at all times be free of liens for labor and materials. Notwithstanding anything in this Lease to the contrary, Developer will not create or permit to remain beyond the period hereinafter provided, and will discharge in the manner hereinafter provided, any mechanics or materialmen's lien (being the liens of mechanics, laborers, artisans, or materialmen for work or materials done or furnished in connection with the Premises), encumbrance, or other charge upon the Premises or any part thereof, upon HPARC's or PFC's interest therein, or upon Developer's leasehold interest; provided, however, should any such lien be filed against the Premises or the leasehold estate created by this Lease, Developer shall, within thirty (30) days after receipt of notice of the filing of such lien, either discharge and cancel the lien of record or post a bond sufficient to remove such lien from the applicable real property records (in connection with which Developer may contest any claims of any persons who have provided, or alleged to have provided, work to the Premises). NOTICE IS HEREBY GIVEN THAT NEITHER HPARC NOR PFC IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO DEVELOPER, OR TO ANYONE HOLDING THE PREMISES OR ANY PART THEREOF THROUGH OR UNDER DEVELOPER, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF HPARC OR PFC IN AND TO THE PREMISES OR ANY PART THEREOF.

8. USE, MAINTENANCE AND SURRENDER OF PREMISES.

(a) Permitted Uses. The Premises may be used solely for the purposes of the following (collectively, the "*Permitted Uses*"): (i) 158 apartment units, (ii) 5 live/work units subject to the Retail Use Restrictions, (iii) approximately 3,200 square feet of restaurant or retail space on the ground floor that may be used as described on the attached Exhibit "G" (the "*Retail Use Restrictions*"), (iv) the Parking Garage, (v) general office, and (vi) all related and ancillary uses in connection with the preceding items in this sentence. Any other use of the Premises shall require HPARC's prior written consent, which may be given or withheld in HPARC's sole discretion. Notwithstanding any other provision contained herein, in no event may the Premises ever be used for a hotel.

(b) Non-Discrimination. Developer shall not discriminate against any person or persons because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status or disability in the development, improvement and conduct of operations on the Premises.

(c) Prohibited Use - Wireless Communication System. Developer is prohibited from installing or permitting the installation on the Premises of a "wireless communication system" (as that term is defined in the Unified Development Code of the City of San Antonio as of the Effective Date or may be hereafter amended or supplemented, and including any other terminology therein having the same or similar meaning). Nothing in the preceding sentence is intended to restrict Developer or its tenants/subtenants from installing Internet routers or other devices which allow access to the Internet via wireless means for such tenants/subtenants and their employees, guests and invitees.

(d) Hemisfair Mixed-Income Housing Requirement. At all times during the Term of this Lease, Developer shall ensure that at least the following number of residential apartment units on the Premises are leased or available to households in the following income ranges at monthly rents that are

not greater than twenty-five percent (25%) of the Household Income (as defined below) for such households (collectively, the "**Hemisfair Mixed-Income Housing Requirement**"):

(i) at least three (3) units to households making between 50% and 60% of the Area Median Income (as defined below) for the applicable household size;

(ii) at least three (3) units to households making between 60% and 70% of the Area Median Income (as defined below) for the applicable household size;

(iii) at least three (3) units to households making between 70% and 80% of the Area Median Income (as defined below) for the applicable household size;

(iv) at least three (3) units to households making between 80% and 90% of the Area Median Income (as defined below) for the applicable household size;

(v) at least two (2) units to households making between 90% and 100% of the Area Median Income (as defined below) for the applicable household size; and

(vi) at least two (2) units to households making between 100% and 110% of the Area Median Income (as defined below) for the applicable household size.

Developer shall notify HPARC within five (5) Business Days if it ever fails to satisfy the Hemisfair Mixed-Income Housing Requirement and shall also deliver to HPARC a certification on or before January 15<sup>th</sup> of each calendar year during the Term certifying that Developer is in compliance with the Hemisfair Mixed-Income Housing Requirement. For purposes hereof, "**Area Median Income**" shall mean the current Area Median Income for single persons and households of various sizes established by the United States Department of Housing and Urban Development (HUD) or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of San Antonio, Texas. For purposes hereof, "**Household Income**" shall be the "annual income" of the household, divided by 12, determined according to the regulations applicable Housing Choice Voucher Program established under Section 8 of the Housing Act of 1937, as such regulations exist as of the Effective Date hereof (any and subsequent change, replacement or termination of such regulations shall have no impact whatsoever on the standard described in the preceding portions of this sentence).

In addition, the Developer shall ensure that no more than sixty percent (60%) of the total residential apartment units on the Premises are Developer Subsidized Units (as defined below) at any one time during the Term of the Lease and shall endeavor to cause no more than fifty percent (50%) of the total residential apartment units on the Premises to be Developer Subsidized Units at any one time during the Term of the Lease. For purposes hereof, "**Developer Subsidized Units**" shall include any apartment unit rented by Developer to a tenant for less than fair market value for purposes of qualifying for any grants, loans, tax exemption, other payment, benefit or incentive targeted towards the provisions and/or maintenance of affordable housing or workforce housing.

Developer shall retain and preserve the records it is relying upon to confirm compliance with the Hemisfair Mixed-Income Housing Requirement for at least four (4) years after the end of the calendar year to which they relate. Such records shall be subject to inspection and audit by HPARC and its agents upon reasonable advance notice.

(e) Public Facility Workforce Housing Requirement. Except as provided herein below, Developer shall ensure at all times during the Term of this Lease that out of the total residential

apartment units on the Premises, at least fifty percent (50%) of such units are reserved for occupancy by individuals and families earning less than eighty percent (80%) of the Area Median Income (the “**50/80 Housing Requirement**”). Developer shall notify HPARC within five (5) Business Days if it ever fails to satisfy the 50/80 Housing Requirement and shall also deliver to HPARC and the PFC a certification on or before January 15<sup>th</sup> of each calendar year during the Term certifying that Developer is in compliance with the 50/80 Housing Requirement. Notwithstanding the foregoing, if Developer does not obtain, loses or elects to forgo the Tax Exemption, then Developer shall be relieved of the 50/80 Housing Requirement; provided, however, that Developer shall continue to be subject to the Hemisfair Mixed-Income Housing Requirement. It is expressly understood and agreed that an apartment unit may simultaneously count towards satisfaction of both the Hemisfair Mixed-Income Housing Requirement and the 50/80 Housing Requirement so long as such unit satisfies the criteria of both such requirements.

(f) Maintenance and Repair. Developer shall maintain all improvements on the Premises in a condition and manner consistent with a Class A apartment building in the San Antonio central business district area and in accordance with all applicable Laws. If the standards for “Class A apartment buildings” change after the Effective Date, Developer shall not have any requirement to alter the improvements or personal property on the Premises, add services or amenities, or otherwise change the improvements or personal property on the Premises from the Approved Plans.

(g) Nuisances and Disturbances. Developer shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would in any way make void or voidable any insurance then in force with respect thereto or make it impossible to obtain the insurance required to be furnished by Developer hereunder. Developer shall not take any action which would constitute a legal nuisance or violate the Permitted Exceptions or any Laws.

(h) Surrender. During the last two (2) years of the Term, HPARC shall have the right to perform an environmental audit of the Premises, including all improvements situated thereon, and if such environmental audit reveals environmental conditions that violate Developer’s obligation hereunder, HPARC shall have the right to cause Developer to remediate such adverse environmental condition and surrender the Premises in the condition required by this Lease. Subject to the foregoing, Developer will surrender and HPARC will accept the Premises and any improvements thereon in their then current “as-is” condition. Any property not removed by Developer may be deemed, at the option of HPARC, to have been abandoned by Developer and may be retained by such party without any claim by Developer.

(i) Hemisfair Conditions. Developer hereby acknowledges that the Premises are part of the Hemisfair District which contains public parkland where events featuring small and large gatherings of people are expected to be regular occurrences. Developer acknowledges that it is taking the Property subject to all legally permissible conditions or impacts that may arise or affect the Premises by virtue of its proximity to such public parkland, including without limitation the effects of amplified and unamplified music or other noise, heavy traffic and congestion (both pedestrian and vehicular), displays of light commonly associated with music and other artistic performance, and construction related to the development of such public parkland, adjacent commercial development and the installation and construction of new streets and other public amenities planned within the Hemisfair District.

9. UTILITIES. Developer shall pay all public utility charges and maintenance expenses for utility services to the Premises, including (a) heat, water, sewer, electricity, telephone, CATV and other utility services on the Premises during the Term of this Lease, and (b) any and all impact, utility reserve, connection and use fees associated with the use and construction of the Premises.

10. TAXES AND ASSESSMENTS.

(a) Real Estate Taxes. HPARC acknowledges that Developer intends to seek the Tax Exemption. For any year that Developer seeks to take advantage of the Tax Exemption, Developer shall ensure that it satisfied the 50/80 Housing Requirement and/or such other requirements as Developer has control over that may be required for purposes of obtaining and maintaining the Tax Exemption. HPARC hereby agrees to reasonably cooperate with Developer in seeking and maintaining such Tax Exemption; provided, however, that HPARC and PFC shall not be obligated to incur any cost or expense in connection with the pursuit or maintenance of such Tax Exemption and HPARC HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTIES WHATSOEVER REGARDING THE APPLICATION OR EXEMPTION OF REAL PROPERTY TAXES TO THE PREMISES, THE PROJECT OR ANY OTHER INTEREST GRANTED TO DEVELOPER PURSUANT TO THIS LEASE. Notwithstanding the anticipated Tax Exemption, in the event that any real estate taxes or assessments are assessed against the Premises, then Developer shall pay all such real estate taxes, assessments and governmental charges (if any), plus additional amounts, if any, in penalties, interest, attorney's fees, collection penalties and/or other amounts (collectively, "*Taxes*") assessed against HPARC, PFC or Developer on account of the Premises allocable to the Term or pro rata portions of the Term, as well as any other charges, Taxes and/or impositions now in existence or hereinafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefor or which are added to a tax or charge previously included within the definition of Taxes.

(b) INDEMNIFICATION. DEVELOPER AGREES TO PROTECT, INDEMNIFY AND HOLD HARMLESS HPARC AND THE PFC, AND THEIR AGENTS, SERVANTS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, OFFICERS, EMPLOYEES, FROM LIABILITY FOR ANY AND ALL SUCH TAXES, AND FROM ANY SALE OR OTHER JUDICIAL OR NON-JUDICIAL PROCEEDING SEEKING TO ENFORCE PAYMENT THEREOF.

(c) Notice and Payment. HPARC shall provide Developer with copies of any tax statements and assessments affecting the Premises that HPARC receives within thirty (30) days following HPARC's receipt thereof; provided, however, that Developer promptly shall use commercially reasonable efforts to cause the Premises to be separately rendered as a tax parcel by and direct, in writing and with copy to HPARC, both the Bexar County Appraisal District ("*BCAD*") and the Office of the Bexar County Tax Assessor-Collector ("*Tax Office*") to designate Developer as the party to be responsible for receiving and bills, appraisals or related notices from either BCAD or the Bexar County Appraisal Review Board, as well as all notices, demands, warnings, or other communications from the Tax Office concerning any "*Taxes*" (as defined above) pertaining to the Premises. Developer agrees to pay all such foregoing taxes, assessments and charges (including any penalties or interest associated therewith) for which Developer is responsible at least fifteen (15) days prior to the date of delinquency thereof, subject to subparagraph (d) below, and to deliver to HPARC evidence of such payments promptly upon payment thereof.

(d) Contest. Developer shall have the right to contest the amount or validity of real property taxes and assessments pertaining to the Premises or Improvements thereon by appropriate administrative and legal proceedings brought in its own name by property tax consultants and/or legal counsel selected and engaged by Developer. Any such proceedings shall be undertaken at the sole cost and expense of Developer and any refund resulting therefrom shall belong solely to Developer. DEVELOPER AGREES TO PROTECT, INDEMNIFY AND HOLD HARMLESS HPARC AND THE PFC AND THEIR AGENTS, SERVANTS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, OFFICERS, EMPLOYEES, FROM ANY COSTS, LIABILITY OR EXPENSE OF ANY KIND INCURRED AS A RESULT OF SUCH CONTEST.

(e) Rent Taxes.

(1) In addition to the timely payments and furnishing of all notices and proof of payment by Developer as required under the preceding paragraphs of this Section 10, Developer shall pay all other general and special taxes, assessments, liens, bond obligations, license fees or taxes, water and sewer rents and charges, utilities and communications taxes and charges, any similar impositions in lieu of other impositions now or previously within the definition of real property taxes or assessments, all other government charges, general and special, ordinary and extraordinary, foreseen and unforeseen, or any other charge constituting Taxes as defined in Section 10(a) above, which are imposed upon or assessed against (i) any Rent or other sum payable by Developer hereunder, (ii) this Lease and the leasehold estate created hereby, or (iii) the ownership, operation, occupancy, leasing, use or possession of the Premises (including, without limitation, any gross receipts tax, gross rental tax, sales tax, use tax or excise tax) and any and all assessments under any covenants, conditions and restrictions affecting the Premises (collectively "**Rent Taxes**") which may be now or hereafter levied or assessed against the Premises, applicable to the period from the Effective Date until the expiration or earlier termination of this Lease. Notwithstanding the foregoing, there shall be excluded from Rent Taxes all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal, state and local income taxes, and any sales tax imposed against HPARC.

(2) If at any time during the Term a tax or excise on rent or any other tax however described (other than an income tax), including anything constituting Taxes as defined in Section 10(a) above, is levied or assessed under any Laws by any Governmental Authority against HPARC on account of rent payable to HPARC hereunder or any tax based on or measured by expenditures made by Developer on behalf of HPARC, such tax or excise shall be considered "**Rent Taxes**" for purposes of this paragraph, and will be payable in full by Developer; provided, however, that any sales tax imposed against HPARC is excluded from such definition of Rent Taxes. Such taxes or excises will be payable within ten (10) days after Developer's receipt of the tax bill therefor from HPARC.

(f) Personal Property Taxes. Developer will pay or cause to be paid, prior to delinquency (and promptly after its receipt of HPARC's request therefor, provide HPARC with written evidence of such payment) all Taxes and assessments (real and personal) levied against any personal property placed by Developer or its subtenants on the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures).

11. INSURANCE.

(a) Developer's Insurance. Commencing on the Effective Date and continuing throughout the Term of this Lease, Developer shall maintain insurance in accordance with the following:

(1) Developer shall, at its sole cost and expense, obtain and maintain a (i) commercial general liability insurance insuring Developer, and with HPARC, the City, and PFC, if any, as an additional insured, against all claims, demands, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises and any and all Improvements situated thereon, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence; (ii) all risk property insurance covering the full replacement value of the Project and all other Improvements on the Premises, together with all personal property owned by Developer and located on the Premises; (iii) a business automobile policy or policies extending to all owned, non-owned, hired, and borrowed automobiles, the limits of such policy or policies to be in an amount not less than \$1,000,000, (iv) workers' compensation insurance with statutory limits,

and employer's liability with limits of not less than \$1,000,000 in respect of bodily injury by accident, \$1,000,000 in respect of bodily injury by disease, and (v) commercial umbrella/excess liability insurance with limits of not less than \$10,000,000 per occurrence and in the aggregate. Developer will implement reasonable increases in any such limits consistent with the insurance being required by institutional owners of properties similar to the Project in the San Antonio, Texas area. In connection with the construction of any improvements or any alterations at the Premises, Developer shall maintain (and cause its contractors to maintain) Builder's Risk insurance on an All Risk basis (including collapse) on a completed value (non-reporting) form, for full replacement value covering all work incorporated in the Improvements and all materials and equipment in or about the Premises. Developer will cause HPARC and PFC to be named as an additional insured on all contractor general liability insurance policies for both ongoing work and completed operations. In addition, all contractor's workers compensation policies shall name HPARC and PFC as an additional insured.

(2) All policies of insurance shall be issued by an insurance company or companies having an AM Best's rating of not less than A- and a financial rating of Class VII as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. Developer shall deliver to HPARC a standard ACORD certificate evidencing the required insurance on or before the Effective Date. Ten (10) days prior to the expiration of each of the policies required hereunder, Developer shall furnish HPARC with certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Lease. In the event Developer fails to maintain, or cause to be maintained, the insurance required by this Lease, HPARC may procure such insurance for the benefit only of HPARC, the City and PFC for such risks covering their respective interests, and Developer will pay all premiums thereon within thirty (30) days after demand by HPARC. In the event Developer fails to pay such premiums (or reimburse HPARC) upon demand the amount of all such premiums shall bear interest at the Default Rate.

(b) Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered, or is required by this Lease to be covered, by insurance policies. Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to property of the parties hereto.

(c) All dollar amounts associated with insurance required to be carried by Developer under this Section 11 shall be in Constant Dollars. "**Constant Dollars**" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. Within sixty (60) days of written notice from HPARC, an adjustment shall occur on the first day of January immediately following the tenth (10th) anniversary of the Effective Date, and thereafter at ten (10) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current CPI and the denominator of which is the Base CPI. The "**Base CPI**" shall be the CPI for the calendar year in which the Effective Date occurs; and the "**Current CPI**" shall be the CPI for the calendar year preceding the adjustment year.

(d) If at any time neither HPARC, the PFC, nor any other entity owned or controlled by the City of San Antonio has any ownership or leasehold interest in the Premises, then (i) Developer shall no longer be obligated to add the City as an additional insured, and (ii) Developer shall no longer be obligated to indemnify the City with respect to claims arising on or after the date upon which neither

HPARC, the PFC, nor any other entity controlled or owned by the City of San Antonio has any ownership or leasehold interest in the Premises.

## 12. HAZARDOUS SUBSTANCES.

(a) Hazardous Substance. For purposes of this Section 12, "*Hazardous Substance*" means any substance, matter, material, waste, or pollutant, the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated, prohibited, or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("*RCRA*") (42 U.S.C. §§ 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended ("*CERCLA*") (42 U.S.C. §§ 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended ("*CWA*") (33 U.S.C. §§ 1251 et seq.), (iv) the Toxic Substances and Control Act, as now or hereafter amended ("*TSCA*") (15 U.S.C. §§ 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended ("*CAA*") (42 U.S.C. §§ 7401 et seq.), (vi) the Safe Drinking Water Act, as now or hereafter amended ("*SDWA*") (42 U.S.C. §§ 300(f) - 300(j)), and (vii) the Oil Pollution Act of 1990, as now or hereafter amended ("*OPA*") (33 U.S.C. §§ 2701 et seq.), (viii) any present or future state or local statute, regulation, or ordinance analogous to any of the foregoing statutes, and (ix) any other present or future federal, state or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting or governing the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified and regulated as hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (viii) and (ix) above are collectively referred to herein as "*Hazardous Waste Laws*". The term "*Hazardous Substances*" shall also include any substance the presence of which on the Premises by virtue of its chemical composition requires reporting or remediation under any Hazardous Waste Law. Hazardous Substances shall not include normal cleaning fluids, office supplies, batteries, vehicles or construction equipment, pest control products or other materials used in connection with the development and use of the Premises for commercial purposes that are typically used and maintained in accordance with Hazardous Waste Laws.

(b) Hazardous Substances on Premises Prohibited. Except as provided in the last sentence of Section 12(a) above, Developer shall not conduct, permit, or authorize the use, distribution, manufacturing, emission, generation, transportation, storage, treatment, or disposal in, on or under the Premises, of any Hazardous Substance without prior written authorization by HPARC.

### (c) Compliance with Toxic Waste Laws.

(1) Developer shall, at its sole cost and expense, comply with all Hazardous Waste Laws applicable to the Premises.

(2) Developer shall promptly provide HPARC with copies of all written communications, permits, reports, sampling results, or agreements with and/or from any governmental authority or agency (federal, state, local, or foreign) relating to any violation or alleged violation of Hazardous Waste Laws in connection with the Premises.

(d) Clean Up and Mitigation. If any Hazardous Substances are released from or on the Premises in violation of Hazardous Waste Laws during the Term, or if Hazardous Substances are stored, transported, treated or disposed of at or from the Premises in violation of Hazardous Waste Laws during the Term, Developer shall promptly take any and all remedial, removal, or other action required by any governmental authority or by any order of a court or arbitration panel to clean up or remediate such



violative condition at the Premises, mitigate exposure to liability arising from such Hazardous Substance, as required by law, or cease taking or cause requisite corrective action(s) to be taken to preclude any or further (as the case may be) adverse environmental effects, regulatory enforcement actions or civil or criminal actions or proceedings resulting from such activity during the Term.

(e) INDEMNITY. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS HPARC, THE PFC, AND THE CITY FROM AND AGAINST ANY AND ALL LIABILITY, REASONABLE COSTS, REASONABLE EXPENSES, REASONABLE ATTORNEYS' FEES, REASONABLE REMEDIAL OR RESPONSE COSTS, REASONABLE INVESTIGATORY COSTS, AND SIMILAR REASONABLE EXPENSES ARISING OUT OF OR OTHERWISE ATTRIBUTABLE TO ANY RELEASE OR DISPOSAL OF HAZARDOUS SUBSTANCES ON THE PREMISES AND/OR ANY OFFSITE LOCATION ARISING AS A RESULT OF THE USE OF THE PREMISES HEREUNDER BY DEVELOPER OR ANY DEVELOPER-RELATED PARTY (AS HEREINAFTER DEFINED) OR OTHERWISE ARRANGED FOR BY OR ON BEHALF OF DEVELOPER OR ANY DEVELOPER-RELATED PARTY. SUCH INDEMNITY OBLIGATION SHALL NOT BE SUBJECT TO AND SHALL EXPRESSLY SURVIVE ANY TERMINATION OR EXPIRATION OF THIS LEASE.

EXCEPT AS DISCLOSED IN THAT ONE CERTAIN RABA KISTNER REPORT DATED ON OR ABOUT DECEMBER 12, 2014 (PROJECT NO. ASA 14-110-00), TO HPARC'S ACTUAL KNOWLEDGE, AS OF THE EFFECTIVE DATE, THERE ARE NO HAZARDOUS SUBSTANCES LOCATED ON THE PREMISES AND THE PREMISES HAS NOT BEEN USED FOR THE GENERATION, TREATMENT, STORAGE OR DISPOSAL OF HAZARDOUS SUBSTANCES, NO UNDERGROUND STORAGE TANKS HAVE EVER BEEN LOCATED ON THE PREMISES NOR ARE ANY UNDERGROUND STORAGE TANKS PRESENTLY LOCATED ON THE PREMISES. FOR PURPOSES HEREOF, "HPARC'S ACTUAL KNOWLEDGE" MEANS THE ACTUAL KNOWLEDGE OF ANDRES ANDUJAR WITHOUT ANY DUTY OF INQUIRY. SO LONG AS THIS LEASE IS IN PLACE, HPARC SHALL NOT VIOLATE, AND SHALL, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INDEMNIFY DEVELOPER AGAINST ANY VIOLATION BY HPARC OF, ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE OR REGULATION RELATING TO THE GENERATION, MANUFACTURE, PRODUCTION, USE, STORAGE, RELEASE OR THREATENED RELEASE, DISCHARGE, DISPOSAL, TRANSPORTATION OR PRESENCE OF ANY HAZARDOUS SUBSTANCES, IN, ON, UNDER OR ABOUT THE PREMISES, INCLUDING WITHOUT LIMITATION ANY SUCH VIOLATION WHICH MAY HAVE OCCURRED BY HPARC. HPARC'S VIOLATION OF THE FOREGOING PROHIBITION SHALL CONSTITUTE A MATERIAL BREACH AND DEFAULT UNDER THIS LEASE AND HPARC SHALL, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INDEMNIFY AND HOLD HARMLESS AND DEFEND DEVELOPER FROM AND AGAINST ANY CLAIMS, DAMAGES, PENALTIES, LIABILITIES OR COSTS CAUSED BY OR ARISING OUT OF SAID VIOLATION. IN CONFORMANCE WITH THE REQUIREMENTS OF APPLICABLE LAW, HPARC SHALL CLEAN UP, REMOVE, REMEDY AND REPAIR ANY SOIL OR GROUND WATER CONTAMINATION AND DAMAGE CAUSED BY THE RELEASE OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES BY HPARC IN, ON, UNDER, OR ABOUT THE PREMISES. THE OBLIGATIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS LEASE.

(f) Offsite Disposal. Developer shall maintain such written records as are required by any applicable rules of any governmental authority in connection with the disposal of Hazardous Substances from the Premises (including, without limitation, originals or copies of invoices of all third parties involved in any manner with such disposal), including without limitation (as applicable), the method of disposition thereof and, to the extent such disposition is by offsite disposal, all reports,

invoices, and other written materials pertaining to such offsite disposition. Developer shall make such records available for review by HPARC on request and shall furnish a complete set of records in question on request by HPARC within thirty (30) days after the end of each calendar year during the Term or on expiration or earlier termination of this Lease.

13. BOND LEASE AND INDEMNITY.

(a) BOND LEASE. THIS IS A BOND LEASE, ABSOLUTELY NET TO HPARC (PROVIDED, HOWEVER, THAT THE PARTIES AGREE THAT HPARC HAS NO RIGHTS UNDER THIS LEASE TO IMPOSE ANY EXPENSES EXCEPT FOR THOSE EXPRESSLY AUTHORIZED BY THE LEASE AND SUCH EXPENSES AS MAY BE OTHERWISE LEVIED AGAINST THE PREMISES UNDER APPLICABLE LAW (EXCLUDING ANY SUCH EXPENSES CREATED BY HPARC OR THE PFC)). THE TERM "**BOND LEASE**," AS USED HEREIN, MEANS THAT HPARC HAS NO OBLIGATIONS UNDER THIS LEASE EXCEPT TO ABIDE BY ALL OF ITS OBLIGATIONS UNDER THE MASTER LEASE, ABIDE BY ALL APPLICABLE LAWS REGARDING THIS LEASE, COLLECT RENT AS IT BECOMES DUE AND PAYABLE AND AS OTHERWISE EXPRESSLY SET FORTH HEREIN.

THE FOLLOWING SECTIONS ARE BEING SET OFF FROM THE REMAINDER OF THE LEASE IN ORDER TO MAKE THEM CONSPICUOUS:

(b) DEVELOPER'S INDEMNIFICATION OF INDEMNIFIED PERSONS.

(1) DEFINITIONS. THE FOLLOWING DEFINED TERMS WILL BE USED IN SECTIONS 13(b) AND 13(c) AND SOME OF THE TERMS INCORPORATE TERMS THAT ARE DEFINED ELSEWHERE IN THIS LEASE:

(A) INDEMNIFY: MEANS TO PROTECT, DEFEND, HOLD HARMLESS, PAY, AND BE SOLELY RESPONSIBLE FOR THE "**INDEMNIFIED LIABILITIES**" (AS DEFINED IN SECTION 13(b)(1)(C) BELOW);

(B) LIABILITIES: MEANS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES (INCLUDING COURT COSTS, ATTORNEYS FEES, AND COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION BY, THROUGH, OR OF ANY PERSON OR ENTITY;

(C) INDEMNIFIED LIABILITIES: MEANS ALL LIABILITIES ARISING FROM INDEMNIFIED MATTERS (AS THAT TERM IS DEFINED IN SECTION 13(b)(2) BELOW), OTHER THAN LIABILITIES ARISING SOLELY FROM EXCLUDED MATTERS (AS DEFINED IN SECTION 13(b)(3) BELOW);

(D) ARISE: MEANS DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART (I) TO OCCUR AS A RESULT OF, (II) TO CAUSE, OR (III) TO RESULT IN;

(E) DEVELOPER-RELATED PARTY: MEANS (I) DEVELOPER ITSELF, (II) ANY CONTRACTOR OF DEVELOPER, (III) THE EMPLOYEES OF DEVELOPER OR OF ANY CONTRACTOR OF DEVELOPER, (IV) ANY PERSON THAT DEVELOPER OR ANY CONTRACTOR OF DEVELOPER'S CONTROLS OR EXERCISES CONTROL OVER, (V) ANY INVITEE OF DEVELOPER, (VI) ANY LICENSEE OF DEVELOPER, AND (VII) SUBTENANTS OF DEVELOPER AND THEIR EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES;

(F) INDEMNIFIED PERSONS: MEANS (I) HPARC, (II) THE PFC, (III) THE CITY AND (IV) AS TO EACH OF THE PERSONS OR ENTITIES LISTED IN "(I)" THROUGH "(III)" ABOVE, THE FOLLOWING PERSONS OR ENTITIES: SUCH PERSON OR ENTITY'S PARTNERS, PARTNERS OF THEIR PARTNERS, AND ANY SUCCESSORS, ASSIGNS, HEIRS, PERSONAL REPRESENTATIVES, ELECTED OFFICIALS, DEVISEES, AGENTS, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES.

(2) INDEMNITY: DEVELOPER COVENANTS AND AGREES TO INDEMNIFY THE INDEMNIFIED PERSONS FOR ALL INDEMNIFIED LIABILITIES WHICH ARISE OUT OF, OR ARE ALLEGED TO HAVE ARISEN OUT OF, ANY OF THE FOLLOWING MATTERS (THE "INDEMNIFIED MATTERS"):

(A) ANY ACCIDENT, INJURY, DEATH OR DAMAGE TO ANY PERSON OR PROPERTY OCCURRING IN, ON OR ABOUT THE PREMISES OR ANY PORTION THEREOF DURING THE TERM OF THIS LEASE;

(B) ALL CONSTRUCTION AND ANY CHANGES, ALTERATIONS, REPAIRS AND ANYTHING DONE IN, ON OR ABOUT THE PREMISES OR ANY PART THEREOF IN CONNECTION WITH SUCH CHANGES, ALTERATIONS AND REPAIRS BY DEVELOPER OR ANY DEVELOPER-RELATED PARTY;

(C) THE USE, OCCUPATION, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PREMISES OR ANY PART THEREOF DURING THE TERM OF THIS LEASE;

(D) ANY ACT ON THE PART OF DEVELOPER OR ANY DEVELOPER-RELATED PARTY;

(E) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PREMISES OR ANY PART THEREOF BY DEVELOPER OR ANY DEVELOPER-RELATED PARTY;

(F) ANY VIOLATION BY DEVELOPER (OR BY ANY DEVELOPER-RELATED PARTY THEN UPON OR USING THE PREMISES) OF ANY LAWS WITH RESPECT TO THE PREMISES DURING THE TERM OF THIS LEASE; OR

(G) UPON THE EXPIRATION OF THE DUE DILIGENCE PERIOD, BUT SUBJECT TO THE SECOND PARAGRAPH OF SECTION 12(E) OF THIS LEASE, THE CONDITION OF THE PREMISES, OR OF ANY BUILDINGS OR OTHER STRUCTURES NOW OR HEREAFTER SITUATED THEREON, OR THE FIXTURES OR PERSONAL PROPERTY THEREON OR THEREIN.

(3) EXCLUDED MATTERS: THE INDEMNIFIED LIABILITIES DO NOT INCLUDE ANY LIABILITIES TO THE EXTENT RESULTING FROM (A) GROSS NEGLIGENCE OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY, AND NOT AS AN INVITEE OF DEVELOPER, (B) THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY AND NOT AS AN INVITEE OF DEVELOPER, (C) ANY LAWSUITS CHALLENGING THE VALIDITY OR ENFORCEABILITY OF THIS LEASE, (D) ANY ENVIRONMENTAL LIABILITIES RELATING TO CONTAMINATION OR CONDITIONS EXISTING ON THE PREMISES PRIOR TO

THE EXPIRATION OF THE DUE DILIGENCE PERIOD EXCEPT TO THE EXTENT CAUSED BY DEVELOPER, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER DEVELOPER CONTROL, (E) ANY LIABILITY ARISING OUT THE CONDITION OF THE ADJACENT PARKLAND OR OTHER CITY-OWNED PROPERTY UNLESS CAUSED BY DEVELOPER, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER DEVELOPER CONTROL, OR BY SOME CONDITION ON OR OF THE PREMISES, OR (F) ANY CLAIM AGAINST THE CITY ARISING OUT THE EXERCISE BY THE CITY OF ANY CITY GOVERNMENTAL FUNCTION.

(4) NOTICE: HPARC WILL ADVISE DEVELOPER IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THE INDEMNIFICATION SET FORTH IN THESE PARAGRAPHS 13(b) AND (c) MAY APPLY WITHIN TEN (10) DAYS AFTER IT BECOMES AWARE OF SUCH ACTION, PROCEEDING OR INVESTIGATION.

(5) DEFENSE: DEVELOPER, AT DEVELOPER'S EXPENSE, MUST ASSUME ON BEHALF OF THE INDEMNIFIED PERSONS AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ANY INDEMNIFIED LIABILITIES. HPARC FURTHER AGREES TO COOPERATE AT NO COST TO HPARC IN DEVELOPER'S DEFENSE OF ANY ACTION OR PROCEEDING BROUGHT BY A PERSON OR ENTITY IN CONNECTION WITH ANY INDEMNIFIED LIABILITY. EACH INDEMNIFIED PERSON HAS THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT DEVELOPER'S EXPENSE. IN THE EVENT OF FAILURE BY DEVELOPER TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION, EACH INDEMNIFIED PERSON, AT ITS OPTION, AND WITHOUT RELIEVING DEVELOPER OF ITS OBLIGATIONS UNDER THIS SECTION 13(b), MAY SO PERFORM, BUT DEVELOPER MUST REIMBURSE SUCH INDEMNIFIED PERSON FOR ALL COSTS AND EXPENSES SO INCURRED, TOGETHER WITH INTEREST AT THE DEFAULT RATE. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 13(b) ARE NOT AND CANNOT BE DEEMED TO BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

(6) TIME PERIOD COVERED: DEVELOPER'S INDEMNITY COVERS ALL INDEMNIFIED LIABILITIES (A) DURING THE DUE DILIGENCE PERIOD WHEN CAUSED DEVELOPER, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER DEVELOPER CONTROL, AND (B) DURING THE REMAINDER OF THE TERM OF THIS LEASE.

(7) DEVELOPER'S RELEASE OF INDEMNIFIED PERSONS. NO INDEMNIFIED PERSON WILL BE LIABLE IN ANY MANNER TO DEVELOPER OR ANY OTHER PARTY FOR, AND DEVELOPER HEREBY WAIVES AND RELEASES THE INDEMNIFIED PARTY FROM ANY CLAIM ARISING FROM, ANY INJURY TO OR DEATH OF PERSON OR FOR ANY LOSS OF OR DAMAGE TO THE PROPERTY OF DEVELOPER, REGARDLESS OF WHETHER SUCH PROPERTY IS ENTRUSTED TO EMPLOYEES OF AN INDEMNIFIED PERSON OR SUCH LOSS OR DAMAGE IS OCCASIONED BY CASUALTY, THEFT, OR ANY OTHER CAUSE OF WHATSOEVER NATURE, EXCEPT TO THE EXTENT DUE TO THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF AN INDEMNIFIED PERSON. IN NO EVENT WILL ANY INDEMNIFIED PERSON BE LIABLE IN ANY MANNER TO DEVELOPER OR ANY OTHER PARTY AS A RESULT OF THE ACTS OR OMISSIONS OF DEVELOPER OR ANY DEVELOPER-RELATED PARTY.

(8) THIS SECTION 13 IS SUBJECT TO THE WAIVER OF SUBROGATION PROVISIONS OF SECTION 11(b).

THE PREVIOUS SECTIONS WERE SET OFF FROM THE REMAINDER OF THE LEASE IN ORDER TO MAKE THEM CONSPICUOUS.

14. COMPLIANCE WITH LAWS; COOPERATION. Developer shall comply with all Laws applicable to the Premises or to the use or occupancy thereof. Developer, at its expense, shall obtain all licenses or permits which may be required for the use and occupancy of the Premises within the terms, provisions and conditions of this Lease, or for alterations, improvements, or additions which Developer may desire to make, and HPARC, where necessary, shall join with and cooperate with Developer in applying for all such permits or licenses reasonably necessary to achieve the purposes of this Lease and the uses of the Premises as contemplated by this Lease, at no cost, expense or liability to HPARC. Without limiting the generality of the foregoing, HPARC agrees (a) if requested by Developer, to support any governmental application of Developer permitted by this Lease, by filing a letter with the appropriate governmental authority in a form reasonably satisfactory to Developer, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level. HPARC shall cooperate with Developer in such matters, so long as HPARC has sufficient notice regarding the request for such cooperation, has staff available to facilitate such cooperation and is reimbursed for its out-of-pocket expenses Developer may elect to cause the Premises to be subdivided so that the area to be leased forms a separate legal parcel. Developer shall bear the costs of preparing and filing the subdivision plan and obtaining any other required approvals and permits for such subdivision. HPARC shall cooperate with Developer in obtaining such subdivision approval including executing any reasonable and necessary documentation required for such process; provided, however, that it no event shall HPARC or the PFC be required to make any dedications of grant any easements in connection with such replat. Upon completion of the subdivision, the newly subdivided parcel on which the Improvements are located shall become the leased parcel and the "Premises" under this Lease; in such event, Developer and HPARC shall execute an amendment to this Lease with a revised Exhibit A and shall execute and record an amended memorandum in recordable form under State law describing the new Premises.

15. ASSIGNMENT-SUBLEASING BY DEVELOPER; LEASEHOLD MORTGAGES.

(a) Developer may assign this Lease at any time to any entity that is an Affiliate of Developer without the need for any consent from HPARC. Except as provided in the preceding sentence of this paragraph and in Section 15(f) below, Developer may not assign this Lease prior to Substantial Completion, without the prior written consent of HPARC, which consent may be given or withheld in HPARC's sole discretion (but HPARC shall not be arbitrary or capricious in determining whether to provide any such consent).

(b) Following Substantial Completion, Developer may assign this Lease with the prior written consent of HPARC and such consent shall not to be unreasonably withheld, conditioned or delayed; provided, however, that HPARC shall be required to give its consent to any assignment where the following conditions are satisfied:

(i) either (A) the assignee and its Affiliates own or operate at least 1,000 multifamily apartment units, or (B) the assignee agrees to hire a professional property management company that is then presently managing at least 1,000 multifamily apartment units;

(ii) either (a) the assignee is a publicly-traded company that has not ever been convicted of a felony under the laws of the State of Texas or the United States of America, or (b)

neither any person owning twenty percent (20%) or more of the beneficial ownership of the assignee nor any executive officer of the assignee has ever been convicted of a felony under the laws of the State of Texas or the United States of America;

(iii) neither the assignee nor its Affiliates have ever been a defendant in a lawsuit with HPARC, the PFC, the City, or any agency, division or subsidiary of the City involving fraud, misrepresentation or breach of a material contract; and

(iv) the assignee or its Affiliates have a tangible net worth equal to or greater than ten percent (10%) of the total consideration to be paid to assignor in connection with such assignment.

For purposes of demonstrating satisfaction of the conditions described in (i)-(iii) above, the proposed assignee shall submit to HPARC a signed copy of the certification attached to this Lease as Exhibit J (the "**Certification**") along with a schedule of the multifamily apartment units being relied upon with respect to (i) above. For purposes of the condition described in (iv) above, the proposed assignee shall submit to HPARC an executed letter addressed to HPARC from a duly licensed certified public accountant or federally insured financial institution confirming the tangible net worth requirement (a "**Net Worth Letter**"). From the date of HPARC's *actual* receipt (the date actually received by HPARC notwithstanding the deemed received language contained in Section 21) of a request to approve an assignment along with the original Certification, the accompanying information thereto, and the Net Worth Letter, HPARC shall have ten (10) business days to either approve such assignment or provide written notice to Developer citing specific discrepancies in the information provided or specific information calling into question the validity of one or more of the conditions described in (i)-(iii) above. Any consent required from HPARC under this Section 15(b) shall be deemed given if HPARC does not respond in writing within ten (10) business days following receipt of a request for such approval from Developer.

(c) Notwithstanding the foregoing, in the event that neither HPARC, the PFC, nor any other entity owned or controlled by the City of San Antonio, Texas has any ownership or leasehold interest in the Land or the Premises, then Developer shall have the right to freely assign this Lease without the need for any consent from HPARC. In addition, at any time after the Effective Date, HPARC hereby consents and grants to Developer the right, on an exclusive or non-exclusive basis, to encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of Developer's right, title or interest under this Lease as security for the repayment of any indebtedness and/or the performance of any Leasehold Mortgage. Upon a permitted assignment of Developer's entire interest under this Lease, HPARC shall recognize such assignee as Developer's successor, the assignee shall have all of the assigned rights, benefits and obligations of Developer under and pursuant to this Lease, and Developer shall be relieved of all of its obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. Developer may also enter into subleases for the sublet of the apartment units, live/work spaces and retail spaces without the consent of HPARC, and grant a leasehold mortgage or other security interest in Developer's leasehold interest in this Lease at any time without the consent of HPARC. Notwithstanding the foregoing or anything contained herein to the contrary, any such assignment, sublease or leasehold mortgage shall be expressly subject to the terms of this Lease and no assignment, sublease or leasehold mortgage shall release Guarantor from any of its liability under the Guaranty. In the event of any Assignment, Developer shall provide HPARC with a copy of such assignment within fifteen (15) days following execution of such Assignment.

(d) Without HPARC's consent, Developer may at all times sublet or license all or any portion of the Premises, or grant a license, concession or other right of occupancy of all or portions of the Premises; provided, however, that Developer shall not permit any such subtenants, licensees and other occupants of the Premises to either use the Premises for any use other than the Permitted Uses or to violate the Retail Use Restrictions and such subleases and licenses shall be expressly subject to the terms, conditions and provisions of this Lease.

(e) Notwithstanding any provision of this Lease to the contrary, any sale, assignment or transfer of Developer's interest in this Lease in any proceeding for the foreclosure of any Leasehold Mortgage (as defined below), or the assignment or transfer of Developer's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of, or exercise of power of private sale under, any Leasehold Mortgage (collectively, "**Foreclosure**") will be a permitted transfer of Developer's interest in this Lease. Notwithstanding any provision of this Lease to the contrary, in the event that any Leasehold Mortgagee or its nominee acquires Developer's interest in this Lease or in a new lease through Foreclosure, such Leasehold Mortgagee or its nominee, as applicable, will have the right to sell, transfer, convey or assign its interest in the Lease without HPARC's consent, but the transferee under any such transfer, conveyance or assignment shall thereafter be bound by all of the terms, conditions and provisions of this Lease, including with respect to any future assignment.

(f) Leasehold Mortgaging.

(i) Subject to Section 40 of this Lease, neither HPARC's right, title and interest in this Lease, the Master Lease or the Premises, nor the PFC's right, title and interest in the Master Lease or the Premises, will be subordinated to the lien, priority and security title of any encumbrance of this Lease or the interest of Developer as security for any indebtedness Developer may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument (a "**Leasehold Mortgage**", and the owner or owners or holder or holders of all or any of which is a "**Leasehold Mortgagee**").

(ii) Developer has the right, subject to the requirements set forth in this Section 15(f), without the consent of HPARC, to convey a security interest in all or a part of Developer's interest under this Lease and the Improvements, if any, as security for any indebtedness that Developer may incur. No enforcement by the Leasehold Mortgagee of any rights or remedies contained in the Leasehold Mortgage and provided by law for the benefit of any Leasehold Mortgagee that affect the Developer's leasehold interest under this Lease shall be effective as between HPARC and the Leasehold Mortgagee unless and until a written notice of such Leasehold Mortgage is delivered to HPARC, notwithstanding any other form of notice to HPARC, actual or constructive.

(iii) If HPARC receives from Developer or from a Leasehold Mortgagee written notice in the manner provided in this Lease, specifying the name and address of such Leasehold Mortgagee and requesting that HPARC give to such Leasehold Mortgagee a copy of each notice of default by Developer at the same time as and whenever any such notice of default is given by HPARC to Developer, then (a) HPARC will comply with such request by giving such notice, addressed to such Leasehold Mortgagee at the address last furnished to HPARC, with respect to each default by Developer occurring on or after the date of HPARC's receipt of such notice, and (b) (I) if such default is a default in the payment of any sum due under this Lease, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Developer under this Lease and for an additional thirty (30) days after such period, provided such cure period for such Leasehold Mortgagee shall never be less than thirty (30) days after receipt by such Leasehold Mortgagee of such notice; (II) if such default is a default in observing or performing any other covenant or condition to be observed or performed by Developer under this Lease, and such default can be cured by such Leasehold Mortgagee without

obtaining possession of the Premises, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Developer under this Lease or sixty (60) days after receipt of such notice (provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such sixty (60) days, such Leasehold Mortgagee will have such additional period as may be necessary to cure such default with diligence and continuity); or (III) if such default is a default that can only be cured by such Leasehold Mortgagee by obtaining possession of the Premises, the time period afforded to such Leasehold Mortgagee to cure such default will include the time necessary to obtain such possession with diligence and continuity, through a receiver or otherwise, and an additional sixty (60) days after obtaining such possession (provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of sixty (60) days, such Leasehold Mortgagee will have such additional period as may be necessary to cure such default with diligence and continuity). So long as a Leasehold Mortgagee is prevented by any process, stay or injunction issued by any court of competent jurisdiction from commencing or prosecuting foreclosure or other appropriate proceedings of that nature, the foregoing cure period afforded to a Leasehold Mortgagee under clause III above will be extended for an additional period of time necessary to enable such Leasehold Mortgagee to obtain possession or control of the Premises, provided that the Leasehold Mortgagee uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction. HPARC will accept performance by any Leasehold Mortgagee of any covenant, condition or agreement of Developer's with the same force and effect as though performed by Developer, if, at or prior to the time of such performance, HPARC is (or has been) furnished with evidence reasonably satisfactory to HPARC of the interest in this Lease claimed by the Leasehold Mortgagee tendering such performance. Timeframes for Leasehold Mortgagee to respond to any notice or demand under this Lease will run from the date such written notice or demand is actually received by Leasehold Mortgagee. A Leasehold Mortgagee is not required to cure any previously occurred non-monetary defaults of Developer which are not reasonably susceptible of being cured by Leasehold Mortgagee. Examples of such previously occurred non-monetary defaults would include, without limitation, Developer's bankruptcy, Developer's failure to provide reports and returns with respect to Taxes under this Lease or a prior non-recurring violation of the permitted use clause under this Lease.

(iv) If any Leasehold Mortgagee or its nominee acquires title to all or a part of Developer's interest in this Lease or the Improvements, by foreclosure, assignment in lieu of foreclosure or otherwise, or enters into a new lease with HPARC as provided below, such Leasehold Mortgagee or its nominee may assign its interest in this Lease (or such new lease) subject to and in accordance with the provisions and conditions of this Section 15(f) and such Leasehold Mortgagee or its nominee, as applicable, will be released from any further liability for the performance or observance of the Developer's covenants and conditions under this Lease (or such new lease) to be performed and observed after the date of such assignment, but not with respect to the period of time in which Leasehold Mortgagee or its nominee held title to such interest, for which Leasehold Mortgagee or its nominee will remain liable.

(v) In the event of a Foreclosure, the purchaser at any sale of Developer's interest in this Lease and the Improvements, if any, in any Foreclosure will be a permitted assignee or transferee of this Lease and Improvements. No Leasehold Mortgagee or other acquirer of Developer's interest in this Lease or the Improvements pursuant to Foreclosure, or who becomes the Developer under a new lease, and each subsequent acquirer of Developer's interest in this Lease or of the Developer's interest in the new lease (collectively, the "*Successor*") will become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Developer unless and until such Successor becomes the owner of all or a portion of Developer's interest upon a Foreclosure or enters into a new lease with HPARC pursuant to this Section 15(f). Any Successor will be liable for (A) the performance and observance of such covenants and conditions only so long as such Successor owns such interest of Developer under this Lease or the interest of the Developer under such new lease, and (B) any



defaults by such Successor occurring during the period it owned such interest of Developer under this Lease or the interest of the Developer under such new lease (collectively, the "*Successor Liabilities*"). Each Successor, on acquiring Developer's interest in this Lease or Developer's interest in the new lease, may only sell, transfer, mortgage, encumber, convey or assign Developer's interest in this Lease or Developer's interest in the new lease in accordance with the terms of this Lease, and will be relieved of all obligations under this Lease or the new lease to be performed from and after the date of such assignment, but not relieved of the Successor Liabilities.

(vi) Without in any manner or for any purpose waiving or modifying the provisions of Section 24: (a) in the event, this Lease is terminated for any reason prior to the end of the Term, including, without limitation, by reason of any bankruptcy proceedings in respect of Developer, any Leasehold Mortgagee or a person designated by such Leasehold Mortgagee will have the right, exercisable by written notice to HPARC within thirty (30) days after the effective date of such termination, rejection or disaffirmance, to enter into a new lease of the Premises with HPARC; (b) the term of said new lease will begin on the date of the termination, rejection or disaffirmance of this Lease and will continue for the remainder of the Term; (c) such new lease will otherwise contain the same terms, conditions and provisions as those set forth in this Lease, except for requirements that are no longer applicable or have already been performed, provided that such Leasehold Mortgagee has cured all defaults on the part of Developer that are susceptible of being cured by the payment of money within the time periods provided in Section 15(f)(iii), and that such new lease will require the Developer promptly to commence, and expeditiously to continue, to cure all other defaults on the part of Developer under this Lease to the extent susceptible of being cured; and (d) this provision will survive the termination of this Lease and will continue in full force and effect to the same extent as if this provision were a separate and independent contract among HPARC, Developer and each Leasehold Mortgagee.

(vii) HPARC agrees that, so long as any Leasehold Mortgagee holds a Leasehold Mortgage, no voluntary termination of the Lease by Developer and no cancellation, surrender or modification of this Lease will be effective without the prior written consent of each then outstanding Leasehold Mortgagee. Notwithstanding the foregoing to the contrary, Leasehold Mortgagee's consent will not be required with respect to minor or ministerial modifications of this Lease that do not adversely affect the rights of Developer or the Leasehold Mortgagee. Developer will provide any Leasehold Mortgagee with a copy of any modification executed pursuant to either of the two (2) preceding sentences promptly following execution by HPARC and Developer.

(viii) Within fifteen (15) days after receipt of written request from any Leasehold Mortgagee, HPARC will execute, acknowledge and deliver to such Leasehold Mortgagee a written certificate certifying (i) that attached to the certificate are true and correct copies of the Lease, (ii) to the actual knowledge of HPARC, the Lease is in full force and effect (or, if not, so specifying), (iii) whether or not, to the actual knowledge of HPARC, a default or Event of Default by Developer has occurred under this Lease which has not been cured (and if so, specifying the same) or whether or not to HPARC's actual knowledge conditions exist which but for the passage of time or the giving of notice, or both, would constitute an Event of Default by Developer; (iv) the date through which Base Rent has been paid, and (v) any other matters or state of facts regarding this Lease which are reasonably requested by such Leasehold Mortgagee.

(ix) For so long as any Leasehold Mortgagee or its nominee is the owner of the leasehold estate created by this Lease, HPARC will look solely to the interest of such Leasehold Mortgagee or its nominee in the Premises, including, without limitation, any rents, revenue, profits, property insurance or rent loss insurance proceeds or other proceeds derived from the Premises after such Leasehold Mortgagee has been notified in writing by HPARC that a default or an Event of Default has occurred under this Lease, in the event of the breach or default by such Leasehold Mortgagee or its

nominee under the terms of this Lease, and HPARC agrees that any judgment or decree to enforce the obligations of such Leasehold Mortgagee or its nominee will be enforceable only to the extent of the interest of such Leasehold Mortgagee or its nominee in the Premises, and any such judgment will not be subject to execution on nor be a lien on any assets of the Leasehold Mortgagee or nominee other than the Premises. Notwithstanding the foregoing, this limitation of personal liability shall not in any manner impair HPARC's exercise of any or all of its rights against any predecessor to the Leasehold Mortgagee as Developer or with respect to the Premises under Section 24 below or against Guarantor under the Guaranty. The term "**Premises**", as used in this Section, will be deemed to include, without limitation, any rents, revenue, profits, property insurance or rent loss insurance proceeds or other proceeds derived from the Premises during any period the leasehold estate created by this Lease is owned by such Leasehold Mortgagee or its nominee and such Leasehold Mortgagee or its nominee has been notified in writing by HPARC that a default or Event of Default has occurred under this Lease.

(x) Neither the bankruptcy nor the insolvency of Developer or any assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges and non-monetary obligations of Developer or assignee under this Lease are paid and performed by the Leasehold Mortgagee in accordance with the terms of this Lease.

(xi) No payment made to HPARC by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to HPARC pursuant to HPARC's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(xii) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including Leasehold Mortgagee) having an interest in this Lease or in the estate of HPARC or assignee shall join in a written instrument effecting such merger and shall duly record the same.

(xiii) Each Leasehold Mortgagee is and shall be an express third party beneficiary of the provisions of this section, and, following such mortgagee's foreclosure of its interest in the Premises, such mortgagee shall be entitled to compel the performance of the obligations of HPARC under this Lease.

#### 16. ASSIGNMENT BY HPARC.

(a) HPARC shall have the right to assign its rights under this Lease, collaterally or otherwise, without Developer's consent. Except as expressly provided in this Lease, no assignment by HPARC shall alter the rights of Developer hereunder, and all of the recitals, terms, provisions, covenants, and conditions of this Lease shall remain in full force and effect upon the assignment. Upon any assignment by HPARC, Developer shall be entitled to continue making rental payments to the assignor unless and until the assignor actually delivers to Developer a written notice directing rental payments to thereafter be made to the assignee.

(b) HPARC will not grant any easements or impose any restrictive covenants against the Premises other than the Permitted Exceptions and Retail Use Restrictions, without the express written approval of Developer, nor shall HPARC seek to change the zoning or enter into any agreements that modify or alter Developer's rights and obligations under this Lease without Developer's prior written consent.

(c) If Developer loses the Tax Exemption as a result of an assignment or sale made by either HPARC or the PFC with respect to each's respective interest in the Land or Premises, then either (i) to the extent allowed by applicable law, HPARC shall make payment to Developer within ninety (90) days of an amount equal to the Net Economic Loss (as defined below) suffered by Developer, or (ii) Developer shall be permitted to offset the Net Economic Loss against up to fifty percent (50%) of the Base Rent due under this Lease until such time as Developer has recovered the Net Economic Loss plus interest accruing on such amount from the date upon which Developer loses such Tax Exemption at the Default Rate. For purposes hereof, "*Net Economic Loss*" shall be defined as the positive difference (if any) between (i) the present value of Developer's leasehold interest over the balance of the remaining Term of the Lease (including Extension Periods) assuming the availability of the Tax Exemption and compliance with the 50/80 Housing Requirement, *less* (ii) the present value of Developer's leasehold interest over the balance of the remaining Term of the Lease (including Extension Periods) assuming the loss of the Tax Exemption and no obligation to comply with the 50/80 Housing Requirement. HPARC and Developer shall attempt in good faith to agree upon the Net Economic Loss, but if HPARC and Developer cannot agree on the Net Economic Loss, then HPARC and Developer agree that the determination of the Net Economic Loss will be made by the Board of Appraisers appointed in accordance with the procedures described below in Section 20(c)(iii) with the compensation to such appraisers to be paid in accordance with the same formula described in Section 20(c)(iii). Upon appointment, the Board of Appraisers shall determine the Net Economic Loss, and each of HPARC and Developer shall be permitted to present to the appraisers the relevant factors and components in determining the Net Economic Loss.

17. HOLDOVER. Any holdover by Developer after any termination of this Lease or the expiration of this Lease shall create no more than a tenancy at sufferance at one hundred twenty-five percent (125%) of the Base Rent then in effect, and on all other applicable conditions herein provided, plus any and all Additional Rent and other charges which would have been applicable had the Term of this Lease continued through the period of such holding over by Developer; HPARC and Developer hereby agree in advance that such rent is a fair rental rate for such tenancy. No holding over by Developer after the expiration of the Term of this Lease shall be construed to extend the Term of this Lease; and in the event of any holding over, Developer shall indemnify HPARC against all claims for damages by any other tenant or prospective tenant to whom HPARC may have leased all or any part of the Premises effective before or after the expiration of the Term of this Lease, resulting from delay by HPARC in delivering possession of all or any part of the Premises. Notwithstanding any discussions or negotiations of any nature then pending between HPARC and Developer, any holding over, with or without the consent of HPARC, if any, shall thereafter constitute a tenancy from month to month, under the terms, provisions and conditions of this Lease to the extent applicable to a tenancy from month to month unless and until HPARC and Developer, in each of their sole and absolute discretion, and with no obligation to do so, enter into a specific written agreement to the contrary. Notwithstanding anything herein to the contrary, pursuant to Section 91.001(c) of the Texas Property Code, HPARC and Developer specifically agree that no notice to terminate Developer's tenancy hereunder will be required from and after the expiration of the Term of this Lease under Section 91.001 or Section 24.005 of the Texas Property Code before HPARC files a forcible detainer suit on grounds that the Developer is holding over beyond the end of the rental term or renewal period (if any) hereof.

18. ESTOPPEL CERTIFICATE. HPARC and Developer will, at any time and from time to time, upon not less than thirty (30) days' prior written request by the other party or by PFC, execute, acknowledge and deliver to the requesting party a certificate, certifying that (a) this Lease is unmodified and in full effect (or setting forth any modifications and that this Lease is in full effect as modified); (b) the Base Rent and Additional Rent payable and the dates to which the Base Rent has been paid and whether Additional Rent and other sums payable hereunder have been paid; (c) any default of which HPARC or Developer, as applicable, may have knowledge; (d) the commencement and expiration dates

of this Lease; and (e) such other matters as may reasonably be requested by HPARC, Developer or PFC. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Premises.

19. DESTRUCTION.

(a) Developer's Obligations. In the event the Premises shall be wholly or partially damaged or destroyed by fire or other casualty, Rent shall not be abated and Developer shall, at its own expense, cause the damaged improvements to be restored to their prior condition. Notwithstanding any other provision of this Lease to the contrary, in the event of a substantial casualty within the last five (5) years of the Lease, Developer may elect, by written notice to HPARC, to terminate this Lease ("Casualty Termination Election") in which event HPARC may obligate Developer to raze the improvements, place the Premises in a clean condition and in compliance with the Permitted Exceptions and all applicable laws, ordinances and regulations, and deliver to HPARC all insurance proceeds in excess of those required to satisfy the claim of any leasehold mortgagee and in excess of those required to raze the improvements, place the Premises in a clean condition and in compliance with the Permitted Exceptions and all applicable laws, ordinances and regulations. Developer may make a Casualty Termination Election at any time within ninety (90) days after the casualty unless there are factors that reasonably prevent Developer from making an informed decision regarding such election within ninety (90) days, whereupon the period for such election shall be extended as reasonably required and for so long as Developer continues to diligently pursue resolution of the factors preventing Developer from making such informed decision up to a maximum of one hundred eighty (180) total days for making such election as measured from the date of the casualty. If Developer makes a Casualty Termination Election, then the termination date will be thirty (30) days after the notice by Developer to HPARC and satisfaction of Developer's obligations with respect to the condition of the Premises.

(b) Time for Repairs. Except as to damage or destruction of the Premises covered by Section 19(a), above, Developer shall (i) notify HPARC within ninety (90) days after such damage or destruction as to what schedule Developer intends to commence to repair any such damage and to restore the Premises, and (ii) commence such repairs or restoration as may be required to cause the improvements to be in a safe and sightly condition, such commencement to be within one hundred twenty (120) days following such damage or destruction, and upon the commencement thereof, diligently and continuously prosecute such work to completion; provided, however, that if there are factors that reasonably prevent Developer from commencing such repairs or restoration within one hundred twenty (120) days following the date such damage or destruction occurred, then the time period for commencing such repairs or restoration shall be extended as reasonably required and for so long as Developer continues to diligently pursue resolution of the factors preventing Developer from commencing such repairs or restoration up to a maximum of three hundred sixty-five (365) total days, as measured from the date of the date such damage or destruction occurred. If such damage or destruction shall occur prior to Substantial Completion, the completion date for Substantial Completion set forth in the Project Timeline shall be extended in accordance with this Section 19(b).

20. CONDEMNATION.

(a) If, during the Term, all or a portion of the Premises are condemned or taken by any legal entity having the power of eminent domain, or is transferred in lieu (collectively, a "**Taking**" or "**Taken**", as applicable), and such Taking is with respect to the entire Premises or such portion of the Premises as renders the remaining portion to be of substantially no commercial value (as determined by Developer in its sole but commercially reasonable discretion), this Lease will terminate as of the date that title vests in such condemning authority; provided, however, that such termination will not benefit such

condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority.

(b) If, during the Term, any portion of the Premises are Taken and the Lease is not terminated as provided in subsection (a) above, then (i) this Lease will terminate only as to the portion of the Premises so Taken as of the date that title to such portion of the Premises vests in such condemning authority (provided, however, that such termination will not benefit such condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority), and (ii) except with respect to the last fifteen (15) years of the Term as set forth below, this Lease will not terminate as to the portion of the Premises not Taken. In the event of a partial Taking, Developer will be entitled to a pro-rata reduction in Base Rent based on the number of square feet of in the Premises remaining after the Taking. In the event a partial Taking occurs within the last fifteen (15) years of the Term, Developer will have the right to terminate this Lease by providing thirty (30) days prior written notice of such termination to HPARC, on or before the date which is ninety (90) days after such partial Taking is finalized, and satisfaction of the following conditions: (1) by paying to HPARC, on the effective date of such termination, a sum equal to all amounts and payments under this Lease due from Developer to HPARC to such date; and (2) by surrendering the Premises to HPARC on the effective date of such termination.

(c) The condemnation award shall be allocated between HPARC and Developer in accordance with this Section 20(c).

(i) To the extent permitted by applicable condemnation law, the "compensation" due to each of HPARC and Developer for the Taking of each of their separate estates in and to the Premises created by this Lease as to the Premises shall be determined by separate findings by the trier of fact in such condemnation proceeding. As used in this Section 20, "*compensation*" shall mean and include all sums of money which the condemning authority is required to pay for the Taking of the Premises (including the Land and Improvements), for damages to any portion of the Premises not taken, and for cost of demolition, removal, restoration or relocation. For the avoidance of doubt, the award to Developer shall never be less than the product equal to the Remaining Portion multiplied by the value assigned to the Improvements in such condemnation proceeding. The "*Remaining Portion*" means a fraction, the numerator of which is equal to the number of years remaining during the Term (assuming deemed exercise of all extension rights), and the denominator of which is equal to the number 75.

(ii) If applicable condemnation law or the court in which such proceedings are held does not require or permit the condemning authority to separately compensate each of HPARC and Developer for the estates in the Premises being taken from each of them, then HPARC and Developer agree:

(1) They will cooperate with each other in the presentation of evidence bearing on the value of the Premises disregarding the separate estates of each; and

(2) They will request the trier of fact in the condemnation proceeding to apportion and allocate the single determination of value between HPARC and Developer based upon the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking as determined by separate and additional findings of the trier of fact, and each of HPARC and Developer shall be permitted to present to the trier of fact the relevant factors and components in determining the fair market value of their respective estates.

(iii) If a court is prohibited by law from apportioning and allocating the single determination of value between HPARC and Developer or declines to do so, then HPARC and Developer

shall attempt in good faith to agree upon the allocation of the compensation between them. If HPARC and Developer cannot agree on the allocation of the award, and if such inability to agree continues for thirty (30) days after the amount of the award is determined, HPARC and Developer agree that the determination of such allocation will be made by the Board of Appraisers appointed in accordance with this subsection (iii) in accordance with the following procedure, and the compensation shall be divided between HPARC and Developer on the basis of the proportion which the fair market value of the estate of each of HPARC and Developer in the Premises as determined by the Board of Appraisers and calculated as of the date that is immediately prior to the date of the Taking bears to the aggregate of such fair market values. HPARC and Developer will each promptly appoint one (1) appraiser, and those two (2) appraisers will promptly appoint a third (3rd) appraiser (the "*Board of Appraisers*"). Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least ten (10) years' experience in appraisal of real estate for commercial use in downtown San Antonio, Texas. If such appraisers fail to appoint such third (3rd) appraiser within thirty (30) days after notice of their appointment, then either HPARC or Developer, upon notice to the other, may request the appointment of a third (3rd) appraiser by the then president of the San Antonio Board of Realtors, or any then similar existing body. The three (3) appraisers so appointed will jointly determine the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking, and each of HPARC and Developer shall be permitted to present to the appraisers the relevant factors and components in determining the fair market value of their respective estates. If, after notice by either HPARC or Developer of the appointment of an appraiser by the party giving such notice, the other party to whom such notice is given fails, within a period of ten (10) days after such notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as sole appraiser to make the determination and allocation. HPARC will pay the fees and expenses of the person appointed by HPARC as an appraiser, Developer will pay the fees and expenses of the person appointed by Developer as an appraiser, and HPARC and Developer will each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser appointed pursuant to the provisions of this subsection (iii).

(d) Notwithstanding anything contained in this Lease to the contrary, neither HPARC nor Developer will be prohibited from introducing into any condemnation proceeding or proceedings with respect to the Premises such appraisals or other estimates of value, loss and/or damage as each may in its discretion determine. Developer will be entitled to claim in any condemnation proceedings such award as may be allowed for relocation costs or other consequential damages, but only to the extent that the same does not reduce, and is in addition to, the award for the Land and Improvements and damage to the remainder. At Developer's direction, any condemnation award to which Developer is entitled will be paid directly to its Leasehold Mortgagee.

(e) If there is a temporary taking of all or any portion of the Premises which less than one year, there shall be no abatement of Base Rent, but Developer will be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority extends beyond the date of expiration of the Term, in which case the award made for such taking will be apportioned between HPARC and Developer as of the date of such expiration based upon the pro rata portions of the term of the temporary taking before and after the termination of the Lease.

21. NOTICES. Any notice to be given or to be served in connection with this Lease must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to

have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO HPARC: Hemisfair Park Area Redevelopment Corporation  
Attn: Chief Executive Officer  
434 South Alamo Street  
San Antonio, Texas 78205

WITH A COPY TO: Golden Steves Cohen & Gordon LLP  
Attn: Stephen L. Golden  
300 Convent Street, Suite 2600  
San Antonio, Texas 78205

TO DEVELOPER: AREA Real Estate, LLC  
Attn: David M. Adelman  
1221 Broadway St #104  
San Antonio, TX 78215

WITH A COPY TO: STAHL, BERNAL, DAVIES, SEWELL & CHAVARRIA, LLP  
Attn: Brent Stahl  
7320 N. MoPac, Suite 211  
Austin, TX 78731

TO PFC: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, First Floor  
San Antonio, Texas 78205  
Attention: City Clerk

WITH COPY TO: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, Third Floor  
San Antonio, Texas 78205  
Attention: City Attorney

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

22. QUIET ENJOYMENT. Developer, upon paying the Rent and performing the covenants and agreements of this Lease, shall quietly have, hold and enjoy the Premises and all rights granted Developer in this Lease during the Term hereof.

23. COMMISSIONS. HPARC and Developer acknowledge and agree that neither party has engaged the services of any real estate broker in connection with this Lease. Developer and HPARC shall indemnify and hold the other harmless against any other commission, payment, interest or participation claimed on account of this Lease under any alleged agreement or understanding entered into between or on that party's behalf with the person or entity claiming the commission, payment, interest or participation.

24. DEFAULT AND REMEDIES.

(a) Events of Default. Subject to the rights of Leasehold Mortgagees as provided in this Lease, each of the following events shall constitute an “**Event of Default**” by a party:

(1) Monetary Defaults. The failure or omission by either party to pay amounts required to be paid pursuant to this Lease when due hereunder, and such failure or omission has continued for thirty (30) days after written notice from the other party (each such failure or omission referred to herein as a "**Monetary Default**"). It is hereby expressly acknowledged that Monetary Defaults include the failure of a party to pay monetary damages awarded to the other party in connection with an Event of Default other than a Monetary Default within thirty (30) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

(2) Construction Defaults. The failure of Developer to achieve Substantial Completion of the Project by the deadlines set forth in the Project Timeline, as same may be extended by Excusable Delay and such failure continues for ninety (90) days after written notice from HPARC, or the failure to complete restoration of the Improvements following a casualty by the deadlines set forth in Section 19 and such failure continues for ninety (90) days after written notice from HPARC (each such failure referred to herein as a "**Construction Default**").

(3) General Non-Monetary Defaults. The failure or omission by either party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such party is diligently and continuously proceeding to complete such cure) (the "**Non-Monetary Default Cure Period**") after written notice from the other party (each such failure or omission referred to herein as a "**General Non-Monetary Default**").

(4) Bankruptcy Defaults. (a) Developer's filing for voluntary bankruptcy; or (b) an involuntary bankruptcy is filed against Developer which is not dismissed within sixty (60) days of such filing; (each such event referred to herein as a "**Bankruptcy Default**").

(b) HPARC Remedies for Developer Defaults.

(1) General Remedies. Subject to the rights of Leasehold Mortgagees as expressly provided in this Lease and subject to any other limitations of remedies expressly provided in this Lease, upon the occurrence and during the continuation of an Event of Default by Developer, HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity (a) cure the Developer Event of Default (including without limitation the failure of Developer party to pay Taxes, to maintain insurance or to remove mechanic's liens as required under this Lease) on Developer's behalf, in which event Developer shall reimburse HPARC on demand for all sums so expended by HPARC, including without limitation such reasonable expenses that HPARC has incurred in connection therewith, plus interest at the Default Rate from the date paid by HPARC until repaid by Developer, or (b) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder, or the enforcement and specific performance when available.

(2) Disputed Defaults. With respect to any General Non-Monetary Default that HPARC asserts against Developer but that Developer disputes in writing within sixty (60) days following receipt of written notice of such default from HPARC, HPARC or Developer may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. If the arbitrator determines that a General Non-Monetary Default has occurred ("**Arbitrator Determined General Non-Monetary Default Determination**"), then Developer shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the time the arbitrator's decision becomes final and non-appealable. If Developer does not cure such General Non-Monetary



Default within such Non-Monetary Default Cure Period, then HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity, elect to terminate this Lease by giving notice thereof to Developer ("**General Non-Monetary Default Termination Election**"), in which event Developer shall immediately surrender the Premises to HPARC and if Developer fails so to do, HPARC may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises. If any such General Non-Monetary Default is cured before Developer's receipt of the General Non-Monetary Default Termination Election, HPARC shall have no right to terminate this Lease on account of such General Non-Monetary Default.

(3) General Termination Rights. With respect to any Monetary Default, any Construction Default, or any Bankruptcy Default, HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity, elect to terminate this Lease by giving notice thereof to Developer ("**Other Default Termination Election**"), in which event Developer shall immediately surrender the Premises to HPARC and if Developer fails so to do, HPARC may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises. If any such Monetary Default or Construction Default is cured before Developer's receipt of the Other Default Termination Election, HPARC shall have no right to terminate this Lease on account of such Monetary Default, Construction Default, or Bankruptcy Default.

(4) Rent Damages. Upon any termination of this Lease by HPARC due to an Event of Default by Developer, Developer immediately shall become liable for damages in an amount equal to: (i) the present value [calculated with a discount factor equal to six percent (6%)] of the excess of (x) the entire amount of Rent and other charges and assessments that would become due and payable during the remainder of the Lease Term determined as though this Lease had not been terminated, over (y) the then fair market rental value of the Premises (on the same net basis as this Lease) for the remainder of the Lease Term, together with (ii) HPARC's attorneys fees and court costs or arbitration costs incurred by HPARC in connection with Developer's default and the unpaid Rent (if any) due for periods prior to the date of termination. The calculations in this paragraph shall be made without including any extensions terms which are not yet in effect as of the date of termination.

(5) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to HPARC hereunder or of any damages accruing to HPARC by reason of the violation of any of the terms, provisions, conditions and covenants herein contained. HPARC's acceptance of Rent following an Event of Default hereunder shall not be construed as HPARC's waiver of such Event of Default. No waiver by HPARC of any violation or breach of any of the terms, provisions, conditions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, conditions and covenants herein contained. Forbearance by HPARC to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.

(6) If this Lease shall be terminated by HPARC, and thereafter Developer shall be liable for any deficiency in Rent by way of damages or otherwise, then the Rent, from and after the time of default resulting in such termination, shall be deemed to be the Rent that HPARC would have received had there been no termination.

(7) In case of default in payment of any part of the Rent, HPARC shall have the privilege of splitting its cause of action so as to permit the institution of separate suits for the

Rent, and neither the institution of any such suit, nor the entry of judgment therein, shall bar HPARC from bringing a separate suit for the other, it being understood that the forbearance of HPARC in the institution of any suit or in the entry of judgment for the Rent shall not be defense against, or prejudice a subsequent action for, the other. Developer waives the right to claim a merger of Rent in the previous suit or the judgment entered therein. The claims for Rent may be regarded by HPARC, if it so elects, as separate claims.

(c) Developer Remedies for HPARC Defaults.

(1) Upon the occurrence and during the continuation of an Event of Default by HPARC, Developer may, at its option, and in addition to and cumulatively of any other rights Developer may have under this Lease, at law or in equity (a) cure the HPARC Event of Default on HPARC's behalf, in which event HPARC shall reimburse Developer on demand for all sums so expended by Developer plus interest at the Default Rate from the date paid by Developer until repaid by HPARC, (b) terminate this Lease by notice to HPARC and in conformity with procedures required hereby and by applicable Law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder. Developer shall have the right but not the obligation after providing at least sixty (60) days' notice to HPARC to perform, acquire, or satisfy any lien, encumbrance, agreement or obligation of HPARC which is a lien or encumbrance on the Premises or Improvements; provided HPARC is not contesting the correctness or validity of such lien, encumbrance, agreement or obligation and such lien, encumbrance, agreement or obligation does not result in a material risk of loss of the Premises or Improvements.

(d) Attorney's Fees. In any case where HPARC or Developer employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing party agrees to pay the other party reasonable attorney's fees incurred by the prevailing party.

(e) Waiver. Failure on the part of HPARC or Developer to complain of any action or non-action on the part of Developer or HPARC, no matter how long the same may continue, shall never be deemed to be a waiver by HPARC or Developer of any of its respective rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by HPARC or Developer shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by HPARC or Developer to or of any action by Developer or HPARC requiring HPARC's or Developer's consent or approval shall not be deemed to waive or render unnecessary HPARC's or Developer's consent or approval to or of any subsequent similar act by Developer or HPARC.

25. MEMORANDUM OF LEASE. This Lease shall not be recorded. On the Effective Date, HPARC and Developer shall execute a Memorandum of Lease, in the form attached hereto as Exhibit "C" for recordation in Bexar County at the expense of Developer. Upon the expiration or earlier termination of this Lease, Developer shall, at its expense, within five (5) Business Days following said expiration or termination, file a release of this Lease in the Official Public Records of Real Property of Bexar County, Texas. This obligation shall survive the expiration of the Term or earlier termination of this Lease.

26. ENTIRETY-EXECUTION-SUCCESSION-AMENDMENT-TIME OF ESSENCE. This Lease merges and supersedes all prior negotiations, representations, and agreements, and constitutes the entire contract between HPARC and Developer concerning the leasing of the Premises and the consideration therefor. This Lease and all options herein shall bind and inure to the benefit of the successors and assigns of HPARC, and the successors and permitted assigns of Developer. No variations,

modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. Time is of the essence in the payment and performance of all of the obligations of the parties under this Lease.

27. LIMITATION OF LIABILITY. Neither the partners of HPARC, nor their managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of HPARC hereunder, and Developer and all persons having claims against HPARC hereunder shall look solely to HPARC's interest in the Premises for the enforcement of their rights hereunder. Additionally, upon the assignment of this Lease to a bona fide third party that assumes HPARC's obligations under this Lease and written notice of such assignment to Developer, HPARC shall have no further liability for the obligations of HPARC accruing from and after such assignment.

Upon a permitted assignment of this Lease to a bona fide third party that assumes Developer's obligations under this Lease and written notice of such assignment to HPARC, Developer shall have no further liability for the obligations of Developer accruing from and after such assignment. Except as set forth in the Guaranty, neither the partners or owners of Developer, nor their managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of Developer hereunder.

Notwithstanding any other provision of this Lease to the contrary, in no event will HPARC or Developer be liable for consequential, special, exemplary or punitive damages.

28. HPARC MORTGAGES. Developer acknowledges that HPARC's leasehold interest under the Master Lease is not subordinated to this Lease and that HPARC may subject HPARC's leasehold interest under the Master Lease in the Premises to one or more mortgage loans. In such event, HPARC's mortgagee shall agree for itself, its successors and assigns (by written instrument in substantially the recordable form attached hereto and by reference incorporated herein as Exhibit "E"): (i) to be bound by the terms of this Lease; (ii) not to disturb Developer's use or possession of the Premises in the event of a foreclosure of such lien or encumbrance so long as Developer is not in default hereunder beyond any applicable notice and cure period; and (iii) not to join Developer as a party defendant in any foreclosure proceeding relating to HPARC's leasehold interest in the Master Lease unless such joinder is required by applicable law and provided that such joinder of Developer as a party shall not extinguish or interfere with the rights of Developer under this Lease. Developer hereby agrees to enter into an agreement with HPARC and HPARC's mortgagee substantially in the form attached hereto as Exhibit "E" upon written request from HPARC from time-to-time. Notwithstanding the foregoing, and without limiting the effect thereof, HPARC hereby confirms that there is no financing encumbering HPARC's leasehold interest in the Master Lease as of the Effective Date.

29. HPARC AND PFC RIGHT OF ENTRY. Developer will grant HPARC and its agents the right from time-to-time upon reasonable written notice to enter the Premises to show the Premises to prospective purchasers or mortgagees. Within the last year of the Term, HPARC may perform such non-invasive inspections as HPARC may reasonably require confirming Developer's compliance with the terms and provisions of this Lease. HPARC must be accompanied by a representative of Developer at all times while on the Premises. In addition, the PFC and its agents, employees and permittees shall have the right of ingress and egress over and across the Premises for all reasonable purposes of the PFC; provided, however, that the exercise of such rights by the PFC shall not unreasonably interfere with or disturb the operations of Developer and PFC shall give reasonable notice (not less than 48 hours) prior to exercising such rights, except in the case of an emergency, and provided further that the rights hereby reserved for the benefit of the PFC are expressly subject to the terms, conditions and provisions of that certain Recognition Agreement entered into between the PFC and Developer as of even date herewith.

30. NO IMPLIED WARRANTIES. HPARC AND DEVELOPER EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR DEVELOPER'S INTENDED COMMERCIAL PURPOSE AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, DEVELOPER'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY HPARC OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, DEVELOPER SHALL CONTINUE TO PAY ANNUAL RENT AND ALL AMOUNTS DUE HEREUNDER, WITHOUT ABATEMENT, SETOFF OR DEDUCTION NOTWITHSTANDING ANY BREACH BY HPARC OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED. AS OF THE EXPIRATION OF THE DUE DILIGENCE PERIOD, DEVELOPER WILL HAVE HAD A FULL AND FAIR OPPORTUNITY TO INSPECT THE PREMISES AND FINDS THAT THE PREMISES SUIT DEVELOPER'S PURPOSES. DEVELOPER HAS KNOWLEDGE OF THE PREMISES AND WITH THIS KNOWLEDGE HAS VOLUNTARILY AGREED TO DISCLAIM THE IMPLIED WARRANTY OF SUITABILITY. BOTH HPARC AND DEVELOPER HAVE EXPRESSLY BARGAINED FOR AND AGREED TO THIS DISCLAIMER. FOR AND IN CONSIDERATION OF THE EXECUTION OF THIS LEASE, HPARC AND DEVELOPER AGREE THAT HPARC WOULD NOT HAVE SIGNED THIS LEASE BUT FOR THE DISCLAIMERS SET FORTH ABOVE, AND DEVELOPER WAIVES ANY WARRANTY REGARDING THE PREMISES EXCEPT THOSE EXPRESSLY PROVIDED IN THIS LEASE.

31. SURVIVAL. Any obligations of indemnification created under this Lease shall survive the expiration or earlier termination of this Lease for one (1) year thereafter.

32. EXHIBITS. The Exhibits attached hereto are incorporated herein and made a part of this Lease for all purposes.

33. GOVERNING LAW. This Lease will be governed by the laws of the State of Texas.

34. FORCE MAJEURE. Whenever performance is required of any party under this Lease, the obligation for such performance will be extended as provided in this Section 34. If completion of performance is delayed at any time by reason of acts of God, war, terrorism, sabotage, civil commotion, strife or other violence, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, flood, drought, earthquake, storm, tornado, lightning, windstorm, other natural catastrophe, damage to work in progress by reason of fire or other casualty (provided this shall not extend the timeframes for repairs set forth in Section 19(b)), or causes beyond any reasonable control of a party (other than unavailability of labor or materials or financial reasons), acts of the State, Federal or local government in its sovereign capacity (other than the usual and customary observance and enforcement of Laws), including a moratoria, litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; or litigation by HPARC or the City, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project (each, a "*Force Majeure Event*"), then, the time for performance as specified in this Lease will be appropriately extended by the time of the delay actually caused; provided that the party claiming a permitted delay pursuant to this Section 34 advises the other party of the circumstances supporting such claim within ninety (90) days following the occurrence of the Force Majeure Event. Failure to timely provide notice of a permitted delay under this Section 34 will be deemed a waiver of the additional time claim. For the avoidance of doubt, the term "litigation" in the preceding sentence shall not include litigation resulting from Developer's failure to comply with the terms of this Lease or a breach of the Guaranty. The provisions of this Section 34 will not operate to excuse any part from the prompt payment of any money required by this Lease, including but not limited to Developer's obligation to pay Rent in accordance herewith.

35. LIMITED GUARANTY. Developer shall cause David M. Adelman to execute and deliver to HPARC the Guaranty of this Lease in the form attached hereto as Exhibit "D" contemporaneously with the Effective Date.

36. MEANING. All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any section or clause herein may require, the same as if such words had been fully and properly written in number and gender. Unless expressly stated otherwise, references to "include" or "including" means "including, without limitation." The terms "hereto," "herein" or "hereunder" refer to this Lease as a whole and not to any particular Article or Section hereof.

37. THIRD PARTY BENEFICIARY. Certain provisions of this Lease include certain benefits for PFC and the City, which are not parties to this Lease. HPARC and Developer agree that such provisions are for the third party benefit of PFC and the City, respectively, and may be performed and/or enforced, in their respective sole discretion and without any duty to do so or liability to HPARC or to Developer from doing so or failing to do so for any reason.

38. RELATIONSHIP OF PARTIES. The relationship of HPARC and Developer under this Lease is that of landlord and tenant, each acting in its own best interests. No partnership, joint venture or other or additional business relationship is established or intended hereby.

39. NO LANDLORD'S LIEN. It is expressly understood and agreed that HPARC shall not have any contractual or statutory landlord's lien or security interest of any kind applicable to the Improvements or to Developer's furniture, fixtures, equipment, inventory, or other property regardless of where any such property may be located, and HPARC hereby waives and relinquishes any such contractual and statutory landlord's lien and security interest of any kind applicable to the Improvements and to Developer's property.

40. TREATMENT OF LIENS; THIRD PARTY RIGHTS. If at any time during the Term, any lien or any third party right exists against the Premises or any portion thereof, that creates rights superior to those of Developer, and Developer determines that the existence, use, operation, implementation or exercise of such lien or such third party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Developer's rights under this Lease or the financing of the Project, Developer shall be entitled to seek to obtain a Subordination and Non-Disturbance Agreement (defined below) from the holder of such lien or such third party right, and HPARC shall use commercially reasonable efforts and diligence in helping Developer obtain the same at no out-of-pocket expense to HPARC. HPARC also agrees that any right, title or interest created by HPARC after the Effective Date and effective during the Term in favor of or granted to any third party affecting the Premises shall be subject to (i) this Lease and all of Developer's rights, title and interests created in this Lease, and (ii) any and all documents executed or to be executed by and between Developer and HPARC in connection with this Lease. A "**Subordination and Non-Disturbance Agreement**" shall mean an agreement between Developer and the holder of a lien or a third party right that provides that the holder of such lien or such third party right (i) subordinates such lien or such third party right to Developer's interest under this Lease, (ii) agrees not to disturb Developer's possession or rights under this Lease, and (iii) agrees to provide notice of defaults of HPARC under the lien or third party right documents to Developer and agrees to allow Developer and its lenders a reasonable period of time following such notice to cure such defaults on behalf of HPARC. All Subordination and Non-Disturbance Agreements obtained pursuant to this paragraph shall be in a form reasonably acceptable to Developer and Developer's lenders, if any, and shall be in a form that may be recorded following their execution.

41. LEGAL DESCRIPTION. Developer shall have the right to resurvey the Premises during the Due Diligence Period to confirm the accuracy of the legal description of the Premises attached hereto as Exhibit "A". In the event that Developer discovers through such resurvey any inaccuracies in the legal description of the Premises, the parties agree that the validity of this Lease shall not be affected, but rather the parties shall amend the legal description of the Premises contained in Exhibit "A" of this Lease and in Exhibit "A" of the and the memorandum of this Lease to reflect the corrected legal description of the Premises as mutually agreed upon between the parties.

42. PARKING SUBLEASE.

(a) Parking Garage Construction.

(i) Parking Garage Work. Developer shall cause the Parking Garage portions of the Approved Plans together with any access drives or sidewalk serving such Parking Garage that Developer is responsible for completing (the "*Parking Garage Work*") to be constructed, at Developer's sole cost and expense, substantially in compliance with the Approved Plans and on or before the completion of the entirety of the Project in accordance with the Project Timeline. For purposes hereof, "*Garage Substantial Completion*" means the completion of the Parking Garage Work shown on the Approved Plans and the issuance of a certificate of occupancy for the Parking Garage by the City of San Antonio. Upon written request from HPARC, Developer shall promptly provide HPARC with a written copy of Developer's estimated construction schedule for Garage Substantial Completion.

(ii) Inspection of Parking Garage Work. Developer shall notify HPARC in writing not more than thirty (30) days prior to the date that Developer anticipates that Garage Substantial Completion will occur. Following receipt of such notice, HPARC shall cause its consulting architects and engineers to conduct an inspection of the Parking Garage, following which HPARC shall deliver to Developer a written punch list of all incomplete or faulty items of construction or mechanical installation, and any necessary adjustments, re-construction and finish work needed to bring the Parking Garage into the condition required prior to delivery under the Parking Sublease. Following receipt of such punch list, Developer shall promptly and diligently pursue the final completion of all items reflected on the punch list to the extent such punch list is consistent with the Approved Plans; nothing in any such punch list shall require Developer to take any action that is not consistent with the Approved Plans.

(iii) Punch List Item Resolution. If the Parking Garage has achieved Garage Substantial Completion but subject only to minor punch list items that require no more than fourteen (14) days to complete, HPARC may, at its option: (i) require Developer to repair all punch list items prior to HPARC's acceptance of the premises under the Parking Sublease, or (ii) choose to accept delivery of the premises prior to Developer's repair of all of the punch list items, in which case Developer shall complete all punch list items within fourteen (14) days following the date HPARC accepts the premises under the Parking Sublease. If such repairs are not complete with such fourteen (14) day period for any reason, HPARC may at its option elect to complete all work necessary to bring the premises under the Parking Sublease into the required condition. If HPARC undertakes such work, then Developer shall reimburse HPARC, within thirty (30) days following receipt of an invoice for such sums, for all of HPARC's actual, out-of-pocket costs incurred to complete such work, plus an administrative surcharge of fifteen percent (15%) to compensate HPARC for such efforts. HPARC's and its contractor's determination of the cost of such work shall be final and binding on Developer, provided such costs are actual and reasonable. If Developer does not reimburse HPARC as required by this Section 42(a)(iii), then HPARC may offset such sum against base rent and all other charges due under the Parking Sublease until such sum has been fully recouped.

(b) Execution of Parking Sublease. Upon Garage Substantial Completion, Developer and HPARC shall execute and exchange (a) duly executed original counterparts to the Parking Sublease, (b) duly executed and acknowledged original counterparts to the Memorandum of Lease attached as Exhibit "E" to the Parking Sublease, and (c) duly executed and acknowledged original counterparts to the SNDA attached as Exhibit "B" to the Parking Sublease. Developer shall also secure and deliver to HPARC a duly executed and acknowledged original counterpart to the SNDA from the Developer's leasehold mortgagee (with such changes to the SNDA as Developer's leasehold mortgagee may require).

[Signature Page Follows]


IN WITNESS WHEREOF, HPARC and Developer have caused this Lease to be executed on the date first set forth above.

**HPARC:**

**Hemlock Park Area Redevelopment Corporation,**  
a Texas local government corporation

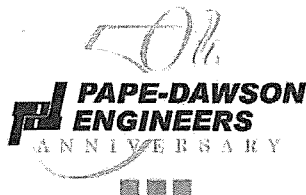
By: \_\_\_\_\_  
Name: Andres Amljar  
Title: Chief Executive Officer

**DEVELOPER:**  
**AREA REAL ESTATE, L.L.C.**

By:  \_\_\_\_\_  
Name: David M. Adamson  
Title: Manager



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PREMISES**



FIELD NOTES  
FOR  
LAND BANK – TRACT 4 (REVISED)

A 1.097 acre, or 47,785 square feet, more or less, tract of land out of Lot 12, Block 3, New City Block 13814 of the Civic Center Project No. 5 Tex. R-83 Urban Renewal Agency subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas and being out of that tract described in deed to the City of San Antonio as a 11.650 acre tract recorded in Volume 6205, Pages 537-543 of the Deed Records of Bexar County, Texas in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 1.097 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (1996) and combined scale factor 0.999830028895;

COMMENCING: At a set ½" iron rod with cap marked "Pape-Dawson" at a point of tangency on the east right-of-way line of South Alamo Street, a variable width right-of-way, at the southwest corner of said Lot 12, being N 1°30'25" E, a distance of 25.06 feet from the intersection of the north right-of-way line of Cesar Chavez Boulevard and the east right-of-way line of South Alamo Street, at North 13,700,114.77 and East 2,131,452.33 of said coordinate system;

THENCE: N 56°10'45" E, departing the east right-of-way line of said South Alamo Street, over and across said Lot 12 a distance of 322.35 feet to the POINT OF BEGINNING;

THENCE: Over and across said Lot 12 the following bearings and distances;  
N 41°35'06" E, a distance of 148.69 feet to a set ½" iron rod with cap marked "Pape-Dawson" for point of curvature;

Along a tangent curve to the right, said curve having a radius of 49.50 feet, a central angle of 22°25'10", a chord bearing and distance of N 52°47'41" E, 19.25 feet, for an arc length of 19.37 feet to a set ½" iron rod with cap marked "Pape-Dawson", for a point of tangency;

N 64°00'16" E, a distance of 54.87 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

N 47°22'16" E, a distance of 63.34 feet to a set ½" iron rod with cap marked "Pape-Dawson" for the north corner of the herein described tract;

THENCE: S 43°44'03" E, continuing over and across said Lot 12, a distance of 142.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

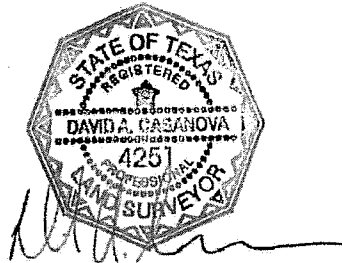
Page 1 of 2

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Hemisfair Land Bank  
Tract 4 (Revised)  
1.097 Acres  
Job No: 9390-13

- THENCE: S 00°36'07" W, continuing over and across said Lot 12, a distance of 18.59 feet to a set ½" iron rod with cap marked "Pape-Dawson" at an angle point of the herein described tract;
- THENCE: S 44°23'47" W, continuing over and across said Lot 12, a distance of 264.42 feet to a set ½" iron rod with cap marked "Pape-Dawson" at the south corner of the herein described tract;
- THENCE: N 45°36'13" W, continuing over and across said Lot 12, a distance of 172.78 feet to the POINT OF BEGINNING, and containing 1.097 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9390-13 by Pape-Dawson Engineers, Inc. Monumentation in progress, a brass nail stamped "Pape-Dawson" may be set on concrete or a magnetic concrete nail may be set in brick pavers.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: October 6, 2015  
JOB NO. 9390-13  
DOC. ID. N:\Survey13\13-9300\9390-13\Word\Landbank - Tract 4\_REVISED.docx  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00



**EXHIBIT "A-1"**  
**BOUNDARY ADJUSTMENT AREA**

**EXHIBIT "B"**

**PERMITTED EXCEPTIONS**

1. Easement as shown on plat recorded in Volume 9518, Pages 122-126, Deed and Plat Records, Bexar County, Texas
2. Historic Designation: Verified Certificate recorded in Volume 16817, Page 1967, Real Property Records, Bexar County, Texas.
3. Memorandum of Lease with Hemisfair Park Area Redevelopment Corporation recorded in Volume 17362, Page 2119, Real Property Records, Bexar County, Texas.

**EXHIBIT "C"**

**MEMORANDUM OF LEASE**

After recording return to:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum of Lease") is entered into as of this 1st day of February, 2016, by and between HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and AREA Real Estate, LLC, a Texas limited liability company ("Developer").

WITNESSETH:

A. HPARC and Developer entered into that certain Development Sublease Agreement (the "Lease") dated February 1, 2016 (the "Effective Date") relating to approximately 1.097 acres of land in the City of San Antonio, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. HPARC and Developer desire to execute and record this Memorandum of Lease to provide record notice of the Lease and certain terms and conditions contained in the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Memorandum of Lease and in the Lease, HPARC and Developer hereby agree as follows:

1. Premises. As of the Effective Date, HPARC leases to Developer, and Developer rents from HPARC, the Premises.

2. Term. The Initial Term of the Lease commenced on the Effective Date and shall end at midnight on the forty-fifth (45<sup>th</sup>) year anniversary of the Full Base Rent Commencement Date (as defined in the Lease). Developer also has options to extend the Term of the Lease for three (3) successive periods of ten (10) years pursuant to the terms, conditions and provisions of the Lease.

3. Incorporation of Lease. The provisions of the Lease are incorporated into this Memorandum of Lease as if set out in full. In the event of any conflict or inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease will govern and control for all purposes.

4. Master Lease. This Lease is subject and subordinate in all respects to the Master Lease by and between the Hemisfair Park Public Facilities Corporation, as landlord, and HPARC, as tenant, dated effective as of December 11, 2014, a memorandum of which is recorded in Book 17362, Page 2119, Official Public Records of Bexar County, Texas. Developer's rights under the Lease are further subject to the terms and conditions of that certain Recognition Agreement between **HEMISFAIR PARK PUBLIC FACILITIES CORPORATION**, a Texas non-profit public facilities corporation ("PFC"), and Developer dated February 1, 2016.

5. Defined Terms. All capitalized terms and words of art which are used but not defined in this Memorandum of Lease will have the same respective meaning designated for such terms and words of art in the Lease.

6. Cancellation of Memorandum of Lease. On the request of HPARC following the expiration or termination of the Lease, Developer will promptly execute and deliver an appropriate release and/or cancellation instrument in recordable form acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of Developer in and to the Premises under the Lease.

[Signatures begin on the following page]

HPARC and Developer have caused this Memorandum of Lease to be executed on the day, month and year set out above.

**HPARC:**

**Hemisfair Park Area Redevelopment Corporation,**  
a Texas local government corporation

By: \_\_\_\_\_  
Name: Andres Andujar  
Title: Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by Andres Andujar, the Chief Executive Officer of Hemisfair Park Area Redevelopment Corporation, a Texas local government corporation, on behalf of said local government corporation.

\_\_\_\_\_  
Notary Public

Commission Data:

\_\_\_\_\_

(NOTARIAL SEAL)

*[Signatures continued on following page]*

**DEVELOPER:**

AREA Real Estate, LLC, a Texas limited liability company

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

Name: David M. Adelman

Title: Manager

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by David M. Adelman the Manager of AREA Real Estate, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

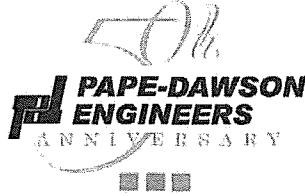
Commission Data:

\_\_\_\_\_  
(NOTARIAL SEAL)





**EXHIBIT "A" TO MEMORANDUM OF LEASE  
LEGAL DESCRIPTION**



**FIELD NOTES  
FOR  
LAND BANK – TRACT 4 (REVISED)**

A 1.097 acre, or 47,785 square feet, more or less, tract of land out of Lot 12, Block 3, New City Block 13814 of the Civic Center Project No. 5 Tex. R-83 Urban Renewal Agency subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas and being out of that tract described in deed to the City of San Antonio as a 11.650 acre tract recorded in Volume 6205, Pages 537-543 of the Deed Records of Bexar County, Texas in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 1.097 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (1996) and combined scale factor 0.999830028895;

COMMENCING: At a set ½" iron rod with cap marked "Pape-Dawson" at a point of tangency on the east right-of-way line of South Alamo Street, a variable width right-of-way, at the southwest corner of said Lot 12, being N 1°30'25" E, a distance of 25.06 feet from the intersection of the north right-of-way line of Cesar Chavez Boulevard and the east right-of-way line of South Alamo Street, at North 13,700,114.77 and East 2,131,452.33 of said coordinate system;

THENCE: N 56°10'45" E, departing the east right-of-way line of said South Alamo Street, over and across said Lot 12 a distance of 322.35 feet to the POINT OF BEGINNING;

THENCE: Over and across said Lot 12 the following bearings and distances;

N 41°35'06" E, a distance of 148.69 feet to a set ½" iron rod with cap marked "Pape-Dawson" for point of curvature;

Along a tangent curve to the right, said curve having a radius of 49.50 feet, a central angle of 22°25'10", a chord bearing and distance of N 52°47'41" E, 19.25 feet, for an arc length of 19.37 feet to a set ½" iron rod with cap marked "Pape-Dawson", for a point of tangency;

N 64°00'16" E, a distance of 54.87 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

N 47°22'16" E, a distance of 63.34 feet to a set ½" iron rod with cap marked "Pape-Dawson" for the north corner of the herein described tract;

THENCE: S 43°44'03" E, continuing over and across said Lot 12, a distance of 142.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

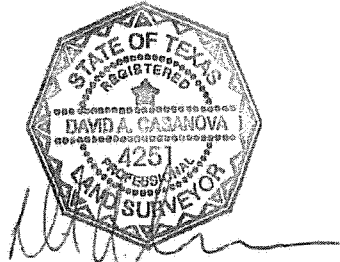
Page 1 of 2

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Hemisfair Land Bank  
Tract 4 (Revised)  
1.097 Acres  
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- THENCE: S 00°36'07" W, continuing over and across said Lot 12, a distance of 18.59 feet to a set ½" iron rod with cap marked "Pape-Dawson" at an angle point of the herein described tract;
- THENCE: S 44°23'47" W, continuing over and across said Lot 12, a distance of 264.42 feet to a set ½" iron rod with cap marked "Pape-Dawson" at the south corner of the herein described tract;
- THENCE: N 45°36'13" W, continuing over and across said Lot 12, a distance of 172.78 feet to the POINT OF BEGINNING, and containing 1.097 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9390-13 by Pape-Dawson Engineers, Inc. Monumentation in progress, a brass nail stamped "Pape-Dawson" may be set on concrete or a magnetic concrete nail may be set in brick pavers.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: October 6, 2015  
JOB NO. 9390-13  
DOC. ID. N:\Survey\13\13-9300\9390-13\Word\Landbank - Tract 4\_REVISED.docx  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00



## **EXHIBIT "D"**

### **LIMITED GUARANTY**

This Limited Guaranty ("Guaranty"), effective February 1, 2016, is made by DAVID M. ADELMAN ("Guarantor") to and for the benefit of the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"). Capitalized terms not otherwise defined herein have the meanings specified in the Lease (as defined below).

#### **Recitals**

A. AREA Real Estate, LLC, a Texas limited liability company ("Developer"), and HPARC are parties to that certain Development Sublease Agreement (the "Lease") effective as of the date hereof, pertaining to that certain real property located in the City of San Antonio, Bexar County, Texas, more particularly described in the Lease. Capitalized words or phrases that are not defined herein will have the meaning ascribed to such capitalized words and phrases in the Lease, unless the context clearly indicates another meaning.

#### **Guaranty**

In consideration of the foregoing and to induce HPARC to enter into the Lease, Guarantor agrees as follows:

1. Subject to paragraph 9 below, Guarantor unconditionally and absolutely guarantees to HPARC the prompt and full payment and performance when due and owing of all present and future obligations of Developer under the Lease that are not timely paid or performed by Developer in accordance with the terms of the Lease.
2. Guarantor shall perform all obligations under this Guaranty strictly in accordance with the terms and provisions of the Lease.
3. Guarantor waives (a) presentment and demand for payment of any indebtedness to Developer or Guarantor, and (b) protest and notice of dishonor or default to Developer or Guarantor to which Developer or Guarantor might otherwise be entitled under a guaranty.
4. This Guaranty is an absolute, continuing and unconditional guaranty of payment and performance and not of collection. Notice to Guarantor of any and all defaults is waived and consent is hereby given to all extensions of time that HPARC may grant to Developer in the payment or performance of any of the terms or provisions of the Lease and/or to the waiving in whole or in part of any such payment or performance, and/or to the releasing of Developer in whole or in part from any such performance, and/or to the adjusting of any dispute in connection with the Lease, and/or to the assignment of the Lease to any other entity; and no such defaults, extensions, waivers, releases, adjustments, or assignments, with or without the knowledge of Guarantor, shall affect or discharge the liability of Guarantor. Guarantor and HPARC hereby waive any and all right to a trial by jury in any action or proceeding to enforce this Guaranty. Guarantor and HPARC further agree that the prevailing party in any action to enforce this Guaranty will be entitled to receive from the other party all reasonable expenses, including legal fees and disbursements paid or incurred by the prevailing party in any action seeking to enforce this Guaranty. Guarantor agrees that it is not necessary for HPARC, in order to enforce this Guaranty, to institute suit or exhaust its legal remedies against Developer; but the sole condition precedent to enforcement of the obligations of Guarantor hereunder is that Developer does not timely perform its payment or performance obligations in accordance with the terms of the Lease.

5. This Guaranty shall not be impaired by, and Guarantor hereby consents to (i) any modification, supplement, extension or amendment of the Lease to which the parties thereto may hereafter agree, (ii) any assignment of the Lease, (iii) any exercise or non-exercise of any right, remedy, power, or privilege under or in respect of this Guaranty or the Lease; or (iv) any assignment or transfer of the assets of Developer to, or any consolidation or merger of Developer with or into any other person, partnership, or corporation, or any disposition by Guarantor of any interest in Developer. The liability of Guarantor hereunder is primary, direct, unconditional and co-extensive with that of the Developer and may be enforced without requiring HPARC first to resort to any other right, remedy or security. The enforceability of this Guaranty shall not be affected by any bankruptcy proceeding or other proceeding affecting the rights of creditors of Developer, nor by discharge or modification of Developer's liability under the Lease in any bankruptcy proceeding. Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of Developer to HPARC, unless and until all of said debts and obligations have been satisfied in full.
6. This Guaranty is governed as to its validity, construction and performance by the laws of the State of Texas, without regard to its conflict of law provisions.
7. Subject to paragraph 9 below, Guarantor agrees that this Guaranty is a continuing and irrevocable guaranty and shall remain in full force and effect until all payment and performance obligations under the Lease have been paid and performed as set forth in the Lease. Nothing in this paragraph 7 shall be construed to diminish in any way the effect of paragraph 9 below.
8. This Guaranty is binding upon Guarantor, its successors and assigns, and inures to the benefit of HPARC and its successors and assigns.
9. Upon Substantial Completion of the Project in accordance with the Lease, this Guaranty shall terminate completely, including without limitation as to all obligations of Developer under the Lease, including those arising prior to the date of Substantial Completion, provided that the obligations of Guarantor under this Guaranty shall continue and remain in full force and effect with respect to the payment of any unpaid Rent under the Lease for the period prior to the date of Substantial Completion.

\_\_\_\_\_  
David M. Adelman

STATE OF TEXAS

COUNTY OF BEXAR

Before me, on this day personally appeared David M. Adelman, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public

Commission Data:

\_\_\_\_\_  
(NOTARIAL SEAL)

**EXHIBIT "E"**

When recorded, return to:

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

**ATTORNMEN AND NON-DISTURBANCE AGREEMENT**

This ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("Agreement") is made and entered into effective as of \_\_\_\_\_, 201\_\_ by and between \_\_\_\_\_ ("Beneficiary"); \_\_\_\_\_, a \_\_\_\_\_ ("HPARC"); and \_\_\_\_\_, a \_\_\_\_\_ ("Developer").

A. Beneficiary is the owner and holder of [\_\_\_\_\_], the "Deed of Trust", which Deed of Trust constitutes a lien on the land described in Exhibit A (the "Property").

B. Developer is the holder of a leasehold estate in the Property (the property which is the subject of such leasehold estate being referred to as the "Demised Premises") pursuant to the terms of the Development Sublease Agreement (the "Lease") dated February 1, 2016, and executed by and between Developer, as the tenant, and HPARC, as the landlord.

C. HPARC, Developer and Beneficiary desire to confirm their understandings with respect to the Lease and the Deed of Trust.

In consideration of the mutual and dependent covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree and covenant as follows:

1. Recognition of Lease. Subject to the terms of this Agreement, Beneficiary acknowledges and agrees that the security interest of Beneficiary pursuant to the Deed of Trust is subject to the Lease. Nothing in this Agreement will be deemed or construed as limiting or restricting the enforcement by Beneficiary of any of the terms, covenants, provisions or remedies against HPARC as specified in the Deed of Trust.

2. Purchaser. As used herein, the term "Purchaser" shall be deemed to include Beneficiary and any of its successors and assigns, including anyone who shall have succeeded to HPARC's interest in the Demised Premises by, through or under judicial foreclosure sale, non-judicial foreclosure sale or other similar proceedings brought pursuant to the Deed of Trust, deed in lieu of such foreclosure, other proceedings brought by Beneficiary under or with respect to the Note or Deed of Trust, or otherwise.

3. Attornment. If the interests of HPARC in and to the Demised Premises become owned by Beneficiary or another Purchaser by reason of judicial foreclosure, non-judicial foreclosure by the trustee under the Deed of Trust, other proceedings brought by Beneficiary or Purchaser or by any other manner, including, but not limited to, Beneficiary's exercise of its rights under any collateral assignment(s) of leases and rents, whereby Purchaser succeeds to the interest of the HPARC under the Lease, Developer shall be bound to Purchaser in accordance with all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any extension thereof duly exercised by Developer with the same force and effect as if Purchaser were the HPARC under the Lease. Developer does hereby attorn to Purchaser, as its HPARC, which attornment shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately

upon Purchaser's succeeding to the interest of the HPARC under the Lease; provided, however, that Developer shall be under no obligation to pay rent to Purchaser until Developer receives written notice from Purchaser that it has succeeded to the interest of the HPARC under the Lease, and upon receipt of such notice, Developer shall pay to Purchaser all rental and other payments required under the Lease for the duration of the term of the Lease and any extensions thereof duly exercised by Developer, in accordance with all of the terms, covenants and conditions of the Lease. The respective rights and obligations of Developer and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extension thereof duly exercised, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if expressly set forth herein.

4. Non-Disturbance. If the interests of HPARC in and to the Demised Premises become owned by Beneficiary or another Purchaser by reason of judicial foreclosure, non-judicial foreclosure by the trustee under the Deed of Trust, other proceedings brought by Beneficiary or Purchaser or by any other manner, the interests of Purchaser will be subject in all respects to the Lease and Developer's rights, title, interest, possession, use and occupancy of the Demised Premises pursuant to the Lease shall not be extinguished or terminated by such foreclosure nor interfered with or disturbed by Purchaser during the term of the Lease and any extension thereof duly exercised by Developer so long as Developer is not in default under the Lease beyond any applicable notice and cure periods; which non-disturbance shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Purchaser's succeeding to the interest of the HPARC under the Lease.

5. Purchaser's Obligations. If Purchaser shall succeed to the interest of HPARC under the Lease, Purchaser shall be bound to Developer under all of the terms, covenants and conditions of the Lease; provided, however, that Purchaser shall not be:

(a) liable for any act or omission of any prior HPARC (including HPARC) under the Lease; however, Purchaser acknowledges that it will be liable for all defaults by the prior HPARC under the Lease to the extent they are of an ongoing nature and are continuing from and after the date it becomes the Purchaser;

(b) subject to any offsets or defenses which Developer might have against any prior HPARC (including HPARC) under the Lease; however, Purchaser acknowledges that it will be liable for all defaults by the prior HPARC under the Lease to the extent they are of an ongoing nature and are continuing from and after the date it becomes the Purchaser;

(c) bound by any rent, additional rent, advance rent or other monetary obligations which Developer might have paid for more than the current month to any prior HPARC (including HPARC) under the Lease and which is not delivered or paid to Purchaser at the time of Purchaser's succession to title to the Demised Premises

(d) bound by any security deposit of any type or advance rental deposit made by Developer under the Lease that is not delivered or paid to Purchaser at the time of Purchaser's succession to title to the Demised Premises; or

(e) bound by any material modification or amendment of the Lease that has the effect of modifying the Term, reducing the amount of Rent or increasing the liability of the HPARC in any material way.

6. Exculpation of Purchaser. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to the extent it does not currently provide, to provide that Purchaser's obligations and liability under the Lease shall never extend beyond Purchaser's interest, if any, in the Demised Premises from time to time (collectively, "Purchaser's Interest"). Developer shall look exclusively to

Purchaser's Interest for payment or discharge of any obligations of Purchaser under the Lease. If Developer obtains any money judgment against Purchaser with respect to the Lease or the relationship between Purchaser and Developer, then Developer shall look solely to Purchaser's Interest to collect such judgment. Developer shall not collect or attempt to collect any such judgment out of any other assets of Purchaser.

7. Default Notice. Developer agrees to give written notice ("Default Notice") to Beneficiary of any default by HPARC of its obligations under the Lease specifying the nature of the default, contemporaneously with the delivery of any notice of such default to HPARC. After receipt of a Default Notice, Beneficiary will have the right (but not the obligation) to correct or cure the default of HPARC within the time period given to HPARC to cure the default.

8. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; properly addressed, (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the address of the intended addressee. Notice so mailed shall be effective two (2) days after its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective one (1) day after delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HPARC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

10. Amendment. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto or their respective successors in interest.

11. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

12. Governing Law. This Agreement shall be governed by the laws of the State of Texas and venue for any action brought hereunder shall be in Bexar County, Texas.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
THE SIGNATURE PAGES FOLLOW.]**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BENEFICIARY:

\_\_\_\_\_

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

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

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

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of such bank.

(Seal and Expiration Date)

\_\_\_\_\_

Notary Public

HPARC:

**Hemisfair Park Area Redevelopment Corporation,**  
a Texas local government corporation

By: \_\_\_\_\_  
Name: Andres Andujar  
Title: Chief Executive Officer

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

DEVELOPER:

\_\_\_\_\_

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

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

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

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

(Seal and Expiration Date)

\_\_\_\_\_

Notary

Public

**EXHIBIT "F"**

PLAN APPROVAL PROCESS

- (a) Within sixty (60) days following the Effective Date of this Lease, Developer shall deliver to HPARC and to City its preliminary plans and schematic drawings for the Improvements (the "**Preliminary Plans**").
- (b) Within thirty (30) days of receipt thereof, HPARC shall review such Preliminary Plans and either approve such Preliminary Plans or provide comments to Developer requesting changes to such Preliminary Plans. HPARC shall base its approval or disapproval of the Preliminary Plans on whether such Preliminary Plans conform to the aesthetic, vision and overall plan for the Hemisfair District, including without limitation the massing, height, orientation, color and materials shown on the Preliminary Plans.
- (c) If Developer is unable to obtain HPARC's approval of the Preliminary Plans prior to the expiration of the Due Diligence Period and such inability is not due to HPARC being arbitrary or capricious, then this Lease shall terminate unless Developer and HPARC mutually agree in writing to extend the Due Diligence Period.
- (d) Following approval of the Preliminary Plans, Developer shall prepare final working drawings conforming to the Preliminary Plans (the "**Final Plans**") and submit them to HPARC for approval on or before September 30, 2016 (the "**Final Plan Submittal Deadline**"). HPARC shall review the Final Plans and either approve such Final Plans or provide comments requesting changes to such Final Plans within thirty (30) days following HPARC's receipt thereof; provided, however, that HPARC's approval of the Final Plans shall not be unreasonably withheld, conditioned or delayed so long as such Final Plans conform to the Preliminary Plans. The Final Plans once approved by HPARC shall constitute the "**Approved Plans**" for all purposes under this Lease.

## EXHIBIT "G"

### RETAIL USE RESTRICTIONS

The use of the approximately 3,200 square feet of restaurant or retail space on the ground floor of the Premises (the "*Retail Space*") is subject to the following restrictions.

No portion of the Retail Space may be used for any of the following:

1. Any nuisance;
2. Any use which violates laws or requirements of governmental authorities having jurisdiction over the Retail Space;
3. Any establishment selling, renting, displaying or advertising sexually explicit material or performances, including without limitation any adult book store, adult arcade, adult novelty or video store, adult cabaret, gentlemen's club, go-go club, strip bar, or escort or escort agency.
4. A massage parlor (except as part of the regular services offered by a doctor, chiropractor, health club, day spa or beauty salon);
5. A store selling, distributing or displaying any drug paraphernalia primarily used in connection with the use or ingestion of illicit drugs;
6. A "second hand" store, including as examples those operated by Goodwill Industries or the Salvation Army;
7. A pawn shop;
8. A flea market;
9. A mortuary or funeral home;
10. A tattoo or piercing parlor;
11. A kennel or veterinary clinic where animals are kept overnight;
12. An automobile body and repair shop;
13. A gun shop;
14. A liquor store;
15. A check-cashing operation other than a bank;
16. A bail bonds office or operation;
17. A fast food restaurant. For purposes hereof, a "fast food restaurant" shall mean a restaurant whose principal business is the sale of foods, desserts or beverages to the customer in a ready-to-consume state, either within the restaurant building or for carry-out with consumption off the premises, and which has all of the following characteristics: (a) food items are served primarily in paper, plastic or other disposable containers; and (b) the restaurant provides rapid customer service by preparing the menu items in advance of the customer's order or by having the items in a ready-to-assemble condition.
18. Stores where souvenirs, t-shirts, or novelties comprise more than thirty-five percent (35%) of the display area or visible floor area. Display for these purposes includes any wall display such as shelves, hangers, etc., and any floor space such as shelves, tables, etc. T-shirts, souvenirs, or novelties, or any combination thereof, may also not be displayed in more than thirty-five percent (35%) of the window(s) or door(s) visible from the street of such store; or
19. Entertainment uses targeted principally towards tourists or visitors (such as, for example, Ripley's Believe It Or Not, Guinness World Records, and similar such uses).

In addition, no portion of the Retail Space may be used for a Formula Business Use (as defined below) unless HPARC gives its prior written consent to such use in writing, such consent to be given or withheld in HPARC's sole discretion.

For purposes hereof, a "**Formula Business Use**" is defined as a type of retail, restaurant, service or other business use establishment which, along with nine (9) or more other such establishments located in the United States under the same name, shares two or more of the following features: (a) a Standardized Array of Merchandise or (in the case of a restaurant, coffee shop, bar or other establishment serving food or drink) a Standardized Menu, (b) a Standardized Facade, (c) a Standardized Decor and Color Scheme, or (d) Standardized Uniform Apparel. Formula Business Uses may include, without limitation, the following: retail stores, restaurants, bars, banks, sales offices, spas, and hair and nail salons.

For purposes hereof, the following terms shall be defined as follows:

1. "**Standardized Array of Merchandise**" is defined as a situation in which 50% or more of in-stock merchandise is from a single distributor bearing uniform markings.
2. "**Standardized Menu**" is defined as a menu that share 50% or more of the same items with other such establishments.
3. "**Standardized Façade**" is defined as a generalized conforming appearance of the face or front of a Formula Business Uses to other such establishments.
4. "**Standardized Décor**" is defined as a generalized conforming style of interior finishes, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.
5. "**Standardized Color Scheme**" is defined as a generalized conforming selection of colors used inside and outside of the Formula Business Use, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.
6. "**Standardized Uniform Apparel**" is defined as a generalized conforming use of standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

Notwithstanding any other provision contained herein, if Developer exercises commercially reasonable efforts to lease the Retail Space for a period of six (6) months but does not receive any written offers to lease the Retail Space for the Minimum Rental Amount (as defined below), then Developer shall be permitted to lease the Retail Space on a one-time basis, without HPARC's prior written consent, to either (a) a Formula Business Use, or (b) a fast food restaurant; provided, however, that such fast food restaurant may not also be a Formula Business Use. Once Developer has successfully leased the Retail Space following such six (6) month period, then Developer shall again be subject to the full range of Retail Use Restrictions with respect to any future users of the same; provided, however, that Developer shall have the same rights described in the preceding sentence if Developer again exercises commercially reasonable efforts to lease the Retail Space for a period of six (6) months but does not receive any written offers to lease the Retail Space for the Minimum Rental Amount. For purposes hereof, the "**Minimum Rental Amount**" is defined as eighteen dollars (\$18.00) per square foot net rent per year, excluding any deductions for concessions or tenant allowances offered or proposed, with such Minimum Rental Amount to be adjusted to account for changes in CPI using a base year of 2018.

**EXHIBIT "H"**

**PROJECT TIMELINE**

<b>PROJECT PHASE</b>	<b>COMPLETION DATE</b>
Draft of Construction Contract	August 31, 2016
Construction Start Date	January 1, 2017
Substantial Completion	October 31, 2018

**EXHIBIT "I"**

PARKING SUBLEASE

[SEE ATTACHED]



**PARKING GARAGE SUBLEASE AGREEMENT**

**BY AND BETWEEN**

**HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION**

**AND**

**AREA REAL ESTATE, LLC**

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## PARKING GARAGE SUBLEASE AGREEMENT

This Parking Garage Sublease Agreement (this "**Parking Garage Lease**") is entered into by and between AREA REAL ESTATE, LLC, a Texas limited liability company (hereinafter called "**Developer**") and the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (hereinafter called "**HPARC**"). Developer and HPARC are sometimes collectively referred to herein as the, "**Parties**" and individually as a "**Party**".

### Article I.      **PREMISES**

#### Section 1.01      Premises.

For and in consideration of HPARC's payment of the rental hereinafter set forth and performance of the covenants and agreements hereinafter contained, Developer hereby sub-leases to HPARC a portion of that certain parking garage (the "**Garage**") to be constructed by Developer on those certain premises described on the attached Exhibit "A" (the "**Development Sublease Premises**") and subleased by HPARC to Developer pursuant to that certain Development Sublease Agreement dated as of February 1, 2016 (the "**Development Sublease**"). The portion of the Garage that will be sub-leased to HPARC will include parking spaces on the lower floors of the Garage sufficient to provide HPARC with 238 parking spaces with all such spaces being located on the lower floors side of the Gate (defined below) along with the common drive aisles leading from the Entrance Area (as defined below) to the Gate (as defined below), and the Garage entrance area for the entrance gate and related entrance facilities (the "**Entrance Area**"); the 238 parking spaces along with the common drive aisles and the Entrance Area constitute the "**Premises**" hereunder and are more particularly described on the attached Exhibit "A-1". The portions of the Garage which are not part of the Premises, including without limitation all remaining Garage parking spaces and areas in the uppermost floors of the Garage and above the Gate (the "**Apartment Parking Area**") are excluded from the Premises. It is currently estimated that the Apartment Parking Area will include 180 parking spaces, but the Parties acknowledge and understand that the number of spaces in the Apartment Parking Area may be more or less than such estimate, to be determined in Developer's sole discretion. The "**Gate**" means a parking garage gating facility located between the Premises and Apartment Parking Area which facility will be owned and operated by Developer for allowing only those vehicles with access rights to the Apartment Parking Area to enter the Apartment Parking Area.

#### Section 1.02      Master Lease and Development Sublease.

Notwithstanding any other provision contained in this Parking Garage Lease, this Parking Garage Lease is hereby made expressly subject and subordinate in all respects to the Development Sublease and to that certain Master Lease Agreement by and between the Hemisfair Park Public Facilities Corporation (the "**PFC**"), as landlord, and HPARC, as tenant, dated effective as of December 11, 2014 (the "**Master Lease**"). For ease and convenience, however, the term "**Parking Garage Lease**" is used herein to refer to this Parking Garage Sublease Agreement notwithstanding the fact that this Parking Garage Sublease Agreement is in fact a sub-sublease.

### Article II.      **TERM AND RENEWAL**

#### Section 2.01      Initial Term.

Subject to Section 2.03, this Parking Garage Lease shall be effective for a period of thirty (30) years (the "**Initial Term**"), commencing on the Commencement Date (hereinafter defined) and

terminating on the last day of the calendar month in which falls the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (also referred to herein for purposes of this Parking Garage Lease as the “*Expiration Date*”), unless sooner terminated or extended in accordance with the provisions of this Parking Garage Lease.

Section 2.02      Extension Options.

The Term of this Parking Garage Lease shall be automatically extended for four (4) successive periods with the first such period terminating on [INSERT EXPIRATION DATE OF THE INITIAL TERM UNDER THE DEVELOPMENT SUBLEASE], and the next three periods being for ten (10) years each (each, an “*Extension Period*”) unless HPARC delivers to Developer written notice electing not to exercise such option, such notice to be delivered to Developer on or before the two hundred seventieth (270<sup>th</sup>) day preceding the Expiration Date or the expiration date of the Extension Period then in effect. References to the word “*Term*” in this Parking Garage Lease shall include the Initial Term and each effective Extension Period, collectively.

Section 2.03      Termination of Development Sublease.

Notwithstanding any other provision contained herein, this Parking Garage Lease shall automatically terminate and be of no further force and effect in the event that the Development Sublease is terminated or has expired according to its terms and Developer has no further rights in and to the Development Sublease Premises.

**Article III.      RENT**

Section 3.01      Rent.

(a)      Base Rent. HPARC shall pay to Developer the Base Rent (as defined below) on a quarterly basis. From the Commencement Date until the expiration of the first Lease Year under the Development Sublease, the annual Base Rent (“*Base Rent*”) will be Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00), payable in quarterly installments in the amount of Sixty-Eight Thousand Seven Hundred Fifty and No/100 Dollars (\$68,750.00). The first such payment of Base Rent shall be due on the day (the “*Initial Payment Due Date*”) that is the first January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, or October 1<sup>st</sup> to occur after the Commencement Date (as defined below), with such first payment being prorated based upon the actual number of days between the Commencement Date and such Initial Payment Due Date. For purposes hereof, “*Lease Year*” means each consecutive period of twelve (12) full calendar months, following the Commencement Date, defined below, except that if the Commencement Date is a date other than the first day of a calendar month, the first Lease Year will include that fractional portion of the calendar month in which the Commencement Date occurs and the first full twelve (12) months thereafter, and the last Lease Year will end on the expiration or earlier termination of this Parking Garage Lease; provided, however, that that if the second Extension Period takes effect, then the Lease Year hereunder shall be adjusted so that such Extension Period commences at the beginning of a Lease Year and terminates at the end of a Lease Year with any payments attributable to any partial Lease Year terminating at the end of the first Extension Period to be prorated accordingly

(b)      Additional Rent. All amounts, if any, which HPARC is required to pay or discharge pursuant to this Parking Garage Lease, in addition to Base Rent (including without limitation HPARC’s Pro Rata Share of Developer Shared Capital Expenses), together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute additional rent hereunder (“*Additional Rent*”; Additional Rent together with Base Rent are sometimes collectively referred to as “*Rent*”). HPARC and Developer agree that each provision of this Parking Garage Lease for determining

charges, amounts and other Additional Rent payable by HPARC is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 of the Texas Property Code. ACCORDINGLY, HPARC VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS, IF ANY, AVAILABLE TO HPARC UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED, SUCCEEDED AND/OR RENUMBERED.

(c) All Sums Rent. Notwithstanding anything contained in this Parking Garage Lease to the contrary, all amounts payable by HPARC to or on behalf of Developer under this Parking Garage Lease, whether or not expressly denominated as rent, shall constitute Rent for all other purposes hereunder.

(d) Late Charge. In addition to any other remedies available to Developer pursuant to this Parking Garage Lease, in the event that HPARC shall fail to pay any portion of any installment of Rent or any other sum due hereunder by the date which is ten (10) days after such payment is due, there shall be added to such unpaid amount a late charge in the amount of Five Hundred Dollars for the first late payment in any 12-month period and \$1,000 for any additional late payments in the same 12-month period, in order to compensate Developer for the extra administrative expenses incurred by Developer. In addition, if such installment is not paid within thirty (30) days after the date such payment is due, the total amount then due shall bear interest at the rate per annum which is the lesser of (a) twelve percent (12%) per annum, or (b) the highest lawful rate (the "**Default Rate**"), until paid.

#### Section 3.02 CPI Adjustments.

On each anniversary of the Commencement Date (each, an "**Adjustment Date**"), the annual Base Rent shall be increased to equal the greater of (i) the annual Base Rent in effect during the immediately preceding Lease Year, and (ii) the product of (x) the initial Base Rent in effect under this Parking Garage Lease multiplied times (y) the sum of one (1) plus the applicable CPI Increase Percentage. For purposes hereof, the "**CPI Increase Percentage**" means the percentage increase in the CPI for the last calendar month preceding such Adjustment Date over the CPI for the last calendar month preceding the Commencement Date. For example, commencing on the first anniversary of the Commencement Date, if the CPI for the last month preceding the Commencement Date were 200 and the CPI for the twelfth (12th) month following the Commencement Date (such 12th month being the last calendar month preceding the Adjustment Date) were 220, then the CPI Increase Percentage for such period would be 10% and the annual Base Rent would increase from \$275,000.00 per year to \$302,500.00 for the second Lease Year.

For purposes hereof, "**CPI**" shall mean the Consumer Price Index for all Urban Consumers – all city average - (1982-1984 = 100) of the Bureau of Labor Statistics of the United States Department of Labor. If the Consumer Price Index ceases to use the 1982-1984 average equaling 100 as the basis of calculation, or if a material change is made in the term or number of items contained in the Consumer Price Index, or if the Consumer Price Index is altered, modified, converted or revised in any other material way, then CPI shall be adjusted to the figure that would have resulted had the change in the manner of computing the Consumer Price Index in effect at the date of this Parking Garage Lease not been so altered. If such Consumer Price Index shall no longer be published by said Bureau, then any substitute or successor index published by said Bureau or other governmental agency of the United States, and similarly adjusted as aforesaid, shall be used. If such Consumer Price Index (or a successor or substitute index similarly adjusted) is not available, then a comparable governmental or other comparable publication reasonably selected by Developer shall be used to determine the CPI for purposes of this Parking Garage Lease.

Section 3.03     Payment.

All payments of Rent shall be made by check or, at HPARC's option, wire transfer to an account identified by Developer.

**Article IV.     COMMENCEMENT DATE**

Section 4.01     Commencement Date.

For purposes of this Parking Garage Lease, the "**Commencement Date**" shall mean the date on which all of the following conditions have been satisfied:

- (a) Developer shall have achieved Garage Substantial Completion as defined in the Development Sublease;
- (b) Developer has delivered actual possession and control of the Premises to HPARC;
- (c) Developer shall have delivered to HPARC, in recordable form a subordination, non-disturbance and attornment agreement substantially in the form attached hereto as Exhibit "B" or in such other form as may be reasonably required by Developer's lender (the "**SNDA**") duly executed by each holder of any mortgage or deed of trust encumbering or affecting the Garage or any portion thereof; and
- (d) Developer and HPARC have executed and delivered a written notice of delivery and acceptance of the Premises in the form attached hereto as Exhibit "C", which Developer will prepare and which HPARC shall execute within ten (10) business days after provision of the statement or if HPARC has not signed such statement within such ten (10) business days, HPARC shall be deemed to have executed such statement. HPARC will not unreasonably withhold or delay its execution and delivery of such Exhibit "C" form.

**Article V.     USE OF PARKING GARAGE**

Section 5.01     Reserved Access.

The Developer shall have complete concurrent rights for access to and from the Apartment Parking Area through the Common Access Areas of the Garage located within the Premises, which access rights will be non-exclusive and in common with other users of the Premises portion of the Garage. HPARC shall have complete concurrent rights of access to and from the Premises through the Common Elevators (as defined below) and such stairwells excluded from the Premises that provide access to and from the Premises. For purposes of this Parking Garage Lease, "**Common Access Areas**" shall mean drives, ramps, elevators, stairs, Entrance Area and all other portions or amenities in the Premises portion of the Garage, as the same may exist from time-to-time, that are necessary for Developer and the Developer Permitted Parties (as defined below) to gain access to and from the Apartment Parking Area.

Section 5.02     Permitted Use.

(a) Premises. HPARC shall have the right to use and operate the Premises as a general public parking facility (the "**Permitted Use**"). HPARC may also reserve some spaces in the Premises for daily, weekly or monthly rentals and such use shall be deemed part of the Permitted Use; provided, however, that HPARC shall at all times make at least 100 of the parking spaces in the Premises available for hourly general public parking. Subject to the terms and provisions hereof, HPARC shall use

the Premises and cause the HPARC Permitted Parties to use the Premises for the Permitted Use and for no other purposes without the prior written consent of Developer. For purposes hereof, "**HPARC Permitted Parties**" shall include (i) any person willing to pay the hourly parking rates for the Premises portion of the Garage, including without limitation Developer Permitted Parties (defined below), (ii) any person using the Premises portion of the Garage under a daily, weekly or monthly rental as permitted above, and (iii) HPARC's employees, consultants, contractors, agents and managers.

(b) Apartment Parking Area. All Developer Permitted Parties may use the Apartment Parking Area for any purpose specified by Developer. Developer will not use the Apartment Parking Area for general public parking. Developer will inform Developer Occupants of the Parking Garage Rules. For purposes hereof, "**Developer Permitted Parties**" shall mean Developer, the Developer Occupants (as defined below), Developer's contractors and subcontractors, Developer lessees or sublessees in the retail portions of the Development Sublease Premises, and all such persons respective employees, tenants, subtenants, licensees, invitees, guests, visitors, successors and assigns. For purposes hereof, "**Developer Occupants**" shall mean all persons who acquire rights by sublease or other instrument or written arrangement to possess, own, use or occupy any residential apartment unit located in the adjacent residential apartment building. For the avoidance of doubt, Developer's contractors and subcontractors may use any portion of the Garage at no charge during any time of such personnel's initial construction, repair, maintenance, rebuilding or restoration of any portion of the Garage or the other structures located on the Development Sublease Premises.

Section 5.03 Compliance with Parking Procedures.

Developer and HPARC shall at all times comply with the Garage Rules and Regulations (the "**Parking Garage Rules**") attached as Exhibit "D" as the same may be modified from time-to-time in a written instrument signed by both Developer and HPARC; in determining whether to propose and/or approve any changes to the Parking Garage Rules, Developer and HPARC shall act in good faith using commercially reasonable discretion.

Section 5.04 No Obligation to Provide Security Services.

Developer and HPARC acknowledge and agree that neither such party has any duty or obligation of any kind or character to provide, and may elect not to provide in its sole discretion, any security services or surveillance services at the Garage and that all persons accessing or using any part of the Garage shall do so at their own risk. Even if HPARC or Developer do at any time employ security personnel and/or surveillance services, such services shall be obtained solely for the benefit of the party providing such services and no third party may rely upon such services or actions by such party to imply, mean or guarantee that they will be thereby protected from acts of crime and injury, theft or damage to person or property in the Garage. Notwithstanding the fact that the security or surveillance services may from time to time be provided, NEITHER HPARC NOR DEVELOPER SHALL BE LIABLE OR RESPONSIBLE FOR, AND DEVELOPER AND HPARC, EACH FOR ITSELF AND ALL PERMITTED PARTIES AND OCCUPANTS, HEREBY RELEASES HPARC AND DEVELOPER FROM ANY LIABILITY FOR, ANY AND ALL CRIMINAL ACTS OF THIRD PERSONS, INCLUDING, WITHOUT LIMITATION, ACTS OF ROBBERY, BURGLARY, THEFT, MALICIOUS MISCHIEF, ASSAULT OR OTHER CRIMES AGAINST PERSON OR PROPERTY OF ANY NATURE WHATSOEVER. THE LIMITATIONS AND RELEASES OF LIABILITY CONTAINED IN THIS SECTION WILL APPLY REGARDLESS OF ANY NEGLIGENCE ON THE PART OF HPARC OR DEVELOPER OR ANY PARTY OR EMPLOYEE CONTRACTED BY HPARC OR DEVELOPER.

## Article VI. OPERATION AND MAINTENANCE OF PARKING GARAGE

### Section 6.01 Routine General Maintenance of Premises.

Except as expressly provided herein, HPARC shall cause, at its sole cost and expense, the Premises (excluding the stairwells and elevators) to be cleaned and maintained in a condition and manner consistent with Class A public parking garages in the San Antonio central business district area (the "**Maintenance Standard**"). Compliance with the Maintenance Standards shall include, without limitation, the following when necessary: (a) normal maintenance and repairs of the Premises, including snow removal, repainting of stall markings, replacement or repair of signs, Garage Entrances, entry gates, automated equipment and ticket dispensing equipment, and (b) routine removal of trash, refuse or litter from the Premises. Except as expressly provided herein, Developer shall cause, at its sole cost and expense, all stairwells and elevators in the Garage to be cleaned and maintained in accordance with the Maintenance Standard, which shall include, without limitation, the routine removal of trash, refuse or litter from such areas.

### Section 6.02 Operation of Vehicular Access Points.

HPARC shall be responsible for operating all vehicle entry and exit points in the Entrance Area (the "**Garage Entrances**"). HPARC shall furnish Developer with as many access cards as Developer requests (or other necessary instruments) for the Garage (and additional access cards on an order signed by Developer) for a one-time fee equal to HPARC's cost plus 5%; provided, however, Developer may directly purchase access cards (or other necessary instruments) if it so chooses and in such event HPARC will cooperate to give Developer access to the vendor of the applicable access cards (or other necessary instruments). Upon written request from HPARC, Developer will provide HPARC with a list of the persons holding such cards (or other instruments) and upon written request from HPARC will update such list from time to time to keep it current (no more often than once per calendar month). The Garage shall be open for use by the Developer Permitted Parties twenty-four (24) hours a day, every day of the year, except to the extent such access is restricted or hindered due to (a) emergencies, (b) applicable laws, ordinances, rules, and regulations ("**Legal Requirements**"), (c) street closures, street repairs and construction, and other off-site circumstances, (d) Force Majeure Events, and/or (e) necessary maintenance and repairs to the Garage. In each of the circumstances in the preceding sentence, HPARC shall use commercially reasonable efforts to ensure that even if the Premises portion of the Garage is closed for general public parking, the Garage Entrances and Common Access Areas of the Premises will still be open and useable by the Developer Permitted Parties to use the Reserved Access to drive to and from the Apartment Parking Area. The covenants contained in this paragraph will not be construed to require HPARC to keep a parking attendant at the Garage twenty four (24) hours each day; the Garage may be unattended at times, but during such times the access control equipment at the Garage will be programmed or set by HPARC to allow ingress to and egress from the Garage by Developer Permitted Parties. Notwithstanding any other provision contained herein, egress from the public parking portion of the Garage operated in the Premises by HPARC shall be open for use twenty-four (24) hours a day but HPARC may elect to prevent ingress by the public during hours to be reasonably determined by HPARC.

### Section 6.03 Repairs and Maintenance Obligations.

(a) HPARC Repairs and Maintenance. Excluding restoration following a casualty, HPARC shall have the exclusive right and obligation to maintain and repair the Premises portion of Garage (excluding the elevators, stairwells, and structural elements of the Garage) in accordance with the terms of this Parking Garage Lease. Excluding restoration following a casualty, HPARC shall make such repairs, maintenance or replacements to the Premises as necessary to maintain the Premises (excluding the elevators, stairwells, and structural elements of the Garage) in accordance with the Maintenance



Standard, the Legal Requirements and insurance requirements now or hereafter enacted or imposed (collectively, the “*Required Improvements and Repairs*”). If any Legal Requirements or insurance requirements may be satisfied in one or more ways, HPARC shall have commercially reasonable discretion as to how and when to comply with such requirement, as long as such requirement is addressed timely. Developer shall notify HPARC promptly of any events, circumstances or conditions giving rise to any Required Improvements and Repairs. Except as required to comply with any Legal Requirements, HPARC shall not make any alterations or improvements to the Premises without the written consent of Developer determined in its sole and absolute discretion.

(b) Developer Repairs and Maintenance. Developer shall have the exclusive right and obligation to maintain and repair the elevators and stairwells, and all portions of the Garage outside of the Premises, including without limitation the Apartment Parking Area, Developer Elevators (if any), Common Elevators and Remaining Elements. Developer shall make all such repairs, maintenance or replacements as necessary to maintain such areas in accordance with the Maintenance Standard, the Legal Requirements and insurance requirements now or hereafter enacted or imposed. If any Legal Requirements or insurance requirements may be satisfied in one or more ways, Developer shall have commercially reasonable discretion as to how and when to comply with such requirement, as long as such requirement is addressed timely.

Section 6.04 Expense Reimbursement.

(a) Defined Terms. As used in this Parking Garage Lease, the following terms shall have the meanings ascribed to them below.

(i) “*Capital Expense*” shall mean any expenditure for the acquisition of fixed assets that are required to be capitalized under GAAP.

(ii) “*Common Elevators*” means the elevators of the Garage that are for the use of both the Premises and the Apartment Parking Area.

(iii) “*Developer Elevators*” means the elevators, if any, in the Garage described on the attached Exhibit “F” that are for the exclusive use of the Developer Permitted Parties.

(iv) “*Developer’s Pro Rata Share*” means a fraction for which the numerator is the total number of parking spaces included in the Apartment Parking Area and the denominator of which is the total number of parking spaces in the Garage.

(v) “*Developer Shared Capital Expenses*” means actual, out-of-pocket costs incurred by Developer that constitute Capital Expenses related to the maintenance, repair and replacement of (a) the Common Elevators and (b) the stairwells located within the Garage below the level where the Gate is located.

(vi) “*Developer Sole Expenses*” means all expenses incurred by Developer towards fulfillment of its obligations to maintain, repair and replace the Garage (excluding the Premises except for the elevators and stairwells located within the Premises) that are not expressly defined herein as Developer Shared Capital Expenses.

(vii) “*HPARC’s Pro Rata Share*” means a fraction for which the numerator is the total number of parking spaces included in the Premises and the denominator of which is the total number of parking spaces in the Garage.

(viii) “**HPARC Shared Capital Expenses**” means the actual out-of-pocket costs incurred by HPARC that constitute Capital Expenses related to repaving the ramps and drive aisles included in the Common Access Areas and the maintenance, repair and replacement of improvements, facilities and equipment located within the Entrance Area, excluding such expenses that are directly related to revenue collection or the maintenance, repair or replacement of revenue collection equipment.

(ix) “**HPARC Sole Expenses**” means all expenses incurred by HPARC towards fulfillment of its obligations to maintain and repair the Premises and the Entrance Area that are not expressly defined herein as HPARC Capital Shared Expenses.

(x) “**Remaining Elements**” includes the stairwells, roof, foundation, any other structural elements of the Garage, and any other portion of the Garage not defined as the Premises, Apartment Parking Area, Developer Elevators, or Common Areas.

(b) Shared Expense Reimbursement. HPARC shall reimburse Developer for HPARC’s Pro Rata Share of Developer Shared Capital Expenses on monthly pro rata basis according to the same schedule by which such expenses are amortized in accordance with GAAP. Developer shall reimburse HPARC for Developer’s Pro Rata Share of HPARC Shared Capital Expenses on monthly pro rata basis according to the same schedule by which such expenses are amortized in accordance with GAAP (i.e., the annual amortization of a capital expense shall be prorated between the Parties and the divided by 12 to determine the amount of monthly reimbursement to be paid). Notwithstanding the foregoing, if the amortization schedule for any Developer Shared Capital Expenses would extend beyond the expiration of the final “Extension Period” provided for under the Development Sublease (irrespective of whether any of such “Extension Periods” are actually exercised under the Development Sublease) and this Parking Garage Lease is still in effect, then Developer may amortize such expenses over the remaining Term of this Parking Garage Lease (including any Extension Periods remaining hereunder) so long as it obtains HPARC’s approval prior to incurring such expenses that exceed Twenty Thousand and No/100 Dollars (\$20,000.00) (adjusted for CPI using 2018 as the base year), such consent not to be unreasonably withheld, conditioned or delayed.

(c) Sole Expenses. HPARC shall be solely responsible for HPARC Sole Expenses. Developer shall be solely responsible for Developer Sole Expenses.

## Article VII. TAXES.

Pursuant to the terms, conditions and provisions of the Development Sublease, Developer is responsible for paying all (if any) of the real estate taxes, assessments and governmental charges (if any), plus additional amounts, if any, in penalties, interest, attorney’s fees, collection penalties and/or other amounts (collectively, “**Taxes**”) that may be assessed against the Garage or the Premises during the Term, as well as any other charges, taxes and/or impositions now in existence or hereinafter imposed by any any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, office or instrumentality of them (“**Governmental Authority**”) based upon the privilege of renting the Premises or upon the amount of rent collected therefor or which are added to a tax or charge previously included within the definition of Taxes.

## Article VIII. INSURANCE REQUIREMENTS

### Section 8.01 Garage Insurance.

Developer shall comply with the insurance requirements of the Development Sublease.

### Section 8.02 Developer's Liability Insurance.

Developer shall comply with the insurance requirements of the Development Sublease.

### Section 8.03 HPARC Liability Insurance.

(a) Developer acknowledges that: (i) the City of San Antonio maintains a fully funded reserve account ("*Liability Fund*") for the purpose of providing relief from third party legal liability claims, for which the City may become liable; and (ii) HPARC is a nonprofit local government corporation created by the City of San Antonio to aid and act on behalf of the City in redeveloping Hemisfair.

(b) Claims which may be asserted against HPARC in connection with this Garage Sublease and in which HPARC is found to be liable by a court of competent jurisdiction, shall be paid by the City of San Antonio through the Liability Fund

(c) If at any time neither HPARC nor any other entity owned or controlled by the City of San Antonio has any leasehold interest in the Premises, then the above portions of this Section 8.03 shall not longer apply and the following provisions of this Section 8.03(c) shall apply for the remainder of the Term.

HPARC shall, at its sole cost and expense, obtain and maintain a (i) commercial general liability insurance insuring HPARC, and with Developer as an additional insured, against all claims, demands, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence; (ii) a business automobile policy or policies extending to all owned, non-owned, hired, and borrowed automobiles, the limits of such policy or policies to be in an amount not less than \$1,000,000, (iii) workers' compensation insurance with statutory limits, and employer's liability with limits of not less than \$1,000,000 in respect of bodily injury by accident, \$1,000,000 in respect of bodily injury by disease, and (iv) commercial umbrella/excess liability insurance with limits of not less than \$10,000,000 per occurrence and in the aggregate. HPARC will implement reasonable increases in any such limits consistent with the insurance being required by institutional owners of properties similar to the Garage in the San Antonio, Texas area.

All policies of insurance shall be issued by an insurance company or companies having an AM Best's rating of not less than A- and a financial rating of Class VII as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. HPARC shall deliver to Developer standard ACORD certificate evidencing the required insurance on or before the Commencement Date. Ten (10) days prior to the expiration of each of the policies required hereunder, HPARC shall furnish Developer with certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Parking Garage Lease. In the event HPARC fails to maintain, or cause to be maintained, the insurance required by this Parking Garage Lease, Developer may procure such insurance for the benefit only of Developer for such risks covering its respective interest, and HPARC will pay all

premiums thereon within thirty (30) days after demand by Developer. In the event HPARC fails to pay such premiums (or reimburse Developer) upon demand the amount of all such premiums shall bear interest at the Default Rate.

Section 8.04     Insurance Policy Requirements.

Developer shall comply with the insurance requirements of the Development Sublease. In the event Developer fails to maintain, or cause to be maintained, the insurance required by the Development Sublease, HPARC may procure such insurance for the Garage portion of the Development Sublease Premises, for the benefit only of HPARC for risks relating to this Parking Garage Lease covering their respective interests, and Developer will pay all premiums thereon within thirty (30) days after demand by HPARC. In the event Developer fails to pay such premiums (or reimburse HPARC) upon demand the amount of all such premiums shall bear interest at the Default Rate.

Section 8.05     Waiver of Subrogation.

Notwithstanding anything contained in this Parking Garage Lease to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered, or is required by this Parking Garage Lease to be covered, by insurance policies. Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Parking Garage Lease with respect to any loss or damage to property of the parties hereto.

Section 8.06     Constant Dollars.

All dollar amounts associated with insurance required to be carried by Developer and HPARC under this Parking Garage Lease shall be in Constant Dollars but rounded off to the nearest whole one million dollar increment. "**Constant Dollars**" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the first day of January immediately following the fifteenth (15th) anniversary of the Effective Date, and thereafter at fifteen (15) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current CPI and the denominator of which is the Base CPI. The "**Base CPI**" shall be the CPI for the calendar year in which the Effective Date occurs; and the "**Current CPI**" shall be the CPI for the calendar year preceding the adjustment year. If the Development Sublease has a concept similar to this paragraph with regard to periodic increases in insurance required to be carried by Developer under the Development Sublease, then the preceding portions of this paragraph shall not apply.

**Article IX.     INDEMNITY**

DEVELOPER (AS APPLICABLE, THE "**DEVELOPER INDEMNITOR**") COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, HPARC, PFC, THE CITY OF SAN ANTONIO, TEXAS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND REPRESENTATIVES (INCLUDING ANY PROPERTY MANAGERS) (AS APPLICABLE, THE "**DEVELOPER INDEMNITEE**"), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT

LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE DEVELOPER INDEMNITEE RESULTING FROM DEVELOPER INDEMNITOR'S ACTS OR OMISSIONS IN, ON OR ABOUT THE GARAGE, OR FROM ANY CONDITION OF THE GARAGE CAUSED BY DEVELOPER INDEMNITOR. THE DEVELOPER INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A DEVELOPER INDEMNITEE.

HPARC (AS APPLICABLE, THE "**HPARC INDEMNITOR**") COVENANTS AND AGREES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TO FULLY INDEMNIFY AND HOLD HARMLESS, DEVELOPER AND ITS RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND REPRESENTATIVES (INCLUDING ANY PROPERTY MANAGERS) (AS APPLICABLE, THE "**HPARC INDEMNITEE**"), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE HPARC INDEMNITEE RESULTING FROM HPARC INDEMNITOR'S ACTS OR OMISSIONS IN, ON OR ABOUT THE GARAGE, OR FROM ANY CONDITION OF THE GARAGE CAUSED BY HPARC INDEMNITOR. THE HPARC INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A HPARC INDEMNITEE.

THE PROVISIONS OF THIS INDEMNIFICATION 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. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

IF AT ANY TIME NEITHER HPARC NOR ANY OTHER ENTITY OWNED OR CONTROLLED BY THE CITY OF SAN ANTONIO HAS ANY LEASEHOLD INTEREST IN THE PREMISES, THEN DEVELOPER SHALL NO LONGER BE OBLIGATED TO INDEMNIFY PFC OR THE CITY OF SAN ANTONIO WITH RESPECT TO CLAIMS ARISING ON OR AFTER THE DATE UPON WHICH NEITHER HPARC NOR ANY OTHER ENTITY CONTROLLED OR OWNED BY THE CITY OF SAN ANTONIO HAS ANY LEASEHOLD INTEREST IN THE PREMISES.

THE TERMS OF THIS ARTICLE SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS PARKING GARAGE LEASE.

**Article X. ASSIGNMENT AND SUBORDINATION**

Section 10.01 Assignment by HPARC.

HPARC shall not have any right to assign the Parking Garage Lease during the first ten (10) years of the Term. Subject to Developer's ROFR (defined below), if HPARC is simultaneously assigning (or collaterally assigning, as applicable) its rights under the Development Sublease in a manner permitted by the Development Sublease, HPARC may simultaneously assign (or collaterally assign, as applicable) its interest in this Parking Garage Lease to the same assignee (or same collateral assignee, as applicable) as it is assigning (or collaterally assigning, as applicable) its rights to the Development Sublease, without Developer's consent, so long as the assignee (or collateral assignee, as applicable) agrees to assume all of HPARC's obligations pursuant to this Parking Garage Lease. Except as otherwise expressly indicated

herein, no assignment or collateral assignment by HPARC shall alter the rights of Developer hereunder, and all of the recitals, terms, provisions, covenants, and conditions of this Parking Garage Lease shall remain in full force and effect upon any such permitted assignment. HPARC shall provide Developer with a copy of any fully-executed permitted assignment within five (5) days after the complete execution of such assignment. Except as expressly provided in the preceding portions of this paragraph, HPARC shall not have any rights to assign or sublease its rights under this Parking Garage Lease without Developer's prior written consent, which consent may be withheld in Developer's sole and absolute discretion. Any purported or attempted assignment which is not permitted by the terms of this paragraph is void.

HPARC's rights in the preceding paragraph are subject in all respects to Developer's right of first refusal described in this paragraph. HPARC grants Developer a right of first refusal to purchase HPARC's rights under this Parking Garage Lease ("**ROFR**"). If HPARC receives an offer to sell its rights under the Parking Garage Lease and it intends to accept the offer, or if HPARC decides to make an offer to sell its rights under the Parking Garage Lease (collectively, "**Offer**"), HPARC will give a written copy of the Offer to Developer. Developer will have the right to accept the Offer by written notice to HPARC given within fifteen (15) days after Developer's receipt of the Offer. If Developer accepts the Offer, Developer will be bound to purchase HPARC's rights under the Parking Garage Lease strictly in accordance with the terms of the Offer. If Developer does not accept the Offer made pursuant to this paragraph, HPARC may proceed to sell its rights under the Parking Garage Lease so long as such sale complies with the requirements of the preceding paragraph and so long as such sale is on the same terms as in the Offer; if HPARC does not consummate such sale for any reason, Developer shall retain its ROFR under this paragraph as to any all subsequent Offers.

In no event shall the terms, conditions and provisions of this Section 10.01 restrict HPARC's ability to enter into management agreements pursuant to which a third party may perform all or some of HPARC's obligations hereunder on behalf of HPARC so long as HPARC remains contractually obligated to Developer hereunder with respect to all such obligations.

Section 10.02     Assignment by Developer.

Developer may assign, or collaterally assign, its interest in this Parking Garage Lease only in connection with an assignment, or collateral assignment, of Developer's interest in the Development Sublease permitted under the terms, conditions and provisions of the Development Sublease.

Section 10.03     Subordination, Nondisturbance and Attornment.

Pursuant to and subject to the SNDA delivered to HPARC on or before the Commencement Date hereunder, this Parking Garage Lease shall be subordinate to all existing Developer's leasehold mortgages and/or deeds of trust affecting the Premises. If Developer, subsequent to the Commencement Date, collaterally assigns its rights under this Parking Garage Lease, Developer shall cause its leasehold mortgagee to execute and record an SNDA with respect to such mortgage or deed of trust in substantially the form attached to this Parking Garage Lease as Exhibit "B" (or in such other form as Developer's leasehold mortgagee shall reasonably require); in such event, HPARC shall also execute and deliver such SNDA. So long as such SNDA executed by Developer and Developer's leasehold mortgagee is delivered to HPARC, HPARC's rights under this Parking Garage Lease shall be subordinate to the lien of such mortgage or deed of trust and HPARC shall attorn to Developer's successor following any foreclosure, sale or transfer in lieu thereof ("**Developer's Successor**"). Notwithstanding any foreclosure or sale under any mortgage or deed of trust (or transfer by deed in lieu thereof), this Parking Garage Lease shall remain in full force and effect so long as HPARC is not in default beyond any applicable notice or cure period.

## Article XI. CASUALTY

### Section 11.01 Restoration.

In the event the Garage shall be wholly or partially damaged or destroyed by fire or other casualty, Developer shall, at its own expense, cause the Garage to be restored to its prior condition in accordance with the terms, conditions and provisions of the Development Sublease.

### Section 11.02 Abatement of Rent.

Except as expressly provided in this Parking Garage Lease, this Parking Garage Lease shall not terminate, nor shall HPARC have any right to terminate this Parking Garage Lease. In the event the Garage is partially damaged by fire or other casualty, all Rent and other amounts due hereunder shall abate in such proportion as that part of the Premises rendered unusable by such fire or other casualty.

## Article XII. CONDEMNATION.

### Section 12.01 Taking of Entire Premises.

If, during the Term, all or a portion of the Premises is condemned or taken by any legal entity having the power of eminent domain, or is transferred in lieu (collectively, a "**Taking**" or "**Taken**", as applicable), and such Taking is with respect to the entire Premises or such portion of the Premises as renders the remaining portion to be of substantially no commercial value (as determined by Developer in its sole but commercially reasonable discretion), this Parking Garage Lease will terminate as of the date that title vests in such condemning authority; provided, however, that such termination will not benefit such condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority.

### Section 12.02 Taking of Less than Entire Premises.

If, during the Term, any portion of the Premises is Taken and this Parking Garage Lease is not terminated as provided in Section 12.01 above, then (i) this Parking Garage Lease will terminate only as to the portion of the Premises so Taken as of the date that title to such portion of the Premises vests in such condemning authority (provided, however, that such termination will not benefit such condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority), and (ii) this Parking Garage Lease will not terminate as to the portion of the Premises not Taken. In the event of a partial Taking, HPARC will be entitled to a pro-rata reduction in Base Rent based on the number of parking spaces in the Premises eliminated by the Taking.

### Section 12.03 Allocation of Condemnation Awards.

(a) The condemnation award relating to the leasehold estates in this Parking Garage Lease shall be allocated between HPARC and Developer in accordance with this Section.

(b) To the extent permitted by applicable condemnation law, the "compensation" due to each of HPARC and Developer for the Taking of each of their separate leasehold estates in and to the Premises created by this Parking Garage Lease as to the Premises shall be determined by separate findings by the trier of fact in such condemnation proceeding. As used in this Section 12, "**compensation**" shall mean and include all sums of money which the condemning authority is required to pay for the Taking of the Parking Garage Lease leasehold estates of HPARC and Developer in and to the

Premises, including (without limitation) damages sustained to any portion of the Premises not taken and costs of demolition, removal, restoration or relocation.

(c) If applicable condemnation law or the court in which such proceedings are held does not require or permit the condemning authority to separately compensate each of HPARC and Developer for their Parking Garage Lease leasehold estates in the Premises being taken from each of them, then HPARC and Developer agree:

(1) They will cooperate with each other in the presentation of evidence bearing on the value of the Premises disregarding the separate estates of each; and

(2) They will request the trier of fact in the condemnation proceeding to apportion and allocate the single determination of value between HPARC and Developer based upon the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking as determined by separate and additional findings of the trier of fact, and each of HPARC and Developer shall be permitted to present to the trier of fact the relevant factors and components in determining the fair market value of their respective estates.

(3) If a court is prohibited by law from apportioning and allocating the single determination of value between HPARC and Developer or declines to do so, then HPARC and Developer shall attempt in good faith to agree upon the allocation of the compensation between them. If HPARC and Developer cannot agree on the allocation of the award, and if such inability to agree continues for thirty (30) days after the amount of the award is determined, HPARC and Developer agree that the determination of such allocation will be made by the Board of Appraisers appointed in accordance with this subsection (iii) in accordance with the following procedure, and the compensation shall be divided between HPARC and Developer on the basis of the proportion which the fair market value of the estate of each of HPARC and Developer in the Premises as determined by the Board of Appraisers and calculated as of the date that is immediately prior to the date of the Taking bears to the aggregate of such fair market values. HPARC and Developer will each promptly appoint one (1) appraiser, and those two (2) appraisers will promptly appoint a third (3rd) appraiser (the "**Board of Appraisers**"). Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years' experience in appraisal of real estate for commercial use in downtown San Antonio, Texas. If such appraisers fail to appoint such third (3rd) appraiser within thirty (30) days after notice of their appointment, then either HPARC or Developer, upon notice to the other, may request the appointment of a third (3rd) appraiser by the then president of the San Antonio Board of Realtors, or any then similar existing body. The three (3) appraisers so appointed will jointly determine the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking, and each of HPARC and Developer shall be permitted to present to the appraisers the relevant factors and components in determining the fair market value of their respective estates. If, after notice by either HPARC or Developer of the appointment of an appraiser by the party giving such notice, the other party to whom such notice is given fails, within a period of ten (10) days after such notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as sole appraiser to make the determination and allocation. HPARC will pay the fees and expenses of the person appointed by HPARC as an appraiser, Developer will pay the fees and expenses of the person appointed by Developer as an appraiser, and HPARC and Developer will each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser appointed pursuant to the provisions of this subsection (iii).

(4) Notwithstanding anything contained in this Parking Garage Lease to the contrary, neither HPARC nor Developer will be prohibited from introducing into any condemnation proceeding or proceedings with respect to the Premises such appraisals or other estimates of value, loss and/or damage as each may in its discretion determine. Developer will be entitled to claim in any



condemnation proceedings such award as may be allowed for relocation costs or other consequential damages, but only to the extent that the same does not reduce, and is in addition to, the award for the land and improvements and damage to the remainder. At Developer's direction, any condemnation award to which Developer is entitled will be paid directly to its leasehold mortgagee.

Section 12.04 No Abatement of Rent.

If there is a temporary taking of all or any portion of the Premises which is less than one year, there shall be no abatement of Rent, but HPARC will be entitled to the entire award relating to this Parking Garage Lease for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority extends beyond the date of expiration of the Term, in which case the award made for such taking will be apportioned between HPARC and Developer as of the date of such expiration based upon the pro rata portions of the term of the temporary taking before and after the termination of this Parking Garage Lease.

**Article XIII. DEFAULT**

(a) Events of Default. Subject to the rights of leasehold mortgagees as provided in this Parking Garage Lease, each of the following events shall constitute an "***Event of Default***" by a Party:

(1) Monetary Defaults. The failure or omission by either Party to pay amounts required to be paid pursuant to this Parking Garage Lease when due hereunder, and such failure or omission has continued for thirty (30) days after written notice from the other Party (each such failure or omission referred to herein as a "***Monetary Default***"). It is hereby expressly acknowledged that Monetary Defaults include the failure of a Party to pay monetary damages awarded to the other Party in connection with an Event of Default other than a Monetary Default within thirty (30) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

(2) General Non-Monetary Defaults. The failure or omission by either Party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Parking Garage Lease, and such failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such Party is diligently and continuously proceeding to complete such cure) (the "***Non-Monetary Default Cure Period***") after written notice from the other Party (each such failure or omission referred to herein as a "***General Non-Monetary Default***").

(3) Bankruptcy Defaults. (a) HPARC filing for voluntary bankruptcy; or (b) an involuntary bankruptcy is filed against HPARC which is not dismissed within sixty (60) days of such filing (each such event referred to herein as a "***Bankruptcy Default***").

(b) Developer Remedies for HPARC Defaults.

(1) General Remedies. Subject to the rights of leasehold mortgagees as expressly provided in this Parking Garage Lease and subject to any other limitations of remedies expressly provided in this Parking Garage Lease, upon the occurrence and during the continuation of an Event of Default by HPARC, Developer may, at its option, and in addition to and cumulatively of any other rights Developer may have under this Parking Garage Lease, at law or in equity (a) cure the HPARC Event of Default on HPARC's behalf, in which event HPARC shall reimburse Developer on demand for all sums so expended by Developer, including without limitation such reasonable expenses that Developer has incurred in connection therewith, plus interest at the Default Rate from the date paid

by Developer until repaid by HPARC, or (b) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder, or the enforcement and specific performance when available.

(2) Disputed Defaults. With respect to any General Non-Monetary Default that Developer asserts against HPARC but that HPARC disputes in writing within sixty (60) days following receipt of written notice of such default from Developer, HPARC or Developer may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. If the arbitrator determines that a General Non-Monetary Default has occurred ("**Arbitrator Determined General Non-Monetary Default Determination**"), then HPARC shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the time the arbitrator's decision becomes final and non-appealable. If HPARC does not cure such General Non-Monetary Default within such Non-Monetary Default Cure Period, then Developer may, at its option, and in addition to and cumulatively of any other rights Developer may have under this Parking Garage Lease, at law or in equity, elect to terminate this Parking Garage Lease by giving notice thereof to HPARC ("**General Non-Monetary Default Termination Election**"), in which event HPARC shall immediately surrender the Premises to Developer and if HPARC fails so to do, Developer may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises. If any such General Non-Monetary Default is cured before HPARC's receipt of the General Non-Monetary Default Termination Election, Developer shall have no right to terminate this Parking Garage Lease on account of such General Non-Monetary Default.

(3) General Termination Rights. With respect to any Monetary Default or any Bankruptcy Default, Developer may, at its option, and in addition to and cumulatively of any other rights Developer may have under this Parking Garage Lease, at law or in equity, elect to terminate this Parking Garage Lease by giving notice thereof to HPARC ("**Other Default Termination Election**"), in which event HPARC shall immediately surrender the Premises to Developer and if HPARC fails so to do, Developer may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises. If any such Monetary Default or Bankruptcy Default is cured before HPARC's receipt of the Other Default Termination Election, Developer shall have no right to terminate this Parking Garage Lease on account of such Monetary Default or Bankruptcy Default.

(4) Rent Damages. Upon any termination of this Parking Garage Lease by Developer due to an Event of Default by HPARC, HPARC immediately shall become liable for damages in an amount equal to: (i) the present value [calculated with a discount factor equal to six percent (6%)] of the excess of (x) the entire amount of Rent and other charges and assessments that would become due and payable during the remainder of the Term determined as though this Parking Garage Lease had not been terminated, over (y) the then fair market rental value of the Premises (on the same net basis as this Parking Garage Lease) for the remainder of the Term, together with (ii) Developer's attorneys fees and court costs or arbitration costs incurred by Developer in connection with HPARC's default and the unpaid Rent (if any) due for periods prior to the date of termination. The calculations in this paragraph shall be made without including any extensions terms which are not yet in effect as of the date of termination.

(5) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to Developer hereunder or of any damages accruing to Developer by reason of the violation of any of the terms, provisions, conditions and covenants herein contained. Developer's acceptance of Rent following an Event of Default hereunder shall not be construed as Developer's waiver of such Event of Default. No waiver by Developer of any violation or breach of any of the terms, provisions, conditions and covenants herein

contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, conditions and covenants herein contained. Forbearance by Developer to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.

(6) If this Parking Garage Lease shall be terminated by Developer, and thereafter HPARC shall be liable for any deficiency in Rent by way of damages or otherwise, then the Rent, from and after the time of default resulting in such termination, shall be deemed to be the Rent that Developer would have received had there been no termination.

(7) In case of default in payment of any part of the Rent, Developer shall have the privilege of splitting its cause of action so as to permit the institution of separate suits for the Rent, and neither the institution of any such suit, nor the entry of judgment therein, shall bar Developer from bringing a separate suit for the other, it being understood that the forbearance of Developer in the institution of any suit or in the entry of judgment for the Rent shall not be defense against, or prejudice a subsequent action for, the other. HPARC waives the right to claim a merger of Rent in the previous suit or the judgment entered therein. The claims for Rent may be regarded by Developer, if it so elects, as separate claims.

(c) HPARC Remedies for Developer Defaults. Upon the occurrence and during the continuation of an Event of Default by Developer, HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Parking Garage Lease, at law or in equity (a) cure the Developer Event of Default on Developer's behalf, in which event Developer shall reimburse HPARC on demand for all sums so expended by HPARC plus interest at the Default Rate from the date paid by HPARC until repaid by Developer, (b) terminate this Parking Garage Lease by notice to Developer and in conformity with procedures required hereby and by applicable Law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder. HPARC shall have the right but not the obligation after providing at least sixty (60) days' notice to Developer to perform, acquire, or satisfy any lien, encumbrance, agreement or obligation of Developer which is a lien or encumbrance on the Premises or Improvements; provided Developer is not contesting the correctness or validity of such lien, encumbrance, agreement or obligation and such lien, encumbrance, agreement or obligation does not result in a material risk of loss of the Premises or Improvements.

(d) Attorney's Fees. In any case where HPARC or Developer employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing Party agrees to pay to the prevailing Party the reasonable attorney's fees incurred by the prevailing Party.

(e) Waiver. Failure on the part of HPARC or Developer to complain of any action or non-action on the part of Developer or HPARC, no matter how long the same may continue, shall never be deemed to be a waiver by HPARC or Developer of any of its respective rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by HPARC or Developer shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by HPARC or Developer to or of any action by Developer or HPARC requiring HPARC's or Developer's consent or approval shall not be deemed to waive or render unnecessary HPARC's or Developer's consent or approval to or of any subsequent similar act by Developer or HPARC.

**Article XIV. NOTICES**

Any notice to be given or to be served in connection with this Parking Garage Lease must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO HPARC: Hemisfair Park Area Redevelopment Corporation  
Attn: Chief Executive Officer  
434 South Alamo Street  
San Antonio, Texas 78205

WITH A COPY TO: Golden Steves Cohen & Gordon LLP  
Attn: Stephen L. Golden  
300 Convent Street, Suite 2600  
San Antonio, Texas 78205

TO DEVELOPER: AREA Real Estate, LLC  
Attn: David Adelman  
1221 Broadway St #104  
San Antonio, TX 78215

WITH A COPY TO: STAHL, BERNAL, DAVIES, SEWELL & CHAVARRIA, LLP  
Attn: Brent Stahl  
7320 N. MoPac, Suite 211  
Austin, TX 78731

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

**Article XV. MISCELLANEOUS**

Section 15.01 Quiet Enjoyment.

HPARC, upon paying the Rent and performing the covenants and agreements of this Parking Garage Lease, shall quietly have, hold and enjoy the Premises and all rights granted HPARC in this Parking Garage Lease during the Term hereof.

Section 15.02 Force Majeure.

Whenever performance is required of any party under this Parking Garage Lease, the obligation for such performance will be extended as provided in this Section 14.02. If completion of performance is delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, damage to work in progress by reason of fire or other casualty or causes beyond any reasonable control of a party (other than unavailability of labor or materials or financial reasons), acts of the State, Federal or local government in its sovereign capacity (other than the usual and customary observance and enforcement of Laws), including a moratoria (each, a

“*Force Majeure Event*”), then, the time for performance as specified in this Parking Garage Lease will be appropriately extended by the time of the delay actually caused.

Section 15.03 Relationship of Parties.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

Section 15.04 Legal Construction.

THIS PARKING GARAGE LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, and all obligations of the parties created hereunder are performable in Bexar County, Texas. The parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought hereunder.

Section 15.05 Severability.

If one or more of the provisions contained in this Parking Garage Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Parking Garage Lease shall not be affected thereby, and it is also the intention of the parties to this Parking Garage Lease that in lieu of each clause or provision of this Parking Garage Lease that is illegal, invalid or unenforceable, there be added as a part of this Parking Garage Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 15.06 Captions.

The Captions contained in this Parking Garage Lease are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

Section 15.07 Authority.

The signer of this Parking Garage Lease for Developer and HPARC hereby represents and warrants that he or she has full authority to execute this Parking Garage Lease on behalf of Developer and HPARC (as applicable).

Section 15.08 Entire Agreement.

This Parking Garage Lease contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements (except for applicable provisions in the Development Sublease which are expressly referenced in this Parking Garage Lease), oral or otherwise, regarding the subject matter of this Parking Garage Lease shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that none of the Developer nor HPARC shall be bound by any term, condition or representation not herein written (except for applicable provisions in the Development Sublease which are expressly referenced in this Parking Garage Lease).

Section 15.09 Developer and HPARC as Corporation or Partnership.

If Developer and HPARC execute this Parking Garage Lease as a corporation or partnership, then Developer and HPARC and the persons executing this Parking Garage Lease on behalf of Developer and HPARC represent and warrant that the individuals executing this Parking Garage Lease on Developer's and HPARC's behalf are duly authorized to execute and deliver this Parking Garage Lease on their behalf.

Section 15.10 Attorneys' Fees.

In the event that at any time following the date hereof, HPARC or Developer shall institute any action or proceeding against the other relating to the provisions of this Parking Garage Lease or any default hereunder, then and in that event, the prevailing party shall reimburse the other for all reasonable costs and expenses, including attorneys' fees and expenses incurred by the prevailing party with respect thereto.

Section 15.11 Brokers.

Developer and HPARC respectively warrant and represent to each other that it has had no dealings with any broker in connection with this Parking Garage Lease and that it knows of no other person who is or might be entitled to a commission, finder's fee or other like payment in connection with this Parking Garage Lease and each party hereunder does hereby agree to indemnify, defend and hold the other harmless from and against any and all loss, liability and expenses that the other party may incur should such warranty and representation by such party prove incorrect.

Section 15.12 Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Parking Garage Lease in which time of performance is a factor.

Section 15.13 Amendments in Writing.

This Parking Garage Lease may only be changed, modified or amended by an instrument in writing, executed by the parties hereto.

Section 15.14 Accord and Satisfaction.

No payment by Developer or receipt by HPARC of a lesser amount than the monthly fees provided for herein shall be deemed to be other than on account of the earliest stipulated fees, nor shall any endorsement of statement on any check or any letter accompanying any check or payment as fees be deemed an accord and satisfaction, and HPARC may accept such check payment without prejudice to HPARC'S right to recover the balance of such fees or pursue any other remedy provided for in this Parking Garage Lease.

Section 15.15 Estoppel Certificate.

HPARC and Developer will, at any time and from time to time, upon not less than ten (10) days prior written request by the other party, execute, acknowledge and deliver to the requesting party a certificate, certifying that (a) this Parking Garage Lease is unmodified and in full effect (or setting forth any modifications and that this Parking Garage Lease is in full effect as modified); (b) the Rent payable and the dates to which the Rent has been paid; (c) any default of which HPARC or Developer, as

applicable, may have knowledge; (d) the commencement and expiration dates of this Parking Garage Lease; and (e) such other matters as may reasonably be requested by HPARC or Developer. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Premises.

Section 15.16 Memorandum of Lease.

This Parking Garage Lease shall not be recorded. On the Commencement Date, Developer and HPARC shall execute a Memorandum of Lease, in the form attached hereto as Exhibit "E" for recordation in Bexar County, Texas. Upon the expiration or earlier termination of this Parking Garage Lease, HPARC shall, at its expense, within five (5) business days following said expiration or termination, file a release of this Parking Garage Lease in the Official Public Records of Real Property of Bexar County, Texas. This obligation shall survive the expiration of the Term or earlier termination of this Parking Garage Lease.

Section 15.17 Third Party Beneficiaries.

Portions of Article IX of this Parking Garage Lease grant certain specific rights and benefits to PFC and City of San Antonio, neither of which is a party to this Parking Garage Lease ("**Third Party Rights**"): HPARC and Developer agree that PFC and the City of San Antonio are express, intended third party beneficiaries of the Third Party Rights, each with the right (but no duty) to enjoy and enforce such Third Party Rights.

[Signature Page Follows]

EXECUTED AND AGREED TO as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "*Effective Date*").

**HPARC:**

**HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION**, a Texas local government corporation

By: \_\_\_\_\_  
Name: Andres Andujar  
Title: Chief Executive Officer

**DEVELOPER:**

**AREA REAL ESTATE, LLC**, a Texas limited liability company

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



**JOINDER BY CITY OF SAN ANTONIO**

The City of San Antonio hereby joins in the execution of this Parking Garage Sublease for the sole and limited purpose of confirming its agreement to perform the obligations and agreements required of it under Section 8.03(a) and Section 8.03(b) of the Parking Garage Sublease.

CITY OF SAN ANTONIO

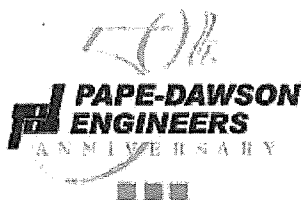
By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

Approved as to Form:

\_\_\_\_\_  
Acting City Attorney

**EXHIBIT "A"**

**DESCRIPTION OF THE DEVELOPMENT SUBLEASE PREMISES**



**FIELD NOTES  
FOR  
LAND BANK - TRACT 4 (REVISED)**

A 1.097 acre, or 47,785 square feet, more or less, tract of land out of Lot 12, Block 3, New City Block 13814 of the Civic Center Project No. 5 Tex. R-83 Urban Renewal Agency subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas and being out of that tract described in deed to the City of San Antonio as a 11.650 acre tract recorded in Volume 6205, Pages 537-543 of the Deed Records of Bexar County, Texas in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 1.097 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (1996) and combined scale factor 0.999830028895;

COMMENCING: At a set ½" iron rod with cap marked "Pape-Dawson" at a point of tangency on the east right-of-way line of South Alamo Street, a variable width right-of-way, at the southwest corner of said Lot 12, being N 1°30'25" E, a distance of 25.06 feet from the intersection of the north right-of-way line of Cesar Chavez Boulevard and the east right-of-way line of South Alamo Street, at North 13,700,114.77 and East 2,131,452.33 of said coordinate system;

THENCE: N 56°10'45" E, departing the east right-of-way line of said South Alamo Street, over and across said Lot 12 a distance of 322.35 feet to the POINT OF BEGINNING;

THENCE: Over and across said Lot 12 the following bearings and distances;

N 41°35'06" E, a distance of 148.69 feet to a set ½" iron rod with cap marked "Pape-Dawson" for point of curvature;

Along a tangent curve to the right, said curve having a radius of 49.50 feet, a central angle of 22°25'10", a chord bearing and distance of N 52°47'41" E, 19.25 feet, for an arc length of 19.37 feet to a set ½" iron rod with cap marked "Pape-Dawson", for a point of tangency;

N 64°00'16" E, a distance of 54.87 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

N 47°22'16" E, a distance of 63.34 feet to a set ½" iron rod with cap marked "Pape-Dawson" for the north corner of the herein described tract;

THENCE: S 43°44'03" E, continuing over and across said Lot 12, a distance of 142.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" for an angle point;

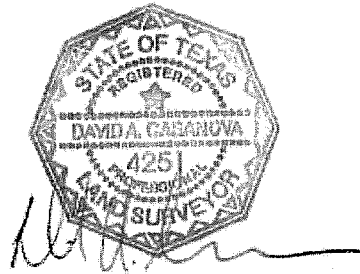
Page 1 of 2

San Antonio | Austin | Houston | Fort Worth | Dallas  
Transportation | Water Resources | Land Development | Surveying | Environmental  
2000 NW Loop 410, San Antonio, TX 78213 T: 210 375 9000 www.Pape-Dawson.com

Hemisfair Land Bank  
Tract 4 (Revised)  
1.097 Acres  
Job No: 9390-13

- THENCE: S 00°36'07" W, continuing over and across said Lot 12, a distance of 18.59 feet to a set ½" iron rod with cap marked "Pape-Dawson" at an angle point of the herein described tract;
- THENCE: S 44°23'47" W, continuing over and across said Lot 12, a distance of 264.42 feet to a set ½" iron rod with cap marked "Pape-Dawson" at the south corner of the herein described tract;
- THENCE: N 45°36'13" W, continuing over and across said Lot 12, a distance of 172.78 feet to the POINT OF BEGINNING, and containing 1.097 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9390-13 by Pape-Dawson Engineers, Inc. Monumentation in progress, a brass nail stamped "Pape-Dawson" may be set on concrete or a magnetic concrete nail may be set in brick pavers.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: October 6, 2015  
JOB NO. 9390-13  
DOC. ID. N:\Survey\13\13-9300\9390-13\Word\Landbank - Tract 4\_REVISIED.docx  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00



**EXHIBIT "A-1"**

**DESCRIPTION OF THE PREMISES**

***[A MUTUALLY AGREED UPON DESCRIPTION AND/OR DEPICTION OF THE PREMISES  
WILL BE ATTACHED PRIOR TO EXECUTION OF THIS PARKING GARAGE LEASE]***

**EXHIBIT "B"**  
**SNDA**

**SUBORDINATION, ATTORNMENT**  
**AND NON-DISTURBANCE AGREEMENT**

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT (the "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ whose address is \_\_\_\_\_ ("Tenant"), and \_\_\_\_\_ ("Lender"), and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Landlord").

**RECITALS:**

A. By that certain Garage Sublease Agreement dated \_\_\_\_\_, as amended on \_\_\_\_\_ (hereinafter referred to as the "Lease"), Landlord (or a predecessor in interest to Landlord) sub-leased to Tenant certain premises located in San Antonio, Bexar County, Texas (the "Property") a more particular description of which Property appears in Exhibit "A", attached hereto and by this reference made a part hereof; and

B. Landlord has applied for a loan from Lender, to be secured by a Deed of Trust, Security Agreement – Financing Statement covering the Property and collaterally assigning the Lease and the rents thereunder (the "Mortgage") and Lender is unwilling to make such a loan (the "Loan") unless Tenant subordinates Tenant's interest under the Lease to the Mortgage; and

C. Tenant wishes to induce Lender to make the Loan and has agreed to such subordination upon certain terms and conditions, and has agreed to make certain warranties and representations to Lender; and

D. Tenant, Landlord and Lender desire hereby to establish certain rights, safeguards, obligations, and priorities with respect to their respective interests by means of the following Subordination, Attornment and Non-Disturbance Agreement;

NOW THEREFORE, FOR AND IN CONSIDERATION OF TEN AND NO/100 DOLLARS AND OTHER VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged and agreed, and to induce Lender to make the Loan, Tenant, Landlord and Lender agree as follows:

1. The Lease and the rights of Tenant thereunder and with respect to the Property are and shall be subject and subordinate to the lien of the Mortgage to all advances made or to be made thereunder, to the full extent of all sums from time to time secured thereby, and to any renewal, substitution, extension, modification, refinance or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto; provided that such subordination shall not lessen or diminish Tenant's rights under the Lease subject to the express terms of this Agreement.

2. In the event that Lender or any other person (the Lender, any other such person and their successors and assigns being referred to herein as the "Purchaser") acquires title to the Lease or the Property pursuant to the exercise of any remedy provided for in the Mortgage and under any of the

documents evidencing the Loan (the "Loan Documents") (including without limitation foreclosure) or by reason of the acceptance of a deed in lieu of foreclosure or otherwise (a "Foreclosure Event"), Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and subject to the provisions in Paragraph 4 of this Agreement, the Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser without the execution of any further documents. Tenant agrees to execute and deliver at any time and from time to time, upon the request of Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage or any Purchaser, any instrument or certificate which, in the reasonable judgment of the requesting party, is necessary or appropriate, in connection with any Foreclosure Event, to evidence such attornment, which instrument or certificate shall be in form and content reasonably acceptable to Tenant. Tenant hereby waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any Foreclosure Event.

3. So long as the Lease is in full force and effect and Tenant shall not be in default under the Lease beyond any applicable notice and cure period:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights but Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise diminish or interfere with Tenant's rights under the Lease or this Agreement in such action;

(b) the right of possession of Tenant to the Property shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its rights under the Mortgage or the indebtedness secured thereby or under the Loan Documents, including without limitation a Foreclosure Event;

(c) the Lease shall not be terminated (except upon expiration of the term thereof or as otherwise expressly permitted under the terms of the Lease) or affected by said exercise of any remedy provided for in the Mortgage and the Loan Documents, and Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage, the Loan Documents or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder; and

(d) All condemnation awards and insurance proceeds paid or payable with respect to the Property shall be applied and paid in the manner set forth in the Lease.

4. In no event shall Purchaser be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless (x) such act or omission continues from and after the date upon which the new owner succeeds to the interest of such prior landlord and (y) Mortgagee has received notice thereof and ten (10) business days to cure same (unless such act or omission cannot be cured within ten (10) business days, upon which Mortgagee shall have such additional time to cure as is commercially reasonable, provided that Mortgagee commences to cure such act or omission with said ten (10) business day period and diligently prosecutes same to completion);

(b) subject to any defenses which Tenant may have against any prior landlord (including Landlord) other than one arising from actual payment and performance, which payment and performance would bind a new landlord pursuant to this Agreement;

(c) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being agreed that Mortgagee or new owner, as applicable, shall have the right not the obligation to cure any such default and further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(d) bound by any fixed rent or additional rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease;

(e) bound by any amendment or modification of the Lease made without its consent (unless Mortgagee's consent is not required under the terms of the Mortgage); notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain non-material events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such non-material amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such non-material amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner; or

(f) bound by any payment of rent or additional rent which the Tenant might have paid to any prior landlord for more than the current month.

5. Tenant agrees to give prompt written notice to Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the rent payable thereunder (there being no implication that Tenant has any right to cancel the Lease or abate the rent payable thereunder), and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within ten (10) business days after the date of receipt thereof to cure, or if the default cannot be cured within ten (10) business days, has failed to commence and to diligently pursue the cure of Landlord's default which gave rise to such right of cancellation or abatement. Tenant further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Tenant of its acquisition of Lender's interest in the Mortgage and designated the address to which such notices are to be sent.

6. Upon Tenant's receipt of written notice from Lender as provided in Paragraph 11 that substantially complies with the requirements of the terms of the Texas Assignment of Rents Act (Sections 64.001 et. seq. of the Texas Property Code) ("TARA"), Tenant shall pay to Lender the amount of all prepaid rents made in excess of one month's rent, all payments of accrued but unpaid rent, rents as they accrue after the notice is received and other sums that become due under the Lease without deduction or offset directly to Lender or to the person and at the address specified by Lender, notwithstanding any conflicting instructions or demands by Landlord or any third party. Tenant hereby waives any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of notice set forth in Section 64.056 of TARA. Tenant shall be under no obligation to ascertain whether a default by Landlord has occurred under the Mortgage or any other Loan Document. Landlord hereby authorizes and directs Tenant to deliver such payment to Lender upon receipt of such written notice and shall indemnify and hold Tenant harmless from any loss, cost, expense or claim incurred by Tenant in connection with its compliance with this provision. Landlord waives any right, claim or demand it may now or hereafter have against Tenant by reason of such direct payment to Lender and agrees that such direct payment to Lender shall discharge all obligations of Tenant to make such payment to Landlord.

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

8. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

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

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

11. All notices, requests demands or other communications required or permitted to be given pursuant to this Agreement shall be in writing and given by (i) personal delivery, (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth on the first page hereof and will be deemed to have been received either, in the case of personal delivery, as of the time of personal delivery, in the case of expedited delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail, upon deposit in a depository receptacle under the care and custody of the United States Postal Service. Either party will have the right to change its address for notice hereunder to any other location within the continental United States by notice to the other party of such new address at least 30 days prior to the effective date of such new address.

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

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



IN WITNESS WHEREOF, Tenant, Landlord and Lender have caused this instrument to be executed as of the date and year first above written.

**TENANT:**

\_\_\_\_\_

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

**LENDER:**

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

**LANDLORD:**

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

**Schedule of Exhibits:**

- Exhibit "A" - Property
- Exhibit "B" - Lease

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

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

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

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

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

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

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

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

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

**EXHIBIT "C"**

**CONFIRMATION OF ACCEPTANCE OF PREMISES**

Reference is made to that one certain Parking Garage Sublease Agreement (the "***Parking Garage Lease***") by and between AREA REAL ESTATE, LLC, a Texas limited liability company (hereinafter called "***Developer***") and the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (hereinafter called "***HPARC***"). Capitalized terms used in this instrument and not otherwise defined herein have the same meaning ascribed to such terms in the Parking Garage Lease. HPARC acknowledges and agrees to the following:

- (a) Developer has achieved Garage Substantial Completion as defined in the Development Sublease;
- (b) Developer has delivered actual possession and control of the Premises to HPARC;
- (c) The Commencement Date under the Parking Garage Lease is \_\_\_\_\_.

**HPARC:  
HEMISFAIR PARK AREA REDEVELOPMENT  
CORPORATION**

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

**DEVELOPER (SIGNING THIS INSTRUMENT  
SOLELY FOR THE PURPOSES OF CONFIRMING  
THE COMMENCEMENT DATE):  
AREA REAL ESTATE, LLC**

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

**EXHIBIT "D"**

**PARKING GARAGE RULES**

It is the desire of Developer and HPARC to maintain and operate the Garage in an orderly manner. These rules may be changed in accordance with Section 5.03 of the Parking Garage Lease.

1. **TRAFFIC SIGNS.** All persons parking in the Garage shall observe posted signs and markings regarding speed, stop signs, traffic lanes, reserved parking, no parking, parking stripes, etc.

2. **TRASH.** All persons parking in the Garage shall refrain from throwing trash, ashtray contents, or other debris in the Garage.

3. **FLAT TIRES.** All vehicle owners and all persons parking in the Garage shall be responsible for promptly repairing flat tires or other conditions of the vehicle which cause unsightliness in the reasonable judgment of Developer.

4. **REMOVAL OF UNAUTHORIZED VEHICLES.** If vehicles are blocking driveways or passageways or parked in violation of these rules and regulations or state statutes, HPARC (in the Premises portion the Garage) or Developer (in the Apartment Parking Area portion the Garage) may exercise vehicle removal to the extent permitted by applicable law with the removal cost being charged to the vehicle owner to the extent permitted by applicable law. To the extent the vehicle owner does not pay the removal cost, such cost shall be borne solely by the person exercising rights to remove such vehicle.

5. **LIGHTING / SECURITY.** HPARC shall maintain all lighting on the Premises portion of the Garage Lease in a condition and manner consistent with a Class A public parking garages in the San Antonio central business district area.

6. **PARKING OF TRUCKS AND DELIVERY VEHICLES.** No trailers or large trucks may be parked in the parking areas except for temporary loading or unloading. Service and delivery vehicles may be parked in loading zones only when necessary.

7. **ALLOTTED SPACES.** At no time shall either party or their employees use more than the number of Parking Spaces allotted to such party in the Parking Garage Lease. Each party shall use commercially reasonable efforts to cause its residents, employees and agents to only utilize the Parking Spaces reserved for such party's use unless such persons are using the Garage as members of the general public and paying the rates required in connection with such use.

8. **CONTROL DEVICES.** Subject to Developer's approval (not to be unreasonably withheld, conditioned or delayed), HPARC may install or utilize any commercially reasonable system of entry and exit control devices in the entrance area of the Premises portion of the Garage and in marked loading areas in the Premises. All Developer Permitted Parties shall, without any cost charged by HPARC, have uninterrupted access (including without limitation via the Reserved Access rights specified herein) to and through the Premises portion of the Garage to drive to and from the Apartment Parking Area 24 hours per day, every day of every year; such uninterrupted access shall be an automated process which does not require any parking entrance attendant (such as a punch code or electronically detectable entry card or fob).

9. **THEFT/DAMAGE TO VEHICLES.** Except as provided in the Parking Garage Lease, no party shall not be responsible for any theft or damage to vehicles or contents located therein within the Garage.

**EXHIBIT "E"**

**MEMORANDUM OF LEASE**

After recording return to:

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (the "Memorandum of Lease") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and AREA Real Estate, LLC, a Texas limited liability company ("Developer").

WITNESSETH:

A. HPARC and Developer entered into that certain Parking Garage Sublease Agreement (the "Lease") dated \_\_\_\_\_, 2016 (the "Effective Date") relating to a certain portion of a parking garage in the City of San Antonio, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. HPARC and Developer desire to execute and record this Memorandum of Lease to provide record notice of the Lease and certain terms and conditions contained in the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Memorandum of Lease and in the Lease, HPARC and Developer hereby agree as follows:

1. Premises. As of the Effective Date, Developer leases to HPARC, and HPARC rents from Developer, the Premises.

2. Term. The Initial Term of the Lease commenced on the Effective Date and shall end at midnight on \_\_\_\_\_, 20\_\_\_. HPARC also has options to extend the Term of the Lease for four (4) successive periods with the first such period schedule to terminate at midnight on \_\_\_\_\_, 20\_\_ and the other three periods being for ten (10) years each pursuant to the terms, conditions and provisions of the Lease.

3. Incorporation of Lease. The provisions of the Lease are incorporated into this Memorandum of Lease as if set out in full. In the event of any conflict or inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease will govern and control for all purposes.

4. Defined Terms. All capitalized terms and words of art which are used but not defined in this Memorandum of Lease will have the same respective meaning designated for such terms and words of art in the Lease.

5. Cancellation of Memorandum of Lease. On the request of Developer or HPARC following the expiration or termination of the Lease, the other party shall promptly execute and deliver an appropriate release and/or cancellation instrument in recordable form acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of such party under the Lease.

[Signatures begin on the following page]

HPARC and Developer have caused this Memorandum of Lease to be executed on the day, month and year set out above.

**HPARC:**

**Hemisfair Park Area Redevelopment Corporation,**  
a Texas local government corporation

By: \_\_\_\_\_  
Name: Andres Andujar  
Title: Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by Andres Andujar, the Chief Executive Officer of Hemisfair Park Area Redevelopment Corporation, a Texas local government corporation, on behalf of said local government corporation.

\_\_\_\_\_  
Notary Public

Commission Data:

\_\_\_\_\_

(NOTARIAL SEAL)

*[Signatures continued on following page]*

**DEVELOPER:**

AREA Real Estate, LLC, a Texas limited liability company

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

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of AREA Real Estate, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

Commission Data:

\_\_\_\_\_  
(NOTARIAL SEAL)

**EXHIBIT "A" TO MEMORANDUM OF LEASE  
LEGAL DESCRIPTION**

**[to be attached]**



**EXHIBIT "J"**

CERTIFICATION

In connection with the intended purchase by \_\_\_\_\_ ("Assignee") of all rights of Developer (defined below) in that one certain Development Sublease Agreement (the "Lease") dated on or about \_\_\_\_\_, 2016 (as amended and assigned) between the Hemisphere Park Area Redevelopment Corporation, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and [AREA Real Estate, LLC, a Texas limited liability company/ or list other current holder of lease rights if applicable] ("Developer").

I, \_\_\_\_\_, on behalf of Assignee certify the following statements are accurate as of [insert date of this certification]:

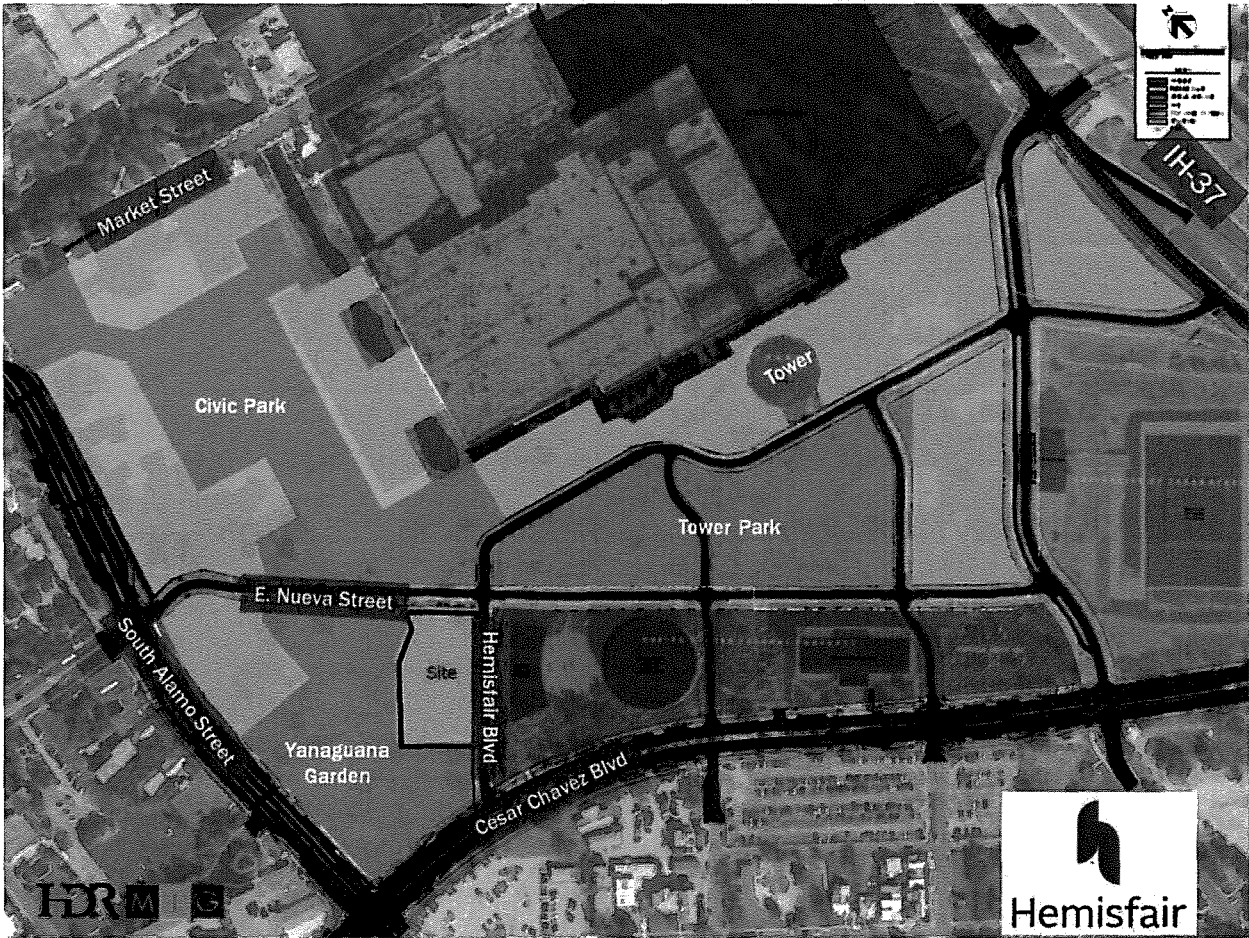
1. HPARC may rely upon the statements contained in this certification.
2. [Choose one of the following and mark through or delete the other one:] (A) Assignee or its Affiliates (as defined in the Lease) have owned or operated, or presently own or operate, at least 1,000 multifamily apartment units; or (B) Assignee or its Affiliates have hired a professional property management company that is presently managing at least 1,000 multifamily apartment units. Attached hereto as Exhibit "A" is a schedule of the multifamily apartment units being relied upon in making this certification.
3. Either (a) the assignee is a publicly-traded company that has not ever been convicted of a felony under the laws of the State of Texas or the United States of America, or (b) neither any person owning twenty percent (20%) or more of the beneficial ownership of the assignee nor any executive officer of the assignee has ever been convicted of a felony under the laws of the State of Texas or the United States of America;.
4. Neither the assignee nor its Affiliates have ever been a defendant in a lawsuit with the HPARC, the PFC, the City, or any agency, division or subsidiary of the City involving fraud, misrepresentation or breach of a material contract.
5. The assignee or its affiliates have a tangible net worth equal to or greater than ten percent (10%) of the total consideration to be paid to assignor in connection with such assignment.

ASSIGNEE:

\_\_\_\_\_

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

Exhibit A: Map of Development Site



CITY OF SAN ANTONIO  
CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT



# City Council Agenda Item #31 Acequia Lofts

John Jacks, Interim Director  
January 28, 2016

## Background

Hemisfair  
Master Plan  
Adopted

*February 2012*

HPARC Begins  
P3 Solicitation

*June 2014*

HPARC  
Negotiates with  
AREA thru

*December 2015*

HPARC PFC  
Established

*December 2013*

HPARC Selects

AREA Real  
Estate, LLC –  
Acequia Lofts

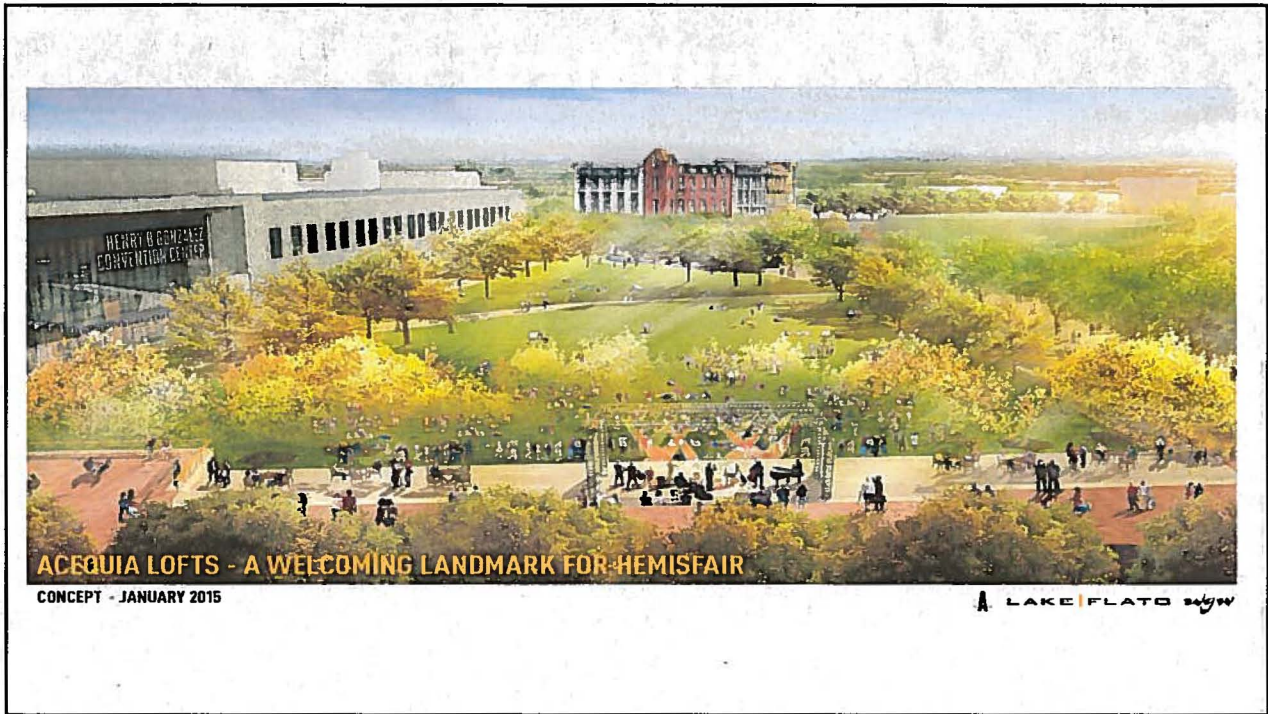
*January 2015*

# Purpose

**Approve Agreement with AREA Real Estate LLC for Acequia Lofts**

# P3 RFP Goals

 <b>100 MF Units</b>	 <b>Residential Parking</b>	 <b>200 Public Parking Spaces</b>	 <b>Ground Floor Retail</b>	 <b>\$15-25 Million Project Value</b>
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## Next Steps



## Recommendation

Staff recommends approval of the Development Sublease Agreement between AREA Real Estate, LLC and HPARC