

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Engineering

AGENDA DATE: Regular Agenda
October 18, 2011

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Shubert, City Engineer, (915) 541-4423

DISTRICT(S) AFFECTED: District 3, Rep. Acosta

SUBJECT:

That the City Manager is authorized to execute a Lease Agreement by and between the City of El Paso, Texas and MCA Tech Park, Inc., for the redevelopment and use of approximately 11.7 acres of land adjacent to Interstate Highway I-10 between Revere and Euclid Streets, located in El Paso, County of El Paso Texas, subject to the adoption of an Ordinance adopting a Final Project Plan and Final Reinvestment Zone Financing Plan for a Tax Increment Reinvestment Zone, which includes the subject property, the Lease Agreement being substantively in the form attached herein.

BACKGROUND / DISCUSSION:

The City of El Paso has acquired various parcels in the Medical Center Area. This is a lease for two parcels, totaling approximately 11.7 acres to the MCA Tech Park, Inc., an affiliate of the MCA Foundation for construction and operation of life sciences research, technology commercialization and related facilities, and parking garages. This is a long range- development strategy designed to expand biomedical research, enable technology commercialization, support new enterprise formation, and attract new biomedical firms which serve as an initial catalyst for the proposed Tax Increment Reinvestment Zone, which includes the subject property. The agreed upon terms of the lease, subject to the adoption of TIRZ and the final project and financing plans for that TIRZ, include:

- Construction of a 80,000 square foot life sciences research building, begin within 36 months, certificate of occupancy within seventy-two months
- Costs of landscape & maintenance of improvements, utilities to be borne by Tenant
- Initial term of fifty (50) years, with five 10-year automatic options
- The greater of \$1,000/year or ten percent (10%) of Tenant's cumulative net profits
- City retains right to audit any or all of Tenant's records and accounts pertaining to the operation
- Except if to an affiliate, Tenant shall not assign or transfer this Lease without prior written approval

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

Revenue Generating

BOARD / COMMISSION ACTION: Approved by CARE

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also) Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is authorized to execute a Lease Agreement by and between the City of El Paso, Texas and MCA Tech Park, Inc., for the redevelopment and use of approximately 11.7 acres of land adjacent to Interstate Highway I-10 between Revere and Euclid Streets, located in El Paso, County of El Paso Texas, subject to the adoption of an Ordinance adopting a Final Project Plan and Final Reinvestment Zone Financing Plan for a Tax Increment Reinvestment Zone, which includes the subject property, the Lease Agreement being substantively in the form attached herein.

APPROVED this _____ day of _____ 2011.

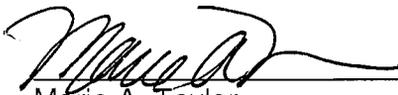
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E., City Engineer
Engineering and Construction Management

**Medical Center of the Americas (MCA)
Life Sciences Research Facilities
SITE LEASE**

City of El Paso
El Paso, Texas

MCA Tech Park, Inc.

Tenant

MCA Life Sciences Research Facilities
SITE LEASE
TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	PREMISES AND PRIVILEGES.....	1
1.01	Description of Premises Demised.....	1
1.02	Right to Construct.....	2
1.03	Restriction of Privileges, Uses and Rights.....	2
1.04	Conditions of Granting Lease.....	2
ARTICLE II	OBLIGATIONS OF LANDLORD.....	2
2.01	Quiet Enjoyment.....	2
2.02	Title and Survey.....	3
2.03	Condition and Maintenance of Premises "As Is".....	3
ARTICLE III	OBLIGATIONS OF TENANT.....	3
3.01	Net Lease.....	3
3.02	Condition of Premises.....	4
3.03	Compliance With Laws.....	4
3.04	Time of Construction.....	6
3.05	Landlord's Approval of Plans.....	7
3.06	Landscaping and Maintenance of Improvements.....	7
3.07	Utilities.....	7
3.08	Trash, Garbage and Other Refuse.....	7
3.09	Permitted Uses.....	7
ARTICLE IV	TERM OF LEASEHOLD.....	7
4.01	Term.....	7
4.02	Options to Extend.....	7
4.03	Holding Over.....	8
4.04	National Emergency.....	8
4.05	Force Majeure.....	8
ARTICLE V	CONSIDERATION.....	8
5.01	Rental Fee.....	8
5.02	Sublease to City.....	9
5.03	Commencement of Rental Fee.....	9
5.04	Records of Tenant.....	9
5.05	Audit.....	10
5.06	Unpaid Rent, Fees and Charges.....	10
5.07	Place of Payment.....	10
ARTICLE VI	INSURANCE AND INDEMNIFICATION.....	10
6.01	Fire and Other Risks Insurance.....	10
6.02	Liability Insurance.....	11
6.03	Performance Bonds.....	11
6.04	Authorized Insurance Companies.....	11
6.05	Indemnification.....	12
6.06	Mutual Waiver of Subrogation Rights.....	12

ARTICLE VII	DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY	12
7.01	Obligations of Tenant	12
7.02	Insurance Proceeds	13
7.03	Cancellation of Lease.....	13
ARTICLE VIII	CONDEMNATION.....	13
8.01	Definitions.....	13
8.02	Notice of Condemnation	14
8.03	Rights of Parties During Condemnation Proceeding	14
8.04	Taking of Leasehold	14
8.05	Total Taking.....	15
8.06	Partial Taking.....	15
8.07	Obligations of Tenant Under Partial Taking	15
8.08	Taking of Temporary Use of Premises and Improvements	15
ARTICLE IX	ENCUMBRANCES	15
9.01	Encumbrance of Tenant's Estate	15
9.02	Mortgagee Protections	15
ARTICLE X	EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER.....	19
10.01	Expiration.....	19
10.02	Cancellation.....	19
10.03	Repossessing and Reletting.....	20
10.04	Assignment and Transfer	20
10.05	Subleasing	21
10.06	Rights Upon Expiration	21
ARTICLE XI	GENERAL PROVISIONS.....	22
11.01	Continuity of Deed Restrictions and Covenants.....	22
11.02	Time is of the Essence	22
11.03	Notices	22
11.04	Attorney's Fees.....	23
11.05	Agreement Made in Texas	23
11.06	Nondiscrimination Covenant.....	23
11.07	Cumulative Rights and Remedies.....	23
11.08	Interpretation	23
11.09	Entire Agreement	24
11.10	Paragraph Headings	24
11.11	Severability	24
11.12	Successors and Assigns.....	24
11.13	Waiver of Warranty and Suitability.....	24
11.14	Survival of Certain Provisions.....	24
11.15	Authorization to Enter Lease.....	24
11.16	Estoppel Certificate	24
11.17	Tenant's Option to Purchase Premises.....	25
11.18	No Merger; Subleases	26
11.19	Permitted Mortgages.....	26

11.20	Memorandum of Lease	26
11.21	Effective Date.....	26
11.22	Capitalized Terms.....	27
	Signatures.....	31
	Acknowledgments	32

ATTACHMENTS

- EXHIBIT "A-1" - Parcel 1: Property Description & Metes and Bounds of Premises
- EXHIBIT "A-2" - Parcel 2: Property Description & Metes and Bounds of Premises
- EXHIBIT "B" - Form of Memorandum of Lease

MCA LIFE SCIENCES RESEARCH SITE LEASE

THIS LEASE AGREEMENT (the "*Lease*") is entered into this _____ day of _____, 20__, to be effective as of the Effective Date, by and between the City of El Paso, a Texas home-rule municipal corporation ("*Landlord*") and MCA Tech Park, Inc., a Texas non-profit corporation ("*Tenant*").

WHEREAS, the Medical Center of the Americas Foundation ("*MCA*"), in collaboration with Landlord and other partners, is undertaking a long-range redevelopment strategy designed to expand biomedical research, enable technology commercialization, support new enterprise formation, and attract new biomedical firms to a certain geographic area that is within or adjacent to a tax increment reinvestment zone ("*Zone*") in the City of Texas; and

WHEREAS, Landlord owns approximately 11.7 acres adjacent to Interstate Highway I-10 between Revere and Euclid Streets, located in the County of El Paso, State of Texas), which Landlord desires that Tenant redevelop to serve as the initial catalyst project in the Zone's project plan implementation; and

WHEREAS, Landlord has determined that a public purpose will be served by leasing the Premises described herein to Tenant in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out, because it will alleviate existing conditions in the Zone, further implementation of the Zone's project plan, and promote redevelopment of the Zone within the meaning of Chapter 311, Texas Tax Code and article VIII, section 1-g(b) of the Texas Constitution; and

WHEREAS, Tenant proposes to lease on a net basis from Landlord certain ground area and to avail itself of certain privileges, rights and uses pertaining thereto; and

WHEREAS, Tenant desires to construct and operate certain life sciences research, technology commercialization and related facilities, and parking garages or lots on the Premises for the conduct of permitted uses thereon; and

WHEREAS, Tenant has indicated a willingness and ability to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Landlord.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Landlord and Tenant agree and covenant as follows:

Definitions

Capitalized terms used in this Lease shall have the meanings given or referenced in Section 11.22 hereof.

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described real property located in El Paso County, Texas (collectively, the "*Premises*").

Parcel 1: An approximately 9.8247 portion of Tract 2, ELIJAH BENNETT SURVEY NO. 11, an Addition to the City of El Paso, El Paso County, Texas, and being more particularly described by metes

and bounds as shown in Exhibit "A-1", attached hereto and made a part hereof for all purposes.

Parcel 2: All of Tracts 5 and 6, ELIJAH BENNETT SURVEY NO. 11 and all of Lots 1, 2, and 3, MEDINA SUBDIVISION, and a portion of Lot 1, Block 21, BRENTWOOD HEIGHTS, containing approximately 1.871 acres, and being more particularly described by metes and bounds as shown in Exhibit "A-2", attached hereto and made a part hereof for all purposes.

1.02 Right to Construct. Tenant shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to the construction or any improvements to the Premises, the plans and specifications for any improvements, additions, or alterations shall be submitted to the City Engineer or his designee, with a copy to the Capital Assets Manager, for review and approval in order to ensure the Premises comply with the MCA master plan zoning and City of El Paso building codes. No work shall commence until Tenant has obtained any and all permits and/or complied with any and all applicable legal requirements pertaining to such construction.

1.03 Restriction of Privileges, Uses and Rights. The rights and privileges granted Tenant hereunder are subject and expressly limited to the construction and operation of a life sciences research and technology commercialization campus, and uses ancillary and/or complimentary thereto, including, without limitation, parking garages and/or parking lots for the campus facilities (the Premises and all improvements located and/or constructed thereon by Tenant are collectively referred to herein as the "Project"). Tenant's use of the Premises shall be limited to planning, designing, constructing, building, erecting, maintaining, equipping, leasing, managing, encumbering, operating and otherwise dealing with the life sciences research and technology commercialization campus to be developed by Tenant on the Premises, and no other use. Any substantial change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than the uses specified herein, shall constitute an event of default and may result in termination of the Lease.

1.04 Conditions of Granting Lease. The granting of this Lease and its acceptance by Tenant is conditioned upon all of the terms and conditions set forth in this Lease.

ARTICLE II - OBLIGATIONS OF LANDLORD

2.01 Quiet Enjoyment. Landlord agrees that upon Tenant's lawful occupying of the Premises and performing all of the covenants, conditions, and agreements set forth herein, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises. Landlord has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

2.02 Title and Survey. Tenant acknowledges receipt of (a) commitment for Title Insurance ("*Title Commitment*") issued by Lone Star Title Company of El Paso, Inc. ("*Title Company*") and identified as Commitment No. _____, and (b) a survey of the Premises prepared by _____ (the "*Survey*"). Landlord warrants and represents to Tenant that it has good and indefeasible title to the Premises subject only to the exceptions to title and other matters reflected in the Title Commitment and Survey. Any matters reflected on the Title Commitment and Survey shall be permitted exceptions to Landlord's title hereunder ("*Permitted Exceptions*").

2.03 Condition and Maintenance of Premises "As Is". Tenant accepts the Premises "As Is", with all faults, relying on Tenant's own inspection and judgment and not in reliance on any representations of Landlord. Tenant acknowledges that substantial site preparation will be necessary in order to utilize the Premises for Tenant's permitted uses hereunder. Landlord shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

ARTICLE III - OBLIGATIONS OF TENANT

3.01 Net Lease. This Lease shall be without cost to Landlord except for Landlord's obligations specifically set forth in Article II above and elsewhere in this Lease. Tenant shall:

A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times;

B. Pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Tenant or Landlord with respect to the Premises, any improvements located on the Premises, Tenant's interest in the Premises and improvements, all of Tenant's personal property located on the Premises, any improvements, equipment, personal property or inventory on the Premises, or Tenant's use and/or occupancy of the Premises, during the Term of this Lease, including any extensions or option periods granted thereto. Tenant in good faith may contest any tax or governmental charge, and Tenant shall not be in default hereunder by reason of the nonpayment of such taxes if Tenant shall have: (a) obtained and furnished to the applicable taxing authority a bond or other security to the extent required by applicable law, and (b) established reserves sufficient to pay such contested taxes and all penalties and interest that may be reasonably payable in connection therewith. Any such contest or other proceedings shall be conducted solely at Tenant's expense, and Tenant shall pay the amount determined to be due, together with all costs, expenses, interest and penalties relating thereto, prior to the time that such taxes become a lien against the Premises.

C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

D. Pay for any environmental work, traffic study, rezoning of parcels, platting or replatting of area, park fees, surveys, asbestos removal, environmental remediation, or demolition that may be required for Tenant's use of the Premises.

E. Pay for any and all installation of infrastructure on the Premises that may be required for Tenant's use of the Premises, including, but not limited to public streets, drainage, underground utilities, and street lighting.

3.02 Condition of Premises. Tenant accepts the Premises in their present condition and agrees that the Premises are suitable for Tenant's business, activities, and operations proposed to be conducted thereon subject to:

A. Tenant's right to construct certain improvements under the terms of this Lease; and

B. Landlord's performance of the obligations imposed on Landlord under Article II above.

3.03 Compliance With Laws. Tenant, at Tenant's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the terms, conditions, and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, applicable to the Premises and now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty

upon the Landlord or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupancy of the Premises and any improvements thereon by disabled persons ("*Disabilities Laws*").

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

(1) "*Environmental Laws*" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300h *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

(2) "*Hazardous Material*" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.

(3) "*Release*" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

(1) Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its sub-tenants, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS SUCCESSORS AND ASSIGNS, ITS EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY AND ANY AND ALL CLAIMS OR ACTIONS BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, ALLEGING OR ARISING IN CONNECTION WITH CONTAMINATION OF, OR ADVERSE EFFECTS ON, THE ENVIRONMENT OR VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENT OR JUDICIAL ENTITY WHICH ARE INCURRED OR ASSESSED AS A RESULT (WHETHER IN PART OR IN WHOLE) OF ANY ACTIVITY OR OPERATION ON OR DISCHARGE FROM THE PREMISES**

OR ANY IMPROVEMENTS THEREON. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Landlord's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section. Landlord shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

(2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon caused or permitted by Tenant results in any contamination of the Premises or any improvements thereon, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

(3) Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that a site characterization, site assessment and/or a cleanup plan should be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

(4) Tenant shall promptly notify Landlord of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.

(5) **Tenant shall insert or incorporate by reference the provisions of this Section 3.03 in any lease or sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.**

Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises.

Tenant's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section 3.03 shall constitute a material default of this Lease and shall permit Landlord to pursue the remedies as set forth herein, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Landlord may resort cumulatively, or in the alternative.

D. Reporting.

(1) At any time that Tenant submits any filing pertaining to its property, operations, or presence on the Premises with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Tenant shall provide duplicate copies of the filing(s) made along with any related documents to Landlord.

(2) Upon expiration, termination or cessation of this Lease for any reason, Tenant shall provide current environmental inspection and inventory reports on the Premises acceptable to Landlord; and if, in the opinion of Landlord, the Premises shall require environmental remediation, Tenant shall perform same to return the Premises into a (like new) condition equal or better to that as of the effective date of the Lease.

3.04 Time of Construction. Tenant agrees to commence construction of an approximately 80,000 square foot life sciences research building ("*Research Building*"), as evidenced by the delivery of a copy of the building permits, within thirty-six (36) months from the Effective Date of this Lease and to complete said construction, as evidenced by issuance of a certificate of occupancy, within seventy-two (72) months from the Effective Date; provided however, if within ten (10) business days prior to the expiration of the specified time periods stated herein, Tenant submits to the City a written request for extension along with a reasonable justification for the delay, the City Manager may, in her sole discretion, issue a written notice to extend the affected deadlines for up to an additional six (6) months. In the event that Tenant shall fail to begin or complete construction within the specified time periods or extensions thereof, the Landlord, may, after notice and cure period, recapture the undeveloped or partially developed parcels of the Premises and this Lease may be terminated upon thirty (30) days notice from Landlord to Tenant, unless the failure to meet these schedules is due to Force Majeure. The parties agree that the Premises are to be developed in phases and that Tenant's obligation to commence and complete construction of additional facilities shall be pursued outside the construction timelines outlined above. The timelines identified above shall apply only to the construction of the Research Building. In the event of a default hereunder, Landlord shall also be entitled to exercise all of its rights and remedies as provided elsewhere in this Lease. In the event Landlord elects to exercise either its recapture option or its other rights and remedies under this Section, Landlord shall first give Tenant written notice of Landlord's intention to exercise its recapture or other rights and remedies, specifying the nature of the alleged default and giving Tenant the opportunity to cure as set out in Section 10.02 hereof.

3.05 Landlord's Approval of Plans. Landlord's approval of any plans, specifications and working drawings for Tenant's construction or alterations of improvements shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the City of El Paso and that, in addition to obtaining approval of the Engineering and Construction Management Department, Tenant shall be required to obtain the approval of other departments as required by law.

3.06 Landscaping and Maintenance of Improvements. Tenant shall landscape the Premises as required by law and keep the improvements on the Premises in a good state of repair and condition, commensurate with other first-class life science and research campuses in the nation. The exterior finish on the improvements shall be repainted and refinished as necessary to maintain the appearance of such improvements. Landlord shall be the sole judge of whether Tenant has maintained the landscaping on the Premises in accordance with the requirements of Title 18 of the El Paso City Code, as may be amended, and the approved landscape plan for the Premises and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems necessary in order to achieve such

compliance. If said maintenance is not undertaken by Tenant within ten (10) days after receipt of written notice, Landlord shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Tenant.

3.07 Utilities. Tenant shall pay for all costs or charges for utility services furnished to Tenant during the term hereof. Tenant shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso, and Tenant shall pay for any and all service charges incurred.

3.08 Trash, Garbage, and Other Refuse. Tenant shall provide a complete and proper arrangement for the adequate sanitary handling, and disposal away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Tenant shall provide and use suitable covered commercial type receptacles for storage of all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets, in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

3.09 Permitted Uses. Tenant will not conduct any business activity on the Premises other than those permitted in Section 1.03.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Term. This Lease shall be for a term of fifty (50) years, commencing on the Effective Date, as defined in Section 11.21, and shall terminate fifty (50) years after the Effective Date (the "*Initial Term*"). The Initial Term, together with any extensions, is referred to herein as the "*Term*".

4.02 Options to Extend. Landlord hereby grants to Tenant five (5) successive options ("*Extension Options*") to extend the Term of this Lease, each for a ten (10) year period (the "*First Option Period*", "*Second Option Period*", "*Third Option Period*", "*Fourth Option Period*", and "*Fifth Option Period*", respectively), upon the same terms and conditions as those set forth in this Lease for the Initial Term. Tenant shall be deemed to have exercised each respective option automatically unless Tenant shall have given written notice ("*Extension Option Notice*") to Landlord of its intention not to exercise the applicable option as of the date ("*Extension Option Date*") which is at least one hundred twenty (120) days prior to the end of the Initial Term or the previous option period, as applicable; provided, however, that it shall be a condition precedent to the extension of the Term for each extension option period that (i) there shall not then exist any Event of Default as of the Extension Option Date, and (ii) this Lease shall be in full force and effect. Tenant's election not to exercise an Extension Option shall thereby terminate all subsequent Extension Options. Should Tenant encumber its leasehold estate under this Lease as permitted under Article IX hereof, and should any Mortgagee succeed to Tenant's rights hereunder, such Extension Options shall inure to the benefit of and be exercisable by such Mortgagee and its assignees so long as it is not in material default hereunder with all applicable cure periods having expired. Upon proper exercise of the Extension Option, the parties shall execute and record a memorandum evidencing the exercise thereof and setting forth the expiration date of the extension period. No affirmative act of Landlord shall be required to effect the extension of the Term.

4.03 Holding Over. It is agreed and understood that any holding over by Tenant on the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a Rental Fee of one and one-half times the then current Rental Fee, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment

for possession of the Premises, shall reinstate, continue or extend the Term of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

4.04 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the Term of this Lease shall be extended by the amount of the period of time of such suspension.

4.05 Force Majeure. If either party hereto shall be prevented from performing any act required hereby by any cause beyond the control of such party, including, without limitation, delays of the nature described below, the time for such performance shall be extended by the period of such delay. For purposes of this Lease, "*Force Majeure*" shall mean delays resulting directly or indirectly from (i) inclement weather, fire or earthquake, acts of God, war, moratorium, or other casualty or (ii) any litigation (other than litigation initiated by Tenant or its affiliates unless Tenant is simply intervening in an action brought by or against Landlord) affecting the Premises or this Lease, including without any limitation, any action to enjoin performance by Landlord or Tenant hereunder; (iii) any action or inaction by any governmental authority or any litigation regarding the Premises which delays, impairs or prevents Tenant from obtaining utility services to the Premises; and/or (iv) any delays caused by labor troubles, strikes or material shortages.

ARTICLE V - CONSIDERATION

5.01 Rental Fee. As consideration for this Lease and for redevelopment of the Premises under the Zone in which the Premises are located, Tenant shall pay to Landlord those rental amounts as set forth herein below. The term "Rental Fee" as used herein shall include the collective amount of the Minimum Annual Guarantee or the Percentage Rental amounts due, as specified herein. Tenant shall pay to Landlord annually, as the Rental Fee ("*Rental Fee*") hereunder, the greater of (i) \$1,000.00 per year ("*Minimum Annual Guarantee*"), or (ii) ten percent (10%) of Tenant's Cumulative Net Profits. Tenant's Cumulative Net Profits shall be calculated as of December 31 of each calendar year or portion thereof during the Term of this Lease and shall be payable on or before January 31 of the following calendar year. "*Net Profits*" means Tenant's annual net income (or loss) from the operation of the Project determined in accordance with Generally Accepted Accounting Principles. "*Cumulative Net Profits*" shall be the aggregate, cumulative Net Profits of Tenant for each year (or portion thereof) during the term of this Lease, as of the date of calculation.

For example: Assume that the Tenant's net profits in the first calendar year (or portion thereof) are \$100,000, that Tenant incurs a \$50,000 net loss in the second full calendar year, and that Tenant's Net Profits in the third full calendar year are \$200,000. In such event, Tenant would pay Rental Fee as follows:

First calendar year	-	\$10,000 (10% of \$100,000)
Second calendar year	-	\$1,000 (no Net Profits, but Minimum Annual Guarantee of \$1,000 is due)
Third calendar year	-	\$15,000 (10% of Tenant's Cumulative Net Profits for years 2 and 3 of \$150,000).

5.02 Sublease to City. If the City of El Paso enters into a sublease with Tenant for any portion of the Premises, then in exchange for payment of the negotiated sublease rate(s), Tenant may elect to reduce the Rental Fee payment due under this Lease by the amount which it would have been charged to the City, as sub-tenant, during the sublease term.

5.03 Commencement of Rental Fee. Payment of the Rental Fee by Tenant to Landlord as aforesaid shall commence on the Effective Date of this Lease.

5.04 Records of Tenant.

A. Tenant shall keep true and accurate accounts, records, books, and data in accordance with generally accepted accounting practices of Tenant's Net Profits, Cumulative Net Profits, and results of its operation of the Project during the Term of this Lease. Invoices, cash receipts, and all other books and records of Tenant pertaining to its operation of the Project, shall be available for inspection or audit by authorized representatives of Landlord at all reasonable times and after ten (10) business days notice, during business hours for a period of three hundred sixty (360) days after the end of each calendar year during the Term and after any option periods thereafter, if any. If an audit is required by Landlord in accordance with this Lease, appropriate records will be maintained for a period of sixty (60) days after completion of the audit.

B. Within ninety (90) days following the end of each calendar year during the Term, Tenant shall submit a statement showing Net Profits for the preceding calendar year, certified from the Tenant's records by Tenant's independent certified public accountant ("*Net Profits Certification*"). Such Net Profits Certification shall be signed and certified by Tenant's independent certified public accountant as an accurate report of Tenant's Net Profits for the preceding calendar year. If, after the submission of Tenant's annual Net Profits Certification, Landlord reasonably questions the accuracy of such Net Profits Certification, Landlord may, at its sole option, require Tenant to submit, at Tenant's own cost, a certified Net Profit statement prepared by an independent certified public accountant selected by Landlord. If the certified Net Profit statement prepared by such independent certified public accountant selected by Landlord confirms Tenant's payment was accurate within a five (5%) variance, Landlord shall reimburse Tenant for the cost of such independent review; if there is more than a five (5%) variance, the amount underpaid by Tenant will be treated as of the date of the determination as unpaid rent, which is subject to 5.06. Nothing contained herein shall affect or diminish the rights granted pursuant to Section 5.05 below. Any failure of Landlord to request a certified Net Profit statement by an independent certified public accountant selected by Landlord in any calendar year shall not operate to bar or destroy the right of Landlord to request such a certified statement in any subsequent calendar year. If the Net Profit statement prepared by the independent certified public accountant selected by Landlord indicates that the amount due to Landlord is less than the payment made for the preceding year, then Landlord shall credit such excess amount to Tenant. Tenant shall maintain annual Net Profit Certifications, as required hereunder, at its principal place of business, for a minimum of five (5) years, and shall forward same to Landlord, if timely requested by Landlord.

5.05 Audit.

A. Landlord shall have the right, during the Term of this Lease, to require that any or all of Tenant's records and accounts pertaining to Tenant's operation of the Project for any calendar year(s) during the Term hereof be submitted for audit to Landlord or a certified public accountant selected by Landlord within ten (10) business days following written request for same. Such audits shall include full calendar months and shall be undertaken by a reputable firm of certified public accountants with offices in El Paso. The costs of any such audit shall be borne by Landlord, unless the results of such audit reveal a discrepancy shortage of more than five percent (5%) between the Net Profits reported in accordance with this Article for the calendar year under audit and the Net Profits as determined by audit for such calendar year. In case of such discrepancy shortage, the full cost of the audit revealing such discrepancy shortage shall be borne by Tenant.

B. Should Landlord discover errors in internal controls or in record keeping associated with the Net Profits reported, Tenant shall correct such discrepancies either upon discovery or within a

reasonable period of time, not to exceed sixty (60) days, after discovery and notification by Landlord to Tenant of such discrepancies. Tenant shall inform Landlord in writing of the action taken to correct such audit discrepancies.

5.06 Unpaid Rent, Fees and Charges. Any payment of the Rental Fee, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Landlord within twenty (20) days of the date upon which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Lease until paid by Tenant.

5.07 Place of Payment. All Rental Fee payments and other amounts due from Tenant to Landlord hereunder shall be paid to Landlord at the following address: City of El Paso, Financial Services, 7th Floor, #2 Civic Center Plaza, El Paso, Texas 79901.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance. Tenant, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Landlord and Tenant as their interests may appear against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "*Full Insurable Value*"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Tenant and reasonably acceptable to Landlord to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Tenant selects be unsatisfactory to Landlord, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Tenant.

6.02 Liability Insurance. Tenant, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Landlord and Tenant, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

6.03 Performance Bonds. Tenant, at its own cost and expense, shall cause to be made, executed, and delivered to Landlord two (2) separate bonds, as follows:

A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with the final plans and specifications; and shall guarantee Tenant and Landlord, as their interests may appear, against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Tenant's contractor to perform completely the work covered by such construction contract.

B. Prior to the date of commencement of any construction, a payment bond with Tenant's contractor or contractors as principal, in a sum equal to the full amount of the construction contract

awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Landlord will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized or accredited to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus.

6.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance and surety companies authorized to do business in the State of Texas with A.M. Best ratings of B++ or better. Such policies shall be delivered to Landlord promptly following the Effective Date of this Lease. Each insurance policy shall contain:

- A. A statement of the coverage provided by the policy;
- B. An endorsement that the Landlord is named as an additional insured to the full amount of the policy limits in the case of the liability coverage and that the property insurance covers Landlord and Tenant "as their interests may appear", and that the Landlord shall be notified at least thirty (30) days in advance in the event the policy or policies are canceled and ten (10) days in advance of cancellation for non-payment of premiums;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An endorsement to the effect that the insurer waives any claim or right in the nature of subrogation to recover against the Landlord, its elected and appointed officials, officers, agents, or employees.

6.05 Indemnification. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LANDLORD. In case of any action or proceeding brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, agrees to defend the action or proceeding by counsel acceptable to Landlord.

6.06 Mutual Waiver of Subrogation Rights. Landlord and Tenant and all parties claiming under them mutually release and discharge each other and their respective officers, directors, partners, employees and agents from all claims and liabilities arising from or caused by any casualty or hazard insured or required to be insured hereunder and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof; provided that such release shall not operate in any

case where the effect is to invalidate such insurance coverage. This release shall apply even if the loss or damage shall be caused by the fault or negligence of a party hereto or for any person for which such party is responsible.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE
OR OTHER CASUALTY

7.01 Obligations of Tenant. During the Term hereof, except as provided in Section 7.03 below, should the improvements constructed by Tenant upon the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and Tenant, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Tenant as aforesaid and in accordance with the following terms and conditions:

A. Tenant shall prepare or cause to be prepared final working plans and specifications for the repair, replacement and/or rebuilding of the improvements, as applicable (the "*Final Plans*"). Upon completion of the Final Plans, Tenant shall submit the same to appropriate governmental agencies for permitting and approval as required by applicable law.

B. Prior to commencing construction, Tenant shall provide to Landlord a performance and payment bond as required herein and, if requested, Builder's Risk Insurance.

C. Upon compliance with the foregoing and Section 7.02 below, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Tenant, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

7.02 Insurance Proceeds. Upon receipt by Tenant of the proceeds of the insurance policy or policies, subject to the rights of any Mortgagee, Tenant shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Tenant during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Tenant shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, then subject to the rights of the insurer and any Mortgagee, the amount of such excess shall be retained by Tenant.

7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty at any time when there is less than seven (7) years remaining on the Initial Term or any remaining Extension Options, Tenant shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Landlord written notice of such election within ninety (90) days after the date of any such damage or destruction, unless Landlord agrees to extend the Term such that at least seven (7) years remain on the Term after such rebuilding. In the event of such termination, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be used to remove all debris and return the Premises to grade. The remainder shall be applied to any Mortgagee holding a first mortgage on the improvements, and the remainder shall be payable to Landlord. All Rental Fees payable under this Lease shall be prorated and paid to the date of such cancellation.

ARTICLE VIII - CONDEMNATION

8.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

A. *"Taking"* means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in a condemnation proceeding or a voluntary transfer or conveyance to the condemning agency or entity made under threat of condemnation in a pending condemnation proceeding. The Taking shall be considered to take place the date actual physical possession is taken by the condemning authority.

B. *"Total Taking"* means the Taking of the fee title to all of the Premises and improvements thereon.

C. *"Substantial Taking"* means the Taking of so much of the Premises or improvements or both that one or more of the following conditions results:

1. The remaining portion of the Premises and improvements thereon after such Taking would not be economically and feasibly useable by Tenant;

2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired;

3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, including, without limitation, the Rental Fees and after performance of all covenants and conditions required of Tenant under this Lease.

D. *"Partial Taking"* means the Taking of a fee title that is not either a Total Taking or Substantial Taking.

E. *"Improvements"*, whether or not capitalized, includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

F. *"Notice of Intended Taking"* means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking, as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.

G. *"Award"* means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.

H. *"Date of Taking"* means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;
 - B. Service of any legal process relating to condemnation of the Premises or improvements;
- or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties During Condemnation Proceeding. Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold. Upon a Total Taking, Tenant's obligation to pay Rental Fees and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is a Substantial Taking under the aforementioned definition, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives the Notice of Intended Taking, elect to treat the Taking as a Total Taking. If Tenant does not so notify Landlord, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rental Fees payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking. All of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by any Tenant-owned improvements, but subject to the Lease, shall be disbursed to Landlord.

8.06 Partial Taking. Upon a Partial Taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the leasehold estate. Landlord shall receive all sums awarded for the Premises, as unencumbered by the Tenant-owned improvements, but subject to the Lease.

8.07 Obligations of Tenant Under Partial Taking. Promptly after any such Partial Taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking at any time when there is less than seven (7) years remaining on the Initial Term or any remaining Extension Options, Tenant shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving written notice of such election within thirty (30) days after the date of such Taking, unless Landlord agrees to extend the Term such that at least seven (7) years remain on the Term after such rebuilding. In such event, all sums awarded for Tenant-owned improvements and the leasehold estate, as well as damages relating to the loss of the fee simple interest in the Premises, shall be awarded to Landlord.

8.08 Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period less than the remainder of the Term, neither the Term nor the Rental Fees shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such temporary taking, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

ARTICLE IX - ENCUMBRANCES

9.01 Encumbrance of Tenant's Estate. Tenant shall have the right to encumber Tenant's Estate or any portion thereof or interest therein or any Sublease pursuant to one or more Permitted Mortgages, provided Tenant shall refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, any portion of the Landlord's Estate. Tenant shall promptly following its receipt of any notice of default or other notice of acceleration of the maturity of a Permitted Mortgage, deliver a true and correct copy thereof to Landlord.

9.02 Mortgage Protections. Provided that any Mortgagee provides Landlord with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

A. **No Termination.** No action by Tenant or Landlord to cancel, surrender, or materially modify the terms of this Lease or the provisions of this Article IX shall be binding upon a Mortgagee without its prior written consent.

B. **Notices.** If Landlord shall give any notice, demand, election or other communication which may adversely affect the security for a Permitted Mortgage, including without limitation a notice of an Event of Default hereunder, to Tenant hereunder, Landlord shall simultaneously give a copy of each such notice to the Mortgagee at the address theretofore designated by it. No notice given by Landlord to Tenant shall be binding upon or affect said Mortgagee unless a copy of said notice shall be given to Mortgagee as provided herein. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to Landlord, may change the address to which such copies of notices are to be sent. Landlord shall not be bound to recognize any assignment of such Permitted Mortgage unless and until Landlord shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give notices or copies thereof to said Mortgagee shall be binding upon Landlord unless and until all of said holders shall designate in writing one of their number to receive all such notices and copies thereof and shall have given to Landlord an original executed counterpart of such designation.

C. **Performance of Covenants.** The Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Tenant hereunder within the time periods specified herein, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of Landlord.

D. Delegation to Mortgagee. Tenant may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon Landlord unless and until either Tenant or the Mortgagee shall give to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Article IX together with written notice specifying the provisions therein which delegate such authority to said Mortgagee, shall be sufficient to give Landlord notice of such delegation.

E. Default by Tenant. In the event of an Event of Default by Tenant in the payment of any monetary obligation hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such Event of Default to any Mortgagee and such Mortgagee shall have failed to cure such Event of Default within thirty (30) business days following delivery of such notice. In the event of an Event of Default by Tenant in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such Event of Default to any Mortgagee and such Mortgagee shall have failed to cure such Event of Default within sixty (60) days following the expiration of any grace or cure periods granted Tenant herein. Notwithstanding the foregoing, if such Event of Default cannot practicably be cured by the Mortgagee without taking possession of the Premises, or if such Event of Default is not susceptible of being cured by the Mortgagee, then Landlord shall not terminate this Lease if and as long as:

(1) in the case of an Event of Default which cannot practicably be cured by the Mortgagee without taking possession of the Premises, (a) the Mortgagee has delivered to Landlord, prior to the date on which Landlord shall be entitled to give notice of lease termination, a written undertaking wherein the Mortgagee agrees that it will cure such Event of Default, and (b) thereafter, said Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (including possession by receiver), and, upon obtaining such possession, shall proceed diligently to cure such Event of Default in accordance with the undertaking delivered pursuant to Subsection (a) above but in no event later than 180 days after obtaining possession; and

(2) In the case of an Event of Default which is not susceptible to being cured by the Mortgagee (for example, the insolvency of Tenant), the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Tenant's Estate hereunder and shall cure all Events of Default which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior Events of Default which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed Events of Default hereunder.

F. Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or such designee as the Tenant hereunder. If any Mortgagee or other third party shall acquire Tenant's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee or such other third party purchaser shall thereafter have the right to further assign or transfer Tenant's Estate to an assignee upon obtaining Landlord's consent with respect thereto, which consent shall not be

unreasonably withheld or delayed. Upon such acquisition of Tenant's Estate as described in the preceding sentence by Mortgagee or its designee, Landlord shall immediately execute and deliver a new ground lease of the Premises to such Mortgagee, upon the written request therefor by such Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Such new ground lease shall be substantially similar in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining Term hereof), and the elimination of any requirements which have been fulfilled by Tenant prior thereto, and such new ground lease shall have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Landlord shall cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Premises.

G. Mortgagee Loss Payable. Landlord agrees that the names of each Mortgagee shall be added to the "*Loss Payable Endorsement*" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

H. New Lease. Landlord agrees that in the event of termination of this Lease by reason of any Event of Default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, Landlord will enter into a new lease of the Premises with the most senior Mortgagee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the rent, and upon substantively similar terms, provisions, covenants and agreements as herein contained and subject to the same rights, if any, of any parties then in possession of any part of the Premises, provided that:

(1) The senior Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date of termination;

(2) The senior Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at the time of execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason of the Event of Default;

(3) The senior Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed which are susceptible to being performed by the senior Mortgagee, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Mortgagee;

(4) The tenant under the new lease shall have the same right, title and interest in and to all improvements located on the Premises as Tenant had under the terminated Lease immediately prior to its termination;

(5) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 9.02H., shall be prior to any Permitted Mortgage or other lien, charge or encumbrance on the Premises, to the same extent as the terminated Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease. The rights granted any Mortgagee to a new lease shall survive any termination of this Lease.

(6) If a Mortgagee shall elect to demand a new lease under this Section 9.02H., Landlord agrees, at the request of, on behalf of and at the sole cost and expense of the Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, and those Subtenants actually occupying the Premises, or any part thereof, as designated by the Mortgagee subject to any non-disturbance or attornment agreements with such Subtenants. Such Mortgagee shall indemnify, defend and hold harmless Landlord from any losses, claims, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of Landlord's compliance with the provisions of this Section 9.02(H)(6).

(7) Unless and until Landlord has received notice from all Mortgagees that the Mortgagees elect not to demand a new lease as provided in Section 9.02H., or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing Subleases nor enter into any new subleases hereunder without the prior written consent of the Mortgagee.

I. No Obligation to Cure. Nothing herein contained shall require any Mortgagee to enter into a new lease pursuant to Section 9.02H above, or to cure any default of Tenant referred to above.

J. No Personal Liability. In the event any Mortgagee or its designee becomes the Tenant under this Lease or under any new lease obtained pursuant to either Section 9.01F. or 9.02H. above, the Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a new lease only for the period of time that the Mortgagee or its designee remains the actual beneficial holder of the Tenant's Estate, and only to the extent provided in this Lease or such new lease. No Mortgagee shall have any personal liability beyond its interest in the Premises for the performance or payment of any covenant, liability, warranty or obligation hereunder or under any new lease, new agreement or other agreement entered into in connection herewith, and the Landlord agrees that it shall look solely to the interests of such Mortgagee in the Premises for payment or discharge of any such covenant, liability, warranty or obligation.

K. Insurance Proceeds. The proceeds from any insurance policies or arising from a condemnation shall be paid to and held by the senior Mortgagee and distributed pursuant to the provisions of this Lease.

L. Material Notices. The parties hereto shall give all Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Premises, and any Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Mortgagee shall not elect to intervene or become a party to the proceedings, such Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

M. Separate Agreement. Landlord shall, upon request, execute, acknowledge and deliver to each Mortgagee, an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to each Mortgagee, between Landlord, Tenant and the Mortgagees, agreeing to all of the provisions hereof.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration. This Lease shall expire at the end of the Term or any extension thereof.

10.02 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Landlord in the event Tenant shall commit any of the following (each an "Event of Default"):

A. Fail to obtain a certificate of occupancy for the Research Building within seventy-two (72) months from the Effective Date of this Lease, or extensions thereof.

B. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due.

C. File in any court a voluntary petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property;

D. Make any general assignment for the benefit of creditors;

E. Abandon the Premises;

F. Be in violation of any local, state, or federal rules or regulations or in default in the performance of any of the covenants, terms, and conditions required in this Lease (except payment of Rental Fees) to be kept and performed by Tenant, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;

G. Be adjudged a bankrupt in involuntary bankruptcy proceedings; or

H. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant, where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

Upon the occurrence of any of the aforesaid Events of Default, Landlord may take immediate possession of the Premises including any and all improvements thereon and remove Tenant's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Landlord to declare this Lease canceled upon the occurrence of any Event of Default shall not operate to bar or destroy the right of Landlord to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the Term of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

10.03 Repossessing and Reletting. Upon the occurrence of an Event of Default, Landlord may at once thereafter, or at any time subsequent during the existence of such breach or default:

A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), using such force as may be necessary; and

B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or

part thereof be less than the Rental Fees due and owing from Tenant during such month or part thereof under the terms of this Lease, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, provided that Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.04 Assignment and Transfer. Tenant shall not assign or transfer this Lease without the prior written approval of Landlord; provided, however, that Landlord's approval shall not be required (i) in the event of an assignment to an "Affiliate" of Tenant, and/or (ii) in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption. In the case of any assignment or transfer of this Lease to an Affiliate of Tenant, Tenant shall not be released from any of its obligations or liability hereunder, and such Affiliate of Tenant shall expressly assume all of the obligations of Tenant under this Lease.

10.05 Subleasing.

A. Tenant's Right to Sublease. Tenant may sub-ground lease the Premises or sub-space lease portions of the improvements constructed by Tenant on the Premises during the Term of this Lease pursuant to Subleases with Subtenants who will occupy all or any portion of the Premises for the conduct of business consistent with the uses permitted herein, subject to the requirements set forth in this Section 10.05.

B. Required Sublease Terms. Each Sublease shall contain the following terms and conditions:

(1) The Sublease shall incorporate the terms, conditions and covenants set forth in this Lease, and state that it is subject and subordinate to this Lease and to any extension, modifications or amendments of this Lease, unless Landlord specifically requires that such Sublease be prior and superior to this Lease;

(2) That rents due Tenant under the Sublease (i) have been assigned to Landlord (and Tenant hereby assigns such rents to Landlord), subject to the provisions of any Mortgage, to support the performance of Tenant's covenants under this Lease, which assignment shall be effective only upon the occurrence of any Event of Default, (ii) shall not be paid more than six (6) months in advance and (iii) shall, upon receipt of written notification from Landlord that an Event of Default has occurred, be paid by the Subtenant directly to Landlord until the Subtenant receives written notice from Landlord that Tenant has cured the Event of Default or is in the process of curing such Event of Default in a manner satisfactory to Landlord; and

(3) That in the event of the cancellation or termination of this Lease prior to the Lease Expiration Date, the Subtenant under such Sublease shall make full and complete attornment to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant; provided that such Subtenant has received a non-disturbance agreement from Landlord, as provided below.

C. Non-Disturbance Agreements. Landlord's authorized representative shall execute a commercially reasonable non-disturbance and attornment agreement ("*Non-Disturbance Agreement*") prepared at the sole cost and expense of the Subtenant, in form satisfactory to Landlord, to each Subtenant

requesting same, which Non-Disturbance Agreement shall require such Subtenant to acknowledge in writing that this Lease is prior to and paramount to the Sublease, and providing that Landlord shall recognize the Sublease and not disturb the Subtenant's possession thereunder so long as Subtenant is not in default under its Sublease and agrees to attorn to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant.

D. Obligations under Lease. Landlord acknowledges and agrees that Tenant may assign any of its obligations under this Lease to any Subtenants without Landlord's prior consent; provided, that Tenant shall not be released from any such obligations in the event such Subtenant fails to perform same.

10.06 Rights Upon Expiration. Upon the expiration or early termination of this Lease for whatever reason, Landlord shall be entitled to have the Tenant return the Premises clear of all improvements above ground level. Tenant shall have one hundred and eighty (180) days after expiration in which to remove such improvements. If Tenant fails to so remove said improvements, Tenant may remove same at Tenant's expense or said items shall be considered abandoned. Landlord may, at its option, take title to the improvements in lieu of removal by or for Tenant. Landlord shall notify Tenant of its election to require removal of the improvements or take possession of the improvements at least one hundred and eighty (180) days prior to the beginning of the last year of this Lease. Tenant hereby agrees to execute all documents deemed necessary by Landlord to effectuate such transfer. Tenant shall promptly surrender and vacate the Premises in broom-clean condition. Landlord may eject all parties in possession, other than Subtenants provided with a Non-Disturbance Agreement.

ARTICLE XI - GENERAL PROVISIONS

11.01 Continuity of Deed Restrictions and Covenants. This Lease agreement is subject to the Permitted Exceptions, as specified in Section 2.02 hereof. Landlord reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.03 Notices. Subject to Article IX hereof, all notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD:	City Clerk	City Manager
	City of El Paso	10th floor
	2 Civic Center Plaza	#2 Civic Center Plaza
	El Paso, Texas 79901	El Paso, Texas 79901

Engineering & Construction Management
Capital Assets Section 4th floor
#2 Civic Center Plaza
El Paso, Texas 79901

TENANT: Medical Center of the Americas Foundation
Emma W. Schwartz, President

201 East Main, Suite 1514
El Paso, Texas 79901

Medical Center of the Americas Foundation
c/o President
P.O. Box 2304
El Paso, Texas 79952

With a copy to: ScottHulse^{PC}
1100 Chase Tower
201 E. Main Drive
El Paso, Texas 79901
Attn: W. David Bernard

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs incurred, in addition to any other relief sought from the non-prevailing party.

11.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.06 Nondiscrimination Covenant. Tenant, itself and its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

C. That Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 C.F.R. Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 C.F.R. Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 C.F.R. Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35.

D. That, in the event of breach of any of the above nondiscrimination covenants, and failure by Tenant to cure such breach within the time period specified in this Lease, Landlord shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

11.07 Cumulative Rights and Remedies. All rights and remedies of Landlord herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.08 Interpretation. Landlord and Tenant agree that this Lease has been freely negotiated by both parties and that in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms, there shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.09 Entire Agreement. This Lease contains all of the agreements and conditions made between the parties hereto concerning the subject matter hereof, and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.10 Paragraph Headings. The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.11 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and which is legal, valid, and enforceable.

11.12 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their successors and permitted assigns.

11.13 Waiver of Warranty of Suitability. Landlord disclaims any warranty of suitability that may arise by operation of law. Tenant leases the Premises as is and Landlord does not warrant that there are no latent defects that are vital to Tenant's use of the Premises for their intended commercial purpose.

11.14 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease shall survive such cessation, expiration or termination of this Lease, including without limitation, the indemnification provisions of Section 3.03, Compliance with Law, and Section 6.05, Indemnification.

11.15 Authorization To Enter Lease. If Tenant signs this Lease as a corporation, each of the persons executing this Lease on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these warranties.

11.16 Estoppel Certificate. Tenant agrees promptly following request by Landlord or the holder of any deed of trust, mortgage or other encumbrance on Landlord's Estate to execute and deliver an Estoppel Certificate to whichever of them has requested the same. Landlord agrees promptly following request by Tenant or a Mortgagee to execute and deliver an Estoppel Certificate to whichever of them has requested

the same. The term "*Estoppel Certificate*" shall mean a certificate, certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rental Fees and other charges are paid in advance, if any, (b) that there are no uncured defaults on the part of Landlord and Tenant hereunder, or if there exist any uncured defaults on the part of Landlord and/or Tenant hereunder stating the nature of such uncured defaults on the part of Landlord and/or Tenant, and (c) the correctness of such other information respecting the status of this Lease as may be reasonably required by the party hereto requesting execution of such Estoppel Certificate. A party's failure to so execute and deliver an Estoppel Certificate within ten (10) business days following written request as required above, shall be conclusive upon such party that as of the date of said request for the same (a) that this Lease is in full force and effect, without modification except as may be represented by the party hereto requesting execution of such Estoppel Certificate, (b) that there are no uncured defaults in Landlord's or Tenant's obligations under this Lease except as may be represented by the party hereto requesting execution of such Estoppel Certificate, and (c) that no Rental Fees have been paid in advance except as may be represented by the party hereto requesting execution of such Estoppel Certificate.

11.17 Tenant's Option to Purchase Premises. To the extent permitted by the laws of the State of Texas, Landlord hereby grants to Tenant an option exercisable in Tenant's sole and absolute discretion to purchase Landlord's Estate ("*Purchase Option*"), on the following terms and conditions:

A. Exercise Period. The Purchase Option may be exercised following completion of construction by Tenant of the Research Building required to be constructed by Tenant, as specified in Section 3.04 hereof.

B. Exercise. Tenant shall exercise its Purchase Option by giving written notice thereof ("*Purchase Option Notice*") to Landlord, which Purchase Option Notice must include Tenant's estimate of fair market value of the Premises, excluding the value of any Tenant-owned improvements thereon as of the date of the Purchase Option Notice. The "*Option Purchase Price*" (herein so called), shall be the fair market value of the Premises, excluding the value of any Tenant-owned improvements thereon as of the date of the Purchase Option Notice, determined by the procedures set forth in Section 11.17(D) below. Tenant's failure to provide such Purchase Option Notice during the foregoing time periods, including such estimate of fair market value, shall be conclusively deemed Tenant's waiver of its right to exercise the Purchase Option. Notwithstanding the foregoing, the Option Purchase Price may be a value mutually agreed upon by Landlord and Tenant which is for less than the fair market value of the Premises, provided the Premises are located in the Zone, and will be further developed under a project plan adopted by Landlord for such Zone.

C. Condition Precedent. It shall be a condition precedent to Tenant's right to exercise the Purchase Option that (i) the Premises shall be located in the Zone, designated as provided by law, and shall conform with the implementation of a project plan adopted by Landlord for the Zone; (ii) this Lease shall, at the time of delivery of Tenant's Purchase Option Notice, be in full force and effect; (iii) there shall not then exist any Event of Default as of the date of delivery of Tenant's Purchase Option Notice; and (iv) a private sale of the Premises to Tenant shall be permitted by the laws of the State of Texas.

D. Determination of Option Purchase Price.

(1) Determination of Option Purchase Price by Agreement. Landlord and Tenant shall have a period of ninety (90) days from the giving of the Purchase Option Notice within which to agree upon the Option Purchase Price.

(2) Appraisal Procedures. If the parties are unable to agree upon the Option Purchase Price within the aforesaid ninety (90) day period, then the Option Purchase Price will be determined as follows:

(a) Appointment by Parties. Within ten (10) days after the expiration of the aforesaid ninety (90) day period, each party shall (i) at its own cost, appoint a real estate appraiser who is a member of the American Institute of Real Estate Appraisers, with at least ten (10) years' full-time

commercial appraisal experience in El Paso County, including experience in the City of El Paso, to appraise and determine the Option Purchase Price and (ii) notify the other party of its selection. If a party does not appoint an appraiser within such ten (10) day period, the single appraiser appointed shall be the sole appraiser and shall determine the Option Purchase Price as described above within thirty (30) days of his appointment.

(b) **Appointment of Third Appraiser.** If the two appraisers are appointed by the parties pursuant to this Section 11.17(D), they shall meet promptly and attempt to determine the Option Purchase Price in accordance with the provisions of this Lease. If they are unable to agree on the Option Purchase Price within thirty (30) days after the second appraiser has been appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this Section within ten (10) days after the last day the two appraisers are given to determine Option Purchase Price. If they are unable to agree on the third appraiser, either of the parties to this Lease, by giving ten (10) days' notice to the other party, can apply to the presiding judge of the United States District court for the Western District of Texas for the selection of a third appraiser who meets the qualifications stated in this Section. Landlord and Tenant shall each bear the cost of the appraiser it has selected and one-half of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

(c) **Determination of Option Purchase Price.** Within thirty (30) days after the selection of the third appraiser, the third appraiser shall make his own determination of the Option Purchase Price. Landlord's appraiser and Tenant's appraiser shall each deliver to the third appraiser, within such thirty (30) day period, their respective appraisals and determinations of the Option Purchase Price. The three appraisals shall be added together and their total divided by three (3), and the resulting quotient shall be the Option Purchase Price hereunder. If, however, either the low appraisal and/or the high appraisal is more than 5% lower or higher than the middle appraisal, such low appraisal and/or such high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining appraisals shall be added together and divided by two (2). The resulting quotient shall be the Option Purchase Price. If both the low and the high appraisal are required to be disregarded, the middle appraisal shall be the Option Purchase Price.

E. **Closing of Option.** Following the valid exercise by Tenant of the Purchase Option and the determination of the Purchase Option Price, the closing thereof ("*Purchase Closing*") shall occur within thirty (30) days of the determination of the Option Price. Upon the Purchase Closing, (a) the Purchase Option Price for Landlord's Estate shall be paid to the Landlord or its successor in cash, (b) Landlord's Estate shall be conveyed to Tenant by grant deed, bill of sale, general assignment and other transfer instruments, all in form reasonably acceptable to both Tenant and Landlord; (c) Landlord's Estate shall be subject to only the Permitted Exceptions and other matters reasonably approved by Tenant; (d) Landlord's Estate shall be conveyed AS IS, WHERE IS, without representation or warranty of any kind, and (e) Tenant and Landlord shall each pay one-half of the transfer taxes, title premiums and other closing costs associated with the Purchase Closing.

11.18 No Merger; Subleases. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, operate as an assignment to Landlord of any or all Subleases of Subtenants.

11.19 Permitted Mortgages. Landlord agrees that neither the surrender, cancellation, expiration or termination of this Lease, nor Landlord's acquisition of Tenant's Estate by any means contemplated hereunder, shall, either by the election of Landlord or by operation of law, work a merger of Landlord's Estate and Tenant's Estate unless and until all indebtedness under any Mortgage has been repaid pursuant to the terms thereof. The lien of such Mortgage shall remain unaffected and in full force and effect upon and following the occurrence of any of the events described in the preceding sentence in accordance with the terms of this Lease.

11.20 Memorandum of Lease. This Lease shall not be recorded; however, to establish the status of Tenant's title and to establish the priority of this Lease, Landlord and Tenant agree to execute and acknowledge a Memorandum of this Lease in the form attached hereto as Exhibit "B" which shall be recorded in the Real Property Records of El Paso County, Texas. In the event of a discrepancy between the provisions of either such Memorandum and this Lease, the provisions of this Lease shall prevail. Recordation of such Memorandum shall be at the expense of Tenant.

11.21 Effective Date. Regardless of the date signed, this Lease shall be effective as of _____, 20____ ("*Effective Date*").

11.22 Capitalized terms used in this Lease and not otherwise defined shall have the following meanings:

"*Affiliate*" means, when used with reference to a specified person, (i) any person that directly or indirectly controls or is controlled by or is under common control with the specified person, or (ii) any person that is an employee of, an officer of, a general partner in or a trustee of, or serves in a similar capacity with respect to, the specified person or any person described in clause (i). In the case of a person who is an individual, Affiliate shall include (x) any member of the immediate family of such person, including the spouse, siblings and lineal descendants and their spouses, of such immediate family member, (y) any trust whose principal beneficiary is such person or one or more members of such immediate family, and (z) any person or entity controlled by such individual's immediate family or any such trust. For purposes of this definition, "control" when used with respect to any specified person or entity means the power to direct the management and policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"*Award*" has the meaning set forth in Paragraph 8.01G. of this Lease.

"*Cumulative Net Profits*" has the meaning set forth in paragraph 5.01 of this Lease.

"*Date of Taking*" has the meaning set forth in Paragraph 8.01H. of this Lease.

"*Disabilities Laws*" has the meaning set forth in Paragraph 3.03 of this Lease.

"*Effective Date*" has the meaning set forth in Paragraph 11.21 of this Lease.

"*Environmental Laws*" has the meaning set forth in Paragraph 3.03A. of this Lease.

"*Estoppel Certificate*" has the meaning set forth in Paragraph 11.16 of this Lease.

"*Event of Default*" has the meaning set forth in Paragraph 10.02 of this Lease.

"*Extension Option Date*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Extension Option Notice*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Extension Option*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Fifth Option Period*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Final Plans*" has the meaning set forth in Paragraph 7.01A. of this Lease.

"*First Option Period*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Force Majeure*" has the meaning set forth in Paragraph 4.05 of this Lease.

"*Fourth Option Period*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Full Insurable Value*" has the meaning set forth in Paragraph 6.01 of this Lease.

"*Government*" has the meaning set forth in Paragraph 3.03B.(3) of this Lease.

"*Hazardous Materials*" has the meaning set forth in Paragraph 3.03A.(2) of this Lease.

"*Improvements*" has the meaning set forth in Paragraph 8.01E of this Lease.

"*Initial Term*" has the meaning set forth in Paragraph 4.01 of this Lease.

"*Landlord*" has the meaning set forth in the first paragraph of this Lease.

"*Landlord's Estate*" means all of Landlord's right, title, and interest in its fee estate in the Premises, its reversionary interest in the Improvements pursuant hereto, and all other rent and benefits due Landlord hereunder.

"*Lease*" has the meaning set forth in the first paragraph of this Lease.

"*Lease Expiration Date*" means the earlier to occur of the following dates: (a) that date which is fifty (50) years following the Commencement Date (subject to extension as provided in Section 4.02 hereof, or (b) that date upon which this Lease is sooner terminated pursuant to the provisions of this Lease or the mutual agreement of the parties hereto.

"*Loss Payable Endorsement*" has the meaning set forth in Paragraph 9.02G. of this Lease.

"*MCA*" means Medical Center of the Americas Foundation.

"*Minimum Annual Guarantee*" has the meaning set forth in Paragraph 5.01 of this Lease.

"*Mortgagee*" means any one or more holders of the beneficial interest and secured position under any Permitted Mortgage.

"*Net Profits*" has the meaning set forth in Paragraph 5.01 of this Lease.

"*Net Profits Certification*" has the meaning set forth in Paragraph 5.04 of this Lease.

"*Non-Disturbance Agreement*" has the meaning set forth in Paragraph 10.05 of this Lease.

"*Notice of Intended Taking*" has the meaning set forth in Paragraph 8.01F. of this Lease.

"*Option Purchase Price*" has the meaning set forth in Paragraph 11.17C. of this Lease.

"*Partial Taking*" has the meaning set forth in Paragraph 8.01D of this Lease.

"*Permitted Exceptions*" has the meaning set forth in Paragraph 2.02 of this Lease.

"*Permitted Mortgage*" means collectively (a) any deed(s) of trust and other collateral security instruments (including, without limitation, financing statements, security agreements and other

documentation required pursuant to the Texas Uniform Commercial Code, and any absolute or conditional assignments of rents and subleases) serving as security for one or more construction loans and/or permanent loans (otherwise permitted to be incurred hereunder) which encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) thereof and (b) any instruments required in connection with an assignment-sublease back transaction involving Tenant's Estate; provided, however, in no event shall any such Permitted Mortgage encumber Landlord's Estate.

"*Person*" whether or not capitalized, means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity (or any department, agency or political subdivision thereof) or other entity.

"*Premises*" has the meaning set forth in Paragraph 1.01 of this Lease.

"*Project*" has the meaning set forth in Paragraph 1.03 of this Lease.

"*Purchase Closing*" has the meaning set forth in Paragraph 11.17D. of this Lease.

"*Purchase Option Notice*" has the meaning set forth in Paragraph 11.17C. of this Lease.

"*Purchase Option*" has the meaning set forth in Paragraph 11.17 of this Lease.

"*Release*" has the meaning set forth in Paragraph 3.03A.(3) of this Lease.

"*Rental Fee*" has the meaning set forth in Paragraph 5.01 of this Lease.

"*Research Building*" has the meaning set forth in Paragraph 3.04 of this Lease.

"*Second Option Period*" has the meaning set forth in Paragraph 4.02 of this Lease.

"*Sublease*" means any present or future ground sublease, space sublease, use or occupancy agreement, entered into in accordance with Section 10.05 hereof, and any modification, extension or termination of any of the foregoing entered into in accordance with Section 10.05 hereof. Subleases shall also include any ground lease, space lease, use or occupancy agreement between Tenant, as lessor thereunder, and a lessee, the demised premises under which are situated within the Premises.

"*Subtenant*" means any person or entity entitled to the use of all or any portion of the Premises under any Sublease. Subtenants shall also include each lessee under any ground lease, space lease, use or occupancy agreement between Tenant, as lessor thereunder, and such lessee, the demised premises under which are situated within the Premises.

"*Substantial Taking*" has the meaning set forth in Paragraph 8.01C. of this Lease.

"*Survey*" has the meaning set forth in Paragraph 2.02 of this Lease.

"*Taking*" has the meaning set forth in Paragraph 8.01A. of this Lease.

"*Tenant*" has the meaning set forth in the first paragraph of this Lease.

"*Tenant's Estate*" means all of Tenant's right, title and interest in its leasehold estate in the Premises, its fee estate in the improvements, and its interest under this Lease.

“Term” has the meaning set forth in Paragraph 4.01 of this Lease.

“Third Option Period” has the meaning set forth in Paragraph 4.02 of this Lease.

“Title Commitment” has the meaning set forth in Paragraph 2.02 of this Lease.

“Title Company” has the meaning set forth in Paragraph 2.02 of this Lease.

“Total Taking” has the meaning set forth in Paragraph 8.01B. of this Lease.

“Zone” has the meaning set forth in the Recitals.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on
the date first written above.

LANDLORD: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer
Engineering and Construction Management

ATTEST:

Printed Name: _____
Title: _____

TENANT: MCA Tech Park, Inc.

By: _____
Printed Name: _____
Title: _____

(ACKNOWLEDGMENTS ON FOLLOWING PAGE)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ in his/her capacity as _____ of MCA Tech Park, Inc., a Texas non-profit corporation, Tenant, on behalf of said non-profit corporation.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

THE STATE OF)
)
COUNTY OF)

This instrument was acknowledged before me on this _____ day of _____, 20____, by Joyce A. Wilson as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (Landlord).

Notary Public, State of

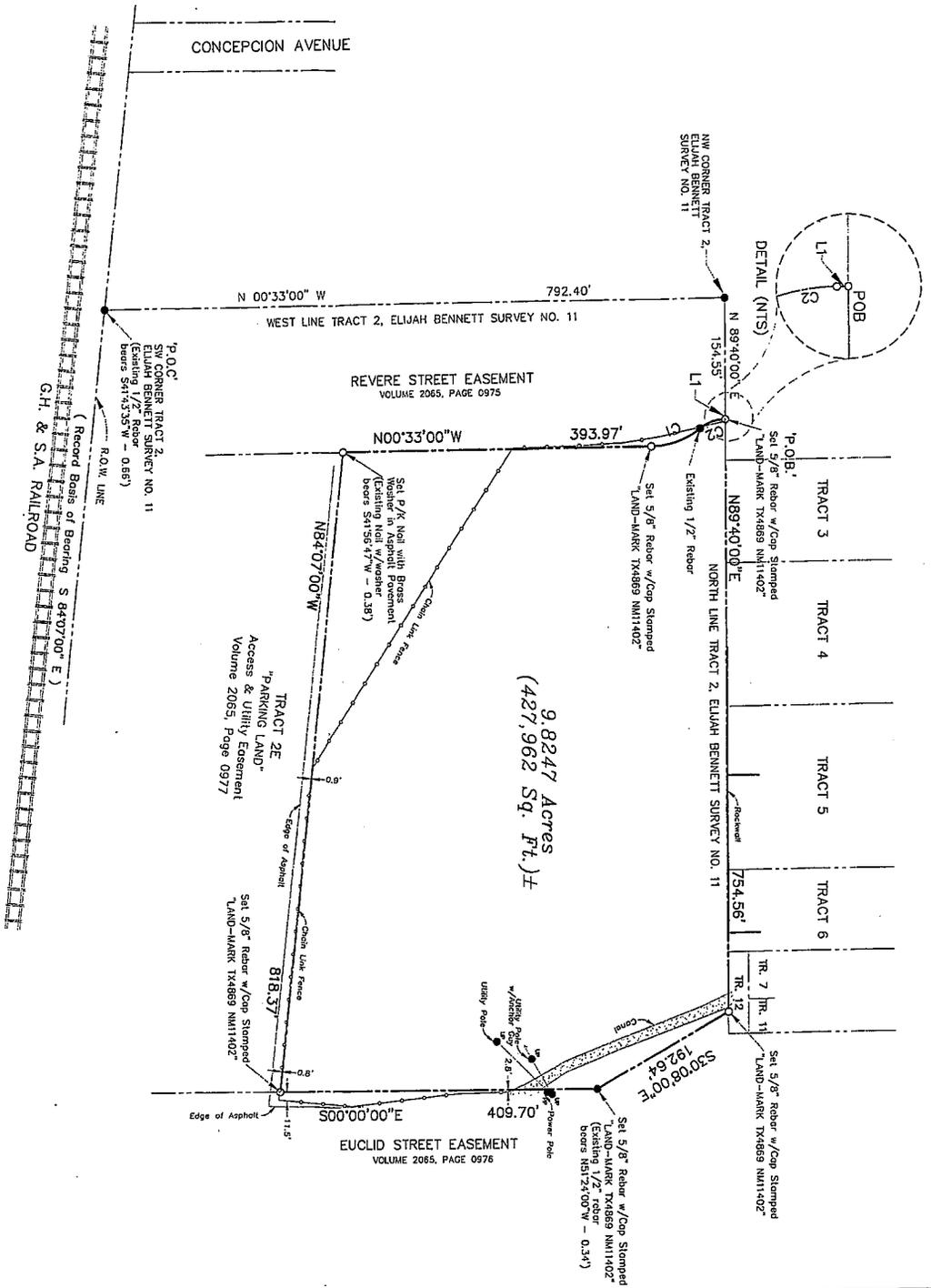
My Commission Expires:

EXHIBIT "A"
Property Description and Metes and Bounds of the Premises

[Attached]

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	100.00	67.11	65.85	N18°46'29"W	38°26'58"
C2	50.00	34.04	33.38	N19°29'59"W	38°59'58"

LINE	BEARING	LENGTH
L1	N00°00'00"W	0.65'



SCALE : 1" = 100'



CAUTION!
ALL UNDERGROUND UTILITIES SHALL BE FIELD VERIFIED BY CONTRACTOR PRIOR TO CONSTRUCTION.

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE BEST OF MY KNOWLEDGE AND BELIEF.

LARRY L. BREWES, R.P.S.
DATE OF SIGNATURE: May 9, 2003.
JOB NO. 03-02-16837

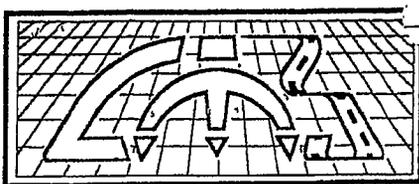
REVISIONS:

DATE	BY	CHECKED BY
	F. Z.	L. D.

PLAT OF SURVEY

A PORTION OF TRACT 2,
ELIJAH BENNETT SURVEY NO. 11,
EL PASO COUNTY, TEXAS.

Larry L. Brewes, R.P.S.
1400 Westwood, Suite 200
El Paso, Texas 79902
Phone: (915) 598-1300
Fax: (915) 598-1300
www.larrybrewes.com



Land-Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

Exhibit A

METES AND BOUNDS DESCRIPTION

A 9.8247 ACRE PORTION OF TRACT 2, ELIJAH BENNETT SURVEY NO. 11, EL PASO COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at the southwest corner of said Tract 2, Elijah Bennett Survey No. 11, *whence* an existing 1/2" rebar bears South 41°43'35" West a distance 0.66 feet; **THENCE** North 00°33'00" West with the westerly boundary line of said Tract 2, Elijah Bennett Survey No. 11 a distance of 792.40 feet to the northwest corner of said Tract 2, Elijah Bennett Survey No. 11; **THENCE** North 89°40'00" East with the northerly boundary line of said Tract 2, Elijah Bennett Survey No. 11 a distance of 154.55 feet to a 5/8" rebar with cap inscribed "LAND-MARK TX4869 NM11402" set in the easterly boundary line of the Revere Street Easement as recorded in Volume 2065, Pages 0975, Deed records, El Paso County, Texas and the **POINT OF BEGINNING** of this parcel:

THENCE North 89°40'00" East continuing with the northerly boundary line of said Tract 2, Elijah Bennett Survey No. 11 a distance of 754.56 feet to a 5/8" rebar with cap inscribed "LAND-MARK TX4869 NM11402" set in the northeasterly boundary line of Tract 2, Elijah Bennett Survey No. 11, for a corner of this parcel;

THENCE South 30°08'00" East with said northeasterly boundary line of said Tract 2, Elijah Bennett Survey No. 11, a distance of 192.64 feet to a 5/8" rebar with cap inscribed "LAND-MARK TX4869 NM11402" set in the westerly boundary line of the Euclid Street Easement recorded in Volume 2065, Page 0976, Deed records, El Paso County, Texas, for corner of this parcel; *whence* an existing 1/2" rebar bears North 51°24'00" West a distance of 0.34 feet;

THENCE South 00°00'00" East with said westerly boundary line of said Euclid Street Easement a distance of 409.70 feet to a 5/8" rebar with cap inscribed "LAND-MARK TX4869 NM11402", set in the northerly boundary line of Tract 2E, Elijah Bennett Survey No. 11, for a corner of this parcel;

THENCE North 84°07'00" West with said northerly boundary line of said Tract 2E, Elijah Bennett Survey No. 11, a distance of 818.37 feet to a P/K nail with brass washer set in asphalt in the easterly boundary line of said Revere Street Easement, for a corner of this parcel; *whence* nail and washer rebar bears South 41°56'47" West a distance of 0.38 feet;

THENCE North 00°33'00" West with said easterly boundary line of said Revere Street Easement a distance of 393.97 feet to a 5/8" rebar with cap inscribed "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE with the arc of a curve to the left and continuing with said easterly boundary line a distance of 67.11 feet to an existing 1/2" rebar, for a corner of this parcel; Said curve having a radius of

1405 Vanderbilt Drive, Suite "A" • El Paso, Texas 79935

Tel. (915) 598-1300 • Fax (915) 598-1221 • E-mail address: lmsurvey@swbell.net

2005 0000 0000

A 9.8247 ACRE PORTION OF TRACT 2,
ELIJAH BENNETT SURVEY NO. 11,
EL PASO COUNTY, TEXAS
MAY 21, 2003
PAGE 2 of 2

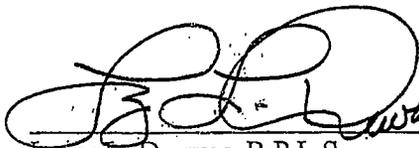
100.00 feet, a central angle of 38°26'58", and a chord which bears North 19°46'29" West a distance 65.85 feet, for a corner of this parcel;

THENCE with the arc of a curve to the right and continuing with said easterly boundary line a distance of 34.03 feet to an existing 1/2" rebar, for a corner of this parcel; Said curve having a radius of 50.00 feet, a central angle of 38°59'58", and a chord which bears North 19°29'59" West a distance 33.38 feet, for a corner of this parcel;

THENCE North 00°00'00" West continuing with said easterly boundary line of said Revere Street Easement a distance of 0.65 feet to the **POINT OF BEGINNING**.

This parcel of land as described above contains 9.8247 Acres (427,962 Sq. Ft.) more or less.

**LAND-MARK PROFESSIONAL
SURVEYING, INC.**

 05-21-03

Larry L. Drewes, R.P.L.S.
Texas License No. 4869

May 21, 2003
Job No. 02-03-16637

411000 000000 000000

05-21-03

EXHIBIT "A-1"

Parcel 1

EXHIBIT "A-2"

Parcel 2

EXHIBIT "B"

Form of Memorandum of Lease

Area to be Leased

GeoID #'s X011-999-000A-0500, M302-999-0010-0100, B724-99-0210-1700

