RR
06/04/15
Item No. 4C

AN ORDINANCE 2015-06-04-0473

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO (THE "CITY") AND FROST BANK ("FROST") FOR THE CITY'S ACQUISITION OF THE FROST BANK TOWER AND ADJACENT PARKING GARAGE FOR THE AMOUNT OF $51 MILLION; AUTHORIZING A MASTER LEASE AGREEMENT FOR THE OCCUPANCY OF THE FROST BANK TOWER BY FROST BANK FOR A PERIOD OF TIME COINCIDING WITH THE COMPLETION OF THE CONSTRUCTION OF A CLASS A OFFICE TOWER IN DOWNTOWN SAN ANTONIO; AND AUTHORIZING AN AMENDMENT TO THE EXISTING CITY LEASE AT FROST BANK TOWER TO PROVIDE ADDITIONAL SPACE TO THE CITY AS IT BECOMES AVAILABLE.

* * * * *

WHEREAS, in accordance with Chapter 2267 of the Texas Government Code and the City's adopted Public-Private Partnership Guidelines (the "City's *P3 Guidelines*"), the City, Weston Urban LLC and Frost Bank have entered into a Comprehensive Development Agreement (the "CDA") for: (i) the conveyance of the existing Frost Bank Tower, located at 100 W. Houston St., to the City; (ii) the construction of a Class A office tower by Weston Urban on property owned by Frost located at the corner of Flores and Houston Street to be leased by Frost as its corporate headquarters; and (iii) the conveyance by the City of certain City-owned real property located at 300 N. Santa Rosa St., 114 W. Commerce St., and 401 N. Flores St. to Weston Urban for residential redevelopment (the "*Project*"); and

WHEREAS, following a due diligence process on the Frost Bank Tower, City staff and Frost representatives have agreed on a purchase price of $51 million to be paid in accordance with the terms and conditions of the CDA and a Real Estate Purchase Agreement; and

WHEREAS, after the City's acquisition of the Frost Bank Tower, the City will lease the building back to Frost to occupy during the time when a new Class A office tower is under construction for Frost to occupy and utilize as its corporate headquarters; and

WHEREAS, the City and Frost have agreed upon the terms and conditions of such lease which have been documented in a Master Lease Agreement; and

WHEREAS, upon its occupancy of the Frost Bank Tower under the City's Master Lease Agreement, Frost will continue to lease certain property within the Frost Bank Tower to the City under the City's existing Lease Agreement, which provides space for the City's Center City Development Office and Economic Development Department; and

WHEREAS, the City and Frost desire to amend the terms of the City's Lease Agreement to provide for additional space in the Frost Bank Tower as it becomes available due to the expiration of leases or vacancy by Frost; N**OW, THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Real Estate Purchase Agreement between the City and Frost Bank, to include all ancillary agreements, documents, and exhibits, for the City's purchase of the existing Frost Bank Tower for the amount of $51 million are hereby approved.

SECTION 2. The terms and conditions of a Master Lease Agreement between the City and Frost Bank, to include all ancillary agreements, documents, and exhibits, for the City's lease of the Frost Bank Tower to Frost Bank are hereby approved.

SECTION 3. The terms and conditions of an Amendment to the Lease Agreement between the City and Frost Bank, to include all ancillary agreements, documents, and exhibits, for the City's lease of space within the Frost Bank Tower to provide for additional space as it becomes available are hereby approved.

SECTION 4. The City Manager or her designee is authorized to execute the Real Estate Purchase Agreement, the Master Lease Agreement, and an Amendment to the Lease Agreement between the City and Frost Bank to include all ancillary agreements, documents, and exhibits in accordance with this Ordinance. A copy of the Real Estate Purchase Agreement, the Master Lease Agreement, and an Amendment to the Lease Agreement in substantially final form, are attached to this Ordinance as "**Exhibit A**", "**Exhibit B**" and "**Exhibit C**." The final agreements shall be filed with this Ordinance upon execution.

SECTION 5. The City Manager, in concurrence with the Chief Financial Officer and City Attorney, shall have the authority to finalize any and all outstanding terms of the Real Estate Purchase Agreement, Master Lease Agreement and an Amendment to the Lease Agreement to include all ancillary agreements, documents and exhibits, so long as such terms are in accordance with this Ordinance.

SECTION 6. This Ordinance shall be effective immediately upon its passage by eight (8) votes or after the 10th day of its passage by less than eight (8) affirmative votes.

RR
06/04/15
Item No. 4C

PASSED AND APPROVED this 4th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**4C (in consent vote: 4A, 4B, 4C, 4D, 4E, 4F)**
Date:	06/04/2015
Time:	09:39:49 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a Real Estate Purchase Agreement between the City of San Antonio and Frost Bank for the City of San Antonio's acquisition of the existing Frost Bank Tower and adjacent parking garage for the amount of $51 million; authorizing a Master Lease Agreement for the occupancy of the Frost Bank Tower by Frost Bank for a period of time coinciding with the completion of construction of a Class A office tower in downtown San Antonio; and authorizing an amendment to the existing City of San Antonio lease at Frost Bank Tower to provide additional space to the City of San Antonio as it comes available.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x			x	
Alan Warrick	District 2	x					
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT A

AGREEMENT OF SALE AND PURCHASE

BETWEEN

FROST BANK

as Seller

AND

THE CITY OF SAN ANTONIO

as Purchaser

FROST TOWER AND FROST PARKING GARAGE

San Antonio, Bexar County, Texas

EXECUTED EFFECTIVE AS OF

June ____, 2015

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AGREEMENT OF SALE AND PURCHASE

This AGREEMENT OF SALE AND PURCHASE (this **"Agreement"**) is entered into and effective for all purposes as of _____, 2015 (the **"Effective Date"**), by and between **FROST BANK**, a Texas state bank (**"Seller"**), and **THE CITY OF SAN ANTONIO**, a Texas municipal corporation (**"Purchaser"**).

In consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

ARTICLE I

DEFINITIONS

Definitions. For purposes of this Agreement, the following capitalized terms have the meanings set forth in this Section 1.1:

"Affiliate" means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Purchaser or Seller, as the case may be. For the purposes of this definition, "**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agreement" has the meaning ascribed to such term in the opening paragraph.

"Authorities" means the various governmental and quasi-governmental bodies or agencies having jurisdiction over Seller, the Real Property or the Improvements (or any portion thereof).

"Business Day" means any day other than a Saturday, Sunday or a day on which state banks are authorized or required to close in the State of Texas.

"CDA" means that certain Comprehensive Development Agreement of even date herewith, entered into by and among Seller, Purchaser and Weston.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), as the same may be amended.

"Certificate as to Foreign Status" has the meaning ascribed to such term in Section 10.3(e).

"Certifying Party" has the meaning ascribed to such term in Section 4.5.

"City Pre-Closing Unwind Payment" means an amount equal to those costs incurred by Purchaser as a result of its inability to deliver bonds or other indebtedness against

payment therefor by the purchasers thereof pursuant to the terms of a written agreement between Purchaser and such purchasers, which may include (but is not limited to) amounts owed to such purchasers for a failure to deliver bonds and the costs and expenses of professionals, consultants, and attorneys engaged by Purchaser to facilitate such issuance of Bonds.

"City Unwind Payment" means the actual, out-of-pocket costs and expenses incurred by the City after the receipt of the Closing Notice to prepare to issue the bonds it will issue to finance the acquisition of the Existing Frost Facilities

"Closing" means the final completion of the purchase and sale of the Property contemplated by this Agreement.

"Closing Date" means the date on which the Closing occurs, which date will be no more than twenty-one (21) days after the New Tower Closing Date as that term is defined in the **CDA**, or such earlier or later date to which Purchaser and Seller may hereafter agree in writing.

"Closing Documents" has the meaning ascribed to such term in Section 16.1.

"Closing Surviving Obligations" means the covenants, rights, liabilities and obligations set forth in Sections 2.1, 3.2, 4.9, 5.3, 5.4, 9.1, 10.7, 11.1, 14.1, 15.1, 16.1 and Articles XIII and XVII.

"Code" has the meaning ascribed to such term in Section 4.4(a).

"Commitment" has the meaning ascribed to such term in Section 6.2(a).

"Cure Notice" has the meaning ascribed to such term in Section 6.2(b).

"Cure Period" has the meaning ascribed to such term in Section 6.2(b).

"Deed" has the meaning ascribed to such term in Section 10.3(a).

"**Delayed Transfer Property**" has the meaning ascribed to such term in Section 2.1.

"Deposit Time" means 12:00 p.m. Central Standard Time on the Closing Date.

"Documents" has the meaning ascribed to such term in Section 5.2(a).

"Effective Date" has the meaning ascribed to such term in the opening paragraph of this Agreement.

"Environmental Laws" means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any Authorities and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect (i) the Real Property or the Improvements (or any portion thereof), (ii) the use, ownership, occupancy or operation of the Real Property or the

Improvements (or any portion thereof), (iii) Seller, or (iv) Purchaser, and as same have been amended, modified or supplemented from time to time prior to and are in effect as of the date of this Agreement, including but not limited to CERCLA, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), RCRA, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), comparable state and local laws, and any and all rules and regulations which are in effect as of the date of this Agreement under any and all of the aforementioned laws.

"Escrow Instructions" has the meaning ascribed to such term in Section 4.2.

"Final Purchase Payment" means the balance of the Purchase Price due on the Closing Date from Purchaser to Seller after applying the Initial Purchase Payment that remains after subtracting the amounts to be paid therefrom pursuant to this Agreement against the entirety of the Purchase Price.

"Gap Notice" has the meaning ascribed to such term in Section 6.2(c).

"General Conveyance" has the meaning ascribed to such term in Section 10.2(b).

"Governmental Regulations" means all laws, ordinances, rules and regulations of the Authorities applicable to Seller or Seller's use and operation of the Real Property or the Improvements or any portion thereof.

"Hazardous Substances" means all (a) electromagnetic waves, urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls of 50 ppm or greater, (b) any solid, liquid, gaseous or thermal contaminant, including smoke vapor, soot, fumes, acids, alkalis, chemicals, waste, petroleum products or byproducts, asbestos, PCBs, phosphates, lead or other heavy metals, chlorine or radon gas, (c) any solid or liquid wastes (including hazardous wastes), hazardous air pollutants, hazardous substances, hazardous chemical substances and mixtures, toxic substances, pollutants and contaminants, as such terms are defined in any Environmental Law, including, without limitation CERCLA, RCRA, the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Hazardous Substances Transportation Act, the Toxic Substances Control Act, the Clean Water Act (33 U.S.C. § 1321 et seq.), the Clean Air Act, the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such Environmental Laws have been amended and/or supplemented from time to time prior to the date of this Agreement, and any and all rules and regulations promulgated under any of the above, and (d) any other chemical, material or substance, the use or presence of which, or exposure to the use or presence of which, is prohibited, limited or regulated by any Environmental Laws, in effect as of or prior to the date of this Agreement or as the same may be amended or supplemented after the date of this Agreement.

"Improvements" means all buildings, structures, fixtures, parking areas and other improvements owned by Seller and located on the Real Property.

"Independent Consideration" has the meaning ascribed to such term in Section 3.4.

"Initial Purchase Payment" has the meaning ascribed to such term in Section 4.1.

"Licenses and Permits" means any and all of Seller's right, title and interest in and to all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by governmental authorities prior to the termination of the Master Lease in connection with the Real Property and the Improvements, including the Permits issued by Purchaser to Seller allowing Seller to use or encroach upon Purchaser's property (whether surface, air, or sub-surface) located adjacent to the Real Property together with all renewals and modifications thereof.

"Master Lease" means that certain Master Lease Agreement to be executed by and between Purchaser, as landlord, and Seller, as tenant, at Closing, a copy of which is attached hereto as **Exhibit E**.

"Memorandum of Options" shall mean that certain Memorandum of Options executed by Seller and Purchaser pursuant to the terms of the Options Agreement.

"Official Records" means the Official Records of Real Property in the Office of the Clerk and Recorder of the County of Bexar, Texas.

"Operating Contracts" means the service agreements, maintenance contracts, equipment leasing agreements, leasing commission agreements, warranties, guarantees, bonds and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property, Improvements or Personal Property and under which Seller is currently paying for services rendered in connection therewith.

"Options Agreement" means that certain Options Agreement in the form of **Exhibit G** attached hereto, to be entered into by and between Seller and Purchaser at the Closing, whereby (x) Seller grants to Purchaser a right to cause Seller to repurchase the Property, and (y) Purchaser grants to Seller a right to purchase the Property.

"Other Party" has the meaning ascribed to such term in Section 4.5.

"Party" means either Seller or Purchaser, as the context requires, and **"Parties"** means both Seller and Purchaser.

"Permitted Exceptions" has the meaning ascribed to such term in Section 6.2(a).

"Personal Property" means all mechanical, electrical, heating, air conditioning and plumbing systems, fixtures and equipment; all furniture, carpets, drapes and other furnishings, the equipment, appliances, tools, supplies, machinery, furnishings and other tangible

personal property of every kind and character attached to, appurtenant to, located in and used by Seller in connection with its ownership or operation of the Improvements and all accessories and additions thereto, but specifically excluding (i) the personal property set forth on **Exhibit B** attached hereto, (ii) any items of personal property owned by lawful tenants of the Improvements and (iii) any items of personal property owned by third parties and leased to Seller.

"Property" has the meaning ascribed to such term in Section 2.1.

"Purchase Price" has the meaning ascribed to such term in Section 3.1.

"Purchaser" has the meaning ascribed to such term in the opening paragraph of this Agreement.

"Purchaser's Information" has the meaning ascribed to such term in Section 5.2(b).

"**Purchaser Related Parties**" means Purchaser and its disclosed or undisclosed, direct and indirect shareholders, officers, directors, trustees, partners, principals, members, employees, agents, affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of the foregoing.

"RCRA" means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, and as further amended.

"Real Property" means those certain parcels of or interests in real property located at 100 West Houston Street in San Antonio, Texas and commonly known as Frost Tower and Frost Garage, as more particularly described on **Exhibit A** attached hereto and made a part hereof, together with all (i) the appurtenances pertaining thereto, including but not limited to Seller's right, title and interest in and to the streets, alleys and right-of-ways which abut such real property; (ii) any easement rights, air rights, subsurface rights, development rights and water rights appurtenant to such real property; and (iii) strips or gores, if any, between such real property and abutting properties, whether owned or claimed by deed, limitations or otherwise, and whether or not they are located inside or outside of the boundaries of such real property.

"Records and Plans" means, collectively: (i) all books and records, including but not limited to property operating statements, specifically relating to the Improvements; (ii) all structural reviews, architectural drawings and engineering, soils, seismic, geologic and architectural reports, studies and certificates pertaining to the Real Property or the Improvements; and (iii) all final plans, specifications and drawings of the Improvements or any portion thereof. The terms "Records and Plans" shall not include (1) any document or correspondence which would be subject to the attorney-client privilege; (2) any document or item which either Purchaser or Seller is contractually or otherwise bound to keep confidential; (3) any documents pertaining to the marketing of the Property for sale to prospective purchasers; (4) any internal memoranda, reports or assessments of either Purchaser or Seller or their respective Affiliates relating to Seller's valuation of the Property; (5) appraisals of the Property whether prepared internally by Seller or Seller's Affiliates or externally; (6) any documents or items which the party in possession or control thereof considers confidential or proprietary; (7)

any documents or items which are not in a Party's possession and control; and (8) any materials projecting or relating to the future performance of the Property.

"Reporting Person" has the meaning ascribed to such term in Section 4.9(a).

"Seller" has the meaning ascribed to such term in the opening paragraph of this Agreement.

"Seller Related Parties" means Seller and its disclosed or undisclosed, direct and indirect shareholders, officers, directors, trustees, partners, principals, members, employees, agents, affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of the foregoing.

"Seller Released Parties" has the meaning ascribed to such term in Section 5.4(a).

"Tenant Lease Covenants" means the covenants of Seller as Tenant under the Master Lease covering Tenant Leases as described in Section 6.1 of the Master Lease.

"Tenant Leases" means the following pertaining to the Improvements: (i) any and all written leases, rental agreements, occupancy agreements and license agreements (and any and all written renewals, amendments, modifications and supplements thereto together with any lease guaranties) entered into on or prior to the Effective Date and in full force and effect and which expire after the expiration of the term of the Master Lease, (ii) any and all new written leases, rental agreements, occupancy agreements and license agreements together with any lease guaranties entered into after the Effective Date and prior to the expiration of the Master Lease which survive the expiration of the Master Lease pursuant to and in accordance with the terms of the Master Lease, and (iii) any and all new written renewals, amendments, modifications and supplements to any of the foregoing entered into after the Effective Date and prior to the expiration of the Master Lease. Tenant Leases will not include subleases, franchise agreements or similar occupancy agreements entered into by Tenants which, by their nature, are subject to Tenant Leases.

"Tenants" means all persons or entities leasing, renting or occupying space within the Improvements pursuant to the Tenant Leases, but expressly excludes any subtenants, licensees, concessionaires, franchisees or other persons or entities whose occupancy is derived through Tenants.

"Termination Surviving Obligations" means the rights, liabilities and obligations set forth in Sections 3.3, 4.5, 4.6, 5.2, 5.3, 5.4, 11.1, 12.1, 14.1, 15.1 and 16.1 and Articles XIII and XVII.

"Title Company" means Presidio Title, LLC, 7373 Broadway, Suite 105, San Antonio, Texas 78209, Attn: David McAllister, telephone: (210) 757-9600, e-mail: dmcallister@presidiotitle.com.

"Title Notice" has the meaning ascribed to such term in Section 6.2(b).

"Title Policy" has the meaning ascribed to such term in Section 6.2(a).

"Title Review Expiration Date" has the meaning ascribed to such term in Section 6.2(b).

"Warranties" shall mean all third party warranties and guaranties, if any, relating to the Real Property, the Improvements or the Personal Property.

Section 1.2 **References; Exhibits and Schedules**. Except as otherwise specifically indicated, all references in this Agreement to Articles or Sections refer to Articles or Sections of this Agreement, and all references to Exhibits or Schedules refer to Exhibits or Schedules attached hereto, all of which Exhibits and Schedules are incorporated into, and made a part of, this Agreement by reference. The words "herein," "hereof," "hereinafter" and words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or Article.

ARTICLE II

AGREEMENT OF PURCHASE AND SALE

Section 2.1 **Agreement.** Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller on the Closing Date, and subject to the terms and conditions of this Agreement, the following (collectively, the **"Property"**):

(a) the Real Property;

(b) the Improvements;

(c) the Personal Property, excluding furniture, the Records and Plans, and Warranties.

Seller is retaining the Licenses and Permits, the Operating Contracts, the Records and Plans, and the Warranties until the expiration of the Master Lease (the foregoing being called the "**Delayed Transfer Property**").

Seller is also retaining its rights as landlord under the Tenant Leases and other third party occupancy agreements until the termination of the Master Lease, and may enter into new Tenant Leases which comply with the Tenant Lease Covenants without first obtaining Purchaser's prior written consent to same.

Unless Seller or Purchaser have exercised an option under the Options Agreement, upon the termination of the term of the Master Lease, the Seller's interest in and to Tenant Leases and Delayed Transfer Property shall be transferred to Purchaser without recourse or warranty provided only those Warranties and Licenses and Permits which are assignable without the consent of any third party and those which are transferable only with consent and for which the required consent has been obtained shall be conveyed and Purchaser will assume and agree to perform, pay, discharge, observe and comply with, as applicable and to the extent not inconsistent with the Tenant Lease Covenants, all of the covenants, liabilities, duties, debts, obligations and responsibilities of Seller, Seller's predecessors in title (if any) and Seller's

Affiliates pursuant to the Tenant Leases, and the Delayed Transfer Property assigned to Purchaser and which arise, accrue or are to be performed, paid, discharged, observed or complied with on or after the expiration of the Master Lease. If an option under the Options Agreement has been exercised, then Seller will retain the Seller's interest in and to Tenant Leases and the Delayed Transfer Property through the closing of Seller's re-purchase of the Property under the terms of the Options Agreement.

Section 2.2 **Indivisible Economic Package**. Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of the Property, it being the express agreement and understanding of Purchaser and Seller that, as a material inducement to Seller and Purchaser to enter into this Agreement, Purchaser has agreed to purchase, and Seller has agreed to sell, all of the Property, subject to and in accordance with the terms and conditions hereof.

ARTICLE III

CONSIDERATION

Section 3.1 **Purchase Price** The purchase price for the Property (the "**Purchase Price**") will be FIFTY-ONE MILLION AND NO/100 DOLLARS ($51,000,000.00) in lawful currency of the United States of America, payable as provided in Section 3.2, which Purchase Price is comprised of the Initial Purchase Payment and the Final Purchase Payment.

Section 3.2 **Method of Payment of Purchase Price**. No later than the Deposit Time, Purchaser will deposit in escrow with the Title Company the Purchase Price (subject to adjustments described in Section 10.4), together with all other costs and amounts to be paid by Purchaser at Closing pursuant to the terms of this Agreement, by Federal Reserve wire transfer of immediately available funds to an account to be designated by the Title Company.

Section 3.3 **Independent Consideration**. The sum of One Hundred Dollars ($100.00) (the "**Independent Consideration**") out of the Initial Purchase Payment is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Effective Date hereof, and is not refundable to Purchaser under any circumstances. Accordingly, if this Agreement is terminated for any reason by either party, the Independent Consideration shall be paid by the Title Company to Seller.

ARTICLE IV

INITIAL PURCHASE PAYMENT AND ESCROW INSTRUCTIONS

Section 4.1 **Initial Purchase Payment**. Simultaneously with the execution and delivery of this Agreement, Purchaser has deposited with the Title Company, in good funds

immediately collectible by the Title Company, the sum of FIVE HUNDRED TEN THOUSAND AND NO/100 DOLLARS ($510,000.00) (the " **Initial Purchase Payment**"), which will be held in escrow by the Title Company pursuant to the terms of this Agreement.

Section 4.2 **Escrow Instructions**. Article IV of this Agreement constitutes the escrow instructions of Seller and Purchaser to the Title Company with regard to the Initial Purchase Payment and the Closing (the "**Escrow Instructions**"). By its execution of the joinder attached hereto, the Title Company agrees to be bound by the provisions of this Article IV. If any requirements relating to the duties or obligations of the Title Company hereunder are not acceptable to the Title Company, or if the Title Company requires additional instructions, the parties agree to make such deletions, substitutions and additions to the Escrow Instructions as Purchaser and Seller hereafter mutually approve in writing and which do not substantially alter this Agreement or its intent. In the event of any conflict between this Agreement and such additional escrow instructions, this Agreement will control.

Section 4.3 **Documents Deposited into Escrow**. On or before the Deposit Time:

(d) Purchaser will cause the difference between the Purchase Price and the Initial Purchase Payment (subject to the prorations and adjustments provided for in this Agreement) to be transferred to the Title Company's escrow account, in accordance with the timing and other requirements of Section 10.2(a),

(e) Purchaser will deliver in escrow to the Title Company the documents described and provided for in Section 10.2(b)-(f) below; and

(f) Seller will deliver in escrow to the Title Company the documents described and provided for in Section 10.3(a), (b), (c), (d), (e), (g), and (h) below.

Section 4.4 **Close of Escrow**. Provided that the Title Company has not received from Seller or Purchaser any written termination notice as described and provided for in Section 4.5 (or if such a notice has been previously received, provided that the Title Company has received from such party a withdrawal of such notice), when Purchaser has delivered to the Title Company the Purchase Price and Purchaser and Seller have delivered to the Title Company the documents required by Section 4.3, the Title Company will on the Closing Date:

(a) If applicable and when required, file with the Internal Revenue Service (with copies to Purchaser and Seller) the reporting statement required under section 6045(e) of the Internal Revenue Code of 1986, as amended (the "**Code**") and Section 4.9;

(b) Insert the applicable Closing Date as the date of any document delivered to the Title Company undated, and assemble counterparts into single instruments;

(c) Disburse to Seller, by wire transfer to Seller of immediately available federal funds, in accordance with wiring instructions to be obtained by the Title Company from Seller, the Purchase Price as adjusted in accordance with the provisions of this Agreement;

(g) Deliver the Deed to Purchaser by agreeing to cause same to be recorded in the Official Records and agreeing to obtain conformed copies of the recorded Deed for delivery to Purchaser and to Seller following recording (the parties hereby acknowledging that the actual recording of the Deed and delivery of conformed copies may actually occur following the Closing Date, as contemplated in Section 10.1 below);

(h) Issue to Purchaser the Title Policy required by Section 6.2(a) of this Agreement;

(f) Deliver to Seller, in addition to Seller's Closing proceeds, all documents deposited with the Title Company for delivery to Seller at the Closing; and

(g) Deliver to Purchaser (i) all documents deposited with the Title Company for delivery to Purchaser at the Closing and (ii) any funds deposited by Purchaser in excess of the amount required to be paid by Purchaser pursuant to this Agreement.

Section 4.5 **Termination Notices**. If at any time the Title Company receives a certificate of either Seller or Purchaser (the "**Certifying Party**") stating that: (a) the Certifying Party is entitled to receive the Initial Purchase Payment pursuant to the terms of this Agreement, and (b) a copy of the certificate was delivered as provided herein to the other party (the "**Other Party**") prior to or contemporaneously with the giving of such certificate to the Title Company, then, unless the Title Company has then previously received, or receives within three (3) Business Days after receipt of the Certifying Party's certificate, contrary instructions from the Other Party, the Title Company, within one (1) Business Day after the expiration of the foregoing three (3) Business Day period, will deliver the Independent Consideration to Seller and the Initial Purchase Payment to the Certifying Party, and thereupon the Title Company will be discharged and released from any and all liability hereunder. If the Title Company receives contrary instructions from the Other Party within three (3) Business Days following the Title Company's receipt of said certificate, the Title Company will not so deliver the Initial Purchase Payment, but will continue to hold the same pursuant hereto, subject to Section 4.6.

Section 4.6 **Title Company Matters**. In the event conflicting demands are made or notices served upon the Title Company with respect to this Agreement, or if there is uncertainty as to the meaning or applicability of the terms of this Agreement or the Escrow Instructions, Purchaser and Seller expressly agree that the Title Company will be entitled to file a suit in interpleader and to obtain an order from the court requiring Purchaser and Seller to interplead and litigate their several claims and rights among themselves. Upon delivery of the Independent Consideration to Seller and the filing of the action in interpleader and the deposit of the Initial Purchase Payment into the registry of the court, the Title Company will be fully released and discharged from any further obligations imposed upon it by this Agreement after the proper filing of such action in interpleader and the proper deposit of the Initial Purchase Payment into the registry of such court.

Section 4.7 [Omitted]

Section 4.8 **Investment of Initial Purchase Payment**. Title Company will invest and reinvest the Initial Purchase Payment, at the instruction and sole election of Purchaser, only in

(a) bonds, notes, Treasury bills or other securities constituting direct obligations of, or guaranteed by the full faith and credit of, the United States of America, in no event maturing beyond the Closing Date, and that are otherwise compliant with the Texas Public Funds Investment Act and the City's Investment Policy or (b) an interest-bearing account at a commercial bank mutually acceptable to Seller, Purchaser and Title Company, provided that such funds are collateralized (to the extent not covered by FDIC insurance) in accordance with the Texas Public Funds Collateralization Act. The investment of the Initial Purchase Payment will be at the sole risk of Purchaser and no loss on any investment will relieve Purchaser of its obligations to pay to Seller as liquidated damages the original amount of the Initial Purchase Payment as provided in Article XIII, or of its obligation to pay the Purchase Price. All interest earned on the Initial Purchase Payment prior to the payment of the Initial Purchase Payment to Purchaser or Seller pursuant to this Agreement will be the property of Purchaser and will be reported to the Internal Revenue Service as income of Purchaser. Purchaser will provide the Title Company with a taxpayer identification number and will pay all income taxes, if any, due by reason of interest accrued on the Initial Purchase Payment.

Section 4.9 **Designation of Reporting Person**. In order to assure compliance with the requirements of section 6045 of the Code, and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) The Title Company (for purposes of this Section 4.9, the "**Reporting Person**"), by its execution hereof, hereby assumes all responsibilities for information reporting required under section 6045(e) of the Code

(b) Seller and Purchaser each hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such party, as reasonably requested by the Reporting Person or otherwise required to be provided by a party to the transaction described herein under section 6045 of the Code; and

(ii) to provide to the Reporting Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Reporting Person is correct.

(c) Each party hereto agrees to retain this Agreement for not less than four years from the end of the calendar year in which Closing occurred, and to produce it to the Internal Revenue Service upon a valid request therefor.

(d) The addresses for Seller and Purchaser are as set forth in Section 14.1 hereof, and the real estate subject to the transfer provided for in this Agreement is described in **Exhibit A**.

ARTICLE V

INSPECTION OF PROPERTY

Section 5.1 **Inspection**. Purchaser expressly acknowledges and confirms that Purchaser has previously inspected and investigated the Property and conducted such tests, evaluations and assessments of the Property as Purchaser deems necessary, appropriate or prudent in connection with Purchaser's acquisition of the Property and the consummation of the transaction contemplated by this Agreement.

Section 5.2 **Documents Review**.

(a) Purchaser acknowledges that Seller has provided copies of or made available to Purchaser (for Purchaser's review, inspection, examination, analysis, verification and photocopying) at either the office of Seller's, Seller's property manager or at the Real Property or by electronic transfer or website, the following documents as they relate to the Property and to the extent in Seller's possession or control (collectively, the **"Documents"**): (i) Seller's most current rent roll; and (ii) copies of the Tenant Leases, (iii) the Licenses and Permits and (iv) the Records and Plans in possession of Seller.

(b) Not later than ten (10) Business Days following the date this Agreement is terminated for any reason, Purchaser will return to Seller all of the Documents (and either return or destroy all copies Purchaser has made of the Documents) and will deliver to Seller a copy of any studies, reports or test results regarding any part of the Property obtained by Purchaser before or after the Effective Date in connection with Purchaser's inspection of the Property which are not the subject of agreements limiting their distribution or requesting confidentiality, and all Records and Plans in the possession of Purchaser (collectively, **"Purchaser's Information"**).

(c) Purchaser acknowledges that some of the Documents may have been prepared by third parties and may have been prepared prior to Seller's ownership of the Property. Purchaser hereby acknowledges that Seller has not made and does not make any representation or warranty regarding the truth, accuracy or completeness of the Documents or the sources thereof (whether prepared by Seller, Seller's Affiliates or any other person or entity). Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Documents and is providing the Documents solely as an accommodation to Purchaser.

(d) Seller acknowledges that some of the studies, reports and tests obtained by Purchaser may have been prepared by third parties and may have been prepared prior to Purchaser's ownership of the Property. Seller hereby acknowledges that Purchaser has not made and does not make any representation or warranty regarding the truth, accuracy or completeness of those studies, reports and tests or the sources thereof (whether prepared by Purchaser, Purchaser's Affiliates or any other person or entity). Purchaser has not undertaken any independent investigation as to the truth, accuracy or completeness of such studies, reports and tests, and will be providing same solely as an accommodation to Seller.

(e) Notwithstanding any provision of this Agreement to the contrary, no termination of this Agreement will terminate Purchaser's obligations pursuant to this Section 5.2.

Section 5.3 **Sale "As-Is"**. THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND PURCHASER, THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND PURCHASER, AND PURCHASER HAS CONDUCTED ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY AND THE DOCUMENTS. OTHER THAN THE WARRANTY OF TITLE CONTAINED IN THE DEED EXECUTED AND DELIVERED BY SELLER AT CLOSING, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION, WARRANTY OR STATEMENT OF SELLER OR ANY OF SELLER'S AFFILIATES, AGENTS OR REPRESENTATIVES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS, WARRANTIES OR STATEMENTS HAVE BEEN MADE. SELLER SPECIFICALLY DISCLAIMS, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DEED TO BE DELIVERED AT CLOSING, NEITHER IT NOR ANY OF ITS AFFILIATES NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY, STATEMENTS OR ASSURANCE WHATSOEVER TO PURCHASER AND NO WARRANTIES, REPRESENTATIONS, STATEMENTS OR ASSURANCES OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (e) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN, OR UNKNOWN, OR LATENT, WITH RESPECT TO THE PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY OR THE TENANTS AND (g) THE COMPLIANCE OR LACK THEREOF OF THE PROPERTY WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and the other types of interests contemplated to be sold hereunder, and that it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Property. Purchaser acknowledges that it has conducted such inspections, investigations and other independent examinations of the Property and related matters as Purchaser deems necessary, including but not limited to the physical and environmental conditions thereof, and will rely upon same and not upon any statements of Seller or any of its Affiliates, or any of their respective partners, members, owners, officers, directors, employees, agents, representatives or attorneys. Purchaser acknowledges that all information obtained by Purchaser was obtained from a variety of sources and Seller will not be deemed to have represented or warranted the completeness, truth or accuracy of any of the Documents or other such information heretofore or hereafter furnished to Purchaser. Upon Closing, Purchaser will assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not

have been revealed by Purchaser's inspections and investigations. Purchaser further hereby assumes the risk of changes in applicable Environmental Laws relating to past, present and future environmental health conditions on, or resulting from the ownership or operation of, the Property. Purchaser acknowledges and agrees that upon Closing, Seller will sell and convey to Purchaser, and Purchaser will accept the Property, "AS IS, WHERE IS," with all faults. Purchaser further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Seller, any Affiliate of Seller, any agent of Seller or its Affiliates or any third party. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein. Purchaser acknowledges that the Purchase Price reflects the "AS IS, WHERE IS" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Purchaser, with Purchaser's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement, and that Seller would not have agreed to sell the Property to Purchaser for the Purchase Price without the disclaimer and other agreements set forth in this Agreement. The terms and conditions of this Section 5.3 will expressly survive the Closing without limitation and will not merge with the provisions of any Closing documents.

Section 5.4 Purchaser's Release of Seller Released Parties.

(a) Seller Released Parties Released From Liability. Purchaser, on behalf of itself and its Affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, hereby releases Seller and Seller's Affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons (collectively, the **"Seller Released Parties"**) from any and all liability, responsibility, claims, damages, losses and expenses arising out of or related to the condition (including the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. Without limiting the foregoing, Purchaser, on behalf of itself and its Affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, specifically releases the Seller Released Parties from any and all responsibility, claims, damages, losses and expenses Purchaser may have against any of the Seller Released Parties now or in the future arising from the environmental condition of the Property or the presence of Hazardous Substances or contamination on or emanating from the Property. The foregoing waivers and releases by Purchaser shall survive, without limitation, either (i) the Closing and shall not be deemed merged into the provisions of any Closing documents or (ii) any termination of this Agreement.

(b) Purchaser's Waiver of Objections. Purchaser acknowledges that it has inspected the Property, observed its physical characteristics and existing conditions and had the

opportunity to conduct such investigations and studies on and of said Property and adjacent areas as it deems or deemed necessary, and Purchaser, on behalf of itself and its Affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, hereby waives any and all objections to or complaints (including but not limited to actions based on federal, state or common law and any private right of action under CERCLA, RCRA or any other state and federal law to which the Property is or may be subject) against any of the Seller Released Parties regarding physical characteristics and existing conditions, including without limitation structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Substances on, under, adjacent to or otherwise affecting the Property or related to prior uses of the Property. The foregoing waivers and releases by Purchaser shall survive, without limitation, either (i) the Closing and shall not be deemed merged into the provisions of any Closing documents or (ii) any termination of this Agreement.

(c) Changes in Laws. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental, safety or health conditions on, or resulting from the ownership or operation of, the Property, and the risk that adverse physical characteristics and conditions, including without limitation the presence of Hazardous Substances or other substances, may not be revealed by its investigation.

(d) Survival. The provisions of this Section 5.4 shall survive, without limitation, either (i) the Closing and shall not be deemed merged into the provisions of any closing documents or (ii) any termination of this Agreement.

ARTICLE VI

TITLE AND SURVEY MATTERS

Section 6.1 **Survey**. Purchaser acknowledges that Seller has delivered to it and the Title Company that certain survey of the Real Property prepared by Pape Dawson Engineers and originally dated _____(as same may gave been revised), (the "**Survey**").

Section 6.2 **Title Commitment**.

(a) Purchaser further acknowledges that Seller has caused the Title Company to previously furnish Purchaser with its title commitment having an issue date of May 13, 2015 (the **"Commitment"**) under G.F. No. 1-150355, by the terms of which the Title Company agrees to issue to Purchaser at Closing an owner's policy of title insurance (the **"Title Policy"**) in the amount of the Purchase Price on the Texas Standard Form Owner's Title Policy. The term **"Permitted Exceptions"** means (1) taxes and assessments for the year of Closing and for any other year if not yet due and payable as of Closing, (2) any liens, encumbrances, or other matters caused or created by Purchaser or its agents, contractors or representatives, or that may otherwise be approved or consented to by Purchaser in writing in its capacity as Purchaser, and (3) those matters noted in the Survey or Commitment that either are not timely objected to in writing in the Title Notice, or if timely objected to in writing by Purchaser, are those which Seller has elected (or is deemed to have elected) not to remove or cure or has been unable to remove or

cure prior to the expiration of the Cure Period, and subject to which Purchaser has elected or is deemed to have elected to accept the conveyance of the Property (excluding those items in Section 6.2(d) which Seller is obligated to cure). The Title Policy may be delivered after Closing.

(b) Purchaser shall have until the date that is five (5) days after the date Purchaser receives the last of the Title Commitment and Survey, to notify Seller, in writing (the "**Title Notice**"), of such objections as Purchaser may have to exceptions contained in the Title Commitment or the Survey. In the event Purchaser delivers timely notice of objections to title or to matters shown on the Survey, Seller shall have until ten (10) days after receipt of the Title Notice (the "**Cure Period**"), to notify Purchaser in its sole and absolute discretion: (i) that Seller has cured (or shall cure by the Closing Date) such objectionable exceptions (and provided reasonable evidence thereof); or (ii) that Seller elects not to cause such exceptions to be cured. If Seller gives Purchaser notice under clause (ii) above (the "**Cure Notice**") or if Seller fails to give any notice to Purchaser within the Cure Period, Seller shall be deemed to have elected not to cure such exceptions and Purchaser shall have until July 14, 2015 (the "**Title Review Expiration Date**"), to notify Seller that Purchaser will take title to the Property subject to all uncured exceptions or that Purchaser will terminate this Agreement (failing which, Purchaser shall be deemed to have elected to take title to the Property subject to all uncured exceptions). If this Agreement is terminated by Purchaser pursuant to the foregoing provisions of this subsection (b), then neither party shall have any further rights or obligations hereunder (except for the Termination Surviving Obligations) and the Initial Purchase Payment shall be paid to Purchaser.

(c) Purchaser may, at or prior to Closing, notify Seller in writing (the "**Gap Notice**") of any objections to title (i) raised by the Title Company between the Title Review Expiration Date and the Closing, and (ii) not disclosed by the Title Company or otherwise known to Purchaser prior to the Title Review Expiration Date and caused by Seller after the date the Authorizing Ordinance is approved by the San Antonio City Council because Seller has caused any new matter to affect title to the Property that is not included among the Permitted Exceptions and not otherwise consented to by the Purchaser. If Purchaser sends a Gap Notice to Seller and Seller does not cure such matter to the Purchaser's reasonable satisfaction within thirty (30) days following receipt of written notice delivered by the Purchaser to Seller, then the Purchaser shall have as its sole remedy for such default, the option of terminating this Agreement by delivering written notice thereof to Seller and Weston Urban, LLC pursuant to the requirements of the CDA within fifteen (15) days following the expiration of such thirty (30) day period, and the Seller and Purchaser shall have the rights and obligations described in Section 6.06C of the CDA for such event. If during the term of this Agreement, the Purchaser discovers any matter affecting title to the Property that (x) was not included as a Permitted Exception, (y) was not caused by Seller after the date the Authorizing Ordinance is approved by the San Antonio City Council, and (z) would materially and adversely impact the Purchaser's intended use of the Property, and Seller does not cure such matter to the Purchaser's reasonable satisfaction within thirty (30) days following receipt of written notice delivered by the Purchaser to Seller, then the Purchaser shall have as its sole remedy for such default, the option of terminating this Agreement by delivering written notice thereof to Seller and Weston Urban, LLC pursuant to the requirements of the CDA within fifteen (15) days following the expiration of such thirty (30) day period, and the Seller and Purchaser shall have the rights described in Section 6.06C of the CDA for such event.

(d) Notwithstanding any provision of this Section 6.2 to the contrary, Seller will be obligated to cure exceptions to title to the Real Property and Improvements relating to (or, as to (ii) below, cure or cause deletion from the Title Policy or affirmative title insurance over) (i) liens and security interests securing any loan to Seller, and (ii) any other liens or security interests created by documents executed by Seller to secure monetary obligations, other than liens for ad valorem taxes and assessments for the current calendar year.

ARTICLE VII

INTERIM OPERATING COVENANTS

Section 7.1 **Interim Operating Covenants**. Seller covenants to Purchaser that Seller will:

(a) Operations. From the Effective Date until the Closing Date, continue to operate, manage and maintain the Improvements in the ordinary course of Seller's business and substantially in accordance with Seller's practice as existing immediately prior to the Effective Date, subject to ordinary wear and tear and further subject to Article IX of this Agreement.

(b) Maintain Insurance. From the Effective Date until the Closing Date, maintain fire and extended coverage insurance on the Improvements which is at least equivalent in all material respects to Seller's insurance policies (and in an amount no less than the Purchase Price) covering the Improvements as of the Effective Date.

(c) Personal Property. From the Effective Date until the Closing Date, not transfer or remove any Personal Property that is functioning and is not obsolete as of the Effective Date from the Improvements except for the purpose of repair or replacement thereof. Any items of Personal Property replaced after the Effective Date will be installed prior to Closing and will be of substantially similar or better quality of the item of Personal Property being replaced.

(d) Leases. From the Effective Date until the end of the term of the Master Lease, not enter into any Tenant Lease or any amendments, expansions or renewals of any Tenant Leases (other than those confirming and/or evidencing expansion or renewal rights which any Tenant may have under its Tenant Lease as written on the Effective Date, which Seller may enter into without Purchaser's consent) without: (i) delivering a copy thereof to Purchaser, (ii) complying with the Tenant Lease Covenants, and (iii) complying with the terms of the Office Lease dated May 9, 2007 by and between Seller as Landlord and Purchaser as Tenant for the lease of premises in the building on the Real Property, as it may have been, or is, amended, supplemented or revised.

(e) Operating Contracts. From the Effective Date until the end of the term of the Master Lease, not enter into any Operating Contract which would survive beyond the expiration of the term of the Master Lease.

(f) Notices. To the extent received by Seller, from the Effective Date until the Closing Date, promptly deliver to Purchaser copies of written default notices under Tenant Leases, notices of lawsuits and notices of violations affecting the Property.

(g) Encumbrances. Seller shall not sell, mortgage, pledge, hypothecate or otherwise voluntarily transfer or dispose of the Property or any material part thereof. Seller shall not initiate, consent to or approve, any action with respect to zoning or any easement applicable to the Property.

(h) Mandatory Notice. If, prior to the Closing, Seller becomes aware that any representation or warranty or covenants of Seller set forth in this Agreement is or has been incorrect or is breached in any material and adverse respect due to changes in conditions or by the discovery by Seller of information of which Seller was unaware as of the Effective Date, the Seller shall immediately notify Purchaser of the representation that has become inaccurate or warranty or covenant which has been breached.

ARTICLE VIII
INTENTIONALLY OMITTED

ARTICLE IX
CONDEMNATION AND CASUALTY

Section 9.1 **Casualty**. If, on or before the Closing Date, all or any of the Real Property, Improvements and/or Personal Property is destroyed or damaged by fire or other casualty, Seller will promptly notify Purchaser of such casualty. Seller will restore the damage using all reasonable diligence as soon as practical; provided, that (i) with respect to any restoration of interior improvements occupied by Seller, Seller's obligation will be limited to restoring same to a building standard condition suitable for Seller's use under the Master Lease with the quality of finish out being at least consistent with the level of finish currently found on the tenth (10th) floor of the existing Building unless the Purchaser agrees to a lesser level of finish and (ii) with respect to damage of premises occupied by third parties, the restoration will be done pursuant to the third party's lease or other occupancy agreement to the level of finish required under such lease or other occupancy agreement. Seller and Purchaser shall meet as promptly as practical to ascertain whether a lesser level of finish out will be acceptable to Purchaser for any part of the interior Improvements. Seller will be responsible for rebuilding the Improvements regardless of whether it receives any insurance proceeds, and the parties will proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price or delay in the Closing Date and with Seller's express obligation to rebuild the Improvements, and replace the Personal Property to the extent necessary in Seller's reasonable discretion for the continued use of the Premises by Seller under the Master Lease and Seller shall have no obligation to restore or replace any of the other Personal Property.

Section 9.2 **Condemnation of Property**. In the event of condemnation or sale in lieu of condemnation of all or any portion of the Real Property and/or Improvements on or before the Closing Date except as provided below with respect to an Excluded Condemnation (as defined below), Purchaser will have the option, by providing Seller written notice prior to the earlier of

(x) the Closing Date or (y) ten (10) days after receipt of Seller's notice of such condemnation or sale, of terminating Purchaser's obligations under this Agreement or electing to have this Agreement remain in full force and effect. In the event Purchaser does not terminate this Agreement timely pursuant to the preceding sentence, the Purchase Price will not be reduced but Seller will assign to Purchaser any and all claims for the proceeds of such condemnation or sale to the extent the same are applicable to the Real Property and/or Improvements, net of reasonable collection costs and any costs incurred by Seller to restore the Property, and Purchaser will take title to the Property with the assignment of such proceeds and subject to such condemnation and without reduction of the Purchase Price. Should Purchaser timely elect to terminate Purchaser's obligations under this Agreement under the provisions of this Section 9.2, the Earnest Money Deposit will be returned to Purchaser upon Purchaser's compliance with Section 4.5, and neither Seller nor Purchaser will have any further obligation under this Agreement except for the Termination Surviving Obligations. Notwithstanding anything to the contrary herein, the Purchaser shall not have a right to terminate this Agreement (but rather the Purchaser shall be obligated to close under this Agreement and take an assignment of any award resulting from such Excluded Condemnation, and the Purchase Price will not be reduced) if a taking or condemnation satisfies one or both of the following criteria (referenced herein as a "**Excluded Condemnation**"): (i) the eminent domain or condemnation proceeding is instituted (or notice of same is given) by the Purchaser or any agency or subsidiary of the Purchaser, or (ii) the Improvements could still be used following such taking or condemnation in substantially the same manner as prior to such taking or condemnation.

ARTICLE X

CLOSING

Section 10.1 **Closing**. The Closing of the sale of the Property by Seller to Purchaser will occur on the Closing Date through the escrow established with the Title Company. At Closing, the events set forth in this Article X will occur (provided that the parties hereby acknowledge and agree that the actual recording of the Deed may occur following Closing, provided that the Title Company complies with Section 6.2 with respect to the issuance of the Title Policy and that the Purchase Price will not be paid until the Closing Date), it being understood that the performance or tender of performance of all matters set forth in this Article X are mutually concurrent conditions which may be waived by the party for whose benefit they are intended. For the purposes of this Agreement, any date to which the Seller elects to adjourn the Closing pursuant to the terms of this Agreement, shall be deemed the "Closing Date" hereunder.

Section 10.2 **Purchaser's Closing Obligations**. At or before the Deposit Time, Purchaser, at its sole cost and expense, will deliver the following items in escrow with the Title Company pursuant to Section 4.3, for delivery to Seller on the Closing Date as provided herein:

(a) The Purchase Price, after all adjustments are made at the Closing as herein provided, by Federal Reserve wire transfer of immediately available funds;

(b) Four (4) counterparts of the General Conveyance, Bill of Sale and Assignment and Assumption substantially in the form attached hereto as **Exhibit D** (the **"General Conveyance"**) duly executed by Purchaser;

(c) Evidence reasonably satisfactory to Seller that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so;

(d) Two (2) counterparts of the Master Lease in the form attached as **Exhibit E** duly executed by Purchaser;

(e) Two (2) counterparts of each of the Options Agreement and the Memorandum of Options executed by Purchaser, with Purchaser's signature acknowledged by a notary public; and

(f) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

Section 10.3 **Seller's Closing Obligations**. At or before the Deposit Time, Seller, at its sole cost and expense, will deliver the following items (a), (b), (c), (d), (e), and (h) in escrow with the Title Company pursuant to Section 4.3; and upon receipt of the Purchase Price, Seller shall deliver the Personal Property to Purchaser at the Improvements:

(a) A special warranty deed substantially in the form attached hereto as **Exhibit F** (the **"Deed"**), duly executed and acknowledged by Seller conveying to Purchaser the Real Property and the Improvements subject only to the Permitted Exceptions, which Deed shall be delivered to Purchaser by the Title Company agreeing to cause same to be recorded in the Official Records;

(b) Four (4) counterparts of the General Conveyance duly executed by Seller;

(c) Two (2) counterparts of the Master Lease duly executed by Seller;

(d) Evidence reasonably satisfactory to Title Company and Purchaser that the person executing the Closing documents on behalf of Seller has full right, power and authority to do so;

(e) A certificate in the form attached hereto as **Exhibit C** (**"Certificate as to Foreign Status"**), duly executed by Seller, certifying that Seller is not a "foreign person" as defined in section 1445 of the Code;

(f) The Personal Property excluding any Delayed Transfer Property;

(g) Two (2) counterparts of the Options Agreement and the Memorandum of Options executed by Seller with Seller's signature acknowledged by a notary public; and

(h) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

Section 10.4 **Disbursement of Funds**. On or before 2:30 p.m. (Central Time) on the Closing Date, the Title Company shall (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account to be designated by Seller, the Purchase Price, less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, (b) pay to all appropriate payees the other costs and amounts to be paid by Purchaser at Closing pursuant to the terms of this Agreement, and (c) pay to the appropriate payees out of the proceeds of Closing payable to Seller, all costs and amounts to be paid by Seller at Closing pursuant to the terms of this Agreement.

Section 10.5 **Prorations**. As Seller will be leasing the Property back from Purchaser pursuant to the Master Lease, there will be no prorations at Closing.

Section 10.6 **Delivery of Real Property**. Upon completion of the Closing, Seller will deliver to Purchaser possession of the Real Property and Improvements, subject to the Master Lease, all occupancy agreements of third parties then in effect and all rights of the occupant under same and the Permitted Exceptions.

Section 10.7 **Costs of Title Company and Closing Costs**. Costs of the Title Company and other Closing costs incurred in connection with the Closing will be allocated as follows:

(a) Purchaser will pay (i) all premium and other costs for the Title Policy and any endorsements, including the so-called "survey deletion", except the portion thereof payable by Seller pursuant to Section 10.7(b) below, (ii) all premiums and other costs for any mortgagee policy of title insurance, including but not limited to any endorsements or deletions, including the survey deletion, (iii) Purchaser's attorneys' fees, (iv) one-half (1/2) of all of the Title Company's escrow and closing fees, if any, and (v) all recording fees;

(b) Seller will pay (i) the premium for the basic Title Policy and the cost for any endorsement with respect to liens described in Section 6.2(d), excluding the so-called "survey deletion", (ii) the cost of the Survey, (iii) one-half (1/2) of all of the Title Company's escrow and closing fees, and (iv) Seller's attorneys' fees;

(c) Any other costs and expenses of Closing not provided for in this Section 10.7 or in other provisions of this Agreement shall be allocated between Purchaser and Seller in accordance with the custom in the county in which the Real Property is located; and

(d) If the Closing does not occur on or before the Closing Date for any reason whatsoever, the costs incurred through the date of termination will be borne by the party incurring same

Section 10.8 **Purchaser's and Seller's Obligations**

(a) **Conditions to Purchaser's Obligations**. In addition to any other conditions expressly provided in this Agreement, the obligation of Purchaser to purchase and pay for the Property is subject to the satisfaction (or waiver by Purchaser) as of the Closing of the following conditions:

(i) [OMITTED].

(ii) Seller shall have performed in all material respects with each obligation required by this Agreement to be performed or complied with by Seller pursuant to Section 10.3.

(iii) At the Closing, the Title Company shall have issued, or irrevocably committed to issue, the Title Policy in accordance with Section 6.2.

Purchaser's closing of the purchase provided for herein shall evidence Purchaser's satisfaction with or waiver of each of such conditions. If any conditions to Purchaser's obligation to close are not satisfied at Closing, as Purchaser's sole and exclusive remedy (Purchaser hereby waiving all other remedies except as expressly provided below in the proviso to this sentence), Purchaser may terminate this Agreement in which event Purchaser shall be entitled to a return of the Initial Purchase Payment (subject to Section 4.5); provided, however, in the event the condition under Section 10.8(a)(ii) is not satisfied by Seller or waived by Purchaser on or before Closing, Purchaser shall be entitled to pursue its remedies under Section 13.1.

(b) Conditions to Seller's Obligations. In addition to any other conditions expressly provided in this Agreement, the obligation of Seller to sell the Property is subject to the satisfaction (or waiver by Seller) as of the Closing of the following conditions:

(i) [OMITTED].

(ii) Purchaser shall have performed or complied in all material respects with each obligation required by this Agreement to be performed or complied with by the Purchaser pursuant to Section 10.2.

Seller's closing of the sale provided for herein shall evidence Seller's satisfaction with or waiver of each of such conditions. If any conditions to Seller's obligation to close are not satisfied at Closing, as Seller's sole and exclusive remedy (Seller hereby waiving all other remedies except as expressly provided below in the proviso to this sentence), Seller may terminate this Agreement in which event Seller shall be entitled to a disbursement of the Initial Purchase Payment (subject to Section 4.5); provided, however, in the event the condition under Section 10.8(b)(ii) is not satisfied by Purchaser or waived by Seller on or before Closing, Seller shall be entitled to pursue its remedies under Section 13.2.

(c) Conditions to Obligation of Both Purchaser and Seller. In addition to any other conditions expressly provided in this Agreement, the obligation of Seller to sell the Property is subject to the satisfaction (or waiver by Seller) as of the Closing of the following conditions:

(i) the New Tower Closing Obligations, as specified in Section 2.04 of the CDA have been satisfied as described above.

The Parties' closing of the sale provided for herein shall evidence their satisfaction with or waiver of such conditions. If this condition is not satisfied at Closing, the Parties may thereafter pursue their respective remedies as provided in the CDA.

ARTICLE 11

BROKERAGE

Section 11.1 **No Brokers**. Purchaser and Seller represent to the other that no real estate brokers, agents or finders' fees or commissions are due or will be due or arise in conjunction with the execution of this Agreement or consummation of this transaction by reason of the acts of such party. The provisions of this Article XI will survive any Closing or termination of this Agreement.

ARTICLE XII

CONFIDENTIALITY

Section 12.1 **Confidentiality**. Neither party may issue a press release without the written approval of the other party, such approval not to be unreasonably withheld, conditioned or delayed. If request for approval of a press release is submitted to a party and such party has not delivered written notice of its disapproval, together with the reason for such disapproval, within three (3) Business Days after such party's receipt of such request (or such shorter period as may be indicated in such request as required for the requesting party to comply with applicable law or stock exchange rules), such press release shall be deemed approved by such party, and the other party may issue such press release as if it had been expressly approved by the other party.

Section 12.2 The provisions of this Article XII will survive the Closing or any termination of this Agreement.

ARTICLE XIII

REMEDIES

Section 13.1 **Default by Seller**. In the event the closing and the consummation of the transactions contemplated herein do not occur as herein provided by reason of any default of Seller, Purchaser may, as Purchaser's sole and exclusive remedy, terminate this Agreement by written notice to Seller within ten (10) Business Days following the selected Closing Date, in which event (i) Purchaser will receive from the Title Company the Initial Purchase Payment (and the Independent Consideration shall be paid to Seller), and (ii) Seller will pay to Purchaser in collected funds the City Unwind Payment (if the City is not yet bound to counter-parties to deliver debt instruments for payment of the Purchase Price) or the City Pre-Closing Unwind Payment (if the City is bound to counter-parties to deliver debt instruments for payment of the Purchase Price), whichever is applicable, whereupon Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations. Notwithstanding the foregoing, nothing contained in this Section 13.1 will limit Purchaser's remedies at law, in equity or as herein provided in the event of a breach by Seller of any of the Closing Surviving Obligations after Closing or the Termination Surviving Obligations after termination. Seller's agreement to pay to Purchaser the City Unwind Payment or City Pre-

Closing Unwind Payment, as applicable, contemplated by this Section 13.1 is a Termination Surviving Obligation.

Section 13.2 **Default by Purchaser**. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREIN DO NOT OCCUR AS PROVIDED HEREIN BY REASON OF ANY DEFAULT OF PURCHASER, PURCHASER AND SELLER AGREE IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE DAMAGES WHICH SELLER MAY SUFFER. AS A RESULT, PURCHASER AND SELLER AGREE THAT IN THE EVENT OF A DEFAULT BY PURCHASER, SELLER MAY, AS ITS SOLE AND EXCLUSIVE REMEDY, TERMINATE THIS AGREEMENT IN WHICH EVENT SELLER WILL RECEIVE FROM THE TITLE COMPANY THE INITIAL PURCHASE PAYMENT AND THE INDEPENDENT CONSIDERATION, AND SELLER AND PURCHASER WILL HAVE NO FURTHER RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT WITH RESPECT TO THE TERMINATION SURVIVING OBLIGATIONS. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN WILL LIMIT SELLER'S REMEDIES AT LAW, IN EQUITY OR AS HEREIN PROVIDED IN THE EVENT OF A BREACH BY PURCHASER OF ANY OF THE CLOSING SURVIVING OBLIGATIONS OR THE TERMINATION SURVIVING OBLIGATIONS.

Section 13.3 **Consequential and Punitive Damages**. EXCEPT AS SET FORTH IN SECTION 13.5 BELOW, EACH OF SELLER AND PURCHASER WAIVE ANY RIGHT TO SUE THE OTHER FOR ANY CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS FOR ANY MATTER OR CLAIM ARISING UNDER THIS AGREEMENT. THIS SECTION 13.3 SHALL SURVIVE CLOSING OR TERMINATION OF THIS AGREEMENT.

Section 13.4 **Exculpation.** (a) Purchaser agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary, retirant, beneficiary, internal investment contractor, agent or other affiliate of Seller or any other Seller Related Parties, including, without limitation, any officer, director, employee, trustee, shareholder, partner, principal, retirant, beneficiary, internal investment contractor, agent or other affiliate of Seller or any such parent, subsidiary or other affiliate, or any other Seller Related Parties (collectively, "**Seller's Affiliates**"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Purchaser agrees to look solely to Seller and its assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Seller's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 13.4(a), Purchaser hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Seller's Affiliates, and hereby unconditionally and irrevocably releases and discharges Seller's Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Purchaser against Seller's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby.

(b) Seller agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary, retirant, beneficiary, internal investment contractor, agent or other affiliate of Purchaser or any other Purchaser Related Parties, including, without limitation, any officer, director, employee, trustee, shareholder, partner, principal, retirant, beneficiary, internal investment contractor, agent or other affiliate of Purchaser or any such parent, subsidiary or other affiliate, or any other Purchaser Related Parties (collectively, "**Purchaser's Affiliates**"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Seller agrees to look solely to Purchaser and its assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Purchaser's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 13.4(b), Seller hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Purchaser's Affiliates, and hereby unconditionally and irrevocably releases and discharges Purchaser's Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Seller against Purchaser's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby

Section 13.5 **Lis Pendens**. This Agreement confers no present right, title or interest in the Property to Purchaser and Purchaser agrees not to, and waives its right to, file a lis pendens or other similar notice against the Property. Notwithstanding the foregoing, if Seller terminates this Agreement pursuant to a right given to it hereunder and Purchaser takes any action which interferes with Seller's ability to sell, exchange, transfer, lease, dispose of or finance the Property or take any other actions with respect thereto (including, without limitation, the filing of any lis pendens or other form of attachment against the Property), then Purchaser shall be liable for all loss, cost, damage, liability or expense (including, without limitation, reasonable attorneys' fees, court costs and disbursements and consequential damages) incurred by Seller by reason of such action to contest by Purchaser.

ARTICLE XIV

NOTICES

Section 14.1 **Notices**. All notices or other communications required or permitted hereunder may be given either by the parties hereto or their respective legal counsel (in which event such notice or communication shall be deemed to have been given by such party) and will be in writing, and will be given by (a) personal delivery, or (b) professional expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith and will be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of

first attempted delivery on a Business Day at the address or in the manner provided herein. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

To Purchaser:

City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78205
Attn: City Manager

with copy to:

City of San Antonio
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205
Attn: City Clerk

with copy to:

Hornberger Fuller & Garza, Inc.
7373 Broadway, Suite 300
San Antonio, Texas 78209
Attn: Drew R. Fuller, Jr.

To Seller:

Frost Bank
100 West Houston Street, T-10
San Antonio, Texas 78205
Attn: Robert Goudge
Executive Vice President

with copy to:

Frost Bank
100 West Houston Street, T-5
San Antonio, Texas 78205
Attn: John D. Wittenberg, Jr.
Executive Vice President and Corporate Counsel

with copy to:

Dykema Cox Smith
112 East Pecan, Suite 1800
San Antonio, Texas 78205
Attn: Peter R. Broderick

ARTICLE XV

ASSIGNMENT AND BINDING EFFECT

Section 15.1 **Assignment; Binding Effect**. Purchaser will not have the right to assign this Agreement without Seller's prior written consent. This Agreement will be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Purchaser, such reference will include the successors and permitted assigns of such party under this Agreement.

ARTICLE XVI

PROCEDURE FOR INDEMNIFICATION AND LIMITED SURVIVAL OF COVENANTS

Section 16.1 **Limitations on Liability**. Notwithstanding anything to the contrary contained in this Agreement, neither Party shall have any liability with respect to any of their respective covenants herein if, prior to the Closing, the other Party has actual knowledge of any breach of a covenant of the counter-party herein, or obtains actual knowledge (from whatever source) that contradicts any of the counter-party's covenants herein and the counter-party nevertheless consummates the transaction contemplated by this Agreement (in which event, any such breach shall be deemed waived by the counter-party).

The Closing Surviving Obligations will survive Closing without limitation unless a specified period is otherwise provided in this Agreement. All other covenants and agreements made or undertaken by Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing Date but will be merged into the Closing documents delivered at the Closing. The Termination Surviving Obligations shall survive termination of this Agreement without limitation unless a specified period is otherwise provided in this Agreement.

ARTICLE XVII

MISCELLANEOUS

Section 17.1 **Waivers**. No waiver of any breach of any covenant or provisions contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

Section 17.2 **Recovery of Certain Fees**. In the event a party hereto files any action or suit against another party hereto by reason of any breach of any of the covenants, agreements or provisions contained in this Agreement, then in that event the prevailing party will be entitled to have and recover of and from the other party all attorneys' fees and costs resulting therefrom. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall

mean all court costs and the fees and expenses of counsel to the parties hereto, which may include printing, photostatting, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 17.2 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

Section 17.3 **Time of Essence**. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE for the performance of all actions (including, without limitation, the giving of notices, the delivery of documents and the funding of money) required or permitted to be taken under this Agreement. Whenever action must be taken (including, without limitation, the giving of notice, the delivery of documents or the funding of money) under this Agreement, prior to the expiration of, by no later than or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. (Central Time) on such date, provided that such action must be completed by 2:30 p.m. (Central Time) with respect to the payment of the balance of the Purchase Price and other payments by Purchaser on the Closing Date. However, notwithstanding anything to the contrary herein, whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents or the funding of money) under this Agreement prior to the expiration of, by no later than or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

Section 17.4 **Construction**. Headings at the beginning of each article and section are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular will include the plural and the masculine will include the feminine and vice versa. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. All exhibits and schedules referred to in this Agreement are attached and incorporated by this reference, and any capitalized term used in any exhibit or schedule which is not defined in such exhibit or schedule will have the meaning attributable to such term in the body of this Agreement.

Section 17.5 **Counterparts**. To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original, electronic (by .pdf) or faxed signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed original or faxed/electronic counterparts will collectively constitute a single agreement.

Section 17.6 **Severability**. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the parties as closely as possible in

an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.7 **Entire Agreement**. This Agreement and the CDA are the final expressions of, and contain the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument, signed by the party to be charged or by its agent duly authorized in writing, or as otherwise expressly permitted herein. In the event of any conflict between the terms of this Agreement and the terms of the CDA, the terms of the CDA shall control.

Section 17.8 **Governing Law; Venue**. THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF TEXAS, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 17.8. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 14.1 HEREOF.

Section 17.9 **No Recording**. The parties hereto agree that neither this Agreement nor any affidavit concerning it will be recorded.

Section 17.10 **Further Actions**. The parties agree to execute such instructions to the Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

Section 17.11 **No Other Inducements**. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

Section 17.12 **Exhibits**. Exhibits A through G, inclusive, are incorporated herein by reference.

Section 17.13 **No Partnership**. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or

joint venturers, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

Section 17.14 **Limitations on Benefits**. It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser and Seller and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser and Seller or their respective successors and assigns as permitted hereunder. Nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party (including, without limitation, any broker or any Tenant) a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

Section 17.15 **Comprehensive Development Agreement**. This Agreement is executed pursuant to the CDA and is subject to termination pursuant to the terms thereof, and the Closing Date is subject to extension as set forth therein, as well. Seller and Purchaser expressly agree that in the event of any conflict between the terms of this Agreement and the terms of the CDA, the terms and provisions of the CDA shall control.

Section 17.16 **Waiver of Jury Trial**. Except as otherwise expressly stated in this Agreement to survive the Closing hereunder, all obligations the Parties have to each other under this Agreement shall survive neither the Closing nor the earlier termination of this Agreement. In the unlikely event that a dispute survives the Closing or termination, EACH OF SELLER AND PURCHASER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH OF SELLER AND PURCHASER MAY HAVE TO: (A) INJUNCTIVE RELIEF (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT TO THE CONTRARY); (B) A TRIAL BY JURY; (C) INTERPOSE ANY COUNTERCLAIM THEREIN (EXCEPT FOR ANY COMPULSORY COUNTERCLAIM WHICH, IF NOT ASSERTED IN SUCH SUIT, ACTION OR PROCEEDING, WOULD BE WAIVED) AND (D) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING.

[SIGNATURES FOLLOW ON NEXT SUCCEEDING PAGE]

EXECUTED as of the date first above written.

SELLER:

FROST BANK,
a Texas state bank

By:_____
Name:_____
Title:_____

PURCHASER:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

JOINDER BY TITLE COMPANY

PRESIDIO TITLE, LLC, referred to in this Agreement as the Title Company, hereby acknowledges that it received this Agreement executed by Seller and Purchaser on the _____ day of _____, 201__, and accepts the obligations of the Title Company as set forth herein. It further acknowledges that it received the Initial Purchase Payment on the _____ day of _____, 201__. The Title Company hereby agrees to hold and distribute the Independent Consideration and Initial Purchase Payment and interest thereon, and the Closing proceeds, in accordance with the terms and provisions of this Agreement. It further acknowledges that it hereby assumes all responsibilities for information reporting required under section 6045(e) of the Code.

PRESIDIO TITLE, LLC

By:_____
Printed Name:_____
Title:_____

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

TRACT 1 (TOWER):

A 0.468 ACRE (20,403 SQUARE FOOT) TRACT OF LAND BEING LOT 24, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 9515, PAGE 138, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING:	At a set lead plug and tack, the intersection of the south right-of-way line of West Houston Street and the east right-of-way line of North Flores Street;
THENCE:	S 89 degrees 12 minutes 00 seconds E 190.55 feet with the south right-of-way line of West Houston Street to a set lead plug and tack at its intersection with the west right-of-way line of North Main Avenue;
THENCE:	S 01 degrees 13 minutes 00 seconds W 109.02 feet with the west right-of-way line of North Main to a set lead plug and tack;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 1.70 feet the beginning of a concrete column and with the concrete column a total distance of 11.70 feet to a corner of said column;
THENCE:	N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to an angle point;
THENCE:	N 88 degrees 45 minutes 05 seconds W at 12.50 feet begin a concrete block wall and with the north face of said wall and its extension a total distance of 168.00 feet to a concrete column;
THENCE:	S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 10.00 feet pass a corner of the column, a total distance of 15.19 feet to a set lead plug and tack in the east right-of-way line of North Flores Street;
THENCE:	N 03 degrees 32 minutes 00 seconds E 107.62 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 0.468 acre (20,403 square feet).

TRACT 2 (GARAGE):

A 1.354 ACRE (58,972 SQUARE FOOT) TRACT OF LAND BEING LOT 23, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, SAN ANTONIO, TEXAS, AS RECORDED IN VOLUME 9515 ON PAGE 138 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a found lead plug and track in the east right-of-way line of North Flores Street, from which the intersection of the east right-of-way line of North Flores and the south right-of-way line of West Houston Street is N 03 degrees 32 minutes 00 seconds E 107.62 feet;

THENCE: S 88 degrees 45 minutes 05 seconds E, at 5.19 feet the beginning of a concrete column and with the concrete column a total distance of 15.19 feet to a corner of the column;

THENCE: N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E 168.00 feet with the extension of and the north face of a concrete block wall to a concrete column;

THENCE: S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E with the column, at 10.00 feet pass a corner of the column, a total distance of 11.70 feet to a found lead plug and tack in the west right-of-way line of North Main;

THENCE: S 01 degrees 13 minutes 00 seconds W 225.08 feet with the west right-of-way line of North Main to an angle point;

THENCE: N 79 degrees 56 minutes 00 seconds W 28.70 feet to an angle point;

THENCE: S 07 degrees 00 minutes 00 seconds W 6.02 feet to an angle point;

THENCE: S 05 degrees 14 minutes 00 seconds W 96.48 feet a found lead plug and tack in the north right-of-way line of West Commerce Street;

THENCE: N 78 degrees 13 minutes 00 seconds W 167.60 feet with the north right-of-way line of West Commerce to a found lead plug and tack at its intersection with the east right-of-way line of North Flores Street;

THENCE: N 01 degrees 36 minutes 00 seconds E 184.75 feet with the east right-of-way line of North Flores Street to a found lead plug and tack, an angle in this line;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.61 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 1.354 acres (58,972 square feet).

EXHIBIT B

LIST OF EXCLUDED PERSONAL PROPERTY

(1) All movable trade fixtures and other personal property, including, without limitation, all furniture, fixtures and equipment located on the Premises related, directly, to Seller's banking or financial services operations on the Property.

(2) All computers, audio/visual equipment and security systems located on the Property.

(3) All artwork located on the Property.

(4) All "Frost Bank" related intellectual property.

(5) All "Frost Bank" signage and any Personal Property with the "Frost Bank" name or logo.

(6) Any furniture and other furnishings which Seller deems to be proprietary to it or of historical significance to Seller or its operations.

EXHIBIT C

NON-FOREIGN ENTITY CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by **FROST BANK**, a Texas state bank (the "**Transferor**"), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);

3. Transferor's U.S. employer identification number is 74-0635455; and

4. Transferor's office address is:

   100 W. Houston Street
   San Antonio, Texas 78205.

Transferor understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made within this certification could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that he has examined this certification and that to the best of his knowledge and belief it is true, correct and complete, and the undersigned further declares that he has the authority to sign this document on behalf of the Transferor.

TRANSFEROR:

FROST BANK, a Texas state bank

By:_____
Name:_____
Title:_____

EXHIBIT D

FORM OF GENERAL CONVEYANCE, BILL OF SALE, ASSIGNMENT AND ASSUMPTION

GENERAL CONVEYANCE AND BILL OF SALE

FROST BANK, a Texas state bank ("**Seller**"), for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration to Seller paid by the **CITY OF SAN ANTONIO**, a Texas municipal corporation ("**Purchaser**"), the receipt of which is hereby acknowledged, hereby bargains, sells, transfers, conveys and assigns to Purchaser the following described property:

> All equipment, appliances, tools, supplies, machinery, furnishings and other tangible personal property attached to, appurtenant to, located in the improvements (the "**Improvements**") located on the real property described on **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Real Property**") and used exclusively by Seller in connection with its ownership or operation of the Improvements (the "**Personal Property**"), but specifically excluding (i) the items of personal property set forth on **Exhibit B** attached hereto, (ii) any items of personal property owned by lawful tenants (each, a "**Tenant**") of the Improvements and (iii) any items of personal property owned by third parties and leased to Seller.

The following items of property are specifically excluded from this General Conveyance and Bill of Sale (this "**General Conveyance**") and are retained by Seller as Delayed Transfer Property:

(a) any and all of Seller's right, title and interest in and to all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by governmental authorities prior to the date hereof in connection with the Real Property and the Improvements, together with all renewals and modifications thereof (the "**Licenses and Permits**"), (b) all third party warranties and guaranties, if any, relating to the Real Property, the Improvements or the Personal Property (the "**Warranties**"), (c) (i) all books and records, including but not limited to property operating statements, specifically relating to the Improvements; (ii) all structural reviews, architectural drawings and engineering, soils, seismic, geologic and architectural reports, studies and certificates pertaining to the Real Property or the Improvements; and (iii) all final plans, specifications and drawings of the Improvements or any portion thereof ("**Records and Plans**"), but the following items are expressly excluded from Records and Plans, Delayed Transfer Property and any other property or rights to by assigned by Seller to Purchaser: (1) any document or correspondence which would be subject to the attorney-client privilege; (2) any document or item which either Purchaser or Seller is contractually or otherwise bound to keep confidential; (3) any documents pertaining to the marketing of the Real Property or Personal Property for sale to prospective purchasers; (4) any internal memoranda, reports or assessments of either Purchaser or Seller or their respective

Affiliates relating to Seller's valuation of the Property; (5) appraisals of the Real Property or Personal Property whether prepared internally by Seller or Seller's affiliates or externally; (6) any documents or items which the party in possession or control thereof considers confidential or proprietary; (7) any documents or items which are not in a Party's possession and control; and (8) any materials projecting or relating to the future performance of the Property, and (d) the service agreements, maintenance contracts, equipment leasing agreements, leasing commission agreements, warranties, guarantees, bonds and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property, Improvements or Personal Property and under which Seller is currently paying for services rendered in connection therewith (the "**Operating Contracts**").

The Personal Property is hereinafter collectively referred to as the "**Assigned Property.**"

Seller has executed this General Conveyance and BARGAINED, SOLD, TRANSFERRED, CONVEYED and ASSIGNED the Assigned Property and Purchaser has accepted this General Conveyance and purchased the Assigned Property AS IS AND WHEREVER LOCATED, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, IT BEING THE INTENTION OF SELLER AND PURCHASER TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN WITH RESPECT TO THE ASSIGNED PROPERTY, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE AS NOW OR HEREAFTER IN EFFECT IN THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, OR CONTAINED IN OR CREATED BY ANY OTHER LAW.

To facilitate execution of this General Conveyance, this General Conveyance may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this General Conveyance, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

[Signatures follow on next succeeding page.]

EXECUTED as of the _____ day of _____, 20___.

SELLER:

FROST BANK, a Texas state bank

By:_____
Name:_____
Title:_____

PURCHASER:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Name:_____
Title:_____

EXHIBIT E

FORM OF MASTER LEASE

[TO BE ATTACHED]

EXHIBIT F

FORM OF SPECIAL WARRANTY DEED

AFTER RECORDING RETURN TO:

_____

_____

_____

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS	§	
	§	KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BEXAR	§	

THAT, **FROST BANK**, a Texas state bank ("**Grantor**"), whose address is 100 W. Houston Street, San Antonio, Texas 78205, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL and CONVEY unto the **CITY OF SAN ANTONIO**, a Texas municipal corporation ("**Grantee**"), whose address is 100 Military Plaza, 1st Floor, San Antonio, Texas 78205, that certain tract of land located in Bexar County, Texas, and being more particularly described on **Exhibit A** attached hereto and made a part hereof by reference for all purposes, together with (i) all improvements thereon, (ii) the appurtenances pertaining thereto, including but not limited to Seller's right, title and interest in and to (a) the streets, alleys and right-of-ways which abut such real property; (b) any easement rights, air rights, subsurface rights, development rights and water rights appurtenant to such real property, excluding, however, any subsurface permits issued to Grantor by Grantee allowing for Grantor's use of Grantee's property adjacent to the Property; and (c) strips or gores, if any, between such real property and abutting properties, whether owned or claimed by deed, limitations or otherwise, and whether or not they are located inside or outside of the boundaries of such real property (all of the foregoing being called the "**Property**").

Subject, however, to the exceptions to title (the "**Permitted Encumbrances**") more particularly set forth on **Exhibit B** attached hereto and fully made a part hereof by reference for all purposes.

TO HAVE AND TO HOLD the above-described Property, subject to the Permitted Encumbrances, together with all and singular the rights and appurtenances thereto in any wise belonging to Grantor, unto the said Grantee, its successors and assigns FOREVER, and Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, its successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor has executed this Special Warranty Deed (this "**Deed**") and BARGAINED, SOLD, TRANSFERRED, CONVEYED and ASSIGNED the Property and Grantee has accepted this Deed and purchased the Property on an "AS-IS", "WHERE-IS" BASIS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, EXCEPT FOR THE WARRANTY OF TITLE SET FORTH HEREIN, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ANY RIGHTS OF GRANTEE UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, ANY CLAIM BY GRANTEE FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN WITH RESPECT TO THE PROPERTY, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY ANY OTHER LAW.

[signature page follows]

Signed this ___ day of _____, 20___.

GRANTOR:

FROST BANK, a Texas state bank

By:_____
Name:_____
Title:_____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 201__, by _____, _____ of FROST BANK, a Texas state bank, on behalf of said bank.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My Commission Expires: _____

EXHIBIT "A" to EXHIBIT "F"

LEGAL DESCRIPTION OF THE PROPERTY

TRACT 1 (TOWER):

A 0.468 ACRE (20,403 SQUARE FOOT) TRACT OF LAND BEING LOT 24, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 9515, PAGE 138, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING:	At a set lead plug and tack, the intersection of the south right-of-way line of West Houston Street and the east right-of-way line of North Flores Street;
THENCE:	S 89 degrees 12 minutes 00 seconds E 190.55 feet with the south right-of-way line of West Houston Street to a set lead plug and tack at its intersection with the west right-of-way line of North Main Avenue;
THENCE:	S 01 degrees 13 minutes 00 seconds W 109.02 feet with the west right-of-way line of North Main to a set lead plug and tack;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 1.70 feet the beginning of a concrete column and with the concrete column a total distance of 11.70 feet to a corner of said column;
THENCE:	N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to an angle point;
THENCE:	N 88 degrees 45 minutes 05 seconds W at 12.50 feet begin a concrete block wall and with the north face of said wall and its extension a total distance of 168.00 feet to a concrete column;
THENCE:	S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 10.00 feet pass a corner of the column, a total distance of 15.19 feet to a set lead plug and tack in the east right-of-way line of North Flores Street;
THENCE:	N 03 degrees 32 minutes 00 seconds E 107.62 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 0.468 acre (20,403 square feet).

TRACT 2 (GARAGE):

A 1.354 ACRE (58,972 SQUARE FOOT) TRACT OF LAND BEING LOT 23, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, SAN ANTONIO, TEXAS, AS RECORDED IN VOLUME 9515 ON PAGE 138 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING:	At a found lead plug and track in the east right-of-way line of North Flores Street, from which the intersection of the east right-of-way line of North Flores and the south right-of-way line of West Houston Street is N 03 degrees 32 minutes 00 seconds E 107.62 feet;
THENCE:	S 88 degrees 45 minutes 05 seconds E, at 5.19 feet the beginning of a concrete column and with the concrete column a total distance of 15.19 feet to a corner of the column;
THENCE:	N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to a corner;
THENCE:	S 88 degrees 45 minutes 05 seconds E 168.00 feet with the extension of and the north face of a concrete block wall to a concrete column;
THENCE:	S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;
THENCE:	S 88 degrees 45 minutes 05 seconds E with the column, at 10.00 feet pass a corner of the column, a total distance of 11.70 feet to a found lead plug and tack in the west right-of-way line of North Main;
THENCE:	S 01 degrees 13 minutes 00 seconds W 225.08 feet with the west right-of-way line of North Main to an angle point;
THENCE:	N 79 degrees 56 minutes 00 seconds W 28.70 feet to an angle point;
THENCE:	S 07 degrees 00 minutes 00 seconds W 6.02 feet to an angle point;
THENCE:	S 05 degrees 14 minutes 00 seconds W 96.48 feet a found lead plug and tack in the north right-of-way line of West Commerce Street;
THENCE:	N 78 degrees 13 minutes 00 seconds W 167.60 feet with the north right-of-way line of West Commerce to a found lead plug and tack at its intersection with the east right-of-way line of North Flores Street;

THENCE: N 01 degrees 36 minutes 00 seconds E 184.75 feet with the east right-of-way line of North Flores Street to a found lead plug and tack, an angle in this line;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.61 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 1.354 acres (58,972 square feet).

EXHIBIT "B" to EXHIBIT "F"

PERMITTED EXCEPTIONS

1. General and special real property taxes and assessments, a lien not yet due and payable.

[List all other specific Permitted Exceptions]

EXHIBIT G

FORM OF OPTIONS AGREEMENT

OPTIONS AGREEMENT

This Options Agreement (the "***Option Agreement***") is made and entered into effective as of the _____ day of _____, 201__ (the "***Option Effective Date***"), by and between The City of San Antonio (the "***City***") and Frost Bank, a Texas state bank, or permitted assigns ("***Frost***").

RECITALS:

WHEREAS, on _____, 201__, pursuant to the Agreement of Sale and Purchase, dated as of _____, 2015 (the "***PSA***"), between Frost and the City, the City purchased from Frost those two platted lots of real property located at 101 W. Houston Street in San Antonio, Bexar County, Texas, more particularly described on **Exhibit "A"** hereto, together with the improvements situated thereon, including but not limited to, the office building commonly known as the Frost Bank Tower and Frost Bank Garage, and the other assets related described as the "Property" in the PSA (said land, improvements, and other assets referred to collectively herein as the "***Frost Tower Assets***");

WHEREAS, pursuant to a Master Lease Agreement dated _____, 201___ by and between the City and Frost (the "***Lease***"), Frost leased the Frost Tower Assets from the City, for the term, and on the terms and conditions, stated in the Lease;

WHEREAS, the City, Frost and Weston Urban, LLC have entered into that certain Comprehensive Development Agreement dated _____, 2015 (the "***CDA***") which contemplates that Frost will enter into the New Tower Lease (as defined therein) for occupancy of certain leased premises after termination of the Lease;

WHEREAS, Frost desires to grant unto City and City desires to acquire from Frost, the exclusive option to cause Frost to repurchase the Frost Tower Assets upon the terms and conditions, and at the price set forth below;

NOW, THEREFORE, for and in consideration of the mutual terms, covenants and conditions contained herein (including the mutual options granted herein), and the sum of ONE HUNDRED and NO/100 DOLLARS ($100.00) (the "***Put Option Fee***"), in hand paid by City to Frost, the receipt and sufficiency of which is acknowledged and confessed, and the sum of ONE HUNDRED and NO/100 DOLLARS ($100.00) (the "***Repurchase Option Fee***" and together with the Put Option Fee, each an "***Option Fee***" and collectively the "***Option Fees***"), in hand paid by Frost to the City, the receipt and sufficiency of which is acknowledged and confessed, the City and Frost agree as follows:

ARTICLE I
GRANT OF OPTION, NOTICE, SALES PRICE

Section 1.1 **Grant of Options**.

(a) For the consideration, above stated, Frost hereby grants to City the exclusive and irrevocable right and option to sell the Frost Tower Assets to Frost (the "***Put Option***") at the

price and on the terms set forth herein. The Put Option may be exercised only during the period (the "***Put Exercise Period***") commencing on the expiration of the Repurchase Exercise Period (the "***Put Exercise Period Commencement Date***") and expiring at 4:00 p.m., San Antonio, Texas time, on the ninetieth (90th) day following the expiration of the Repurchase Exercise Period (the "***Put Exercise Period Expiration Time***"). Upon exercise of the Put Option by the City, Frost has the obligation to purchase all, and not less than all, of the Frost Tower Assets at the Purchase Price, subject to the other terms and conditions set forth herein.

(b) For the consideration, above stated, City hereby grants to Frost the exclusive and irrevocable right and option to purchase the Frost Tower Assets from the City (the "***Repurchase Option***") at the price and on the terms set forth herein. The Repurchase Option may be exercised only during the period (the "***Repurchase Exercise Period***") commencing on the date that Frost or the City exercises its right to terminate the CDA under the terms of Section 6.09 of the CDA (the "***Repurchase Exercise Period Commencement Date***") and expiring at 4:00 p.m., San Antonio, Texas time, on the ninetieth (90th) day following the expiration of the term of the Lease, excluding any extension of the term of Lease arising out of the City or Frost exercising its rights to compel a purchase or sale, as applicable, of the Frost Tower Assets by the other (the "***Repurchase Exercise Period Expiration Time***"). Upon exercise of the Repurchase Option by Frost, the City has the obligation to sell all, and not less than all, of the Frost Tower Assets to Frost at the Purchase Price, subject to the other terms and conditions set forth herein.

(c) Once the New Tower is completed, and Frost has taken possession of the premises demised to it under the New Tower Lease, this Option Agreement and both the Repurchase Option and the Put Option shall be null and void.

Section 1.2 **Purchase Price**. The purchase price of the Frost Tower Assets (the "***Purchase Price***") shall be the sum described as the "Purchase Price" in Section 2 of the Purchase and Sale Agreement attached hereto as **Exhibit "C"** and incorporated herein for all purposes (the "***Purchase Agreement***").

Section 1.3 **Exercise of Option**. The Put Option may be exercised, if at all, by the delivery during the Put Exercise Period of a written notice of exercise of the Put Option, executed by the City, to Frost, counsel to Frost, and the Title Company, and the Repurchase Option may be exercised, if at all, by the delivery during the Repurchase Exercise Period of a written notice of exercise of the Repurchase Option, executed by Frost, to the City, counsel to the City, and the Title Company, in each case accompanied by the following:

(i) three (3) original counterparts of the Purchase Agreement executed by the party exercising the applicable Option;

(ii) proof of delivery of the notice of exercise of the applicable Option being exercised; and

(iii) proof of delivery of termination of the New Tower Lease and the resulting termination of the CDA.

Each written notice and all of the items listed in (i) - (iii) above are collectively referred to herein as an "***Exercise Notice***".

Section 1.4 **Option Fee**. The Put Option Fee is non-refundable to the City, and the Repurchase Option Fee is non-refundable to Frost.

Section 1.5 **Defined Terms**. Any defined terms used herein but not defined herein shall have the meaning ascribed to such terms in the Purchase Agreement.

ARTICLE II
OBLIGATIONS OF OPTIONOR AND OPTIONEE

Section 2.1 **Closing of Sale**. Upon receipt of a timely delivered and properly completed Exercise Notice from City, Frost shall deliver three (3) fully executed original counterparts of the Purchase Agreement to the Title Company. Upon receipt of a timely delivered and properly completed Exercise Notice from Frost, City shall deliver three (3) fully executed original counterparts of the Purchase Agreement to the Title Company.

Section 2.2 **Title**. Within ten (10) days after the date of an Exercise Notice, the City, at the City's sole cost and expense, shall obtain, and shall deliver or cause to be delivered, a Commitment for Title Insurance (the "***Commitment***") relating to the Property from Presidio Title Company, 7373 Broadway, Suite 105, San Antonio, Texas 78209. Attn: David McAllister (the "***Title Company***"). The Commitment shall confirm that (a) the description of the real property to be conveyed as part of the Frost Tower Assets on Schedule A of the Commitment is the same as the description on **Exhibit "A"** hereto and (b) that the exceptions to coverage listed on the Commitment are the same as those listed on **Exhibit "D"** hereto (the matters described in (a) and (b) are referred to as the "***Title Conditions***"). If the Title Conditions are satisfied, Frost shall have no right to object to matters described on Schedules A and B of the Commitment and the matters listed on Exhibit B shall be deemed "***Permitted Encumbrances***" under the terms of the Purchase Agreement. City shall be obligated to convey the Property subject only to the title exceptions listed on **Exhibit "D"** and shall be obligated to remove any other exception to Frost's title to the Property created during City's ownership of same without the prior written consent of Frost.

Section 2.3 **UCC Searches**. Within ten (10) days after the date of the Exercise Notice, the City, at the City's sole cost and expense, shall obtain, and shall deliver to Frost, current searches of all Uniform Commercial Code financing statements filed with the Office of the Secretary of State of Texas and the County Clerk of Bexar County, Texas against the City and the City's predecessors in title reflecting all effective financing statements then of record relating to the Property or any part thereof.

ARTICLE III
ASSIGNMENT

Frost and the City each agree that (a) the Put Option is personal to the City and accordingly shall neither be exercisable by or for the benefit of any person or entity other than the City, nor shall the Put Option otherwise run with the land included in the Frost Tower Assets; (b) the Repurchase Option shall run with the land included in the Frost Tower Assets and shall bind the City's successors in interest thereto; (c) Frost may not assign its obligations under this Option

Agreement without the prior written consent of the City; and (d) the City may not assign its rights or obligations under this Option Agreement without the prior written consent of Frost. Notwithstanding the foregoing, Frost may assign its rights and obligations under the Option Agreement to an entity which (i) will be the grantee under the deed without warranty to be delivered pursuant to Section 5 of the Purchase Agreement and (ii) which is either Cullen/Frost Bankers, Inc. or a wholly owned subsidiary thereof, without the necessity of the City's consent or any entity into which Frost is merged or otherwise consolidated or which acquires all or substantially all the stock or assets of Frost, but Frost shall not be relieved of any liability hereunder or under the Purchase Agreement as a result of said assignment.

ARTICLE IV
SELLER REPRESENTATIONS AND WARRANTIES

(a) City hereby represents and warrants to Frost that the statements contained in this Article IV are correct and complete as of the Option Effective Date, and will be correct and complete as of the Closing Date.

i. **Due Organization and Qualification**. City is a municipal corporation duly formed, validly existing and in good standing under the laws of Texas.

ii. **Power and Authority**. City has full power and authority to enter into and perform its obligations hereunder and to consummate the transactions herein in accordance with the terms, provisions and conditions hereof. City has authorized the execution, delivery and performance of this Option Agreement and the transaction contemplated by this Option Agreement.

iii. **No Violations**. Neither the execution nor the delivery of this Option Agreement and the consummation of the transactions contemplated hereby, by Seller, will (A) violate any governmental rule to which City or the Frost Tower Assets is subject, or (B) violate, conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which City is a party or by which any of the Frost Tower Assets is subject.

iv. **Valid, Binding and Enforceable Obligation**. This Option Agreement has been duly and validly executed by the City, and, assuming due authorization, execution and delivery of this Option Agreement by Frost, constitutes a valid, binding, and enforceable obligation, enforceable against the City in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and the enforcement of debtors' obligations generally and by general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

ARTICLE V
BUYER REPRESENTATIONS AND WARRANTIES

(a) Frost represents and warrants to City that the statements in this Article V are correct and complete as of the date hereof, and will be correct and complete on the Closing Date, except as otherwise disclosed on the disclosure schedules referenced below.

i. **Due Organization**. Frost is a Texas state bank, duly organized and validly existing under the laws of the state of Texas.

ii. **Power and Authority**. Frost has full power and authority to enter into and perform its obligations hereunder and to consummate the transactions herein contemplated in accordance with the terms, provisions and conditions hereof. Frost has duly and validly authorized the execution, delivery and performance of this Option Agreement and the transaction contemplated by this Option Agreement.

iii. **Valid, Binding and Enforceable Obligations**. This Option Agreement has been duly and validly executed by Frost and, assuming due authorization, execution and delivery of this Option Agreement by the City, constitutes a valid, binding and enforceable obligation, enforceable against Frost in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and the enforcement of debtors' obligations generally and by general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

iv. **No Violations**. Neither the execution or delivery by Frost of this Option Agreement, nor the consummation of the transactions contemplated hereby will (A) violate any governmental rule to which it is subject, (B) violate or conflict with Frost's organizational documents, or (C) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which Frost is a party or by which it or any of its assets is subject.

v. **Governmental Consents**. No approval is necessary in connection with the execution and delivery of this Option Agreement by Buyer or the consummation of the transactions by Buyer contemplated hereby, other than where the failure to obtain an approval would not materially and adversely impact Frost's ability to consummate the transactions contemplated herein in a timely manner.

ARTICLE VI
MISCELLANEOUS

Section 6.1 <u>Notices</u>. All notices provided or permitted to be given under this Option Agreement must be in writing and may be served by delivering the same in person to such party; transmitted by Federal Express or a similar generally recognized overnight carrier providing

proof of delivery. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to City:	City of San Antonio 100 Military Plaza, 1st Floor San Antonio, Texas 78205 Attn: City Manager
With a copy to:	City of San Antonio 100 Military Plaza, 2nd Floor San Antonio, Texas 78205 Attn: City Clerk
With a copy to:	Drew R. Fuller, Jr. Hornberger Fuller & Garza Incorporated 7373 Broadway, Suite 300 San Antonio, Texas 78209 Telephone: (210) 271-1700
If to Frost:	Frost Bank 100 W. Houston Street, T-10 San Antonio, Texas 78205 Attn: Property Management Department
With a copy to:	Frost Bank 100 W. Houston Street, T-5 San Antonio, Texas 78205 Attn: Corporate Counsel
	Frost Bank 100 W. Houston Street, T-4 San Antonio, Texas 78205 Attn: Phillip D. Green Dykema Cox Smith 112 East Pecan, Suite 1800 San Antonio, Texas 78205 Attn: Peter R. Broderick

Section 6.2 **Memorandum**. Upon the execution of this Option Agreement, City and Frost shall enter into a Memorandum of the Options Agreement duly executed and acknowledged by each of them and otherwise in a recordable form mutually acceptable to each of them in their reasonable discretion.

Section 6.3 **Entire Agreement; Amendment**. This Option Agreement and the CDA contain the entire agreement between the City and Frost relating to the Option herein granted. Any oral representations or modifications concerning this Option Agreement shall be of no force or effect,

except a subsequent modification in writing signed by the party to be charged. The provisions of this Option Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by each of the parties hereto. In the event of any conflict between the terms of this Option Agreement and the terms of the CDA, the terms of the CDA shall control.

Section 6.4 **Binding Effect; Intended Beneficiaries**. This Option Agreement binds and inures to the benefit of all respective heirs, personal representatives, successors and assigns of the City and Frost, where permitted by this Option Agreement. Nothing in this Option Agreement, express or implied, is intended to or shall confer upon any person (other than the parties hereto) any right, benefit or remedy or any nature whatsoever under or by reason of this Option Agreement or the Purchase Agreement.

Section 6.5 **Transaction Costs.** Except as otherwise expressly provided herein, Frost, on the one hand, and City, on the other, shall pay all of its own costs and expenses (including attorneys' fees and other legal costs and expenses and accountants' fees and other accounting costs and expenses) incurred in connection with this Option Agreement and the transactions contemplated hereby.

Section 6.6 **Headings.** The headings contained in this Option Agreement are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect in any way the meaning or interpretation of this Option Agreement.

Section 6.7 **Severability**. If any provision of this Option Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Option Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

Section 6.8 **Waivers**. The failure or delay of any party at any time to require performance by another party of any provision of this Option Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Option Agreement should not be construed as a waiver or any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Option Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

Section 6.9 **Counterparts**. This Option Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Confirmation of execution or delivery by telefax, email or other electronic means of a signature page shall be binding upon any party so confirming or delivering.

Section 6.10 **Governing Law**. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas other than any thereof that would require or permit the application of the laws of any other jurisdiction.

Section 6.11 **No Consequential Damages**. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO

ANOTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE, INCLUDING LOSS OF USE OR LOSS OF PROFIT OR REVENUE, AND EACH PARTY HEREBY RELEASES EACH OTHER PARTY, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SUCCESSORS, ASSIGNS, AGENTS AND CONTRACTORS FROM ANY SUCH LIABILITY.

Section 6.12 **Time of Essence**. Time is of the essence with respect to the performance of any obligation under this Agreement.

Section 6.13 **CDA Controls**. City and Frost expressly agree that in the event of any conflict between the terms of this Option Agreement and the terms of the CDA, the terms and provisions of the CDA shall control.

[SIGNATURES ON FOLLOWING PAGE]

In witness hereof, the City and Frost have executed this Option Agreement in duplicate as of the Option Effective Date.

CITY:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

FROST:

FROST BANK,
a Texas state bank

By: _____
Name: _____
Title: _____

Exhibit "A" – Property
Exhibit "B" – Reserved
Exhibit "C" – Purchase Agreement
Exhibit "D" – Permitted Encumbrances

EXHIBIT "A"

PROPERTY

TRACT 1 (TOWER):

A 0.468 ACRE (20,403 SQUARE FOOT) TRACT OF LAND BEING LOT 24, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 9515, PAGE 138, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a set lead plug and tack, the intersection of the south right-of-way line of West Houston Street and the east right-of-way line of North Flores Street;

THENCE: S 89 degrees 12 minutes 00 seconds E 190.55 feet with the south right-of-way line of West Houston Street to a set lead plug and tack at its intersection with the west right-of-way line of North Main Avenue;

THENCE: S 01 degrees 13 minutes 00 seconds W 109.02 feet with the west right-of-way line of North Main to a set lead plug and tack;

THENCE: N 88 degrees 45 minutes 05 seconds W, at 1.70 feet the beginning of a concrete column and with the concrete column a total distance of 11.70 feet to a corner of said column;

THENCE: N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to an angle point;

THENCE: N 88 degrees 45 minutes 05 seconds W at 12.50 feet begin a concrete block wall and with the north face of said wall and its extension a total distance of 168.00 feet to a concrete column;

THENCE: S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;

THENCE: N 88 degrees 45 minutes 05 seconds W, at 10.00 feet pass a corner of the column, a total distance of 15.19 feet to a set lead plug and tack in the east right-of-way line of North Flores Street;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.62 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 0.468 acre (20,403 square feet).

TRACT 2 (GARAGE):

A 1.354 ACRE (58,972 SQUARE FOOT) TRACT OF LAND BEING LOT 23, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, SAN ANTONIO, TEXAS, AS RECORDED IN VOLUME 9515 ON PAGE 138 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a found lead plug and track in the east right-of-way line of North Flores Street, from which the intersection of the east right-of-way line of North Flores and the south right-of-way line of West Houston Street is N 03 degrees 32 minutes 00 seconds E 107.62 feet;

THENCE: S 88 degrees 45 minutes 05 seconds E, at 5.19 feet the beginning of a concrete column and with the concrete column a total distance of 15.19 feet to a corner of the column;

THENCE: N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E 168.00 feet with the extension of and the north face of a concrete block wall to a concrete column;

THENCE: S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E with the column, at 10.00 feet pass a corner of the column, a total distance of 11.70 feet to a found lead plug and tack in the west right-of-way line of North Main;

THENCE: S 01 degrees 13 minutes 00 seconds W 225.08 feet with the west right-of-way line of North Main to an angle point;

THENCE: N 79 degrees 56 minutes 00 seconds W 28.70 feet to an angle point;

THENCE: S 07 degrees 00 minutes 00 seconds W 6.02 feet to an angle point;

THENCE: S 05 degrees 14 minutes 00 seconds W 96.48 feet a found lead plug and tack in the north right-of-way line of West Commerce Street;

THENCE: N 78 degrees 13 minutes 00 seconds W 167.60 feet with the north right-of-way line of West Commerce to a found lead plug and tack at its intersection with the east right-of-way line of North Flores Street;

THENCE: N 01 degrees 36 minutes 00 seconds E 184.75 feet with the east right-of-way line of North Flores Street to a found lead plug and tack, an angle in this line;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.61 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 1.354 acres (58,972 square feet).

EXHIBIT "B"

RESESRVED

EXHIBIT "C"

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "***Agreement***") is entered into as of the ___ day of _____, 201__, by and between The City of San Antonio (the "***Seller***") and Frost Bank, a Texas state bank, or permitted assigns (the "***Purchaser***"). The Agreement is ancillary to that certain Options Agreement dated to be effective _____, 201__ by and between Seller and Purchaser (the "***Options Agreement***"). Purchaser has the right to purchase the Property on the terms and conditions stated in the Option Agreement, including, without limitation, timely delivery of the Exercise Notice.

WITNESSETH:

In consideration of the mutual covenants set forth herein and in consideration of the earnest money deposit herein called for, the receipt and sufficiency of which is hereby acknowledged by Seller, the parties hereto hereby agree as follows:

Section 1. **Sale and Purchase**. Seller shall sell, convey, and assign to Purchaser, and Purchaser shall purchase and accept from Seller, for the Purchase Price (hereinafter defined) and on and subject to the terms and conditions herein set forth, the following:

Section 2. **The Property.** Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, on the Closing Date and subject to the terms and conditions of this Agreement, all of the following (collectively, the "Property"):

(a) those certain parcels of or interests in real property located at 100 West Houston Street in San Antonio, Texas and commonly known as Frost Tower and Frost Garage, as more particularly described on **Exhibit A** attached hereto and made a part hereof, together with (i) the appurtenances pertaining thereto, including but not limited to Seller's right, title and interest in and to the streets, alleys and right-of-ways which abut such real property; (ii) any easement rights, air rights, subsurface rights, development rights and water rights appurtenant to such real property; and (iii) strips or gores, if any, between such real property and abutting properties, whether owned or claimed by deed, limitations or otherwise, and whether or not they are located inside or outside of the boundaries of such real property (the "***Real Property***");

(b) all buildings, structures, fixtures, parking areas and other improvements which Seller purchased from Purchaser or are otherwise owned by Seller, and located on the Real Property (collectively, the "***Improvements***");

(c) all mechanical, electrical, heating, air conditioning and plumbing systems, fixtures and equipment; all furniture, carpets, drapes and other furnishings, the equipment, appliances, tools, supplies, machinery, furnishings and other tangible personal property of every kind and character attached to, appurtenant to, located in and used by Seller in connection with its ownership or operation of the Improvements and all accessories and additions thereto,

but specifically excluding (i) any items of personal property owned by lawful tenants of the Improvements and (ii) any items of personal property owned by third parties and leased to Seller;

The above listed items are herein collectively called the "***Property***". All of the Property shall be conveyed, assigned, and transferred to Purchaser at Closing (hereinafter defined) free and clear of all liens, claims, easements, and encumbrances whatsoever except for the Permitted Encumbrances (hereinafter defined). Purchaser acknowledges that Seller is not conveying to Purchaser; and that Seller reserves unto itself, all rights which Seller may have as a municipal government in streets, alleys, right of way, easement, air rights, subsurface rights, development rights and water rights.

Section 3. **Purchase Price**. The price for which Seller shall sell and convey the Property to Purchaser, and which Purchaser shall pay to Seller, is the sum of: (a) Fifty-One Million and No/100 Dollars ($51,000,000.00) and (b) the City Post Closing Unwind Fee payable pursuant to the terms of the Comprehensive Development Agreement dated _____, 2015 by and among Seller, Purchaser and Weston Urban, LLC (the "**CDA**") if Purchaser is liable under the CDA for the payment of same to Seller at the time of Closing. The Purchase Price shall be payable in cash at the Closing (hereinafter defined).

Section 4. **LIMITATION OF REPRESENTATIONS OR WARRANTIES BY SELLER; ACCEPTANCE OF PROPERTY; DISCLAIMER**. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AND DELIVERED AT CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO **(1)** THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, **(2)** THE INCOME TO BE DERIVED FROM THE PROPERTY, **(3)** THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, **(4)** THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, **(5)** THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, **(6)** THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, **(7)** THE MANNER, QUALITY , STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR **(8)** ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDER OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS.

PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN A PREVIOUS OWNER OF THE PROPERTY AND AS A CURRENT OCCUPANT OF, AND THE PARTY RESPONSIBLE FOR REPAIRING AND MAINTAING THE PROPERTY, THE PURCHASER IS RELYING SOLELY ON ITS OWN KNOWLEDGE OF THE PROPERTY AND NOT ON ANY

INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. AT THE CLOSING PURCHASER AGREES TO ACCEPT THE PROPERTY AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES, AND THAT EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING.

PURCHASER HEREBY WAIVES, RELEASES AND DISCHARGES ALL CLAIMS PURCHASER HAS OR MIGHT HAVE IN THE FUTURE (WHETHER KNOWN OR UNKNOWN) AGAINST SELLER AND ITS PARTNERS AND AFFILIATES WITH RESPECT TO THE DISCLAIMED MATTERS, THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, AND ALL OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY; PROVIDED, HOWEVER, THE FOREGOING WAIVER, RELEASE AND DISCHARGE DOES NOT WAIVE, RELEASE, OR DISCHARGE ANY CLAIM PURCHASER MAY HAVE ARISING DUE TO FRAUD BY SELLER.

NOTWITHSTANDING ANY OF THE FOREGOING APPEARING TO THE CONTRARY, IT IS EXPRESSLY AGREED THAT THE TERMS AND CONDITIONS OF THIS SECTION 4 SHALL NOT APPLY TO ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR OTHER OBLIGATIONS OF SELLER PURSUANT TO THAT ONE CERTAIN OFFICE LEASE DATED MAY 9, 2007, FOR THE PREMISES DESCRIBED THEREIN, BY AND BETWEEN SELLER AS TENANT AND PURCHASER AS LANDLORD AS SAME MAY BE MODIFIED, AMENDED, RENEWED, EXTENDED, OR REPLACED (THE "EXISTING SPACE LEASE") FOR SPACE IN THE PROPERTY AND SELLER SHALL REMAIN LIABLE TO PURCHASER FOR ANY BREACH OF ITS REPRESENTATIONS, WARRANTY COVERAGES AND OTHER OBLIGATIONS UNDER THE EXISTING SPACE LEASE.

THE PROVISIONS OF THIS SECTION 4 SHALL SURVIVE THE CLOSING AND ANY TERMINATION OF THIS AGREEMENT.

Section 5. **Closing**. The "***Closing Date***" of this Agreement shall be the date which is fifteen (15) days after delivery of a properly completed Exercise Notice as contemplated by Section 1.3 of the Option Agreement. The closing (the "***Closing***") of the sale of the Property by Seller to Purchaser shall occur upon the Closing Date. The Closing shall occur in the offices of Title Company commencing at 10:00 A.M. on the Closing Date. On the Closing Date, Purchaser

shall deliver immediately available cash funds in the amount of the Purchase Price to Presidio Title Company, 7373 Broadway, Suite 105, San Antonio, Texas 78209, Attn: David McAllister (the "***Title Company***"). Time is of the essence with regard to the Closing Date. At the Closing the following, which are mutually concurrent conditions, shall occur:

a. Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to the Title Company the following:

i. Immediately available cash funds, in the amount of the Purchase Price as specified in Section 3 hereof;

ii. Evidence satisfactory to Seller and the Title Company that the persons executing and delivering the closing documents on behalf of Purchaser has full right, power and authority to do so;

iii. A duly executed original counterpart of the Deed Without Warranty attached hereto as **Exhibit "B"**;

iv. A duly executed original counterpart of the Bill of Sale attached hereto as **Exhibit "C"**;

v. Such other instruments as are customarily executed in Texas to effectuate the conveyance of property similar to the Property, with the effect that, after the Closing, (i) the full intent of Purchaser and Seller as evidenced by this Agreement will have been fulfilled, (ii) Purchaser will have succeeded to all of the rights, titles, and interests of Seller related to the Property and (iii) Seller will no longer have any rights, titles, or interests in and to the Property.

b. Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

i. Deed Without Warranty in the form of **Exhibit "B"** hereto, fully executed and acknowledged by Seller, conveying to Purchaser the Property;

ii. Evidence satisfactory to Purchaser and the Title Company that the persons executing and delivering the closing documents on behalf of Seller have full right, power and authority to do so;

iii. A duly executed original counterpart of the Bill of Sale attached hereto as **Exhibit "C"**;

iv. Certificate meeting the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, executed and sworn to by Seller;

v. Such other instruments as are customarily executed in Texas to effectuate the conveyance of property similar to the Property, with the effect that, after the Closing, (i) the full intent of Purchaser and Seller as evidenced by this

Agreement will have been fulfilled, (ii) Purchaser will have succeeded to all of the rights, titles, and interests of Seller related to the Property and (iii) Seller will no longer have any rights, titles, or interests in and to the Property.

c. Seller, at its sole cost and expense, shall obtain, and shall deliver or cause to be delivered to Purchaser a copy of, an Owner's policy of title insurance (the "***Title Policy***") in the amount of the Purchase Price issued by Title Company (with such reinsurance as Purchaser may require), insuring that Purchaser is the owner of the Land subject only to the matters of title reflected on **Exhibit "D"** hereto (the "***Permitted Encumbrances***") and the standard printed exceptions included in a Texas standard form owner's policy of title insurance; provided, however, that (A) the standard exception for discrepancies, conflicts, or shortages in area may be deleted except for "shortages in area" (with the charge for such deletion to be paid by Purchaser); (B) such policy shall have "Deleted" endorsed regarding restrictions except for restrictions that are Permitted Encumbrances; (C) the rights of parties in possession shall be limited only to those holding under written leases; and (D) the standard exception for taxes shall be limited to the year in which the Closing occurs, marked "not yet due and payable", and subsequent years and subsequent assessments for prior years due to change in land usage or ownership;

d. Pursuant to the terms of the Master Lease Agreement dated _____, 201__, by and between Seller as Landlord and Purchaser as Tenant (the ***"Lease"***), Purchaser received all income from, is responsible for certain costs and liabilities relating to, the Property that arose out of or were attributable to the period prior to the Closing Date. Purchaser hereby agrees to indemnify, hold harmless and defend Seller from such costs and liabilities and from all reasonable attorneys' fees expended by Seller in defending against such costs and liabilities which are Purchaser's responsibility under the Lease. Because of the terms of the Lease related to receipt of income and payment of costs and liabilities associated with the Property no prorations of such costs and liabilities is necessary. The provisions of this Section 5.d. shall survive the Closing.

e. Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies of every kind, except the tenancies and other rights of occupancy described in Section 6 hereof, and parties in possession.

Section 6. **Tenancies**. Pursuant to the terms of the Lease, Purchaser was the landlord under the leases and other instruments granting right of occupancy on the Improvements, including, without limitation, parking rights (collectively the ***"Tenant Leases"***). Purchaser has been, and will continue after closing to be, responsible for all obligations of the owner of the Property, and landlord under the Tenant Leases. Purchaser hereby agrees to indemnify, hold harmless and defend Seller from all costs and liabilities under the Tenant Leases and from all reasonable attorneys' fees expended by Seller in defending against all such costs and liabilities and enforcing this provision. This provision of this Section 6 shall survive the Closing.

Section 7. **Commissions**. No commission is due any party in connection with the termination contemplated by this Agreement. Each party represents and warrants to the other that it has not engaged or dealt with any other broker or any person who would be entitled to any

brokerage commission concerning the lease of the Premises. Each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any such claims. As used in this Contract, the term "broker" will refer to any real estate broker, salesperson, agent, listing agent, finder, or any other person entitled to a commission, and the term "commission" will refer to any brokerage, advisory, or finder's fees or commissions.

Section 8. Termination and Remedies.

a. If Purchaser fails to consummate the sale of the Property pursuant to this Agreement (for any reason other than Seller's failure to perform its obligations hereunder) and such failure continues for fifteen (15) days after Seller gives written notice thereof to Purchaser, then Seller shall have the right, to: (i) terminate this Agreement by notifying the defaulting party thereof, in which case neither party hereto shall have any further rights or obligations hereunder; or (ii) enforce specific performance of the obligations of the defaulting party hereunder.

b. If Seller fails to consummate the sale of the Property pursuant to, and as required by, this Agreement (for any reason other than Purchaser's failure to perform its obligations hereunder) including, without limitation, Seller's failure to cause the Title Policy to be delivered in the required form and such failure continues for fifteen (15) days after Purchaser gives written notice thereof to Seller, then Purchaser shall have the right, to: (i) terminate this Agreement by notifying Seller thereof, in which case neither party hereto shall have any further rights or obligations hereunder; or (ii) to extend the term of the Master Lease, without the obligation to pay Base Annual Rent thereunder until the earlier of (A) seventy-five (75) years from the date of extension; provided Purchaser shall have the right to terminate the Master Lease at any time prior to such date by sending Seller one hundred eighty (180) days prior written notice of its intention to do so and should Purchaser send such notice to Seller the Master Lease will terminate on the date which is one hundred eighty (180) days after the date of Seller's election notice to Purchaser, or (B) such time as Seller has cured its default under the Agreement and the sale of the Property pursuant to the Agreement is consummated.

c. Purchaser and Seller respectively agree to and to hereby waive and relinquish any and all rights of such party to assert, claim or be awarded consequential, incidental, exemplary or punitive damages against the other party or any related persons of the other party in connection with any cause of action arising out of this contract or the Property.

d. Purchaser agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary, retirant, beneficiary, internal investment contractor, agent or other affiliate of Seller or any other Seller Related Parties, including, without limitation, any officer, director, employee, trustee, shareholder, partner, principal, retirant, beneficiary, internal investment contractor, agent or other affiliate of Seller or any such parent, subsidiary or other affiliate, or any other Seller Related Parties (collectively, "Seller's Affiliates"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Purchaser agrees to look solely to Seller and its assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the

performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Seller's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 8.d., Purchaser hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Seller's Affiliates, and hereby unconditionally and irrevocably releases and discharges Seller's Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Purchaser against Seller's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby. The term "Seller Related Parties" means Seller and its disclosed or undisclosed, direct and indirect shareholders, officers, directors, trustees, partners, principals, members, employees, agents, affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of the foregoing.

e. Seller agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary, retirant, beneficiary, internal investment contractor, agent or other affiliate of Purchaser or any other Purchaser Related Parties, including, without limitation, any officer, director, employee, trustee, shareholder, partner, principal, retirant, beneficiary, internal investment contractor, agent or other affiliate of Purchaser or any such parent, subsidiary or other affiliate, or any other Purchaser Related Parties (collectively, "Purchaser's Affiliates"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Seller agrees to look solely to Purchaser and its assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Purchaser's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 8.e., Seller hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Purchaser's Affiliates, and hereby unconditionally and irrevocably releases and discharges Purchaser's Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Seller against Purchaser's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby. The term "Purchase Related Parties" means Purchaser and its disclosed or undisclosed, direct and indirect shareholders, officers, directors, trustees, partners, principals, members, employees, agents, affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of the foregoing.

Section 9. **Notices**. All notices provided or permitted to be given under this Agreement must be in writing and may be served by delivering the same in person to such party; transmitted by Federal Express or a similar generally recognized overnight carrier generally providing proof of delivery. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

To: Purchaser
Frost Bank
100 W. Houston Street, T-10
San Antonio, Texas 78205
Attn: Robert Goudge

With a copy to:
Frost Bank
100 W. Houston Street, T-5
San Antonio, Texas 78205
Attn: Corporate Counsel

Dykema Cox Smith
112 East Pecan, Suite 1800
San Antonio, Texas 78205
Attn: Peter R. Broderick

To: Seller
City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78205
Attn: City Manager

With copies to:
City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205

City Attorney
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205

Hornberger Fuller & Garza, Inc.
7373 Broadway, Suite 300
San Antonio, Texas 78209
Attn: Drew R. Fuller, Jr.

Either party hereto may change its address for notice by giving three (3) days prior written notice thereof to the other party.

Section 10. **Assigns; Beneficiaries**. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns; provided, however, this Agreement may not be assigned without the consent of all parties hereto. Notwithstanding any of the foregoing provisions of this Section 10 to the contrary, Purchaser may assign its interest as Purchaser under this Agreement to (i) Cullen/Frost Bankers, Inc. or a wholly owned subsidiary thereof or (ii) any entity into which Purchaser is merged or otherwise consolidated or any entity which acquires all or substantially all of the stock or assets of Purchaser without the necessity of Seller's consent, but Purchaser shall not be relieved of any liability hereunder as a result of said assignment. Purchaser shall deliver notice to Seller of any such assignment, along with a copy of the assignment instrument contemporaneously with the execution thereof by Purchaser. This Agreement is for the sole benefit of Seller and Purchaser, and no third party is intended to be a beneficiary of this Agreement.

Section 11. **Waivers**. No waiver of any breach of any covenant or provisions contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

Section 12. **Recovery of Certain Fees**. In the event a party hereto files any action or suit against another party hereto by reason of any breach of any of the covenants, agreements or provisions contained in this Agreement, then in that event the prevailing party will be entitled to

have and recover of and from the other party all attorneys' fees and costs resulting therefrom. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean all court costs and the fees and expenses of counsel to the parties hereto, which may include printing, photostatting, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 12. shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

Section 13. **Time of Essence**. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE for the performance of all actions (including, without limitation, the giving of notices, the delivery of documents and the funding of money) required or permitted to be taken under this Agreement. Whenever action must be taken (including, without limitation, the giving of notice, the delivery of documents or the funding of money) under this Agreement, prior to the expiration of, by no later than or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. (Central Time) on such date, provided that such action must be completed by 2:30 p.m. (Central Time) with respect to the payment of the balance of the Purchase Price and other payments by Purchaser on the Closing Date. However, notwithstanding anything to the contrary herein, whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents or the funding of money) under this Agreement prior to the expiration of, by no later than or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

Section 14. **Construction**. Headings at the beginning of each article and section are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular will include the plural and the masculine will include the feminine and vice versa. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. All exhibits and schedules referred to in this Agreement are attached and incorporated by this reference, and any capitalized term used in any exhibit or schedule which is not defined in such exhibit or schedule will have the meaning attributable to such term in the body of this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action will be taken on the next succeeding Business Day.

Section 15. **Counterparts**. To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original, electronic (by .pdf) or faxed signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed original or faxed/electronic counterparts will collectively constitute a single agreement.

Section 16. **Severability**. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any

adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17. **Entire Agreement**. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument, signed by the party to be charged or by its agent duly authorized in writing, or as otherwise expressly permitted herein.

Section 18. **Governing Law; Venue**. THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF TEXAS, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 17.8. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 14.1 HEREOF.

Section 19. **No Recording**. The parties hereto agree that neither this Agreement nor any affidavit concerning it will be recorded, without both parties consent.

Section 20. **Further Actions**. The parties agree to execute such instructions to the Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

Section 21. **No Other Inducements**. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

Section 22. **Exhibits**. Exhibits A through D, inclusive, are incorporated herein by reference.

Section 23. **No Partnership**. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint

venturers, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

Section 24. **Limitations on Benefits**. It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser and Seller and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser and Seller or their respective successors and assigns as permitted hereunder. Nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party (including, without limitation, Broker or any Tenant) a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

Section 25. Intentionally Deleted

Section 26. **Waiver of Jury Trial**. Except as otherwise expressly stated in this Agreement to survive the Closing hereunder, all obligations the Parties have to each other under this Agreement shall survive neither the Closing nor the earlier termination of this Agreement. In the unlikely event that a dispute survives the Closing or termination, EACH OF SELLER AND PURCHASER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH OF SELLER AND PURCHASER MAY HAVE TO: (A) INJUNCTIVE RELIEF (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT TO THE CONTRARY); (B) A TRIAL BY JURY; (C) INTERPOSE ANY COUNTERCLAIM THEREIN (EXCEPT FOR ANY COMPULSORY COUNTERCLAIM WHICH, IF NOT ASSERTED IN SUCH SUIT, ACTION OR PROCEEDING, WOULD BE WAIVED) AND (D) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING.

Section 27. **Public Instrument.** Frost acknowledges that this Agreement is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

Section 28. **Administrative Agreements.** The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

Section 29. **Extensions and Non-Material Amendments.** The Director of Capital Improvement Management Services may, without further action of City Council, agree on behalf

of City to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

Section 30. **Condemnation.** If prior to the Closing all or any portion of the Property which Purchaser in its reasonable discretion determines is material to its use of the remainder is taken by eminent domain or any eminent domain proceeding is initiated with respect to same, this Agreement shall terminate. If any portion of the Property which Purchaser determines to not be material to its use of the remainder is so taken or any eminent domain proceeding is initiated with respect to same, the parties shall proceed to Closing and if the condemnation award has yet to be paid, and Purchaser shall receive an assignment of Seller's rights in and to said award and there shall be no reduction in the Purchaser Price or, if at the time of Closing the award has already been paid, Purchaser shall receive a credit against the Purchase Price for the amount of such award.

Section 31. **List of Exhibits.**

Exhibit "A" - Description of Land
Exhibit "B" - Deed Without Warranty
Exhibit "C" - Form of Bill of Sale
Exhibit "D" - Permitted Encumbrances

JOINDER BY TITLE COMPANY

The undersigned, Presidio Title Company, referred to in this Agreement as the "**Title Company**", hereby acknowledges that it received this Agreement executed by Seller and Purchaser on the ____ day of _____, 201__, and accepts the obligations of the Title Company as set forth herein.

PRESIDIO TITLE COMPANY

_____

Address: 7373 Broadway, Suite ____,
San Antonio, Texas 78209
Attn: David McAllister
Telephone: (210)_____
Fax: (210) _____

EXHIBIT "A" to EXHIBIT "C"

DESCRIPTION OF LAND

TRACT 1 (TOWER):

A 0.468 ACRE (20,403 SQUARE FOOT) TRACT OF LAND BEING LOT 24, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 9515, PAGE 138, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a set lead plug and tack, the intersection of the south right-of-way line of West Houston Street and the east right-of-way line of North Flores Street;

THENCE: S 89 degrees 12 minutes 00 seconds E 190.55 feet with the south right-of-way line of West Houston Street to a set lead plug and tack at its intersection with the west right-of-way line of North Main Avenue;

THENCE: S 01 degrees 13 minutes 00 seconds W 109.02 feet with the west right-of-way line of North Main to a set lead plug and tack;

THENCE: N 88 degrees 45 minutes 05 seconds W, at 1.70 feet the beginning of a concrete column and with the concrete column a total distance of 11.70 feet to a corner of said column;

THENCE: N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to an angle point;

THENCE: N 88 degrees 45 minutes 05 seconds W at 12.50 feet begin a concrete block wall and with the north face of said wall and its extension a total distance of 168.00 feet to a concrete column;

THENCE: S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;

THENCE: N 88 degrees 45 minutes 05 seconds W, at 10.00 feet pass a corner of the column, a total distance of 15.19 feet to a set lead plug and tack in the east right-of-way line of North Flores Street;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.62 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 0.468 acre (20,403 square feet).

TRACT 2 (GARAGE):

A 1.354 ACRE (58,972 SQUARE FOOT) TRACT OF LAND BEING LOT 23, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, SAN ANTONIO, TEXAS, AS RECORDED IN VOLUME 9515 ON PAGE 138 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a found lead plug and track in the east right-of-way line of North Flores Street, from which the intersection of the east right-of-way line of North Flores and the south right-of-way line of West Houston Street is N 03 degrees 32 minutes 00 seconds E 107.62 feet;

THENCE: S 88 degrees 45 minutes 05 seconds E, at 5.19 feet the beginning of a concrete column and with the concrete column a total distance of 15.19 feet to a corner of the column;

THENCE: N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E 168.00 feet with the extension of and the north face of a concrete block wall to a concrete column;

THENCE: S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;

THENCE: S 88 degrees 45 minutes 05 seconds E with the column, at 10.00 feet pass a corner of the column, a total distance of 11.70 feet to a found lead plug and tack in the west right-of-way line of North Main;

THENCE: S 01 degrees 13 minutes 00 seconds W 225.08 feet with the west right-of-way line of North Main to an angle point;

THENCE: N 79 degrees 56 minutes 00 seconds W 28.70 feet to an angle point;

THENCE: S 07 degrees 00 minutes 00 seconds W 6.02 feet to an angle point;

THENCE: S 05 degrees 14 minutes 00 seconds W 96.48 feet a found lead plug and tack in the north right-of-way line of West Commerce Street;

THENCE: N 78 degrees 13 minutes 00 seconds W 167.60 feet with the north right-of-way line of West Commerce to a found lead plug and tack at its intersection with the east right-of-way line of North Flores Street;

THENCE: N 01 degrees 36 minutes 00 seconds E 184.75 feet with the east right-of-way line of North Flores Street to a found lead plug and tack, an angle in this line;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.61 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 1.354 acres (58,972 square feet).

EXHIBIT "B" to EXHIBIT "C"
DEED WITHOUT WARRANTY

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

DEED WITHOUT WARRANTY

STATE OF TEXAS }
}
COUNTY OF BEXAR }

Authorizing Ordinance: _____

Statutory Authority: _____

Grantor: City of San Antonio, a Texas municipal corporation

Grantor's Mailing Address: City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attn: City Clerk)

Grantor's Street Address: City Hall, 100 Military Plaza, San Antonio, Texas 78205 (Bexar County)

Grantee: Frost Bank, a Texas state bank

Grantee's Mailing Address: 100 W. Houston Street, San Antonio, Texas 78205

Consideration: $10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: Collectively, (a) those certain parcels of or interests in real property located at 100 West Houston Street in San Antonio, Texas and commonly known as Frost Tower and Frost Garage, as more particularly described on Exhibit A attached hereto and made a part hereof, together with the appurtenances pertaining thereto, including but not limited to all of Grantor's right, title and interest in and to (i) the streets, alleys and right-of-ways which abut such real property; (ii) any easement rights, air rights, subsurface rights, development rights and

water rights appurtenant to such real property; and (iii) strips or gores, if any, between such real property and abutting properties, whether owned or claimed by deed, limitations or otherwise, and whether or not they are located inside or outside of the boundaries of such real property (the "**Real Property**"); (b) all buildings, structures, fixtures, parking areas and other improvements which Grantor purchased from Grantee or are otherwise owned by Grantor, and located on the Real Property (collectively, the "**Improvements**"); and (c) all mechanical, electrical, heating, air conditioning and plumbing systems, fixtures and equipment; all furniture, carpets, drapes and other furnishings, attached to, appurtenant to, located in and used by Grantor in connection with its ownership or operation of the Improvements and all accessories and additions thereto excluding those owned by lawful tenants of the Improvements and those owned by third parties and leased to Grantor (collectively, the "**Additional Interests**"). The Land, Improvements and any Additional Interests described in the preceding paragraph are hereinafter sometimes collectively called the "**Property.**"

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, Grants, Bargains, and Conveys to Grantee, the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **WITHOUT ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, CONDITION, OR CHARACTER.**

Exceptions to Conveyance and Warranty: All presently recorded and validly existing instruments that affect the Property and are set forth on Exhibit B attached hereto and made a part hereof.

Grantee hereby assumes liability for the payment of all ad valorem taxes, standby fees and assessments by any taxing authority for the Property for the current year and all subsequent years.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

Approved As To Form:

By:_____
City Attorney

The State of Texas }
County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date:_____

_____
Notary Public, State of Texas
My Commission Expires:_____

After Recording, Return To:

_____

_____

_____

EXHIBIT "C" to EXHIBIT "C"

BILL OF SALE

GENERAL CONVEYANCE, BILL OF SALE,
ASSIGNMENT AND ASSUMPTION

THE CITY OF SAN ANTONIO, a Texas municipal corporation ("**Seller**"), for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration to Seller paid by the **FROST BANK**, a Texas state bank ("**Purchaser**"), the receipt of which is hereby acknowledged, hereby bargains, sells, transfers, conveys and assigns to Purchaser the following described property:

(a) All equipment, appliances, tools, supplies, machinery, furnishings and other tangible personal property attached to, appurtenant to, located in the improvements (the "**Improvements**") located on the real property described on **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Real Property**") and used exclusively by Seller in connection with its ownership or operation of the Improvements (the "**Personal Property**"), but specifically excluding (i) the items of personal property set forth on **Exhibit B** attached hereto, (ii) any items of personal property owned by lawful tenants (each, a "**Tenant**") of the Improvements and (iii) any items of personal property owned by third parties and leased to Seller;

(b) Any and all of Seller's right, title and interest in and to all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by governmental authorities prior to the date hereof in connection with the Real Property and the Improvements, together with all renewals and modifications thereof, in each instance to the extent assignable without the necessity of consent or assignable only with consent and such consent has been obtained (the "**Licenses and Permits**"); and

The Personal Property and Licenses and Permits are hereinafter collectively referred to as the "**Assigned Property.**"

Seller has executed this General Conveyance, Bill of Sale, Assignment and Assumption (this "**General Conveyance**") and BARGAINED, SOLD, TRANSFERRED, CONVEYED and ASSIGNED the Assigned Property and Purchaser has accepted this General Conveyance and purchased the Assigned Property AS IS AND WHEREVER LOCATED, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, CONDITION OR CHARACTER IT BEING THE INTENTION OF SELLER AND PURCHASER TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, ANY CLAIM BY

PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN WITH RESPECT TO THE ASSIGNED PROPERTY, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE AS NOW OR HEREAFTER IN EFFECT IN THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, OR CONTAINED IN OR CREATED BY ANY OTHER LAW.

To facilitate execution of this General Conveyance, this General Conveyance may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this General Conveyance, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

EXECUTED as of the _____ day of _____, 20___.

SELLER:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Name:_____
Title:_____

PURCHASER:

FROST BANK, a Texas state bank

By:_____
Name:_____
Title:_____

EXHIBIT "D" to EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. - [__.] Items from Schedule B of Owner's Policy received by COSA at first closing

[__.] Other items agreed to by Frost and COSA during Lease Term.

EXHIBIT B

MASTER LEASE AGREEMENT

by and between

THE CITY OF SAN ANTONIO, TEXAS,
a Texas municipal corporation

("Landlord")

and

FROST BANK,
a Texas state bank

("Tenant")

_____, 20___

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MASTER LEASE AGREEMENT

This **MASTER LEASE AGREEMENT** ("**Lease**") is made and entered into effective as of the ___ day of _____, 201__ ("**Effective Date**") by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation ("**Landlord**") and **FROST BANK**, a Texas state bank ("**Tenant**").

ARTICLE I
LEASE OF PREMISES

Section 1.1 **The Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to all of the terms, covenants, conditions and provisions set forth herein, the following (referred to herein in the aggregate as the "**Premises**"):

(a) That certain 1.822 acres located in Bexar County, Texas, and more particularly described on **Exhibit A** attached hereto and incorporated herein for all purposes (the "**Land**"), together with all right, title and interest, if any, of Landlord, in and to (i) strips or gores, if any, between the Land and abutting properties, whether owned or claimed by deed, limitations or otherwise, and whether or not they are located inside or outside of the boundaries of the Land, (ii) any land lying in or under the bed of any highway, avenue, street, road, alley, easement or right-of-way, open or proposed, in, on, across, abutting or adjacent to the Land, to the center line thereof, and (iii) all right, title and interest of Landlord, reversionary or otherwise, in and to all easements in or upon the Land and all other rights and appurtenances belonging or in anywise pertaining to the Land or the Improvements described below;

(b) all of the buildings, fixtures and other structures and improvements situated on the Land, including but not limited to, the office building commonly known as Frost Bank Tower and Frost Bank Garage and located at 100 W. Houston Street, San Antonio, Texas 78205 (the "**Building**") with approximately 445,618 square feet of net rentable area and the adjoining eight story parking garage containing 732 parking spaces (collectively, the "**Improvements**");

(c) all right, title and interest of Landlord in and to all easements, roads, streets, ways, sidewalks, alleys, passages, sewer rights, other utility rights, encroachment rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, air rights, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises;

(d) all mechanical, electrical, heating, air conditioning and plumbing systems, fixtures and equipment; all furniture, carpets, drapes and other furnishings; and all other machinery, equipment, fixtures and personal property of every kind and character, and all accessories and additions thereto, owned by Landlord and located in or on the Premises (collectively, the "**Personalty**");

(e) all plans, specifications and architectural floor plans for the Improvements;

(f) all keys to locks on the Land and Improvements;

(g) all (i) assignable permits and licenses, (ii) plans, drawings, specifications, surveys, engineering reports, and other technical information, and (iii) other property and business records (real, personal, or mixed), owned or held by Landlord that relate, in any way, to the design, construction, ownership, use, leasing, maintenance, service, or operation of the Land, Improvements, or Personalty; and

(h) all other rights, privileges and appurtenances owned by Landlord and in any way related to the real and personal property described in this Article I.

Section 1.2 **Basic Lease Provisions**.

A. **Basic Annual Rent**: Months 1 to 36: $_____ monthly ($_____ per year)[1]

B. **Additional Rent**: All amounts required to be paid by Tenant under the terms of this Lease other than Basic Annual Rent, including, without limitation, the amounts described in Sections 3.2 and 3.3.

C. **Rent**: Basic Annual Rent and Additional Rent.

D. **Security Deposit:** N/A.

E. **Termination Date:** The date specified in Section 2.2(b).

F. **Guarantor:** N/A.

G. **Addresses for Notice:**

To: Tenant
Frost Bank
100 W. Houston Street, T-10
San Antonio, Texas 78205
Attn: Properties Management Department

To: Landlord
City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78205
Attn: City Manager

With copies to:

With copies to:

[1] On the Closing Date (as that term is defined in the Agreement of Purchase and Sale by and between Tenant as Seller and Landlord as Purchaser to which the Master Lease is attached as Exhibit E, the Basic Annual Rent to be paid by Tenant shall be calculated and inserted in the blanks below, using the following formula: The Basic Annual Rent payable by Tenant will be equal to either (a) the actual debt service of the Landlord on a 30 year amortization of level debt service, taxable rated (at the City's then current bond rating) fixed rate bond in the original issue amount of Fifty One Million Dollars ($51,000,000) or, (b) an assumed issuance of a 30 year amortization of level debt service, taxable rated (at the City's then current bond rating) fixed rate bond in the original issue amount of Fifty One Million Dollars ($51,000,000). The interest rates to be agreed upon as a representation of market rates as of the Effective Date by Tenant and Landlord's financial advisors.

Frost Bank
100 W. Houston Street, Suite 1270
San Antonio, Texas 78205
Attn: Corporate Counsel

City of San Antonio
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205
Attn: City Clerk

City of San Antonio
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205
Attn: City Attorney

Section 1.3 **Condition of Premises**. Tenant was the owner of the Premises and its primary occupant for approximately forty-two (42) years prior to the Effective Date. Tenant acknowledges and agrees that although Landlord will own and hold title to the Premises, Tenant is responsible for the Premises and any repairs, maintenance, alterations, and modifications thereto in accordance with Section 4.2 below and the other terms and conditions of this Lease. The taking of possession of the Premises by Tenant will establish conclusively that the Premises were at such time in satisfactory order and condition. The Premises are being leased to Tenant "AS IS" and "WITH ALL FAULTS," for the Lease Term, and Tenant accepts the Premises as suitable for the purposes for which the same are leased and in their current condition, "AS IS" and "WITH ALL FAULTS." Tenant acknowledges that neither Landlord nor any of its purported representatives or agents has made (and Landlord hereby specifically disclaims any and all) representations and warranties of any kind or character as to the condition of the Premises, either express or implied, including, without limitation, warranties of fitness for any purpose or particular use or commercial habitability. Landlord has made no representations as to the condition of the Premises or promises to remodel, repair or decorate, except as expressly set forth herein. Tenant acknowledges and agrees that it is leasing the Premises subject to (a) the existing state of title, (b) the rights of any parties in possession thereof, (c) any state of facts which an accurate survey or physical inspection might show and (d) violations of law which may exist on the date hereof.

ARTICLE II
TERM

Section 2.1 **Original Term**. The period of time commencing on the Effective Date and ending on the Termination Date (as defined in Section 2.2), as same is subject to adjustment pursuant to Section 2.2 hereinafter referred to as the "**Term**."

Section 2.2 **Modified Term**. The Original Term of this Lease is intended to coincide with the time needed for construction of a new office tower to be built at the northwest corner of Flores and W. Houston Street, San Antonio, Bexar County, Texas (the "**New Tower**") in which Tenant will lease space. Landlord and Tenant intend that the Term will continue and that Tenant will occupy the Premises until the earlier of the date (a) the date Tenant vacates the Premises and commences business operations in its space in the New Tower, (b) Landlord or Tenant, as applicable, exercises its right under the Options Agreement entered into contemporaneously with this Lease to cause the repurchase of the Premises on the terms and conditions, and at the price, specified therein and Tenant closes on such acquisition or defaults on its obligation to do so (the

earlier of such dates being herein called the "Termination Date"). Because of the inherent uncertainty in the timing of construction of the New Tower, Tenant shall provide Landlord with ninety (90) days prior written notice of the date it intends on vacating the Premises in order to move into the New Tower.

Furthermore, Landlord and Tenant acknowledge that if, pursuant to Section 6.09 of that certain Comprehensive Development Agreement dated _____ and entered into by and among Landlord, Tenant and Weston Urban, LLC (the "**CDA**"), Tenant elects to extend the term of this Lease (this Lease being the "Existing Tower Master Lease" as such term is defined in said agreement), the term of this Lease shall be extended until the earlier of (a) the expiration of the one hundred twentieth (120th) full calendar month after the Effective Date or (b) if Tenant shall subsequently exercise its rights to compel a sale of the Premises to it pursuant to the Options Agreement, the date such sale closes or Tenant defaults in its obligation to purchase the Premises under the Options Agreement and the Purchase Contract executed in connection therewith. Furthermore, if the Lease would terminate because the one hundred twentieth (120th) full calendar month of the term hereof has passed then the Lease shall continue in effect until the closing of the sale of the Premises to Tenant (or the date Tenant defaults in its obligation to purchase the Premises under the Options Agreement and the Purchase Contract executed in connection therewith) or until such time as neither Landlord nor Tenant has any further right under the Options Agreement to compel a purchase or sale of the Premises under the Options Agreement, if neither party exercises its rights thereunder (any extension of the term under the preceding two (2) sentences being called the "Extension Term").

Section 2.3 **Term**. The Original Term and the Extension Term, if applicable, are referred to herein collectively as the "**Term**" or "**Lease Term**".

ARTICLE III
MONETARY PROVISIONS

Section 3.1 **Basic Annual Rent.**

(a) **General**. Tenant agrees to pay the Landlord during each month of the Lease Term as Basic Annual Rent ("**Basic Annual Rent**") for the Premises (and each portion thereof) the respective amounts shown for such periods in *Item A* of Section 1.2 without recoupment, setoff, notice or demand of any kind for the use and occupancy of the Premises, except as otherwise set forth herein.

(b) **Monthly Installments**. Except as expressly provided to the contrary in this Lease, Basic Annual Rent shall be payable in equal consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Basic Annual Rent shall be payable upon Tenant's execution of this Lease. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, or the Lease Term expires on a day

other than the last day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis.

(c) **No Abatement**. Except as otherwise expressly provided in this Lease, no happening, event, occurrence or situation during the Lease Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Rent, or entitle Tenant to an abatement of Rent.

(d) **Late Charge; Default Interest**. If any installment of Rent is not paid when due, and such installment remains unpaid for 10 days after Tenant receives written notice thereof from Landlord, Tenant shall also pay to Landlord on demand, as Additional Rent, (i) a late charge equal to $500.00 for the purpose of defraying Landlord's administrative expenses plus (ii) interest on such overdue payment computed at the rate of 8% per annum (the "**Default Rate**"), which interest will accrue beginning on the date the payment was due.

Section 3.2 **Additional Rent.**

(a) **Real Estate Taxes and Assessments**. From and after the Commencement Date, Tenant shall be responsible for payment, in full and prior to any delinquency, of all real estate taxes and assessments that may be assessed against the Premises during the Lease Term, which must be paid directly to the applicable taxing authority. Landlord shall cause all tax bills to be sent directly to Tenant. Tenant will furnish to Landlord proof of payment of all real estate taxes and assessments within 30 days following Landlord's request therefor. The term "**real estate taxes and assessments**" as used herein shall be deemed to mean all real estate taxes and assessments, and any governmental taxes and assessments of a similar nature, imposed upon or levied against the Land and Improvements, and any taxes hereafter levied or imposed in lieu of real estate taxes and assessments. If, however, by law any special assessment may be divided and paid in annual installments, then, for the purposes of the definition of "**real estate taxes and assessments**", (i) such assessment will be deemed to have been so divided and to be payable in the maximum number of annual installments permitted by law, and (ii) there will be deemed included in real estate taxes and assessments in the expense year the annual installment of such assessment becoming payable during such year, together with interest payable during such year on such annual installment, all as if such assessment had been so divided.

(b) **Rental Taxes**. Tenant covenants to pay to Landlord, monthly in addition to and along with the rentals otherwise payable hereunder any excise, sales, use, transaction privilege or other similar taxes legally levied or imposed during the Lease Term against or on account of amounts payable hereunder by Tenant or the receipt thereof by Landlord (excluding Landlord's income or other similar taxes).

(c) **Personal Property Taxes**. Tenant covenants to pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment and all other personal property belonging to Tenant and placed on the Premises by Tenant. Tenant shall cause all of such personal property of Tenant to be taxed separately from Landlord's property.

(d) **Services and Utilities**. Tenant shall be responsible, at its sole cost and expense, for obtaining, connecting, installing, repairing and maintaining all final utility connections, including primary/secondary electric power, phone and cable service, and shall pay all charges and connection fees for water, heat, gas, electricity, cable, trash disposal, sewers, telephone and other communication services, and any and all other utilities and similar services rendered or supplied to the Premises, and all water rents, sewer service charges, water and sewer tap fees, meter fees, impact fees, or other similar charges levied or charged against, or in connection with, the Premises. Tenant shall be responsible, at its sole cost and expense, for upkeep and security of the Premises, including, without limitation, any janitorial cleaning service, elevator service, and management of the Premises. No interruption or stoppage of any of such utilities or services will ever be construed as an eviction of Tenant nor will such interruption or stoppage cause any abatement of the rent and additional rent payable under this Lease or in any manner relieve Tenant from any of Tenant's obligations under this Lease.

(e) **Other Expenses – Net Lease**. Except as otherwise specifically set forth herein, Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever against the Premises that may arise or become due during the Lease Term and that, except for the execution and delivery of this Lease, would or could have been payable by Landlord.

Section 3.3 **Rental Income**. The Premises constitutes the entirety of the Land and the Improvements. There are currently, and will continue to be during the Lease Term, other parties occupying the Premises pursuant to the terms of agreements with tenants (the "**Third Party Occupancy Agreements**"). It is the express intent of Landlord and Tenant that Tenant (a) collect all income derived from the Third Party Occupancy Agreements and (b) pay all costs and expenses, and bear all liabilities and obligations of lessor under the Third Party Occupancy Agreements during the Term. Tenant shall receive all income and pay all costs, charges, and expenses, in each case of every kind and nature whatsoever related to the Third Party Occupancy Agreements during the Lease Term. Upon the expiration of the Lease Term or the earlier termination of this Lease, Tenant shall assign to Landlord all of its rights under the Third Party Occupancy Agreements, and Landlord shall assume all of Tenant's obligations thereunder.

ARTICLE IV
SERVICES, MAINTENANCE AND IMPROVEMENTS

Section 4.1 **Reserved**.

Section 4.2 **Maintenance and Repair of Premises**.

(a) **General**. Tenant shall take good care of the Premises, make all repairs and replacements thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the drive aisles, entry aprons, sidewalks and curbs located within the Premises in good order, repair and condition at all times, all in accordance with Tenant's current and past practices for doing so. Notwithstanding the foregoing, Tenant shall have no obligation to repair or restore any of Tenant's furniture, trade fixtures, or equipment not constituting a part of the mechanical, electrical or plumbing systems serving the Premises. Tenant will not do, knowingly permit, or suffer, any waste, damages, disfigurement or injury to or upon the Premises or any part thereof,

but this Section shall not be construed as limiting Tenant's rights under Article 5. Landlord shall have no obligation to maintain or repair the Premises or any portion of the Land. Landlord shall not be required to furnish any services of facilities or to make any repairs or alterations to the Premises or the Improvements and Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises and the Improvements. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in the condition required by the terms of this Lease, Landlord shall provide Tenant with written notice of any required repair, and if Tenant fails to make such repair within a reasonable time (not to exceed thirty (30) days), Landlord will have the right, but not the obligation, to perform such maintenance, repair, or refurbishing at Tenant's expense; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonable required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) days period and thereafter diligently completes the required action within a reasonable time, given the nature of the required action.

(b) **Major Items**. In the event that a repair, replacement, or maintenance item for which Tenant is responsible is estimated by Tenant to cost more than One Hundred Twenty-Five Thousand and No/100 Dollars ($125,000.00) or involves a part of the mechanical, electrical, or plumbing systems serving the Premises (a "**Major Expenditure**") Tenant shall notify Landlord in writing: (i) of the specific nature of the Major Expenditure, (ii) of Tenant's specific plans to effect the Major Expenditure, and (iii) of the estimated cost of the Major Expenditure. Except in the case of an emergency (defined as any event which would interfere with Tenant's operation or poses an imminent risk of injury to persons or material damage to property), Tenant shall not implement its plans concerning the Major Expenditure until it has delivered the notice described above, consulted with Landlord, and received Landlord's approval of Tenant's planned course of action, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 4.3 **Alterations**. At any time and from time to time during the Lease Term, Tenant may perform such alteration, renovation and other work with regard to any Improvements as Tenant may elect, provided that (a) Tenant obtains Landlord's prior written approval with respect to any changes to the structure of the Improvements or to the exterior of the Improvements, which approval shall not be unreasonably withheld, conditioned, or delayed; and (b) the same is done in accordance with the Construction Standards (as defined below).

Section 4.4 **Construction Standards and Liens**.

(a) **Standards**. Any improvements shall be constructed, and any alteration, renovation, repair, refurbishment or other work with regard thereto shall be performed, in accordance with the following standards ("**Construction Standards**"):

(1) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.

(2) All such construction or work shall be done in compliance with all applicable deed restrictions and covenants, plats, building codes, ordinances and other

laws or regulations of governmental authorities or quasi-governmental authorities having jurisdiction over the Premises.

(3) No construction or work shall be commenced until all licenses, permits and authorizations required by all governmental authorities or quasi-governmental authorities having jurisdiction over the Premises are obtained.

(4) Tenant shall have obtained and shall maintain in force and effect the insurance coverage required in Article VII with respect to the type of construction or work in question.

(5) After commencement, such construction or work shall be prosecuted with due diligence to its completion.

(b) **Mechanic's and Materialmen's Liens**. Tenant shall have no right, authority or power to bind Landlord or any interest of Landlord in the Premises for any claim for labor or for material or for any other charge or expense incurred in constructing any improvements or performing any alteration, renovation, repair, refurbishment or other work with regard thereto, nor to render Landlord's interest in the Premises liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection therewith. Tenant shall not be considered the agent of Landlord in the construction, erection or operation of any such improvements. If any such mechanic's lien shall at any time be filed, Tenant shall promptly cause the same to be discharged of record by payment, bond, order of court of competent jurisdiction or otherwise; provided, however, that Tenant shall have the right to contest any and all such liens provided security which is satisfactory to Landlord, in its reasonable discretion, is deposited with Landlord or with the court having jurisdiction over such matter, or a bond is so deposited, and such lien is released from the Land within thirty (30) days from the filing date of said lien. Subject to the immediately preceding sentence, in the event that Tenant fails to cause any such lien to be discharged within thirty (30) days after being notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding or other proceeding deemed appropriate by Landlord and the amount so paid by Landlord, together with all costs and expenses (including, but not limited to, reasonable attorneys' fees), incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and shall immediately become due and payable by Tenant to Landlord on the first day of the next following month.

Section 4.5 **Ownership of Improvements, Fixtures and Alterations**. Subject to the terms of any Third Party Occupancy Agreement, any improvements, additions and fixtures (except furniture, machinery, equipment, and trade fixtures) constructed, placed or maintained on any part of the Premises during the Lease Term are considered part of the real property of the Premises and must remain on the Premises and are Landlord's property. Subject to the terms of any Third Party Occupancy Agreement, all alterations made by or for Tenant (other than, subject to the terms of Section 4.6 below, the Tenant's movable furniture, machinery, equipment, and trade fixtures), will immediately become the property of the Landlord, without compensation to the Tenant; provided, however, Landlord will have no obligation to repair, maintain or insure such alterations. Carpeting, shelving and cabinetry will be deemed improvements of the

Premises and not movable trade fixtures, regardless of how or where affixed. Such alterations will not be removed by Tenant from the Premises either during or at the expiration or earlier termination of the Lease Term and will be surrendered as a part of the Premises unless Landlord has requested that Tenant remove such alterations.

Section 4.6 **Right to Remove**. Tenant may, at any time during the Lease Term remove any furniture, office equipment or other trade fixtures owned or placed by Tenant, its subtenants or licensees, in, under or on the Premises, or acquired by Tenant, whether before or during the Lease Term, in accordance with Tenant's standard business operations. Tenant hereby grants Landlord the right to keep any furniture owned by Tenant and located on the Premises on the Termination Date except for the items described on **Exhibit B** (the "**Removable Personalty**"). Landlord may exercise the right to keep such furniture contemplated by the immediately preceding sentence by delivery to Tenant no earlier than ninety (90) days and no later than sixty (60) days prior to the expiration of the Term, written notice of any furniture of Tenant in the Premises that the Landlord desires to own upon Tenant vacating the Premises. Tenant shall leave such furniture in the Premises and deliver to Landlord no later than the expiration of the Term a bill of sale evidencing the conveyance of the listed furniture. Before this Lease terminates, Tenant must repair any material damage to the Improvements on the Premises resulting from the removal of any furniture, office equipment or other trade fixtures not retained by Landlord. Any such items not removed on or before the Lease terminates will be deemed to have been abandoned by Tenant. Notwithstanding anything contained herein to the contrary, should Tenant repurchase the Improvements and Premises pursuant to its rights under the Options Agreement, Landlord shall have no rights or obligations in and to any such furniture of Tenant and no right to compel Tenant to convey any of same to Landlord.

Section 4.7 **Surrender**. Upon the expiration or earlier termination of this Lease, or upon the exercise by Landlord of Landlord's right to re-enter the Premises without terminating this Lease in the event of Tenant's default as provided in Section 10.1, Tenant will surrender the Premises in the same condition as received on the Commencement Date or as subsequently improved (or otherwise altered pursuant to an approved alteration) by Landlord or Tenant in accordance with the terms of this Lease, except for (a) ordinary wear and tear given Tenant's past and current maintenance practices as required under Section 4.2, (b) damage by fire, earthquake, acts of God or the elements or other casualty and (c) condemnation, and will deliver to Landlord all keys and access cards for the Premises and combinations to safes and vaults located in the Premises to the extent constituting Landlord's property. Tenant will, at Landlord's option, remove, or cause to be removed, from the Premises, at Tenant's expense and as of the date of expiration or earlier termination of this Lease, the Removable Personalty and all signs (including exterior building signs), notices. Tenant agrees to repair, at Tenant's expense, any damage to the Premises resulting from the removal of any articles of personal property, movable business or trade fixtures, signs, machinery, equipment, furniture, or movable partitions. Tenant's obligations under this section will survive the expiration or earlier termination of this Lease. If Tenant fails to remove any item of property permitted or required to be removed at the expiration or earlier termination of this Lease, Landlord may, upon five (5) business days' prior written notice to Tenant, and at Landlord's option, remove such property from the Premises at the expense of Tenant and either place such property in storage at the expense of Tenant or dispose of such property in any manner elected by Landlord and charge the reasonable expense of disposition to

Tenant. Notwithstanding the foregoing, Tenant shall have no obligation to surrender any of its furniture or trade fixtures or equipment not constituting any part of the mechanical, electrical or plumbing systems serving the Premises in anything other than their then as-is condition.

ARTICLE V
OCCUPANCY AND CONTROL

Section 5.1 **Permitted Use**. Subject to the last sentence of Section 5.2, Tenant, and any occupant pursuant to the terms of a Third Party Occupancy Agreement permitted under this Lease, may use the Premises for any lawful purpose. Tenant shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would (a) in any way make void or voidable any insurance then in force with respect thereto; (b) make it impossible to obtain the insurance required to be furnished by Tenant hereunder; (c) constitute a public or private nuisance; (d) violate any encumbrances, deed restrictions, or any covenants, conditions, and/or restrictions affecting the Land; or (e) violate present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of any governmental authorities or quasi-governmental authorities having jurisdiction over the Premises. Subject to the last sentence of Section 5.2, Tenant covenants throughout the Lease Term, at Tenant's sole cost and expense, promptly to comply with all laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, or any other body hereafter constituted exercising similar functions, that may be applicable to the Premises. Tenant shall likewise observe and comply with the requirements of all policies of public liability, fire, and all other policies of insurance at any time in force with respect to the Improvements.

Section 5.2 **Laws and Statutes**. Tenant will comply, and will cause all occupants of the Premises to comply, promptly with (a) all laws, orders, regulations and other government requirements now in force or hereafter enacted relating to the use, condition, or occupancy of the Premises, including, without limitation, (i) Title III of The Americans with Disabilities Act of 1990, all regulations issued thereunder, and the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, and the Texas Architectural Barriers Act, as the same are in effect on the date of this Lease and as hereafter amended (the "**Disabilities Acts**"), (ii) all applicable Hazardous Materials Laws (as defined in Section 9.1) and (iii) all rules, orders, mandates, directives, regulations and requirements pertaining to the use of the Premises and the conduct of Tenant's business imposed by Landlord's insurers, the American Insurance Association or insurance service office, any utility company serving the Premises or any other similar body having jurisdiction over the Premises, any related parking areas. Notwithstanding the foregoing, or anything else to the contrary contained herein, to the extent the Premises are not in compliance with all such laws, orders, regulations and other governmental requirements on the Commencement Date, Tenant shall have no obligation whatsoever with respect to any such repairs, alterations or changes as may be required to bring the Premises into compliance.

Section 5.3 **No Liability**. Subject to the provisions of Section 7.2, except for any loss or damage caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors, the failure of Landlord to perform its obligations under this Lease, or as otherwise

provided in this Lease, Landlord shall have no liability for any loss or damage to the Premises or any personal property or equipment of Tenant or third persons, upon or used in connection with the Land during the Lease Term.

Section 5.4 **Access**. Tenant shall permit Landlord and Landlord's agents, representatives or employees to enter on the Land and into any Improvements at any time and from time to time throughout the Lease Term for any reasonable purpose, including, without limitation, review and inspection, to determine whether Tenant and any occupant is in compliance with the terms of this Lease, for the purpose of showing the Premises to any person, to perform any obligation of Tenant after Tenant's failure to perform same, or upon default by Tenant under this Lease. Landlord, its agents, representatives and employees shall use their reasonable efforts not to disturb business being conducted during any visit, but will not be required to incur extra expenses in order to minimize such disruption. No exercise by Landlord of any right or the performance by Landlord of Landlord's obligations under this Lease will constitute actual or constructive eviction or a breach of any express or implied covenant for quiet enjoyment.

ARTICLE VI
NEW LEASES; ASSIGNMENT; SUBLETTING

Section 6.1 **New Leases and Existing Leases**.

(a) Landlord and Tenant have entered into the City Space Lease (as defined in Section 12.39 hereof for the premises described therein (the "Landlord Premises"). The City Space Lease provides that Landlord has the first right to add additional portions of the Building to the Landlord Premises in the event such portions become vacant and Tenant desires to make them available to lease to third parties ("Landlord's Right of First Offer"). Accordingly, the provisions of Section 6.1(b) hereof are expressly subject to Landlord's Right of First Offer. Tenant must first comply with Landlord's Right of First Offer before providing to Landlord written notice of any new or amended Third Party Occupancy Agreement which Tenant proposes to execute for space in the Improvements.

(b) During the Lease Term, Tenant shall give Landlord prior written notice of any new or amended Third Party Occupancy Agreement which Tenant proposes to execute for space in the Improvements (other than parking agreements which have a term of less than ninety (90) days), along with a copy of each such proposed new or amended Third Party Occupancy Agreement. Tenant shall not execute any such new or amended Third Party Occupancy Agreement until and unless Landlord has approved in writing such new or amended Third Party Occupancy Agreement, which approval shall not be unreasonably withheld, conditioned or delayed if such Third Party Occupancy Agreement satisfies the following criteria (the "Tenant Lease Covenants"): minimum lease term – three (3) years; maximum lease term – five (5) years; minimum Base Rent $18.00 per rentable square foot per annum; provided, however, no lease term may extend beyond the Lease Term.

Landlord shall have no right to approve the exercise of any renewal option made by the tenant under a Third Party Occupancy Agreement existing on the date of this Lease which gives the tenant the right to renew its lease pursuant to its terms. Should any renewal of an existing Third

Party Occupancy Agreement, any Third Party Occupancy Agreement entered into after the date of this Lease, or any amendment to any Third Party Occupancy Agreement entered into after the date hereof include any leasing commissions, brokerage commissions, tenant improvement allowances or other expenditures incurred in connection with same, such amounts shall be prorated over the renewal term, the initial term of any new Third Party Occupancy Agreement or term of any Third Party Occupancy Agreement, as applicable, Tenant shall be responsible for the portion thereof attributable to periods preceding and during the Lease Term, and Landlord shall be responsible for the portion of all such costs attributable to periods of time from and after the expiration of the Lease Term, notwithstanding anything appearing to the contrary elsewhere in this Lease. Landlord shall pay Tenant its share of such amounts out of amounts owed by tenants under Third Party Occupancy Agreement upon expiration of the Lease Term if Tenant does not purchase the Premises at such time, or at such other date and time as Landlord and Tenant may agree upon at the time the Third Party Occupancy Agreement is executed. If such amounts are not timely paid by Landlord, same shall accrue interest at the rate of twelve percent (12%) per annum until paid in full and Tenant shall be entitled to recoup such amounts by deducting the amounts owed to it from the payments of rent and other amounts, if any, to be made by Tenant under this Lease becoming due and owing hereunder. Landlord's obligation to pay such amounts to Tenant shall survive the expiration or earlier termination of the Term.

Section 6.2 **Assignment**. During the Lease Term, the Tenant may assign to any subsidiary or affiliate of the Tenant at any time, in whole or in part, any of its right, title or interest in, to or under this Lease or any portion of the Premises; *provided* that no such assignment shall in any way discharge or diminish any of the Tenant's obligations to the Landlord hereunder and the Tenant shall remain directly and primarily liable under this Lease. No such assignment shall be effective unless (a) made pursuant to assignment and assumption documents in form and substance reasonably satisfactory to the Landlord, (b) the use or uses of any such assignee shall be such that they do not materially impair the value or utility of the Premises, (c) the Tenant or such assignee shall have made all filings and taken all other actions necessary or desirable to preserve and protect the rights and interests of the Landlord under this Lease and the Option Agreement, all at the Tenant's sole cost and expense. The Tenant shall notify the Landlord promptly, and in any event not less than thirty (30) days prior to, the date of such assignment, and provide the Landlord with the terms of such proposed assignment. Tenant shall, without Landlord's consent, also be entitled to assign its rights, title, and interest in and to this Lease to any party which acquired all or substantially all the assets of Tenant or with whom Tenant may be merged or otherwise consolidated.

Section 6.3 **Subletting**. So long as Tenant (i) occupies no less than 100,000 rentable square feet of the Building, (ii) maintains the Building as its primary banking facility in San Antonio, Texas and (iii) does not lease any portion of the Premises to another financial institution, Tenant may sublease the Premises or any portion thereof to any person; *provided, however,* that: (a) no sublease or other relinquishment of possession of the Premises shall in any way discharge or diminish any of the Tenant's obligations to the Landlord hereunder and the Tenant shall remain directly and primarily liable under this Lease; (b) each sublease of the Premises shall expressly be made subject to and subordinate to this Lease and to the rights of the Landlord hereunder and thereunder; (c) each sublease first entered into during the Lease Term or which is modified during the Lease Term shall expressly provide for the surrender of the Premises or portion

thereof by the applicable Subtenant at the election of the Landlord after the occurrence of a Lease Event of Default or the expiration of the Lease Term; (d) each sublease shall expressly provide for termination prior to the Termination Date; and (e) the use or uses under any sublease shall be such that they shall not materially impair the value or utility of the Premises.

ARTICLE VII
INSURANCE AND INDEMNITY

Section 7.1 **Insurance**. During the Term, Tenant shall obtain and maintain at its expense the following types and amounts of insurance:

(a) **Property Insurance**. Tenant shall, at its cost and expense and at all times during the Term, maintain in force, for the joint benefit of Landlord and Tenant, a policy of insurance against loss or damage by fire and lightning, and such other perils as are covered under the broadest form of the "extended coverage" or "all risk" endorsements, including, but not limited to, damage by wind storm, hurricane, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, earthquake and flood in an amount equal to the replacement value of the Premises excluding items for which third parties are obligated to insure and repair under their leases/subleases or other occupancy agreement with Tenant.

(b) **Commercial Liability Insurance**. Tenant shall obtain and maintain commercial general liability insurance written on "occurrence" form for bodily injury, property damage, personal and advertising injury, including contractual liability, arising from the occupancy, operation, use, and maintenance of the Premises, in an amount not less than $1,000,000.00 per occurrence, and $5,000,000.00 annual aggregate. This insurance shall be primary and non-contributory and include coverage for independent contractors and products-completed operations liability.

(c) **Workers' Compensation**. A policy or policies of workers' compensation insurance meeting the requirements of the state in which the Premises are located and a policy of employer's liability insurance with limits of liability not less than $500,000.00.

(d) **Commercial Automobile Liability**. $500,000.00 Combined Single Limit per accident for Owned, Non-Owned and Hired autos.

(e) **Miscellaneous**. All policies of insurance to be procured by Tenant shall be issued by insurance companies rated not less than A-/VIII in the most current available "**Best's Key Rating Guide**", qualified to do business in the state in which the Premises are located, and must be issued on forms and include endorsements that are acceptable to Landlord. All insurance provided by Tenant as required under subparts (a) and (b) of this Section must be maintained in favor of Tenant and Landlord, as their respective interests may appear. The policy or policies must also name any mortgagees and loss payees of either party, if applicable. All liability insurance provided by Tenant as required under subpart (c) of this Section must name Landlord, Landlord's lender (if any), Landlord's management agent and others designated by Landlord as additional insureds. Tenant has sole responsibility for the payment of all deductibles under Tenant's insurance policies. Copies of certificates of insurance must be delivered to Landlord

within ten (10) days of the Effective Date and thereafter prior to the expiration of the term of each policy. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy will give Landlord notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. The insurance requirements contained in this Section are independent of Tenant's waiver, indemnification and other obligations under this Lease and may not be construed in any way to restrict, limit or modify Tenant's waiver, indemnification or other obligations.

Section 7.2 **Waiver of Subrogation**. LANDLORD AND TENANT, ON THEIR OWN BEHALF AND ON BEHALF OF ANYONE CLAIMING UNDER OR THROUGH EITHER ONE, EACH WAIVE ANY RIGHTS EACH MAY HAVE AGAINST THE OTHER ON ACCOUNT OF ANY LOSS OR DAMAGE OCCASIONED TO LANDLORD OR TENANT, AS THE CASE MAY BE, THEIR RESPECTIVE PROPERTY, THE PREMISES OR ITS CONTENTS, (WHETHER OR NOT SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE OTHER PARTY OR ANYONE FOR WHOM SAID OTHER PARTY MAY BE RESPONSIBLE) TO THE EXTENT SUCH LOSS OR DAMAGE WOULD BE COVERED BY ANY PROPERTY INSURANCE POLICY THAT IS REQUIRED TO BE MAINTAINED UNDER THIS LEASE BY THE PARTY INCURRING THE LOSS (WHETHER OR NOT SUCH POLICY IS ACTUALLY MAINTAINED), OR IS ACTUALLY COVERED BY PROPERTY INSURANCE, IF BROADER, AND THE PARTY INCURRING SUCH LOSS OR DAMAGE AGREES TO LOOK SOLELY TO THE PROCEEDS, IF ANY, WHICH ARE RECOVERABLE (OR WOULD HAVE BEEN RECOVERABLE HAD SUCH POLICY ACTUALLY BEEN MAINTAINED BY SUCH PARTY) UNDER SAID POLICY. WRITTEN NOTICE OF THE TERMS OF SAID MUTUAL WAIVERS SHALL BE GIVEN TO EACH PROPERTY INSURANCE CARRIER AND SAID PROPERTY INSURANCE POLICIES SHALL BE PROPERLY ENDORSED, IF NECESSARY, TO PREVENT THE INVALIDATION OF SAID INSURANCE COVERAGES BY REASON OF SAID WAIVERS. The provision of this Section 7.2 will survive the termination of this Lease.

Section 7.3 **Reserved**.

Section 7.4 **Waiver of Liability**. To the fullest extent permitted by law, Tenant, on behalf of all Tenant Parties, Waives all Claims against Landlord Parties arising from the following, in each case except to the extent same is a result of the negligence or willful misconduct of Landlord or Landlord's failure to perform its obligations under this Lease, and in such cases subject to Section 7.2, and any obligation of Landlord under the City Space Lease (as defined herein): (i) any Personal Injury, Bodily Injury, or Property Damage occurring in or at the Premises; (ii) any loss of or damage to property of a Tenant Party located in the Premises by theft or otherwise; (iii) any Personal Injury, Bodily Injury, or Property Damage to any Tenant Party caused by the public; (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (v) business interruption or loss of use of the Premises suffered by Tenant; (vi) damages or injuries or interference with Tenant's business, loss of occupancy or quiet enjoyment and any other loss resulting from any condition of environmental contamination or the existence of Hazardous Materials in, at or on the Premises not caused by Tenant, or the exercise by Landlord of any right or the performance by Landlord of Landlord's maintenance or other obligations under this Lease; or (vii) any Bodily Injury to an employee of a

Tenant Party arising out of and in the course of employment of the employee. For purposes of this Section 7.4: (i) the term "**Tenant Parties**" means Tenant, Tenant's representatives, agents, employees, officers, owners, contractors, affiliates, successors or assigns, and all persons and entities claiming through any of these persons or entities; (ii) the term "**Landlord Parties**" means Landlord, Landlord's lender, and their respective representatives, agents, employees, officers, owners, contractors, invitees, guests, affiliates, successors or assigns; (iii) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (iv) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (v) the terms "**Bodily Injury**", "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question. The provision of this Section 7.4 will survive the termination of this Lease.

ARTICLE VIII
CASUALTY

Section 8.1 **Notice of Casualty by Tenant**. If the Improvements situated upon the Premises shall be damaged or destroyed by any peril, including, but not limited to, fire, windstorm or any other casualty, (each such occurrence, a "**Casualty**"), at any time, whether covered by the insurance to be provided by Tenant under this Lease, or not, Tenant shall give prompt notice thereof to Landlord and this Lease shall continue in full force and effect.

Section 8.2 **Restoration by Tenant**. If at any time any Casualty occurs, Tenant shall proceed in good faith and with reasonable due diligence to restore, replace, rebuild and repair the Improvements damaged or destroyed by such Casualty to substantially the same condition such Improvements were in immediately prior to such damage or destruction. Tenant will restore the damage using all reasonable diligence as soon as practical; provided, that (i) with respect to any restoration of interior improvements occupied by Tenant, Tenant's obligation will be limited to restoring same to a building standard condition suitable for Tenant's use under the Lease with the quality of finish out being at least consistent with the level of finish currently found on the tenth (10th) floor of the existing Building unless Landlord agrees to a lesser level of finish and (ii) with respect to damage of premises occupied by third parties, the restoration will be done pursuant to the third party's lease or other occupancy agreement to the level of finish required under such lease or other occupancy agreement. Tenant and Landlord shall meet as promptly as practical to ascertain whether a lesser level of finish out will be acceptable to Landlord for any part of the interior Improvements. Landlord shall not be required to rebuild any Improvements on the Premises or make any repairs or replacements of any nature or description to the Premises or any structure or improvement thereon, whether ordinary or extraordinary, or to make any expenditure whatsoever, except as provided herein or in the City Space Lease. The Rent payable hereunder shall not be abated or reduced during any period of casualty damage, restoration, rebuilding, repairs or replacements of any kind, nor shall Tenant be entitled to surrender possession of the Premises by reason thereof. In the event the insurance proceeds are insufficient to repair, replace, restore or rebuild such Improvements on the Premises, Tenant shall be

responsible for any deficiency with respect thereto. In the event the insurance proceeds plus all interest are greater than needed, the excess shall be the property of Tenant and shall be retained and/or paid to Tenant.

Section 8.3 **Restoration Fund**. Tenant shall have the sole right to adjust any losses or claims with any insurance carrier. If the insurance proceeds of a casualty (other than from rent insurance, if any), the "**Restoration Funds**", is $3,000,000 or less, the whole thereof shall be paid to Tenant and deposited in trust in a segregated account by Tenant in an interest bearing escrow account (if possible) with Tenant. If the Restoration Fund shall exceed $3,000,000, all of such proceeds shall be deposited in trust in a joint account with Landlord and Tenant in an interest bearing escrow account (if possible) with Tenant which account shall require signatures by Landlord and Tenant for withdrawals. Landlord and Tenant shall cooperate with one another and shall execute such documents as may be necessary, to effect the collection of the Restoration Fund. Provided there is compliance with the provisions hereafter, Landlord and Tenant shall pay over to Tenant from time to time, in the manner and to the extent hereinafter provided, the Restoration Fund. The Restoration Fund shall be used only for the purpose of the restoration to be made by Tenant to restore the Premises at least to the extent of the value, and as nearly as possible to the character, existing immediately prior to such fire or other casualty (the "**Restoration**").

Section 8.4 **Payment of Restoration Fund**.

(a) **Requisitions for Payment**. The Restoration Fund received by Landlord and Tenant shall be paid by Landlord and Tenant to Tenant from time to time in installments as the Restoration progresses, upon requisitions to be submitted by Tenant to Landlord showing the cost of labor and material incorporated in the Restoration, or incorporated therein since the last previous requisition. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises, Tenant shall not be entitled to receive any further installment until such lien is satisfied or otherwise discharged.

(b) **Amount of Payment**. The amount of any installment to be paid to Tenant shall be such proportion of the total Restoration Fund received as the cost of labor and materials theretofore incorporated by Tenant in the Restoration bears to the total estimated cost of the Restoration by Tenant, less all payments theretofore made to Tenant out of Restoration Funds.

(c) **Deficiency and Completion**. Upon completion of and payment for the Restoration by Landlord and Tenant, the balance of the Restoration Fund shall be paid over to Tenant (together with interest, if any, thereon). In the event that the Restoration Fund is insufficient for the purpose of paying for the Restoration, Tenant shall nevertheless be required to make the Restoration and pay any additional sums required for the Restoration. For purposes hereof, "Completion" or "Completed" shall mean completion substantially in accordance with the plans and specifications therefor (subject only to punch list items), as determined by a joint inspection made by Landlord and Tenant (or its designated agents or professionals) and the issuance of a certificate of occupancy allowing the improvements to be used and operated for their intended purposes.

(d) **Conditions to Payment**. The following shall be conditions precedent to each such installment payment to Tenant of the Restoration Fund:

(i) **Architect or Contractor Certificate**. There shall be submitted to Landlord the certificate of Tenant's architect or Tenant's contractor stating that (1) the sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers or architects who have rendered or furnished certain services or materials for the Restoration and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate; (2) the sum then requested does not exceed the value of the services and materials described in the certificate; and (3) the balance of the Restoration Fund shall be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail the estimate of the cost of such completion;

(ii) **Completion**. With respect only to the final payment, at the time of making such payment, Tenant shall have Completed Restoration.

Section 8.5 **Commencement of Restoration**. If Tenant shall fail to commence the Restoration for six (6) months after the liability of the insurance company or companies in connection with such loss shall have been adjusted and paid to Landlord and Tenant, or to Tenant in case of liability of less than $3,000,000, or having commenced the Restoration, Tenant shall fail to continue same with reasonable diligence, then, unless such delay shall have been due to causes beyond the reasonable control of Tenant, Landlord shall have the right, without the obligation, after thirty (30) days prior notice to Tenant, to perform the Restoration using the Restoration Fund and to receive or retain the Restoration Fund, and in addition, Landlord shall have all other rights available to Landlord under this Lease and by any governmental requirements when an Event of Default shall occur. Landlord shall in no event be obligated to disburse for or contribute towards the cost of Restoration, except to the extent of the Restoration Fund, provided none of the foregoing shall apply to or effect Landlord's obligations under the City Space Lease.

ARTICLE IX
ENVIRONMENTAL PROVISIONS

Tenant will not cause, or permit any other Tenant Party to cause, the escape, disposal, or release in the Premises of any biologically active, chemically active, or hazardous substances or materials in violation of Law (collectively, "**hazardous substances**") or bring, or permit any other Tenant Party to bring, any hazardous substances into the Premises (except for *de minimis* quantities of household cleaning products and office supplies used in the ordinary course of Tenant's business at the Premises and that are used, kept and disposed of in compliance with all Law). The term hazardous substances includes, but is not limited to, those described in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., the Texas Water Code, the Texas Solid Waste Disposal Act, and

other applicable Law and the regulations adopted under those acts. Tenant will indemnify Landlord from any release of hazardous substances in or on the Premises or the Project caused by any Tenant Party. This Article 9 will survive the termination of this Lease.

ARTICLE X
DEFAULTS AND REMEDIES

Section 10.1 **Tenant's Default**. Each of the following shall be deemed a "**Tenant's Default**" or an "**Event of Default**" by Tenant hereunder and a material breach of this Lease:

(a) the failure of Tenant to pay any installment of Basic Annual Rent or Additional Rent when due; provided, however that Landlord agrees that Landlord shall, prior to such failure constituting a Tenant's Default or an Event of Default, provide Tenant with written notice of nonpayment and Tenant will not be in default if it cures such nonpayment within 10 days of receipt of such notice;

(b) the failure of Tenant to perform any non-monetary obligation contained in this Lease which failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant; provided, however that if Landlord gives notice of any default which by its nature cannot be cured within the thirty (30)-day period, then such period shall be extended for such reasonable time as may be approved by Landlord for curing such default, so long as Tenant continues to diligently prosecute to completion the curing of the default;

(c) the filing of a petition or the commencement of proceedings under any federal or state bankruptcy law by or against Tenant, and if against Tenant, said proceedings shall not be dismissed within thirty (30) days following commencement thereof;

(d) the adjudication of insolvency or the making of a general assignment for the benefit of creditors;

(e) the levy of a writ of attachment or execution on the leasehold estate hereby created that materially and adversely affects Tenant's ability to perform its duties and obligations under this Lease and that is not released or satisfied within 30 days thereafter;

(f) the appointment of a receiver in any proceeding or action to which Tenant is a party with authority to take possession or control of the Premises or the business conducted thereon by Tenant or the property of any guarantor of this Lease, which appointment is not discharged within thirty (30) days thereafter;

(g) the abandonment of the Premises or the failure of Tenant to conduct business in the Premises that is not caused by a casualty or condemnation as otherwise set forth in this Lease, where such failure continues for a period of more than five (5) business days, excepting periods of renovation or repair.

Section 10.2 **Landlord's Remedies**. If a Tenant's Default occurs, Landlord may, at any time thereafter prior to the curing thereof and without waiving any other rights hereunder or available to Landlord at law or in equity (Landlord's rights being cumulative), do any one or all of the following:

(a) re-enter the Premises and remove all persons and property therefrom, using all reasonable force necessary so to do without liability to any person for damages sustained by reason of such removal;

(b) lock the doors to the Premises and exclude Tenant therefrom;

(c) render such performance required of Tenant, other than the payment of rent, and charge all costs and expenses incurred in connection therewith to Tenant, which amounts so charged, together with interest thereon at the Default Rate, shall be due and payable immediately from Tenant to Landlord upon demand;

(d) terminate this Lease by written notice to Tenant. In the event of such termination, Tenant agrees to immediately surrender possession of the Premises. Should Landlord terminate this Lease, Tenant shall have no further interest in this Lease or in the Premises, and Landlord may recover from Tenant all damages Landlord may incur by reason of Tenant's breach, including but not limited to the reasonable cost of recovering the Premises, reasonable attorneys' fees and costs, and the value at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Lease Term, all of which amounts shall be immediately due and payable from Tenant to Landlord upon demand;

(e) without termination of this Lease, attempt to re-let the Premises or any part thereof , for the account of Tenant, for such term (which may be for a term extending beyond the Lease Term) and at such rental and upon such other terms and conditions as Landlord, in its sole discretion, may deem advisable, with the right to make reasonable alterations and repairs to the Premises the expenses of which shall constitute an indebtedness from Tenant to Landlord, immediately payable. In the event of such re-letting, the rents received by Landlord from such re-letting shall be applied first, to the payment of any and all costs and expenses of such re-letting and of such alterations and repairs; second, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If the rents received from such re-letting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly, and Landlord may bring an action therefor as such monthly deficiencies may arise. Notwithstanding any such re-letting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous breach.

Section 10.3 Mitigation of Damages. In the event of a default under the Lease, Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease. If Landlord elects to utilize any space in the Premises itself following any such termination of this Lease or Tenant's right to possession as a result of Tenant's default, then for purposes of calculating Landlord's damages such space will be deemed to be occupied at a rental rate equal to the then fair market rental rate for leases in other Class A buildings in downtown San Antonio, Texas, having a term equal to the remainder of the Lease Term at the time of such termination.

Section 10.4 Mitigation of Damages by Tenant. Tenant's right to seek damages from Landlord as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 10.5 Effect of Suit or Partial Collection. Institution of a forcible detainer action to re-enter the Premises shall not be construed to be an election by Landlord to terminate this

Lease. Landlord may collect and receive any Rent due from Tenant and the payment thereof shall not constitute a waiver of or affect any notice or demand given, suit instituted or judgment obtained by Landlord, or be held to waive or alter the rights or remedies which Landlord may have at law or in equity or by virtue of this Lease at the time of such payment.

Section 10.6 **Remedies Cumulative**. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired nor limit or preclude recovery by Landlord against Tenant of any sums or damages which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any Event of Default hereunder on the part of Tenant. All the remedies hereinbefore given to Landlord and all rights and remedies given to it at law and in equity shall be cumulative and concurrent. NOTWITHSTANDING THE FOREGOING, OR ANYTHING ELSE TO THE CONTRARY CONTAINED HEREIN, IT IS EXPRESSLY AGREED THAT LANDLORD SHALL HAVE NO RIGHT TO ACCELERATE THE RENTS TO BECOME DUE HEREUNDER UPON THE OCCURRENCE OF AN EVENT OF DEFAULT OR A TENANT'S DEFAULT WITHOUT ALSO DISCOUNTING SUCH AMOUNTS TO PRESENT VALUE AND OFFSETTING THE FAIR RENTAL VALUE OF THE PREMISES FOR THE REMAINING TERM AGAINST SUCH AMOUNTS, AND TO THE EXTENT LANDLORD WOULD OTHERWISE HAVE THE RIGHT TO SO ACCELERATE RENTS UNDER TEXAS LAW, LANDLORD HEREBY WAIVES SAID RIGHT.

Section 10.7 **No Acceptance of Surrender**. No act or conduct of Landlord whatsoever shall be deemed to be or constitute an acceptance of the surrender of the Premises or an election to terminate this Lease by Landlord except a written acknowledgment of acceptance of surrender or notice of election to terminate signed by Landlord.

Section 10.8 **Default by Landlord**. In the event that Landlord shall default in the performance of any covenant, condition or other provision of this Lease, and such default remains uncured beyond any applicable cure period expressly provided herein or, if no such cure period is provided, beyond thirty (30) days from and after the date Landlord receives notice of such default (or such longer period as may be reasonably required to cure such default with the exercise of due diligence and best efforts so long as Landlord promptly commences and diligently pursues such cure without interruption) (except in the case of emergency, in which case Tenant shall not be obligated to give Landlord notice and opportunity to cure), Tenant may, at its option, and without waiving any claim for breach of Landlord's obligations, cure such default for Landlord at Landlord's expense. Landlord shall reimburse Tenant upon Tenant's demand all costs and expenses incurred by Tenant in curing Landlord's default. All such sums not reimbursed to Tenant on demand shall accrue interest at the lesser of (i) eight percent (8%) per annum, or (ii) highest rate permitted by law, and may be recouped by Tenant by crediting same against rental payments due under this Lease. In the event Landlord's default results in an actual or constructive eviction of Tenant or a breach of Tenant's quiet enjoyment of the Premises, Tenant may, in addition to any other rights or remedies to which it may be entitled as a result thereof, terminate this Lease. It is agreed that all of Tenant's rights and remedies set forth in this Lease shall be cumulative and shall be in addition to every other right and remedy provided in this Lease or otherwise available to Tenant at law or in equity.

ARTICLE XI
RESERVED

ARTICLE XII
ADDITIONAL PROVISIONS

Section 12.1 **Notices.** Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) by overnight nationally-recognized courier service provided a receipt is required, addressed as set forth in Section 1.2; or (ii) delivering the same to the party to be notified. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

Section 12.2 **Modification and Non Waiver**. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

Section 12.3 **Governing Law; Waiver of Jury Trial**. This Lease shall be construed in accordance with the laws of the state of Texas. **EACH PARTY WAIVES THE RIGHT TO A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING UNDER THIS LEASE.**

Section 12.4 **Number and Gender; Caption; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Lease. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

Section 12.5 **Estoppel Certificate**. Landlord and Tenant shall execute and deliver to each other, within a reasonable time following written request therefor by the other party, a certificate addressed as indicated by the requesting party and stating:

(a) whether or not this Lease is in full force and effect;

(b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendment;

(c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;

(d) whether or not any particular article, section or provision of this Lease has been complied with; and

(e) such other matters as may be reasonably requested.

Section 12.6 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes. This Lease has the following exhibits attached hereto:

Exhibit A - Legal Description of the Land
Exhibit B - Personal Property to be Retained by Tenant

Section 12.7 **Severability**. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 12.8 **Attorney Fees**. If suit should be brought for recovery of the Premises, or for any sum due under this Lease, or because of any act arising out of Tenant's possession of the Premises, or because of an alleged default by Landlord, the prevailing party shall be entitled to all reasonable costs and legal fees incurred in connection with such action.

Section 12.9 **Surrender of Premises; Holding Over**. If Tenant, without the consent of Landlord, shall hold over after the Lease Term, or any extension thereof, Tenant shall become a tenant on a month-to-month basis at a minimum rental equal to 150% of the amount of Basic Annual Rent payable hereunder for the last full calendar month of the Lease Term, and all the terms, covenants and conditions of this Lease shall be applicable, except that Tenant shall not be entitled to any renewal options.

Section 12.10 **No Partnership**. It is the intention of this Lease to create the relation between the parties hereto of landlord and tenant and no other relation whatsoever, and nothing herein contained shall be construed to make the parties hereto partners or joint venturers, or to render either party hereto liable for any of the debts or obligations of the other party.

Section 12.11 **Force Majeure**. As used herein "**Force Majeure**" shall mean the occurrence of any event (other than failure to obtain financing for, failure to refinance or cessation of disbursements under existing financing for, the purchase, construction, demolition, repair or ownership of the Land or Improvements) which prevents or delays the performance by Landlord

or Tenant of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Tenant shall be delayed, hindered or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Tenant shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Tenant: (i) Tenant shall give prompt written notice of such occurrence to Landlord; and (ii) Tenant shall diligently attempt to remove, resolve or otherwise eliminate such event, keep Landlord advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Tenant shall not be relieved by any event of Force Majeure from Tenant's obligations to pay Rent hereunder, nor shall the Term be extended thereby.

Section 12.12 Entire Agreement. This Lease and the CDA constitute the entire agreement of the parties hereto with respect to its subject matter, and supersedes and cancels any and all previous statements, negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant with respect to the subject matter of this Lease or the Premises, other than the City Space Lease. Any agreements entered into between Landlord and Tenant of even date herewith are not, however, merged herein. Notwithstanding the foregoing or any other provision of this Lease, Landlord and Tenant expressly agree that in the event of any conflict between the terms of this Lease and the CDA the terms and provisions of the CDA shall control.

Section 12.13 Successors and Assigns. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's rights to assign, sublet or encumber, and subject to Section 12.23, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

Section 12.14 No Third Parties Benefitted. The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party is intended to benefit herefrom.

Section 12.15 Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

Section 12.16 No Accord and Satisfaction. The acceptance or endorsement by Landlord of any payment or check from Tenant shall not be deemed an accord and satisfaction and shall not prejudice Landlord's right to recover the balance of any amounts due under the terms of this Lease, unless otherwise expressly agreed by Landlord in writing.

Section 12.17 Reserved.

Section 12.18 Commissions. Each party represents and warrants to the other that it has not engaged or dealt with any other broker or any person who would be entitled to any brokerage

commission concerning the lease of the Premises. Each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any such claims. As used in this Lease, the term "broker" will refer to any real estate broker, salesperson, agent, listing agent, finder, or any other person entitled to a commission, and the term "commission" will refer to any brokerage, advisory, or finder's fees or commissions.

Section 12.19 **Authority**. Landlord and Tenant hereby represent to the other that: (i) Landlord is a duly authorized and existing municipal corporation and Tenant is a duly authorized and existing Texas state bank; (ii) each has full right and authority to enter into this Lease; (iii) each person signing on behalf of the Landlord and Tenant are authorized to do so. Tenant hereby represents and warrants to Landlord that the execution and delivery of this Lease by Tenant will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which Tenant is a party or by which Tenant may be bound.

Section 12.20 **Time of Essence**. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

Section 12.21 **Business Days**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

Section 12.22 **Remedies Cumulative**. All rights and remedies of Landlord herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord shall deem desirable.

Section 12.23 **No Sale of Premises**. Landlord may not transfer or assign, in whole or in part, its rights and obligations hereunder or in the Premises during the Lease Term.

Section 12.24 **No Recording of Lease**. In no event shall Tenant record this Lease, and the breach of this covenant shall be deemed an event of default for which no cure period is applicable.

Section 12.25 **Covenants and Conditions**. Each provision of this Lease performable by Tenant or Landlord shall, as applicable, be deemed both a covenant and a condition.

Section 12.26 **Limitation on Landlord's Liability**. Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that any money judgment against Landlord resulting from any default or other claim arising under this Lease may be satisfied only out of the rents, issues, profits and other income (collectively "**income**") actually received from the operation of the Premises, and no other real, personal or mixed property of Landlord or its

representatives, agents, employees, officers, owners, contractors, invitees, guests, affiliates, or partners, wherever situated, may be subject to levy on any judgment obtained against Landlord and if such income is insufficient for the payment of such judgment, Tenant may not institute any further action, suit, claim or demand, in law or in equity, against Landlord for or on the account of such deficiency. Tenant hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Landlord except from income received by Landlord from the operation of the Premises. Notwithstanding the foregoing, if Tenant has received a final, non-appealable judgment for damages against Landlord as a result of an uncured default by Landlord under this Lease, and, despite Tenant's use of all reasonable efforts to levy against Landlord's interest in the Premises, such judgment has nonetheless not been satisfied within sixty (60) days after the date that the judgment became final and non-appealable, then Tenant shall have the right to deduct the unpaid amount of such judgment against the Rent and all other sums to become due under this Lease until fully credited.

Section 12.27 Certain Waivers. Tenant hereby expressly waives and disclaims any lien or claim which Tenant has or may have in and to any property belonging to Landlord or on the Rent due under this Lease. It is specifically understood and agreed that if Landlord commences any proceedings against Tenant for non-payment of Rent, Tenant may not interpose any noncompulsory counter-claim or other claim against Landlord of whatever nature or description in any such proceedings. Tenant further waives all rights to claim a lien under Section 91.004(b) of the Texas Property Code or any other Applicable Law against the Rent or the Premises.

Section 12.28 Consent by Landlord. Except as otherwise expressly stated in this Lease, in each instance where Landlord's approval is required or Landlord's opinion controls any aspect of the Lease affecting Tenant, (a) such approval will not be unreasonably withheld or delayed and (b) such opinion will be reasonably rendered.

Section 12.29 Limitation on Waiver. One or more waivers of any covenant, term or condition of this Lease by either party may not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

Section 12.30 No Relocation. Landlord shall have no right to relocate the Premises.

Section 12.31 Office of Foreign Assets Control Certification. Tenant certifies that it is not acting, directly or indirectly, for or on the behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specifically Designated National and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.

Section 12.32 Privacy. Except as may be required by applicable law, Tenant shall not be required to give Landlord, nor is Landlord expected to have access to, any information about Tenant's customers that is subject to the Gramm-Leach-Bliley Act (the "**Act**"). Landlord, at Tenant's sole cost and expense, shall use commercially reasonable efforts to cooperate with Tenant so that Tenant may comply with all applicable provisions of the Act and other applicable laws if Landlord is given, or if Landlord otherwise has access to, information that is subject to

the Act and/or other applicable laws, including, without limitation, keeping information confidential.

Section 12.33 Quiet Enjoyment. So long as Tenant does not commit an Event of Default, Tenant may peaceably and quietly hold and enjoy the Premises for the Term, without hindrance or interruption by Landlord.

Section 12.34 Matters of Record. Except as otherwise provided herein, this Lease and Tenant's rights hereunder are subject and subordinate to all matters affecting Landlord's title to the Premises recorded in the Real Property Records of Bexar County, Texas, prior to the date hereof, including, without limitation, all covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that it will comply with and not violate any such covenants, conditions and restrictions or other matters currently of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not materially interfere with the use, occupancy, visibility of or access to the Premises by Tenant or the visibility of Tenant's signage. At Landlord's request, Tenant shall join in the execution of any of the aforementioned document.

Section 12.35 Lien Waiver. Notwithstanding any provision in this Lease to the contrary, and notwithstanding any statute purporting to grant Landlord any Landlord's liens or similar security interests in Tenant's property or the property of any other occupant of the Premises, Landlord hereby waives any and all rights, interests or claims it may have against the equipment, fixtures or other personal property of Tenant and/or any other occupant of the Premises, including, without limitation, any statutory or common law landlord's liens or similar interest which Landlord may have from time to time. While the foregoing waiver shall be self-operative, within ten (10) days after Tenant's submittal of a written request to Landlord, Landlord shall execute such instruments evidencing such waiver as are reasonably acceptable to Landlord and are required by any equipment lessor or any party from whom Tenant or any other occupant of the Premises is seeking, or has obtained, financing to be secured by Tenant's, and/or such other occupant's, inventory, equipment, fixtures or other personalty

Section 12.36 Building Name. Landlord may not change the name of the Building during the Lease Term.

Section 12.37 Options Agreement. Contemporaneously with the execution and delivery of this Lease, Landlord and Tenant have entered into an Options Agreement (so called herein) which gives Tenant the right to purchase the Premises from Landlord, and Landlord the right to sell the Premises to Tenant, pursuant to the terms thereof. Pursuant to the terms of the Options Agreement, if same is exercised, Tenant shall repurchase the Premises at the price, and on the terms and conditions, stated therein. The Options Agreement is expressly binding upon the successor and assigns of both Tenant and Landlord. Assumption (by agreement, operation of law, or otherwise) of the responsibilities and rights of Tenant or Landlord under the term of this Lease automatically, and without the necessity of further act, binds the party assuming said responsibilities and rights to the terms of the Options Agreement. Upon the execution of this Lease, Landlord and Tenant shall enter into a Memorandum of the Options Agreement duly

executed and acknowledged by each of Landlord and Tenant and otherwise in a recordable form mutually acceptable to Landlord and Tenant in their reasonable discretion.

Section 12.38 **Regulatory Closure Period.** Tenant, as a regulated Texas state bank, is subject to certain federal laws and regulations regarding the closing of a bank branch, including, without limitation, the customer notices required to be distributed in advance of a bank branch closing. Therefore, to the extent, and only to the extent required by applicable law, if Tenant's right of possession of the Premises is terminated prior to the expiration of the term of this Lease due to a non-monetary default by Tenant (e.g., a default that does not involve the payment of Rent or any other amount due and owing to Landlord), Tenant shall, by providing written notice to Landlord within ten (10) days after the Tenant's right of possession of the Premises is terminated, have a period of up to the lesser of (i) one hundred fifty (150) days from the date Tenant's right to possession is terminated, or (ii) the Expiration Date (the "**Regulatory Closure Period**") to wind up its affairs at the Premises, distribute all required notices of closure to its customers and vacate the Premises. All of Tenant's payment and performance obligations under this Lease shall remain in effect during the Regulatory Closure Period.

Section 12.39 **City Space Lease.** Landlord and Tenant are currently parties to that certain Office Lease dated May 9, 2007 by and between Landlord, as tenant, and Tenant as Landlord, for the portion of the Premises described therein (as same has been amended the "City Space Lease"). Nothing herein shall be deemed or construed as modifying or amending the City Space Lease or the Landlord's obligation thereunder, it being agreed that in the event of a conflict between the terms hereof and the City Space Lease, the City Space Lease shall control.

Counterpart Signature Page
Master Lease Agreement

LANDLORD:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

Counterpart Signature Page
Master Lease Agreement

TENANT:

FROST BANK, a Texas state bank

By:_____
Name:_____
Title:_____

EXHIBIT A

Legal Description of Land

TRACT 1 (TOWER):

A 0.468 ACRE (20,403 SQUARE FOOT) TRACT OF LAND BEING LOT 24, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 9515, PAGE 138, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING:	At a set lead plug and tack, the intersection of the south right-of-way line of West Houston Street and the east right-of-way line of North Flores Street;
THENCE:	S 89 degrees 12 minutes 00 seconds E 190.55 feet with the south right-of-way line of West Houston Street to a set lead plug and tack at its intersection with the west right-of-way line of North Main Avenue;
THENCE:	S 01 degrees 13 minutes 00 seconds W 109.02 feet with the west right-of-way line of North Main to a set lead plug and tack;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 1.70 feet the beginning of a concrete column and with the concrete column a total distance of 11.70 feet to a corner of said column;
THENCE:	N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to an angle point;
THENCE:	N 88 degrees 45 minutes 05 seconds W at 12.50 feet begin a concrete block wall and with the north face of said wall and its extension a total distance of 168.00 feet to a concrete column;
THENCE:	S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;
THENCE:	N 88 degrees 45 minutes 05 seconds W, at 10.00 feet pass a corner of the column, a total distance of 15.19 feet to a set lead plug and tack in the east right-of-way line of North Flores Street;
THENCE:	N 03 degrees 32 minutes 00 seconds E 107.62 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 0.468 acre (20,403 square feet).

TRACT 2 (GARAGE):

A 1.354 ACRE (58,972 SQUARE FOOT) TRACT OF LAND BEING LOT 23, NEW CITY BLOCK 110, FROST BANK TOWER AND MOTOR BANK SUBDIVISION, SAN ANTONIO, TEXAS, AS RECORDED IN VOLUME 9515 ON PAGE 138 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING:	At a found lead plug and track in the east right-of-way line of North Flores Street, from which the intersection of the east right-of-way line of North Flores and the south right-of-way line of West Houston Street is N 03 degrees 32 minutes 00 seconds E 107.62 feet;
THENCE:	S 88 degrees 45 minutes 05 seconds E, at 5.19 feet the beginning of a concrete column and with the concrete column a total distance of 15.19 feet to a corner of the column;
THENCE:	N 01 degrees 14 minutes 55 seconds E 2.75 feet with said column to a corner;
THENCE:	S 88 degrees 45 minutes 05 seconds E 168.00 feet with the extension of and the north face of a concrete block wall to a concrete column;
THENCE:	S 01 degrees 14 minutes 55 seconds W 2.75 feet with said column to a corner;
THENCE:	S 88 degrees 45 minutes 05 seconds E with the column, at 10.00 feet pass a corner of the column, a total distance of 11.70 feet to a found lead plug and tack in the west right-of-way line of North Main;
THENCE:	S 01 degrees 13 minutes 00 seconds W 225.08 feet with the west right-of-way line of North Main to an angle point;
THENCE:	N 79 degrees 56 minutes 00 seconds W 28.70 feet to an angle point;
THENCE:	S 07 degrees 00 minutes 00 seconds W 6.02 feet to an angle point;
THENCE:	S 05 degrees 14 minutes 00 seconds W 96.48 feet a found lead plug and tack in the north right-of-way line of West Commerce Street;
THENCE:	N 78 degrees 13 minutes 00 seconds W 167.60 feet with the north right-of-way line of West Commerce to a found lead plug and tack at its intersection with the east right-of-way line of North Flores Street;

THENCE: N 01 degrees 36 minutes 00 seconds E 184.75 feet with the east right-of-way line of North Flores Street to a found lead plug and tack, an angle in this line;

THENCE: N 03 degrees 32 minutes 00 seconds E 107.61 feet with the east right-of-way line of North Flores Street to the POINT OF BEGINNING, containing 1.354 acres (58,972 square feet).

EXHIBIT B

Personal Property to be Retained by Tenant

(1) All movable trade fixtures and other personal property, including, without limitation, all furniture, fixtures and equipment located on the Premises, related, directly, to Tenant's banking or financial services operations on the Premises.

(2) All computers, audio/visual equipment, and security systems located on the Premises.

(3) All artwork located on the Premises.

(4) All "Frost Bank" related intellectual property.

(5) All "Frost Bank" signage and any Personalty with the "Frost Bank" name or logo.

(6) Any furniture and other furnishings which Tenant deems to be proprietary to it or of historical significance to Tenant or its operations.

EXHIBIT C

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease ("Amendment") is entered into by and between Frost Bank, a Texas state bank ("Landlord") and the City of San Antonio, a Texas municipal corporation ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant are parties to that certain Office Lease dated May 9, 2007 for the premises described therein (the "Premises") located in Landlord's building (the "Building") at 100 West Houston Street, San Antonio, Texas 78205 (the "Original Lease");

WHEREAS, the Original Lease was modified and amended by that certain Extension and Amendment of Lease Agreement (the "First Extension") executed on April 16, 2012 by Landlord and June 19, 2012 by Tenant (the Original Lease as amended by the First Extension being herein called the "Lease");

WHEREAS, Landlord and Tenant now desire to further modify and amend the Lease as set forth herein.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant hereby agree as follows:

1. Term. The term of the Lease is hereby extended to expire on June 30, 2019 (the "Extension Term").

2. Extension. Landlord and Tenant acknowledge that they along with Weston Urban, LLC are parties to that certain Comprehensive Development Agreement dated _____, 2015 (the "CDA"). Pursuant to the transactions contemplated by the CDA and the Ancillary Agreements (as defined in the CDA), Landlord and Tenant contemplate that Landlord will sell the Building to Tenant and enter into a master leaseback of same pursuant to the Existing Tower Master Lease (as such term is defined in the CDA). If the contemplated transactions occur, the term of the Lease shall be extended to be coterminous with the term of the Existing Tower Master Lease and the Lease shall continue as a sublease during the term of the Existing Tower Master Lease.

3. Rental. Through the earlier of (i) the first day of the term of the Existing Tower Master Lease or (ii) the last day of the Extension Term, it is expressly agreed that Base Rent (as defined in the Lease) for the premises demised under the Lease shall equal $19.00 per square foot per annum for a monthly Base Rent payment of $26,061.67.

Upon commencement of the Existing Tower Master Lease, the Base Rent shall be as follows:

(a) From the period commencing on the first day of the term of the Existing Tower Master Lease and ending on the last day of the twelfth (12th) full calendar month thereafter, $10,973.33 per month.

(b) For the thirteenth (13th) through twenty-fourth (24th) months of the term of the Existing Tower Master Lease, an amount equal to the greater of (i) the Base Rent for the preceding twelve (12) month period or (ii) the amount determined by multiplying the Base Rent for the preceding twelve (12) month period by the CPI Adjustment Factor (as defined herein).

(c) For the twenty-fifth (25th) through thirty-sixth (36th) months of the term of the Existing Tower Master Lease, an amount equal to the greater of (i) the Base Rent for the preceding twelve (12) month period or (ii) the amount determined by multiplying the Base Rent for the preceding twelve (12) month period by the CPI Adjustment Factor.

(d) For the thirty-seventh (37th) through forty-eighth (48th) months of the term of the Existing Tower Master Lease, an amount equal to the greater of (i) the Base Rent for the preceding twelve (12) month period or (ii) the amount determined by multiplying the Base Rent for the preceding twelve (12) month period by the CPI Adjustment Factor.

(e) For the forty-ninth (49th) through sixtieth (60th) months of the term of the Existing Tower Master Lease, an amount equal to the greater of (i) the Base Rent for the preceding twelve (12) month period or (ii) the amount determined by multiplying the Base Rent for the preceding twelve (12) month period by the CPI Adjustment Factor.

(f) On the first day of the sixty-first (61st) month of the term of the Existing Tower Master Lease and continuing through the remainder of such term, if same is still in effect at such time, the monthly Base Rent shall be a fair market rental rate determined by Landlord in its good faith, reasonable discretion for comparable space in Class-A office buildings in the downtown San Antonio, Texas area and the Base Rent amount shall be adjusted every twelve (12) months thereafter by Landlord to equal said fair market value at such time, but in no event shall the Base Rent ever decrease. Notwithstanding the foregoing provisions of this subsection 3.(f), if the term of the Existing Tower Master Lease has been extended by agreement of Landlord and Tenant beyond the sixtieth (60th) month of the term of the Existing Tower Master Lease pending completion of the New Tower, the Base Rent for such extended term shall be, for the sixty-first (61st) through the end of the term of the Existing Tower Master Lease, an amount equal to the greater of (i) the Base Rent for the preceding twelve (12) month period or (ii) the amount determined by multiplying the Base Rent for the preceding twelve (12) month period by the CPI Adjustment Factor.

The amounts set forth above are only applicable to the extent the Existing Tower Master Lease is still in force and effect at the times set forth above.

As used above, the term "CPI Adjustment Factor" shall mean a fraction the numerator of which is the CPI (as defined below) most recently published as of the beginning of the twelve (12) month period for which the Base Rent is then being determined and the denominator of which is the CPI in effect as of the first day of the preceding twelve (12) month period. As used

herein, the term "CPI" means the National Consumer Price Index for All Urban Consumers, U.S. City Average, (all items 1982 to 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"). If the CPI should ever cease to be published by the Bureau during the term of the Lease, the CPI Adjustment Factor shall be computed by using an economic index reasonably selected by Landlord, of generally recognized standing, which reflects the increase or decrease in the purchasing power of the dollar.

4. Expansion Space. Upon commencement of the Existing Tower Master Lease and continuing for a period of sixty (60) days thereafter, Tenant shall have the right to notify Landlord ("Tenant's Election Notice") that it desires to add those portions of the Building shown on Exhibit "A" attached hereto and designated as the "18th Floor" of the Building and the "Training Room" on such Exhibit to the Premises. Should Tenant timely notify Landlord of its election to add such portions of the Building to the Premises demised under the Lease, same shall be added to the Premises in their then as-is, where-is condition, without any obligation on the part of Landlord to improve, alter or otherwise take any actions with respect to said portions of the Building, effective as of the date which is ten (10) days from and after the date which Landlord receives Tenant's Election Notice. If, and from the time, such portions of the Building are added to the Premises, same will be subject to all terms and conditions of the Lease except that no additional Base Rent will be owed with respect to same through the expiration of the sixtieth (60th) full calendar month of the term of the Existing Tower Master Lease, subject to the terms of Paragraph 5 below.

Furthermore, if at any time during the term of the Existing Tower Master Lease, other space in the Building becomes vacant and Landlord decides to make same available to lease to third parties, Landlord shall notify Tenant of such fact and Tenant shall have sixty (60) days from and after the receipt of Landlord's notice to notify Landlord in writing that either (i) Tenant elects to have such portions of the Building added to the Premises or (ii) Tenant elects not to add same to the Premises, in which latter event Landlord shall be free to market same for lease to third parties subject to the terms of the Existing Master Lease and Tenant shall have no further right, title or interest in and to the space which was the subject of the notice. Should Tenant timely notify Landlord of its election to add such portions of the Building to the Premises demised under the Lease, same shall be added to the Premises in their then as-is, where-is condition, without any obligation on the part of Landlord to improve, alter or otherwise take any actions with respect to said portions of the Building, effective as of the date which is ten (10) days from and after the date which Landlord receives Tenant's notice that it desires to add such space to the Premises and at such time Landlord and Tenant shall enter into an amendment to the Lease adding the applicable space to the Premises. If, and from the time, such portions of the Building are added to the Premises, same will be subject to all terms and conditions of the Lease except that no additional Base Rent will be owed with respect to same through the expiration of the term of the sixtieth (60th) full calendar month of the Existing Tower Master Lease, subject to the terms of Paragraph 5 below.

5. Continuation Option. If (i) Landlord repurchases the Building pursuant to its rights to do so under the Options Agreement (as such term is defined in the Existing Tower Master Lease), and the Existing Tower Master Lease is subsequently terminated as a result, then immediately upon the effective date of such termination, the rental for the Premises, as same

then exist shall be adjusted to be a fair market rent as determined by Landlord in its good faith, reasonable discretion on that date for comparable space in Class A office buildings in the downtown San Antonio area. Landlord shall send notice of its determination of the rent to the Premises to Tenant. For a period of thirty (30) days from and after the date of such termination (said date of termination being herein called the "Trigger Date"), Tenant shall have the option to either (i) terminate the Lease effective on the date which is sixty (60) days from and after the Trigger Date or (ii) extend the Lease for an additional period of three (3) years following the Trigger Date (so same will expire on the last day of the thirty-sixth (36th) full calendar month following the Trigger Date) at the rental rates prescribed by Landlord in its notice. If Tenant fails to notify Landlord of its election to either extend or terminate the Lease as set forth above, Tenant will be deemed to have terminated the Lease and the Lease will expire on the date which is sixty (60) days from and after the Trigger Date and the term of the Lease will be automatically extended through the date which is sixty (60) days from and after the Trigger Date at the fair market rental rate determined by Landlord.

6. No Transfer. Tenant shall have no right to assign the Lease or subject any portion of the Premises, or otherwise allow any third party to use same and an attempt to do so shall constitute an event of default by Tenant without any notice or opportunity to cure being given Tenant and any such purported assignment or subletting shall be void.

7. No Early Termination. Section 6 of the First Extension is hereby deleted from the Lease and Tenant shall have no further right to terminate the Lease under said Section.

8. Integration/Completed Agreement. This Amendment is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this Amendment, the Lease remains a comprehensive statement of the rights and obligations of Landlord and Tenant. Landlord and Tenant reaffirm the Lease as modified by this Amendment and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

IN WITNESS WHEREOF, this Amendment is executed by and between Landlord and Tenant as of the _____ day of _____, 2015.

FROST BANK,
a Texas state bank

By:_____
Name:_____
Title:_____

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney