

AN ORDINANCE 2011-09-15-0761

**AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ARGO GROUP U.S., INC. ("ARGO") IN THE AMOUNT OF \$2,850,120.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN ASSOCIATED PARKING AGREEMENT.**

\* \* \* \* \*

**WHEREAS**, ARGO, a subsidiary of Argo Group International Holdings, Ltd., is an international underwriter of specialty insurance and reinsurance products in areas of the property and casualty markets offering a comprehensive line of high-quality products and services designed to meet the unique coverage and claims-handling needs of its clients; and

**WHEREAS**, ARGO has had a San Antonio presence and currently employs 250 individuals at its facility located at 10101 Reunion Place, San Antonio, Texas 78216; and

**WHEREAS**, ARGO is engaged in an economic development project that will relocate its current workforce (the "Project"); and

**WHEREAS**, ARGO has identified office space located at 175 E. Houston, San Antonio, TX 78205 (the "Property") as a potential destination for the Project; and

**WHEREAS**, the City seeks to incentivize ARGO to retain and expand its local workforce by developing the Project within the City of San Antonio; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to create a program to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, ARGO is seeking a Chapter 380 Economic Development Grant in the amount of \$2,850,120.00 to assist in deferring costs associated with the Project, including parking for its projected combined workforce of 250 individuals; and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting ARGO in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of an Economic Development Program Grant Agreement (the "Agreement") with ARGO., to include a Parking Agreement for up to 300 spaces over 10 years at 400 S. St. Mary's St., San Antonio, TX 78205 (the "Agreements"), are hereby approved. The City Manager, or her designee, is authorized to execute the Agreements in accordance with this Ordinance. Copies of the Agreements in substantially final form are attached as "Attachment I" and made a part of this Ordinance. Final copies of the Agreements shall be attached when executed.

**SECTION 2.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

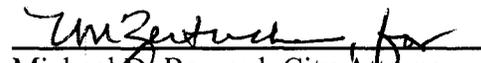
PASSED AND APPROVED this 15<sup>th</sup> day of SEPTEMBER 2011.

  
M A Y O R  
Julián Castro

ATTEST:

  
\_\_\_\_\_  
Leticia M. Yacek, City Clerk

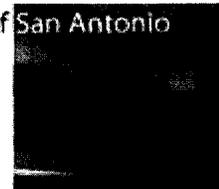
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 13

| <b>Name:</b>        | 13  |             |     |     |         |        |        |
|---------------------|---|-------------|-----|-----|---------|--------|--------|
| <b>Date:</b>        | 09/15/2011  |             |     |     |         |        |        |
| <b>Time:</b>        | 02:45:53 PM   |             |     |     |         |        |        |
| <b>Vote Type:</b>   | Motion to Approve   |             |     |     |         |        |        |
| <b>Description:</b> | An Ordinance authorizing a Chapter 380 Economic Development Program Grant Agreement with Argo Group US, Inc. ("Argo") and related Parking Agreement to provide financial incentives in the approximate amount of \$2,850,120.00 over 10 years provided that the company locates a minimum of 200 corporate level jobs at the IBC Centre building at 175 E. Houston Street no later than June 30, 2012. [Pat DiGiovanni, Deputy City Manager / Interim Director, Center City Development Office] |             |     |     |         |        |        |
| <b>Result:</b>      | Passed  |             |     |     |         |        |        |
| Voter               | Group   | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro       | Mayor   |             | x   |     |         |        |        |
| Diego Bernal        | District 1  |             | x   |     |         |        |        |
| Ivy R. Taylor       | District 2  |             | x   |     |         |        |        |
| Jennifer V. Ramos   | District 3  |             | x   |     |         |        | x      |
| Rey Saldaña         | District 4  |             | x   |     |         |        |        |
| David Medina Jr.    | District 5  | x           |     |     |         |        |        |
| Ray Lopez           | District 6  |             | x   |     |         |        |        |
| Cris Medina         | District 7  |             | x   |     |         |        |        |
| W. Reed Williams    | District 8  |             | x   |     |         |        |        |
| Elisa Chan          | District 9  |             | x   |     |         | x      |        |
| Carlton Soules      | District 10   |             | x   |     |         |        |        |

# **ATTACHMENT I**

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND ARGO GROUP U.S., INC.**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee and ARGO GROUP US, INC. (hereinafter referred to as "GRANTEE"). Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**WHEREAS**, GRANTEE, is a subsidiary of Argo Group International Holdings, Ltd., an international underwriter of specialty insurance and reinsurance products in areas of the property and casualty markets offering a comprehensive line of high-quality products and services designed to meet the unique coverage and claims-handling needs of its clients; and

**WHEREAS**, GRANTEE has had a San Antonio presence and currently employs approximately 250 individuals at its facility located at 10101 Reunion Place, San Antonio, Texas 78216; and

**WHEREAS**, GRANTEE is engaged in an economic development project that will locate its US corporate offices, certain enterprise wide support functions, and certain insurance underwriting and claims operations , together with its current workforce engaged in such activities to a new location in San Antonio (the "Project"); and

**WHEREAS**, GRANTEE has identified office space located at the IBC Center at 175 E. Houston St, San Antonio, TX 78205 (the "Property") which it has considered as a potential destination for the Project along with other locations outside of the City of San Antonio; and

**WHEREAS**, GRANTOR seeks to encourage GRANTEE to retain its current workforce and develop the Project within downtown San Antonio; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, GRANTOR has identified funds to be made available to incentivize GRANTEE to undertake and complete the Project; and

**WHEREAS**, the City Council of City has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2011-09-15-\_\_\_\_\_, passed and approved on September 15, 2011 to grant said funds; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**SECTION 1. AGREEMENT PURPOSE**

GRANTEE shall undertake the Project including the relocation of offices to accommodate its existing employees to the Property. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting

the Project through this Economic Development Program Grant to provide funds to be used to defer costs associated with undertaking and completing the Project.

## SECTION 2. PROJECT REQUIREMENTS

A. Lease Agreement. GRANTEE shall enter into a Lease Agreement (the "Lease") with International Bank of Commerce to locate on the Property prior to May 1, 2012. The Lease shall have a term of not less than ten (10) years and shall provide for GRANTEE to utilize at least 57,712 sq. ft. of office space. Upon its execution, an Acknowledgement of Lease (Exhibit "A"), indicating the Term, square footage and conditions for termination executed by GRANTEE and the lessor of the Property.

B. Business Activities. GRANTEE shall conduct the business activities of its US corporate offices and certain enterprise wide accounting, IT and other support functions associated with Grantee and its subsidiaries, as well as underwriting of specialty insurance products in the areas of property and casualty markets by its subsidiaries (the "Business Activities") at the Property for the Term of this Agreement (as defined in Section 4). Except as provided herein, GRANTEE covenants and agrees that it shall not change the Business Activities without the consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization which shall be defined as a parent, subsidiary or affiliate organization of GRANTEE or a new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE occupies the Property and continues the stated Business Activities. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing through an amendment of this Agreement to comply with all applicable terms herein. Except as authorized above, GRANTEE covenants and agrees not to change the principal use of the Property without prior written approval of GRANTOR, which approval will not be unreasonably withheld, conditioned, or delayed.

C. Full-Time Jobs. GRANTEE, on its own behalf or through its Related Organizations, shall retain and relocate its existing workforce to the Property, which the parties agree currently represents the equivalent of a minimum of TWO HUNDRED (200) Full-Time Jobs to the Property by December 31, 2012.

1. For the purposes of this Agreement, a Full-Time Job shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year,

2. The Full-Time Job positions shall comply with GRANTOR's current wage standard policy which is stated in the GRANTOR's Tax Abatement Guidelines. The minimum cash wage for all positions counted as Full-Time Jobs for purposes of this Agreement shall be TEN DOLLARS AND SEVENTY-FIVE CENTS (\$10.75) per hour. After one full year of full operations at the Property the hourly earnings for seventy percent (70%) of the positions counted as Full-Time Jobs at the Property shall be not less than THIRTEEN DOLLARS AND SEVENTY-SIX CENTS (\$13.76) per hour. The GRANTEE shall submit the Annual Wage Compliance Reports certifying their compliance with these wage requirements.

3. Additionally, all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Property shall be offered an opportunity to participate in GRANTEE's employee benefits program which shall be substantially similar to employee benefits offered to similarly situated employees of GRANTEE in other locations. GRANTEE further covenants and agrees that all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Property shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of GRANTEE's non-temporary full-time employees at other locations.

4. The annual average salary of the cumulative total of TWO HUNDRED (200) retained and created Full Time Jobs as calculated for purposes of this Agreement shall be no less than FIFTY THOUSAND DOLLARS AND 0 CENTS (\$50,000.00).

5. The calculation of the number of Full Time Jobs and annual average salary for purposes of this Agreement shall include: a) direct employees of GRANTEE; b) positions filled by individuals retained on a contract basis and/or leased employees; and c) all individuals who regularly work and/or or maintain their principal office at the Property, without respect to their principal place of residence, provided that all such individuals shall have cumulative hours, earnings and benefits (whether provided by GRANTEE or third parties) sufficient to otherwise qualify their position as Full Time Job.

D. Certification. GRANTEE covenants and agrees that it shall provide GRANTOR's Director of International and Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Full-Time Jobs created and maintained, as well as wages paid and the annual average salary for all employees at the Property.

E. Parking Agreement. GRANTEE shall enter into a Parking Agreement (the "Parking Agreement") with GRANTOR for the eventual use of up to THREE HUNDRED (300) parking spaces over the Term of this Agreement at the GRANTOR-owned St. Mary's Street Parking Garage (the "Garage") located at 400 S. St. Mary's St., San Antonio, TX 78205. The Parking Agreement shall contain the terms and conditions for the utilization of up to THREE HUNDRED (300) parking spaces at the Garage and shall include a per-parking space fee at the GRANTOR's current parking rate at the Garage as set by GRANTOR's City Council. The current rate is EIGHTY-SEVEN DOLLARS AND 0 CENTS (\$87.00) but is subject to future rate increases as approved by GRANTOR's City Council during the term of this Agreement. GRANTEE shall abide by the terms of the Parking Agreement for the Term of this Agreement. Upon its execution the Parking Agreement shall be attached to and become a part of this Agreement as "Exhibit B."

F. Laws. GRANTEE shall comply with all applicable Federal, State and local laws and regulations.

### **SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT**

A. Economic Development Program Grant. GRANTOR is providing GRANTEE with an Economic Development Program Grant in a cumulative amount of approximately TWO MILLION EIGHT HUNDRED FIFTY THOUSAND ONE HUNDRED AND TWENTY DOLLARS AND 0 CENTS (\$2,850,120.00) over the 10-year term of the Parking Agreement. Following the execution of the Parking Agreement, and in accordance with its terms and conditions, GRANTOR will direct disbursement of the Parking Reimbursement Grant from its General Fund or other resources to its Parking Fund to satisfy the financial obligations of GRANTEE, or its permitted assigns, under the Parking Agreement.

B. Grant Disbursement. Following the execution of this Agreement by the Parties and submission by GRANTEE to GRANTOR of an Acknowledgement of Lease executed by GRANTEE and International Bank of Commerce and subject to the terms and conditions herein, GRANTOR will direct disbursement of grant funds from its general fund or other resources to its Parking Fund to satisfy the ONE HUNDRED PERCENT (100%) of the parking fees assessed to the up to THREE HUNDRED (300) parking spaces for ten (10) years beginning on the Commencement Date of the Parking Agreement, which is anticipated by the Parties to be on or about May 1, 2012.

#### SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate on the last day of the last month of the Initial Term of the Parking Agreement (the "Term") unless earlier terminated:

1. By GRANTOR under Section 15 effective on the dates set out therein;
2. By GRANTOR at request of GRANTEE under Section 16 effective as of the date such request is approved; or
3. By GRANTEE as of the date the Lease is terminated by Landlord for reasons other than:
  - a. GRANTEE's Relocation (as that term is defined in Section 15, Subparagraph A, below); or
  - b. GRANTEE's negligence, intentional act or misconduct.

#### SECTION 5. GRANTOR'S OBLIGATIONS

A. Payment. In consideration of full and satisfactory performance of activities required by Section 2 and/or Section 3 of this Agreement, as applicable, and subject to the annual appropriation of funds by GRANTOR's City Council, GRANTOR will pay GRANTEE in accordance with Section 3 above.

B. No Liability for Costs. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

#### SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Retention. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: (1) Four (4) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. Access. GRANTEE shall, following reasonable advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records"). GRANTOR's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

#### SECTION 7. MONITORING

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If

the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

## **SECTION 8. CONFLICT OF INTEREST**

GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as GRANTOR's Code of Ethics.

## **SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. Nondiscrimination. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. Inclusion. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

## **SECTION 10. LEGAL AUTHORITY**

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. Lack of Authority. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section.

## SECTION 11. LITIGATION AND CLAIMS

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out of the performance of any activities hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify GRANTOR immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## SECTION 12. ATTORNEY'S FEES

In the event GRANTEE should default under any of the provisions of this Agreement and GRANTOR should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by GRANTOR.

## SECTION 13. CHANGES AND AMENDMENTS

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Change of Law. Any alterations, additions, or deletions to the terms of this Agreement (other than those terms in Section 2 or Section 3 herein) required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## SECTION 14. SUSPENSION

- A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.
- B. Extensions. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE: (1) immediately upon receipt of Notice of Suspension advises GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institutes and thereafter pursues to completion with reasonable dispatch all steps necessary to cure same.
- C. Lifting of Suspension. A suspension under this Section may be lifted only by GRANTOR upon a showing of full compliance with or written waiver by GRANTOR of the term(s) in question.
- D. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

## SECTION 15. TERMINATION AND RECAPTURE

- A. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean GRANTEE or a Related Organization which has taken the place of GRANTEE, transferring Business Activities to a location not on the Property.
- B. Relocation. Should GRANTEE occupy and use the Property for its Business Activities and subsequently Relocates (as defined in this Article 7, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.
- C. Ceasing. If GRANTEE occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of

cessation shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

D. Number of Jobs. If GRANTEE, a Related Organization or City-approved assignee fails to locate and retain the minimum number of permanent Full-Time Jobs as required in Article 2, Paragraph C above then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement. GRANTEE shall be deemed to be in compliance with such requirement as measured at the end of any calendar year if the average number of Full Time Jobs per year over the preceding three (3) years is equal to or greater than two hundred (200) as calculated Article 2, Paragraph C, Sub-Paragraph 5. Said termination shall be effective at the end of the first calendar year during which GRANTEE is determined to be non-compliant. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

E. Notice of Default. During the Term, GRANTOR may declare a default if GRANTEE fails to comply with any of the terms of this Agreement. Should GRANTOR determine GRANTEE is in default under any of the terms of this Agreement, GRANTOR will notify GRANTEE in writing at the address below in Article 23. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then GRANTOR shall have the right to terminate this Agreement. GRANTOR may, in its sole discretion, extend the Cure Period if GRANTEE commences the cure within the Cure Period and GRANTEE is diligently pursuing such cure. If the Agreement is terminated as a result of default, all grant funds disbursed shall be due for the calendar year during which the termination occurred; in addition, GRANTOR shall have the right to recapture from GRANTEE previously disbursed grant funds under this Agreement according to the schedule in Article 15, Paragraph G below and said grant funds shall be paid by GRANTEE to GRANTOR within sixty (60) calendar days of receiving GRANTOR's written notification of recapture.

F. Other Remedies Available. GRANTOR shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if GRANTEE defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled. The termination and/or recapture of grant funds provided in this Article 15 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or its GRANTOR-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

G. Calculation of Grant Funds Subject to Recapture. If GRANTEE fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Article 15 then GRANTOR shall have the right to recapture from GRANTEE a percentage of the disbursed grant funds based on the following table:

| <u>TERM YEAR</u> | <u>TOTAL PERCENTAGE OF GRANT FUNDS TO BE RECAPTURED:</u> |
|------------------|--|
| 1-5              | 100%   |
| 6                | 80%  |
| 7                | 60%  |
| 8                | 40%  |
| 9                | 20%  |
| 10               | 0%   |

**SECTION 16. AUTHORIZED RELIEF FROM PERFORMANCE**

In addition to relief expressly granted in this Agreement, GRANTOR may grant relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an event of Force Majeure. For purposes of this section, "Force Majeure" is defined as an act of God or natural disaster. It also includes explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain release based upon this Article 16, GRANTEE must file a written request with the GRANTOR's International and Economic Development Department for review and approval, which request shall not be unreasonably denied.

**SECTION 17. SPECIAL CONDITIONS AND TERMS**

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

**SECTION 18. RESERVED**

**SECTION 19. DEBARMENT**

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by GRANTOR.

**SECTION 20. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and GRANTOR under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of

any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

#### **SECTION 21. NON-ASSIGNMENT**

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. The GRANTEE may also have the right to assign this Agreement to any party that acquires the Project, subject to GRANTOR's prior written consent which shall be evidenced by a duly authorized ordinance. In either of such cases, GRANTEE shall give GRANTOR no less than SIXTY (60) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of GRANTOR shall release GRANTOR from performing any of the terms, covenants and conditions herein and may subject GRANTEE to the Termination and Recapture of grant funds in accordance with Section 15 of this Agreement. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement.

#### **SECTION 22. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

#### **SECTION 22. RESERVED**

#### **SECTION 23. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

(Whether personally delivered or mailed):

City of San Antonio  
Attn: International and Economic Development  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

International and Economic Development  
Attn: Director  
19th Floor  
100 Houston St.  
San Antonio, Texas 78205

COPIES TO:

City Attorney  
  
3<sup>rd</sup> Floor – City Hall  
100 Military Plaza  
San Antonio, TX 78205

TO GRANTEE:

- If mailed:

Farid F. Nagji, SVP  
Argo Group US, Inc.  
10101 Reunion Place, Suite 500  
San Antonio, Texas 78216

Byron L. LeFlore, Jr.,  
Executive Counsel  
Argo Group, US, Inc.  
10101 Reunion Place, Suite 500  
San Antonio, Texas 78216

#### **SECTION 24. INCORPORATION OF EXHIBITS**

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – ACKNOWLEDGEMENT OF LEASE

Exhibit B – PARKING AGREEMENT

*Signatures appear on next page.*

**WITNESS OUR HANDS, EFFECTIVE as of September \_\_\_\_, 2011 (the "EFFECTIVE DATE"):**

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2011-09-15-\_\_\_\_ and GRANTEE pursuant to its authority.

**GRANTOR:**

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

\_\_\_\_\_  
Sheryl L. Sculley  
CITY MANAGER

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
CITY ATTORNEY

**GRANTEE:**

**ARGO GROUP US, INC.**  
a Delaware corporation

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

ATTEST:

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

## EXHIBIT A: ACKNOWLEDGEMENT OF LEASE

This Certificate of Lease is executed by Argo Group US, Inc. ("Tenant") and International Bank of Commerce ("Landlord") in favor of the City of San Antonio (the "City"), pursuant to the terms of that certain Economic Development Program Grant Agreement (the "Agreement") dated \_\_\_\_\_ by and between the City of San Antonio and Tenant.

In furtherance of the requirements of the Agreement, the Landlord and Tenant do hereby certify to City as follows:

1. Landlord and Tenant have entered into that certain lease agreement dated \_\_\_\_\_, (the "Lease") pertaining to certain premises located in Landlord's building commonly known as 175 E. Houston Street, San Antonio, Texas.

2. The Lease has a term of at least ten (10) years, exclusive of renewal options.

3. The Lease is for approximately 57, 712 rentable square feet of space located in Landlord's building, and contains certain rights of Tenant to further expand the premises demised thereunder.

4. The only rights set forth in the Lease for either Landlord or Tenant to terminate the Lease are summarized as follows:

- a. In the event of casualty or condemnation, Landlord and Tenant each have certain termination rights more particularly detailed in the Lease.
- b. Landlord has the right to terminate the Lease if an "Event of Default" has occurred and is continuing by Tenant under the Lease. Landlord also has certain termination rights upon the abandonment of the premises demised under the Lease by Tenant (even where such abandonment is not an "Event of Default").
- c. Tenant has the right to terminate the Lease if (i) Tenant loses its parking rights the Agreement by and between the City and Tenant and dated \_\_\_\_\_ pertaining to parking spaces at the City's garage located at 400 N. St. Mary's, San Antonio, Texas, through no fault of Tenant and (ii) Landlord does not obtain comparable substitute parking for Tenant within one hundred eighty (180) days of such loss.
- d. Landlord and Tenant each have the right to terminate the Lease if Tenant does not reach an agreement acceptable to Tenant with the City with respect to certain economic development incentives and parking rights for the 400 N. St. Mary's garage on or before September 22, 2011.

IN WITNESS WHEREOF, this Certificate is executed as of the \_\_\_\_ day of \_\_\_\_\_,  
2011.

International Bank of Commerce

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

Argo Group US, Inc.

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

**EXHIBIT B: PARKING AGREEMENT**

## **PARKING AGREEMENT OF THE CITY OF SAN ANTONIO**

This Parking Agreement (hereinafter referred to as the "Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "OWNER"), a Texas Municipal Corporation acting by and through its City Manager and ARGO GROUP US, INC., a corporation formed in accordance with the laws of the State of Delaware, (hereinafter referred to as "ARGO") for the use of parking spaces located at 400 N. St. Mary's Street, San Antonio, Bexar County, Texas 78205, known as the City-owned St. Mary's St. Parking Garage (hereinafter referred to as "the LICENSED PREMISES"). Together, the City and ARGO may be referred to as "the Parties."

### **I. TERM/RENEWAL**

**1.1** The initial term ("Initial Term") of this Agreement shall be for ten (10) years commencing on the date (herein the "Commencement Date") which is the "Commencement Date" of the term of that certain Lease Agreement ("Lease") by and between ARGO and International Bank of Commerce for premises located in the building located at 175 E. Houston St., San Antonio, TX 78205 and terminating on the last day of the last month of the Lease term. Notwithstanding that the Initial Term will not begin until the Commencement Date, this Agreement shall be a binding contract between the Parties upon the execution and delivery of same by the Parties.

**1.2** It is agreed that ARGO shall have the right to extend the Initial Term of this Agreement for two (2) additional five (5) year periods (each a "Renewal Term") by sending OWNER written notice of its election to so extend the Term for either such period at least one hundred eight (180) days prior to the expiration of the Initial Term, or first Renewal Term, as applicable. Any such renewal and extension shall be on the terms provided herein, however, ARGO and OWNER acknowledges that the License Fee owed hereunder during any such Renewal Term shall be at market rate for monthly parking then established by either: 1) the City of San Antonio by an adopted City ordinance for monthly parking at all City-owned parking garages, as same may be adjusted from time to time, if the City of San Antonio or any related entity including the HOUSTON STREET TIRZ No. 9 is the owner of the LICENSED PREMISES at such time; or 2) by the average of the City of San Antonio monthly parking rate at all City-owned garages and monthly parking rates at privately owned garages in the downtown area, if the City of San Antonio or any such related entity is not then the owner of the LICENSED PREMISES. If OWNER increases such License Fee for or during any Renewal Term, it shall send ARGO at least sixty (60) days prior written notice of its intent to do so and ARGO may elect to terminate this Agreement by sending OWNER written notice thereof prior to the date any such rate increase takes effect. For purposes of this Agreement the "Term" hereof shall mean the Initial Term and any Renewal Term.

### **II. LICENSED PREMISES**

**2.1** OWNER, for and in consideration of the payment of the LICENSE FEES set forth below and the covenants and agreements hereinafter contained, does hereby grant to ARGO a license to utilize up to THREE HUNDRED (300) parking spaces within the LICENSED

PREMISES as requested according to Section 5.10 of this Agreement, as depicted in Exhibit A, which is attached hereto and incorporated herein, to have and to hold for the Term of this Agreement on the terms and conditions set forth in this Agreement . In addition to the right to use such parking spaces, throughout the Term of this Agreement, ARGO and the others entitled to use the parking spaces designated to ARGO hereunder shall also have the right to use all other portions of the parking structure containing such spaces including, without limitation, all driveways, stairways, elevators and other facilities intended for the use of all parking patrons at the LICENSED PREMISES.

**2.2** The LICENSED PREMISES may be used by ARGO as parking for its officers, directors, agents, contractors, and employees and for the employees, officers, directors, agents and contractors of any parent, subsidiary or affiliated entity, or any assignee or subtenant of ARGO, occupying any part of the premises demised under the Lease.

**2.3** ARGO shall not occupy or use, nor permit any portion of the LICENSED PREMISES to be occupied or used for any business or purpose which is not the same as the purpose stated in Section 2.2 above or is unlawful in part or in whole or deemed to be disreputable in any manner.

**2.4** OWNER reserves the right to create and enforce all reasonable, necessary and proper rules and policies for the management and operation of the LICENSED PREMISES, and may eject from the LICENSED PREMISES, any person or persons it reasonably deems has violated said rules and policies. ARGO, and those authorized to use the LICENSED PREMISES by ARGO shall comply with all reasonable rules and regulations of the OWNER governing the use of the LICENSED PREMISES. ARGO and those individuals authorized to utilize the parking spaces designated to ARGO shall use the spaces in such a manner as not to create any nuisance or otherwise unreasonably interfere with OWNER's business operations as they pertain to the operation of the LICENSED PREMISES as a public parking garage. Any rules and/or regulations adopted by OWNER from time to time with respect to the LICENSED PREMISES or adopted by any owner or operator of the LICENSED PREMISES during the Term of this Agreement shall not discriminate against ARGO vis-a-vis any other users of the parking garage, will not require the payment of any additional monies by ARGO, and may not conflict with any rights granted to ARGO under this Agreement. ARGO and those authorized to use the LICENSED PREMISES by ARGO shall not be obligated to comply with any rule or regulation adopted by the OWNER which violates the foregoing.

### **III. ACCEPTANCE AND CONDITION OF LICENSED PREMISES**

**3.1** From and after the effective date of this Agreement OWNER shall maintain the LICENSED PREMISES in good condition and repair (including, without limitation, all structural elements, roofs, exterior walls, mechanical, electrical and plumbing systems, elevators, lighting systems and equipment) and keep same in compliance with all applicable laws, rules and regulations of any governmental authority pertaining to same from time to time including, without limitation, the Americans With Disabilities Act, as same may be modified or amended from time to time. From and after the effective date of this Agreement through the expiration or earlier termination of this Agreement, OWNER shall ensure the continued operation of the LICENSED PREMISES as a public parking garage consistent with the way same is operated on

the effective date of this Agreement. OWNER may not make any material alterations or additions to LICENSED PREMISES or any systems, equipment or facilities which are a part thereof or which serve same, if such alteration or addition would materially interfere with the rights of ARGO hereunder to use the LICENSED PREMISES. OWNER must also cause the LICENSED PREMISES to be lighted twenty-four (24) hours a day, throughout the Term of this Agreement in accordance with its current operating practices for the building.

**3.2** ARGO agrees that, except as set forth in this Agreement, (i) no representations as to the condition of the LICENSED PREMISES and (ii) no promises to alter, repair, or improve the LICENSED PREMISES, either before or after the execution hereof, have been made by OWNER.

#### IV. USE

**4.1** While ARGO will be given as many access cards as it requires for use in accordance with this Agreement, up to a maximum of three hundred (300), it is expressly agreed that the spaces provided for its use shall be on a non-exclusive basis; however, OWNER agrees that at all times between the hours of 6:00 a.m. to 7:00 p.m. Monday through Friday, during the Term, OWNER will ensure that a number of parking spaces will be available at the Leased Premises equal to the number of parking cards then held by ARGO and that OWNER must ensure that at least fifty (50) parking spaces in the LICENSED PREMISES are available for ARGO's designated use after such working hours and on weekends throughout the Term.

4.1.1 If OWNER fails to ensure that the required number of parking spaces are available on more than ten (10) days in any calendar year, for reasons other than damage by casualty or condemnation, OWNER shall be in default under this Agreement and, ARGO, at its option, and in addition to any other rights or remedies which may be available to it, may obtain injunctive or other equitable relief, including, without limitation, specific performance to ensure that the OWNER makes the required parking spaces available at all times during the Term of this Agreement. OWNER acknowledges such action may be by mandamus or other procedure authorized by law.

4.1.2 In addition, on each day that it is documented that the total number of parking spaces designated to ARGO's use are not available at the LICENSED PREMISES due to OWNER's failure to reserve the amount of parking spaces designated for ARGO at the time, and any person authorized to use the parking spaces in the LICENSED PREMISES by ARGO is not able to park their car at the LICENSED PREMISES as a result, OWNER will provide for such user to have free parking in the nearest available City of San Antonio garage provided same may not be farther away from the LICENSED PREMISES than a one mile radius, or if none exist another comparable parking structure within such radius.

**4.2** ARGO agrees and specifically understands that this Agreement is confined to the privilege of using parking spaces within the LICENSED PREMISES and the "common areas" thereof as previously outlined and that the permission given herein does not grant ARGO

any leasehold estate in the LICENSED PREMISES. OWNER retains dominion, possession, and control of said LICENSED PREMISES, including access thereto, at all times. Notwithstanding the foregoing, the rights granted to ARGO under this Agreement shall constitute a "License coupled with an interest" and may not be terminated by the OWNER except as expressly allowed by the terms of this Agreement.

4.3 ARGO shall use reasonable efforts to ensure that those individuals authorized by ARGO to use said LICENSED PREMISES shall in no way obstruct ingress or egress or limit accessibility to OWNER's property or the general public or by others having licenses or other interests in or about the LICENSED PREMISES.

4.4 **RESERVED.**

4.5 OWNER, so long as the City of San Antonio owns the LICENSED PREMISES, reserves the right to restrict the use of the LICENSED PREMISES on days when its use is required for City of San Antonio health and safety emergencies, at the sole discretion of OWNER. In such cases, OWNER will give notice to ARGO, as is reasonable under the circumstances of such restricted use and any License Fees attributable to periods of time that use of the LICENSED PREMISES is so restricted will be abated.

4.6 No alterations or additions to the LICENSED PREMISES are permitted or will be performed by ARGO.

## V. OPERATIONS

5.1 OWNER does not warrant the security of vehicles or persons under this Agreement and accepts no responsibility or liability for any loss or damage of any kind for any reason.

5.2 ARGO's employees must not exceed five (5) mph within the LICENSED PREMISES, must afford the right-of-way to pedestrians, and must extend courtesy to other drivers.

5.3 ARGO acknowledges that vehicles parking in the LICENSED PREMISES shall be of a passenger-type trucks, cars and motorcycles only. The following will not be allowed in the LICENSED PREMISES:

- a. Vehicles with a gross vehicle weight rating (GVWR) in excess of 20,000 lbs;
- b. Vehicles longer or wider than can be reasonably and safely parked in a standard-sized parking space;
- c. Any type of heavy equipment;
- d. Storage of vehicles; and
- e. Any type of other equipment or materials.

5.4 ARGO acknowledges that its employees authorized to park under the terms of this Agreement shall do so only when performing employment duties and only during the working hours of ARGO and the respective employee.

5.5 OWNER will provide ARGO with automatic monthly parking cards for ingress and egress to the LICENSED PREMISES for use by employees of ARGO in accordance with Section 4.1

5.6 ARGO shall report any lost or stolen parking cards to the OWNER. ARGO will be responsible for paying a Twenty Dollar (\$20.00) fee for any replacement cards that may be necessary due to loss or theft.

5.7 ARGO shall maintain a current list of all employees with the respective assigned parking card number. This updated list shall be provided to the OWNER on a monthly basis, no later than the 10<sup>th</sup> day of each month. ARGO shall be solely responsible for disbursing parking cards to employees, retrieving parking cards from former employees and requesting replacement cards for any lost or stolen parking cards.

5.8 ARGO acknowledges that parking provided in the LICENSED PREMISES through this Agreement will not be designated with signage as reserved parking, but ARGO employees may park in any available spots.

5.9 ARGO may request OWNER to provide Visitor Validation Program for its visitor parking at LICENSED PREMISES. The validation process will be as follows:

5.9.1 OWNER may validate ARGO Tickets for one-hour, two-hour, and full-day periods.

5.9.2 OWNER determines the Visitor Validation method, and OWNER may change that method from time to time.

5.9.3 ARGO must obtain and maintain at its own expense all equipment necessary for operating its end of the Visitor Validation method in effect at any given time,

5.9.4 ARGO will be responsible for payment of the validations based on the current parking rates at LICENSED PREMISES. The OWNER's standard rates for parking in the LICENSED PREMISES may be increased from time to time and the standard rate in effect will be applied.

5.9.5 OWNER will notify ARGO of any change in rates at the LICENSED PREMISES.

5.9.6 ARGO will be invoiced for any validations monthly, with payment due no later than ten (10) days from due date on invoice.

5.10 Following the execution of this Agreement and prior to the Commencement Date, OWNER shall disburse upon written request from ARGO up to THREE HUNDRED (300) parking cards to ARGO. ARGO, however, shall only request the number of parking passes needed upon the Commencement Date and shall request additional parking cards, as needed, by providing the OWNER at least thirty (30) days prior written notice to deliver the additional parking cards.

## VI. LICENSE FEES

6.1 Subject to the terms and conditions of this Agreement, during the Term, ARGO will pay the OWNER a monthly license fee of \$87.00 per parking space made available for ARGO's designated use under this Agreement. Such rate will be fixed for the first five (5) years of the Term. If at any time after expiration of the fifth (5<sup>th</sup>) year of the Term this Agreement, OWNER elects to raise the rate it charges for monthly parking at the LICENSED PREMISES and raises such rate on a uniform, non-discriminatory basis for all monthly parkers at the LICENSED PREMISES, it will send ARGO at least thirty (30) days advance written notice of its election to do so and ARGO will thereafter pay the increased rate. Notwithstanding any of the foregoing, it is expressly agreed that regardless of whether the LICENSED PREMISES are owned by the City of San Antonio or by any successor, that at any time during the Initial Term the License Fees may not exceed the rate then charged by the City of San Antonio (regardless of whether City of San Antonio owns the LICENSED PREMISES) in comparable parking garages owned by it and located in the downtown San Antonio area, being defined as the area bordered by US Highway 281 on the east, Interstate 10 on the south and west, and Interstate Highway 35 on the north. If the City of San Antonio owns more than one garage within such area, the License fee allowed to be charged by the OWNER or successor owner at any given time shall be limited to the average of such rates. If the City of San Antonio owns no other such garages, the License Fee may not exceed prevailing market rates for monthly parking in garages located in, or adjacent to, office buildings in downtown San Antonio and used primarily for monthly parking of tenants of such buildings. During any Renewal Term the License Fee may not exceed the amounts set forth in Section 1.2 of this Agreement.

Notwithstanding the foregoing, in accordance with the terms and conditions of that certain Chapter 380 Economic Development Program Grant Agreement by and between City of San Antonio and ARGO dated of even date herewith (the "Grant Agreement"), City of San Antonio and ARGO covenant and agree that, so long as the Grant Agreement has not been terminated, the following payment mechanism shall apply to payments of the License Fees for the use of the parking spaces for the Term:

6.1.1 City of San Antonio shall "pay" ONE HUNDRED PERCENT (100%) of the License Fees owed by ARGO hereunder for the first ten (10) years of the Term of this Agreement.

6.2 **[RESERVED]**

6.3 License Fees shall be paid at the following address:

City of San Antonio  
Downtown Operations Office - Parking Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
210-207-8266

6.4 If at any time during the Term of this Agreement City of San Antonio sells the LICENSED PREMISES, it is agreed that the monthly License Fees owed by ARGO hereunder shall be deemed to be reduced for the periods of time during the Term from and after the date of such sale by the amount of the License Fees which would have been paid by the City of San Antonio during such period of time pursuant to the terms of Section 6.1.

6.5 If at any time during the Term of this Agreement, ARGO's use of the LICENSED PREMISES and the parking spaces reserved herein for its use shall be impaired or restricted as a result of the negligence or willful misconduct of OWNER, its agents, employees or contractors, or as a result of OWNER's failure to perform its obligations under this Lease then it is expressly agreed that the License Fees hereunder shall abate proportionately to the extent ARGO's use of the parking spaces and/or LICENSED PREMISES is so impaired until such time as the use of the parking spaces and/or LICENSED PREMISES by ARGO is no longer so impaired. It is expressly agreed that this abatement shall accrue independently of, and cumulatively of, any rights which ARGO may have in the event that any failure by OWNER to perform its obligations hereunder rises to a default under the terms of Section 7.2 of this Agreement. Additionally, during any such period of interruption, OWNER must provide replacement parking for the spaces which are not available to ARGO in accordance with the procedures and requirements outlined in Section 4.1 of this Agreement.

## VII. DEFAULT AND REMEDIES

7.1 Default. ARGO shall be in default under this Agreement if ARGO:

- (i) fails to pay any License Fees which ARGO is obligated to pay hereunder when due and such failure continues uncured for a period of ten (10) days following ARGO's receipt of written notice of such failure from OWNER;
- (ii) fails to perform any other material obligation hereunder and such failure shall continue uncured for a period of thirty (30) days, or such longer period of time as may be reasonably necessary to cure the failure in question, from and after the date ARGO receives written notice of such failure from the OWNER; or
- (iii) except as permitted under Article XI, sells, transfers, conveys or assigns of this Agreement without prior approval of OWNER, as provided in Article XI. Assignment.

Following the occurrence of any event of default by ARGO hereunder, OWNER shall be entitled to pursue any and all rights and remedies available to it at law or in equity as a result of such default; provided, however, that if the OWNER terminates this License then OWNER shall not

be entitled to pursue any claim for recovery of License Fees and other amounts which would be owed under this Agreement for periods from and after the date of such termination, but OWNER shall be entitled to recover any License fees and other amounts owed for periods prior to such termination. Furthermore, to the extent that applicable law would allow the OWNER to terminate ARGO's right to use and possess the LICENSED PREMISES without terminating the Agreement itself, OWNER hereby waives such right and agrees that such remedy shall not be available to OWNER in the event of a default by ARGO hereunder.

7.2 OWNER Default. In the event OWNER fails to perform any of its obligations under this Agreement and such failure continues for fifteen (15) days, or such longer period of time as may be reasonably necessary to cure the failure in question, from and after the date ARGO sends written notice of such failure to OWNER, OWNER shall be in default hereunder and ARGO shall be entitled to exercise any and all rights and remedies available to it at law or in equity as a result of such default, including, without limitation, the right to bring an action for specific performance against OWNER to compel OWNER to perform its obligations under this Agreement, whether by mandamus or otherwise. In addition, if such default results in an actual or constructive eviction of ARGO, ARGO may, at its option and without prejudice, and in addition to any other rights or remedies to which it may be entitled, terminate this License. City of San Antonio, to the extent permitted by law, hereby waives any rights it may have to assert a defense, or other claim, of sovereign immunity, whether as immunity from liability or immunity from suit, or otherwise, in any enforcement action brought by ARGO as a result of City of San Antonio's default as OWNER hereunder.

### **XIII. TERMINATION/REDUCTION**

8.1 For purposes of this Agreement, "termination" shall mean termination by expiration of the Term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.

8.2 Surrender. Regardless of how this Agreement is terminated, ARGO shall vacate the LICENSED PREMISES within twenty-four (24) hours of termination of this Agreement.

8.3 Termination by ARGO. Notwithstanding anything contained in this Agreement to the contrary, ARGO may terminate this Agreement if (i) ARGO elects not to enter into the Lease for any reason, or (ii) after entering into the Lease, if the Lease is terminated for any reason. Should ARGO elect to so terminate this Agreement, it shall send OWNER written notice of such termination and the termination will be effective fifteen (15) days from and after the date on which ARGO sends such notice. Upon any such termination neither ARGO nor OWNER shall have any further rights or obligations one unto the other hereunder, except any such termination shall not effect either's liability to the other arising out of any obligations under this Agreement prior to the date of such termination.

8.5 Reduction in Spaces by ARGO. At any time during the term hereof, ARGO may also opt to reduce the number of parking spaces reserved for ARGO's exclusive use hereunder by sending OWNER at least thirty (30) days of its election to do so. Should ARGO so elect to

reduce the number of parking spaces in the LICENSED PREMISES, the License Fee shall be reduced accordingly from and after the effective date of such reduction.

## IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of the Term of this Agreement, ARGO shall furnish an original completed Certificate(s) of Insurance to OWNER and the City Clerk's Office, evidencing that ARGO is maintaining the insurance required of it under this Agreement. The original certificate(s) must be mailed to OWNER. OWNER shall have no duty to allow ARGO to occupy the LICENSED PREMISES until such certificate has been delivered to OWNER, and, so long as City of San Antonio is the OWNER, no officer or employee, other than OWNER's Risk Manager, shall have authority to waive this requirement.

9.2 Subject to ARGO's right to maintain reasonable deductibles in such amounts as it may elect from time to time, ARGO shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at ARGO's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-/VIII or better by A.M. Best Company, in the following types and amounts:

| <u>TYPE</u>   | <u>AMOUNT</u>  |
|---|--|
| 1. Workers' Compensation<br>Employers' Liability  | Statutory<br>\$500,000/\$500,000/\$500,000   |
| 2. Commercial General (public) Liability Insurance to include coverage for the following: |  |
| a. Premises operations  |  |
| *b. Independent contractors   | Bodily Injury and Property<br>Damage of \$1,000,000 per<br>occurrence, with a \$2,000,000<br>General Aggregate, or its equivalent,<br>in umbrella or excess liability coverage |
| c. Personal Injury  |  |
| d. Contractual liability  |  |
| *e. Explosion, collapse, underground  |  |
| f. Broad form property damage, to<br>include fire legal liability                         |  |
| 3. Business Automobile Liability  | Combined Single Limit for Bodily<br>Injury and Property Damage of<br>\$1,000,000 per occurrence  |
| a. Owned/lease vehicles   |  |
| b. Non-owned vehicles   |  |
| c. Hired vehicles   |  |

\*If applicable

9.3 OWNER shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by OWNER.

9.4 ARGO agrees that, with respect to the above required insurance, all insurance agreements and Certificate(s) of Insurance will contain the following required provisions:

- Name OWNER and its officers, employees, volunteers and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured at the LICENSED PREMISES, with the exception of the workers' compensation and professional liability policies;
- Provide that to the extent OWNER is an additional insured on ARGO's insurance policy the insurance of ARGO will be "primary" over any insurance maintained by OWNER;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of OWNER.

9.5 ARGO shall notify OWNER in the event of any notice of cancellation, or non-renewal of any required insurance policy and shall give such notices not less than five (5) business days after ARGO receives same from its insurer. In addition, ARGO must deliver a replacement Certificate of Insurance prior to the cancellation or expiration of the policy in question. All notices shall be given to OWNER at the following address:

City of San Antonio  
Downtown Operations Office - Parking Division  
P.O. Box 339966  
San Antonio, Texas 78283-3966

9.6 If ARGO fails to maintain the aforementioned insurance, OWNER may obtain such insurance, and invoice ARGO for the cost of same; however, procuring of said insurance by OWNER is an alternative to other remedies OWNER may have, and is not the exclusive remedy for failure of ARGO to maintain said insurance or secure such endorsement.

9.7 Nothing herein contained shall be construed as limiting, in any way, the extent to which ARGO may be held responsible for payments of damages to persons or property resulting from ARGO's performance under this License.

9.8 OWNER Insurance. (a) OWNER shall keep the LICENSED PREMISES, improvements, alterations, and additions that are located within the LICENSED PREMISES insured against damage or destruction by fire and other casualty, including the perils commonly covered under a so-called "special form" property insurance (ISO) Form CP 10 30 or its future equivalent if same is discontinued) and such other perils as are customarily insured against by owner's of similar parking structures in the San Antonio, Texas area to the extent of 100 percent of the actual replacement cost thereof.

(b) OWNER shall maintain commercial general liability insurance against claims on account of personal injury, bodily injury, death or property damage incurred upon any part of the LICENSED PREMISES, contractual liability coverage with this Lease as a covered contract, and

automobile liability insurance. Such insurance shall have a combined single limit of not less than \$5,000,000 per occurrence.

(c) All OWNER's insurance policies required pursuant to this Section 9.8 shall be issued by one or more responsible insurance companies having an A.M. Best's rating of A-/VIII or better and licensed to do business in the jurisdiction where the LICENSED PREMISES are located and shall be written on an "occurrence" basis, with deductibles not exceeding commercially reasonable amounts for the respective perils covered on its property insurance and \$100,000 on the commercial general liability policy. OWNER shall deliver to ARGO certificates of all such policies within ten days of the effective date of such policies and certificates of all renewal policies at least ten days prior to the expiration of any such policies, and upon ARGO's written request, OWNER shall also deliver to ARGO duplicate copies of such policies and renewals thereof.

(d) So long as City of San Antonio is the owner of the LICENSED PREMISES, the foregoing shall not apply and the following insurance requirements shall pertain to "OWNER":

The City of San Antonio's Defined Self- Insurance Fund was created by City Council for the sole purpose of providing defense of and payment of claims against the City of San Antonio and its officers, employees, members of boards and commissions when and while acting in the ordinary course of their duties, powers and functions. Pursuant to the Texas Tort Claims Act, §101.23, the current maximum limits of liability for claims against a City of San Antonio employee is \$250,000 per claimant and \$500,000 per occurrence. Throughout the Term, City of San Antonio shall maintain such fund in amounts it deems reasonably appropriate.

With respect to Property Insurance, City of San Antonio has purchased and will maintain throughout the Term, a blanket commercial property insurance, which includes coverage for the full replacement value of the LICENSED PREMISES from the perils of fire, wind, hail, theft or vandalism and such other perils as the City of San Antonio customarily insures its properties against from time to time and is subject to a \$200,000 per occurrence deductible (or such greater deductible as City of San Antonio may reasonably elect to carry from time to time).

## X. INDEMNITY

**Subject to the waiver and release set forth below, ARGO covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, OWNER and the elected officials, employees, officers, directors, volunteers and authorized representatives of OWNER, individually or collectively, from and against any and all claims, damages, judgements, losses, expenses, fees, causes of action, liability and suits of any kind in law or in equity: arising out of any negligent or willfully wrongful act or omission of ARGO or any persons authorized by ARGO to use the parking spaces at the LICENSED PREMISES by ARGO, at the LICENSED PREMISES, (including any damage to or loss of any property belonging to : (a) ARGO or any one using any of the LICENSED PREMISES by, through or under ARGO, or (b) OWNER and the elected officials, employees, officers, directors, volunteers and representatives of OWNER) except to the extent same arises out of the negligence or**

willful misconduct of OWNER, its officers, employees, agents, contractors, volunteers or other representatives.

OWNER covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, ARGO and those authorized to use the LICENSED PREMISES by ARGO, individually or collectively, from and against any and all claims, damages, judgments, losses, expenses, fees, causes of action, liability and suits of any kind in law or in equity: arising out of any negligent or willfully wrongful act or omission of OWNER or any of OWNER's employees, elected officials, officers, directors, agents, volunteers, and/or representatives, at the LICENSED PREMISES, (including any damage to or loss of any property belonging to ARGO and/or any person authorized to use the LICENSED PREMISES by ARGO) except to the extent same arises out of the negligence or willful misconduct of ARGO and/or any person authorized to use the LICENSED PREMISES by ARGO. Notwithstanding any of the foregoing appearing to the contrary, it is expressly agreed that the indemnity portion of the preceding sentence shall apply to the City of San Antonio, as OWNER, only to the extent that the City of San Antonio may lawfully make such indemnity but shall fully apply to any party succeeding to the City of San Antonio's ownership interest in the LICENSED PREMISES.

IN THE EVENT ARGO AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

ARGO shall promptly advise OWNER in writing of any claim or demand against OWNER or ARGO known to ARGO for which ARGO indemnifies OWNER under this Agreement.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT APPEARING TO THE CONTRARY, OWNER HEREBY RELEASES ARGO AND ANY PERSON OR ENTITY UTILIZING THE LICENSED PREMISES BY, THROUGH OR UNDER ARGO FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE LICENSED PREMISES OR THE BUILDING OF WHICH SAME ARE A PART AND/OR DAMAGE TO OR LOSS OF ANY PERSONAL PROPERTY OF OWNER LOCATED THEREIN, AND ANY LOSS OF BUSINESS OR REVENUE RESULTING THEREFROM, THAT WOULD BE COVERED FROM TIME TO TIME BY THE PROPERTY INSURANCE THE OWNER IS OBLIGATED TO CARRY UNDER THIS AGREEMENT, OR ACTUALLY CARRIES WITH RESPECT TO THE LICENSED PREMISES, IF BROADER. OWNER AGREES THAT THIS RELEASE WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF ANY

**RELEASED PARTY BUT SAME WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY RELEASED PARTY.**

## **XI. ASSIGNMENT**

**11.1** Except as set forth below, ARGO shall not assign or transfer any interest in this Agreement to any other person or entity without OWNER's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary for an assignment or other transfer of ARGO's interest in this Agreement to a Related Organization (being defined as a parent, subsidiary, direct or indirect at any level, or affiliate organization of ARGO or any entity which succeeds to or receives an assignment of ARGO's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of ARGO, or any parent, subsidiary or affiliate of such entity). To be eligible for the benefits of this Agreement, the Related Organization must agree in a writing to comply with all applicable terms herein from and after date it succeeds to ARGO's interest in this Agreement. Furthermore, ARGO may, without the consent of OWNER, assign its interest hereunder, and/or sublicense all or any part of the spaces reserved to it under this Agreement, to any entity which (i) receives an assignment of ARGO's interest in the Lease or (ii) sublets all or any portion of the premises demised to ARGO under the Lease, provided ARGO must send OWNER notices of any such assignment or subletting within ten (10) days of the date of same.

**11.2** OWNER may assign this Agreement to any entity which acquires ownership of the parking structure in which the LICENSED PREMISES are a part provided that the assignee agrees in writing to assume all obligations of OWNER under this Agreement, in a writing upon which ARGO may rely. OWNER shall provide ARGO with notice of any such an assignment no later than thirty (30) days prior to the effective date of same.

## **XII. DAMAGE TO LICENSED PREMISES**

**12.1** Subject to the waiver set forth in Article X, ARGO shall be responsible for any and all damages to the LICENSED PREMISES caused by the negligence or willful misconduct of its employees in using the LICENSED PREMISES.

## **XIII. DESTRUCTION OF LEASED PREMISES**

**13.1** If the LICENSED PREMISES are destroyed in whole or in part by fire, other casualty, during the term of this Agreement, OWNER must restore same as soon as reasonably possible under the circumstances but in any event within two hundred seventy (270) days of the date of such damage. Should OWNER fail to do so OWNER shall be in default and ARGO may in such event terminate this Agreement and bring an action against OWNER for any and all damages it may suffer or incur as a result of such default. If any such destruction materially impairs or prevents ARGO from using any of the parking spaces in the LICENSED PREMISES reserved to it hereunder, it is expressly agreed that the License Fees attributable to such spaces shall be abated from the date of such damage until the date on which OWNER completes its restoration activities and ARGO can again use such spaces.

In the event that any such damage at the LICENSED PREMISES would result in less than the designated number of parking spaces being made available to ARGO on any day, OWNER must provide alternative parking as follows:

(a) To the extent space is available in any OWNER owned garages, OWNER must first make spaces available in such garages equal in number to the number of spaces which ARGO cannot reasonably use in the LICENSED PREMISES, with preference being given to those garages owned by OWNER which are within a one (1) mile radius of the LICENSED PREMISES.

(b) If insufficient spaces are available in such garages, then OWNER must provide other alternative parking as is reasonably acceptable to ARGO. Any time OWNER is providing any alternative parking, OWNER must provide transportation at no cost to ARGO, between the alternative parking area(s) and the LICENSED PREMISES at regularly scheduled intervals reasonably acceptable to ARGO so that its authorized users may be able to timely get to, and return from, work and to safely travel from the alternative parking area(s) to the LICENSED PREMISES during regular business hours.

In calculating the number of spaces unavailable to ARGO, it is expressly agreed that the total number of parking spaces in the LICENSED PREMISES which are rendered unusable as a result of the casualty or other damage shall be multiplied by a fraction, numerator is the number of parking spaces available to ARGO and the denominator is the total number of monthly parkers in the LICENSED PREMISES. In addition, the total number of spaces available for ARGO in any alternative parking area shall be calculated by multiplying the number of available spaces in any alternative parking facility times a fraction, the numerator of which is the number of displaced ARGO parkers and the denominator of which is the total number of displaced parkers from the LICENSED PREMISES. In the event OWNER fails to provide the required alternative spaces and/or transportation as set forth in this section, OWNER acknowledges that ARGO may seek specific performance and other equitable relief compelling OWNER to perform its obligations under this section, in addition to seeking any other rights and remedies available to ARGO at law or in equity as a result of OWNER's failure to do so. Such rights and remedies shall be available to ARGO without a necessity of notice or opportunity to cure being given CITY regardless of any other provision in this Agreement appearing to the contrary.

In the event the LICENSED PREMISES are ever not owned by the City of San Antonio, it is expressly agreed that the reference to alternative parking herein as owned by the OWNER shall continue to mean those owned by the City of San Antonio and not that owned by the successor owner of the LICENSED PREMISES, unless ARGO subsequently agrees to the contrary.

#### **XIV. CONDEMNATION**

If, at any time during the Term, the entirety of the LICENSED PREMISES should be taken for any public or quasi-public use under right of eminent domain or sale-in-lieu thereof this License shall terminate, unless such taking is effected by the City of San Antonio after it has conveyed its

ownership interest in the LICENSED PREMISES to a third party, in which event this License shall continue notwithstanding such taking. If, during the term, any portion of the LICENSED PREMISES is taken for public or quasi-public use by right of eminent domain for sale-in-lieu thereof, and such taking/sale is not by the City of San Antonio following a conveyance of its ownership interest in the LICENSED PREMISES to a third party, then ARGO may at its option (i) terminate this License in its entirety or (ii) accept a reduction in the number of parking spaces available to it hereunder by an amount equal to the product of the total spaces rendered unavailable as a result of such taking times a fraction the numerator of which is the total number of spaces designated for ARGO's use under this Agreement at such time and the denominator of which is the total number of spaces in the garage prior to such taking. In connection with any such taking, Tenant shall be entitled to receive a portion of the award/sales price paid by the condemning authority for the LICENSED PREMISES equal to the value of ARGO's lost parking rights under this Agreement. Any compensation awarded for a taking of OWNER's ownership in the LICENSED PREMISES, exclusive of the amount to which ARGO is entitled, shall be the property of OWNER. If after having conveyed the LICENSED PREMISES to a third party, the City of San Antonio subsequently reacquires the LICENSED PREMISES through eminent domain or sale-in-lieu thereof, such acquisition will be subject to the terms of this License and this License shall remain in effect following any such acquisition.

#### **XV. RELATIONSHIP OF PARTIES**

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

#### **XVI. NOTICE**

**16.1** Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended, or by hand delivery (courier or otherwise) with signature from the receiving party, to be given at the following address, or such other address as either Party may designate in a written notice to the other:

OWNER: City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

*and*

Director of Downtown Operations Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Until the Commencement Date:

ARGO: Argo Group US, Inc.  
10101 Reunion Place, Suite 500  
San Antonio, Texas 78216  
Attn: Byron L. LeFlore, Jr.  
Executive Counsel

## **XVII. AMENDMENTS**

**17.1** Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both OWNER and ARGO.

## **XVIII. EFFECT OF WAIVER**

**18.1** Either OWNER's or ARGO's waiver of a breach of one covenant or condition of this Agreement is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. OWNER's acceptance of License Fee installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the License Fees.

## **XIX. LEGAL CONSTRUCTION**

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

## **XX. SEVERABILITY**

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

## **XXI. CAPTIONS**

**21.1** The captions contained in this Agreement are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

**XXII. AUTHORITY**

**22.1** Each of OWNER and ARGO represent and warrant to the other that this Agreement has been authorized by all necessary action of such Party and that the person executing this Agreement on behalf of such Party is duly authorized to do so.

**XXIII. TIME**

**23.1** Time is of the essence with respect to the Parties obligations under this Agreement.

**XXIV. ENTIRE AGREEMENT**

**24.1** This Agreement, and any amendment thereto, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that neither the ARGO nor OWNER shall be bound by any term, condition or representation not herein written.

EXECUTED AND AGREED TO this the \_\_\_\_ day of September, 2011.

**CITY OF SAN ANTONIO**

**ARGO GROUP US, INC.**  
a Delaware corporation

\_\_\_\_\_  
Sheryl L. Sculley  
City Manager

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

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

# Exhibit A