

# Memorandum



DATE November 1, 2021

CITY OF DALLAS

TO Honorable Members of the Economic Development Committee:  
Tennell Atkins (Chair), Carolyn King Arnold (Vice-Chair), Adam McGough  
Omar Narvaez, Jaime Resendez, Chad West, and Gay Donnell Willis

SUBJECT **Proposed Lease Agreement with Refuge City of Dallas, Inc.**

On November 10, 2021, staff will seek City Council authorization for a 39-year lease agreement, with two 10-year renewal options, with Refuge City of Dallas, Inc. for approximately 12.865 acres of City-owned land located at 12000 Greenville Avenue.

The Refuge City of Dallas project was briefed to this committee on October 4, 2021. Over the past month, staff and the city attorney's office have finalized lease terms with Refuge City of Dallas, Inc., and a draft lease agreement is attached as **Exhibit A**. Any feedback on the lease terms received at the committee meeting will be incorporated into the final draft of the lease agreement, which will be circulated to you before November 10.

Refuge City of Dallas, Inc., as well as staff from Dallas Water Utilities, the Office of Homeless Solutions, the City Attorney's Office, and the Office of Economic Development, will be available to answer questions regarding the lease terms at the November 1 Economic Development Committee.

Regards,

A handwritten signature in blue ink that reads "Eric A. Johnson".

Dr. Eric A. Johnson

Chief of Economic Development & Neighborhood Services

c: Honorable Mayor and City Council  
T.C. Broadnax, City Manager  
Chris Caso, City Attorney  
Mark Swann, City Auditor  
Biliera Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager

Majed A. Al-Ghafry, Assistant City Manager  
Jon Fortune, Assistant City Manager  
Joey Zapata, Assistant City Manager  
M. Elizabeth Reich, Chief Financial Officer  
M. Elizabeth (Liz) Cedillo-Pereira, Chief of Equity and Inclusion  
Directors and Assistant Directors

## **GROUND LEASE AGREEMENT**

This Ground Lease Agreement (this "Lease") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between City of Dallas, a Texas municipal corporation, hereinafter referred to as "City" or "Landlord"; and Refuge City of Dallas, Inc., a Texas 501(c)(3) non-profit corporation, hereinafter referred to as "Refuge" or "Tenant."

### **RECITALS:**

A. City seeks to establish as a public purpose the promotion of youth services, living accommodations, counseling, mental health services, medical services, job training, and related services to women and children recovering from abuse and/or sex trafficking and individuals and families experiencing homelessness ("City's public purpose"); and

B. The City of Dallas is the owner of certain real property located in Dallas, Dallas County, Texas, containing approximately \_\_\_\_\_ acres and located east of Greenville Avenue, north of its intersection with Forest Lane, and more specifically described on Exhibit A attached hereto and depicted on Exhibit A-1 attached hereto (the "Land").

C. In accordance with Section 253.011 of the Texas Local Government Code, City is permitted to lease real property to a 501(c)(3) non-profit organization without complying with governmental notice and bidding requirements set forth in Section 272.001(a) of the Local Government Code or other law provided Tenant will use the real property in a manner that promotes the public purpose of the City as set forth in an agreement that also provides that if the nonprofit at any time fails to use the property for the specified public purpose, the real property will automatically revert to City.

D. Refuge is a qualifying 501 (c)(3) non-profit organization under Section 253.011, and has requested City ground lease the Land to enable Refuge to develop, construct, use, operate and maintain certain facility and related improvements to serve the City's public purpose; and

E. City recognizes the services provided by Refuge can promote and address the City's public purpose, including but not limited to within Lake Highlands and the surrounding communities; and

F. By Resolution No. \_\_\_\_\_ (the "Resolution"), approved by the Dallas City Council on \_\_\_\_\_, attached hereto and made a part hereof as Exhibit \_\_\_\_, City established the City's public purpose and authorized this Lease to permit Refuge to undertake the design, construction, use, operation, and maintenance of responsive improvements by Tenant on the Premises; and

G. Refuge desires to lease the Land and is willing to accept and lease the Land from the City, together with all appurtenant easement rights and appurtenances thereto, all buildings and improvements now located thereon, and together with non-exclusive use, in common with Landlord, its successors and assigns, of City's right, title, and interest, if any, in and to the adjoining and adjacent highways, roads, streets, lanes, whether public or private, reasonably required for the installation, maintenance, operation and service of sewers, water, gas, drainage, electricity and other utilities, for the use and benefit of the Improvements to be erected thereon (collectively, the "Premises"), pursuant to the terms and conditions hereinafter set forth in this Lease to serve the City's public purpose and develop, construct, use, operate and maintain responsive facility and related improvements, as more specifically described below ("Project"); and

H. For the Project, Refuge intends to construct, develop, use, operate, and maintain facilities and related improvements including but not limited to multi-family housing, survivor housing, individual housing, multiple farm stands, a child development center, an innovation hub, gymnasium, health clinic and multiple retail locations including a restaurant and coffee shop to accomplish the City's public purpose; and

I. Refuge, subject to the terms set forth in this Lease, is willing to sublease to the City, at City's election and no cost, up to \_\_\_\_\_ square feet of leasable space within the Premises for City's exclusive use to operate related services or public safety office within the Premises (the "City Space" as hereinafter defined); and

J. City agrees that purposing the Land for the Project to enable development of the Improvements will serve the City's public purpose; and

K. The Land and Improvements shall constitute the leased Premises; and

L. Refuge intends to fundraise for the Project and undertake the design, construction, and operation of the Improvements in phases, in accordance with the terms of this Lease; and

M. Refuge shall complete the initial fundraising for the Project, entailing a minimum of \$8 million dollars, no later than June 30, 2023; and

N. City is agreed to the phased development concurrent with Refuge's fundraising efforts; and

O. The recitals set forth above are incorporated herein and made a part of this Lease to the same extent as if set forth herein in full; and

P. All capitalized terms in this Lease shall have the meanings as set forth in this Lease unless expressly provided otherwise herein.

NOW THEREFORE, in consideration of the covenants and agreements to be performed by Refuge, and such other mutual covenants and considerations as herein provided, City and Refuge hereby enter into this Lease on the terms and conditions stated herein.

## **ARTICLE 1**

### **Definitions**

**Section 1.01.** The terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

(a) "Acquisition Corporation" shall mean an entity to which the Leased Premises shall be transferred as part of a package deal involving two or more of Tenant's facility locations.

(b) "Additional Rent" shall mean all amounts or monetary obligations due and owing to Landlord by Tenant under this Lease, other than Rent.

(c) "Bankruptcy Sale" shall mean a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy proceeding affecting the owner of such property.

(d) "Business Day" shall mean any calendar day other than Saturday, Sunday or federal banking holiday.

(e) "City Space" shall mean approximately 2,000 square feet, or less by agreement of the parties, of leasable space within the Premises Refuge, at City's election shall lease to City for City's exclusive use to operate related services or public safety office within the Premises, and which shall constitute part of the consideration for the land conveyance set forth in this Lease.

(f) "Commencement Date" shall mean the Effective Date.

(g) "Common Facilities" shall mean the parking areas, parking area lighting, streets, roads, driveways, fire corridors, underground service drives, tunnels, aisles, sidewalks, landscaped areas, utility and sewer lines and systems, and other facilities and service areas for common use, whether or not shown on final development plans developed by Tenant, and any additions thereto or enlargements thereof, which are located anywhere within the Leased Premises and serve the Leased Premises.

(h) "Condemnation" shall mean a taking of all or part of the real property interests in the Leased Premises, in one or more proceedings by the public authorities exercising the right of condemnation or eminent domain, or one or more conveyances to any public authority which has the power of condemnation or eminent domain and has threatened to exercise such power with respect to the real property interest conveyed.

(i) "Condemnation Award" shall mean any award paid or payable, whether or not in a separate award, to Landlord, Tenant or a Mortgagee after the Effective Date because of or as compensation for any Condemnation Proceeding, including: (1) any award made for any improvements that are the subject of the Condemnation Proceeding; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation Proceeding, as determined in Condemnation Proceeding; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation Proceeding, including for any prepayment premium under any Mortgage.

(j) "Condemnation Proceeding" shall have the meaning ascribed to such term in Section 12.01 of this Lease.

(k) "Dallas Water Utilities" or "DWU" shall mean the City of Dallas Department of Water Utilities.

(l) "Day" or "day" shall mean a calendar day, unless this Lease expressly designates such day as a Business Day.

(m) "Default" shall have the meaning ascribed to such term in Section 13.01 of this Lease.

(n) "Director" shall mean Director of the City of Dallas Office of Economic Development, and as to matters related to the real property portions of the Leased Premises, the Director of the City of Dallas Department of Water Utilities; and as to matters related to the carrying out of the City's public purpose, the Director of the City of Dallas Office of Homeless Solutions, as the case may be, and or their designee.

(o) "Environmental Law" shall have the meaning ascribed to such term in Section 18.01 of this Lease.

(p) "Event of Default" shall have the meaning ascribed to such term in Section 13.01 of this Lease.

(q) "Fee Estate" shall mean Landlord's fee interest in the Premises, including Landlord's reversionary interest in the Premises.

(r) "Fee Mortgage" shall mean any Mortgage that encumbers the Fee Estate.

(s) "Fee Mortgagee" shall mean a Mortgagee holding a Fee Mortgage.

(t) "Floor Area" shall mean, with respect to each building or structure on the Leased Premises, the number of square feet of floor area for such building lying within the exterior faces of exterior walls excluding, however, loading docks which are not heated or air conditioned.

(u) "Governmental Authorities" shall mean all federal, state, county, municipal and local governments, and all agencies, departments, commissions, boards, bureaus and offices thereof, having or claiming jurisdiction over the Premises or the Improvements.

(v) "Hazardous Substance" shall mean any materials, substances or wastes identified or regulated as "hazardous materials" or any similar designation in any way under Environmental Laws, including, without limitation (i) those materials identified or defined as solid wastes or as toxic or hazardous materials, wastes or substances under Environmental Laws, (ii) any materials, substances or wastes that are toxic, ignitable, corrosive or reactive and that are regulated by any local governmental authority, any agency of the State of Texas or any agency of the United States government, (iii) asbestos, (iv) petroleum and petroleum based products, (v) natural gas, (vi) urea formaldehyde foam insulation, (vii) polychlorinated biphenyls (PCBs), and (viii) freon and other chlorofluorocarbons

(w) "Improvements" shall mean any improvements constructed by Tenant on the Premises to serve the City's public purpose, including without limitation, the buildings and other improvements required to be constructed by Tenant on and otherwise made to the Premises and comprised of but not limited to multi-family housing, survivor housing, individual housing, multiple farm stands, a child development center, an innovation hub, gymnasium, health clinic and multiple retail locations including a restaurant and coffee shop; foundations, together with roof and all other exterior and interior structural work; exterior doors, windows, lighting and other fixtures; interior walls and wall coverings, doors and door hardware, windows and window treatments; lighting fixtures, floor coverings and building fixtures; signs; canopies; security systems, satellite and other fixed communication systems; safety glass; protective barriers; entrance driveways, sidewalks, parking lots, landscaping, streetscaping and sprinkler systems; plumbing, heating, air conditioning and ventilation systems; water, gas, cable, electrical, telephone and fiber optic mains, lines and systems; parking lot and sidewalk lighting; and sanitary and storm water sewers, lines and facilities and further including all modifications, changes, additions, alterations, replacements, substitutions and improvements of any part or portion of the foregoing. The Improvements will be constructed in compliance with the Final Site Plan(s) and other requirements of Section 6.01.

(x) "Institutional Lender" shall mean a bank, an investment bank, real estate finance company, an insurance company, a welfare, pension or retirement fund, or system of a state or municipality or of a corporation whose shares are listed on the New York Stock Exchange, or a real estate investment trust whose shares are listed on the New York Stock Exchange; provided, in each case, such entity is subject to the jurisdiction of the courts of the state where the Leased Premises are located.

(y) "Landlord" shall mean and include, at any given time and subject to the provisions of Section hereof captioned "Transfer of Landlord's Interest", Landlord herein named and each successor to or assignee of any interest of Landlord herein named under this lease.

(z) "Lease Year" shall mean a period of twelve (12) consecutive full calendar months. The first Lease Year shall begin on the Commencement Date (or the first day of the first calendar month following the Commencement Date if the Commencement Date is other than the first day of a calendar month), and each succeeding Lease Year shall commence on the anniversary date of the beginning of the first Lease Year.

(aa) "Leased Premises" shall mean Land and/or Tenant's Parcel together with the improvements thereon, including the Common Facilities.

(bb) "Leasehold Estate" shall mean all of the rights, title and interests of Tenant in, to and under the leasehold estate created and existing under this Lease, including without limitation, all rights, title and interests of Tenant to the Improvements, and the right to receive any and all pledges, fees, revenues, income, rents and other proceeds related thereto, subject to the reversionary interest of Landlord in the Premises.

(cc) "Leasehold Mortgage" shall have the meaning ascribed to such term in Section 8.03 of this Lease.

(dd) "Leasehold Mortgagee" shall have the meaning ascribed to such term in Section 8.03 of this Lease..

(ee) "Mortgage" shall mean any mortgage, lien, security interest, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument or agreement intended to grant real property (including leasehold) security for any obligation (including a promissory note, bond, note, certificate of obligation, certificate of participation or other instrument, evidencing a proportionate interest in payments due to be paid by the issuer) encumbering the Leasehold Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record.

(ff) "Mortgagee" shall mean any holder of a Mortgage, including, without limitation, any Leasehold Mortgagee.

(gg) "Mortgagee Protections" shall mean, with respect to any Mortgagee, all rights, protections, and privileges of such Mortgagee under this Lease, including: (1) any right to receive notices and/or to cure Defaults (including, in the case of a Leasehold Mortgagee, all Leasehold Mortgagee's Cure Rights); (2) in the case of a Leasehold Mortgagee, any requirement for the Leasehold Mortgagee's consent; and (3) all other rights, remedies, protection, privileges, and powers of such Mortgagee and anyone claiming through or under such a Mortgagee.

(hh) "Limited Build Zone" shall mean that area designated as such on Exhibit \_\_\_\_ attached hereto and incorporated for all purposes herein and reserved by the City for future Dallas Water Utilities Department purposes and uses, as determined by the Department and authorized by City to proceed, and upon which Tenant shall have no right to construct any permanently affixed, non-portable improvements without the Director of Water Utilities Department's prior written consent.

(ii) "Occupant" shall mean anyone entitled by ownership, lease, or other written agreement to use and occupy floor area within the Leased Premises including, without limitation, the parties hereto.

(jj) "Permittee" shall mean any Occupant and its officers, directors, employees, agents, partners, contractors, customers, visitors, and invitees.

(kk) "Person" shall mean any legally recognized entity, including but not limited to, an individual, corporation, partnership (general or limited), limited liability company, unincorporated association, trust, or governmental entity.

(ll) "Related Corporation" shall mean a corporation, partnership, or other business entity, qualified under Texas Local Government Code 253.011 and which, directly or indirectly, controls, is controlled by, or is under common control with, another corporation, partnership, or other business entity. If more than 50 per cent of the voting stock of a corporation shall be owned by another corporation or by a partnership or other business entity, the corporation whose stock is so owned shall be deemed to be controlled by the corporation, partnership, or business entity owning such stock.

(mm) "Successor Corporation" shall mean a corporation or other business entity qualified under Texas Local Government Code 253.011 and into or with which another corporation or other business entity shall be merged or consolidated or to which all or substantially all of the assets of such other corporation or other business entity shall be transferred.

(nn) "Tenant" shall mean and include, at any given time, subject to Texas Local Government Code 253.011, the provisions of paragraph B of Section 8.01 hereof captioned "Subletting and Assigning by Tenant" and paragraph B of Section 8.03 hereof captioned "Rights of Leasehold Mortgagees and Subtenants", Contractor, and any person, firm, corporation or other legal entity to whom or to which Tenant's interest in this lease shall be assigned pursuant to the terms of this lease.

(oo) "Tenant's Building" shall mean the Improvements erected or to be erected by Tenant on Tenant's Parcel generally at the locations shown therefore on Exhibit B attached hereto pursuant to Section 6.04 hereof captioned "Improvements to be Constructed by Tenant".

(pp) "Tenant's Parcel" shall mean the approximately \_\_\_\_\_ acres of land, having a street address of \_\_\_\_\_ and being situated on City Block \_\_\_\_\_, in the City of Dallas, County of Dallas, Texas, as more fully described and outlined on "Exhibit "A", attached hereto and made a part hereof, demised to Tenant hereunder.

(qq) "Tenant Default" shall have the meaning ascribed to such term in Section 13.01 of this Lease.

(rr) "Term" or "term" shall mean the term of this Lease as defined in Section 2.02, unless this Lease is sooner terminated in accordance with the terms of this Lease, in which case the Term shall end on the date this Lease is terminated.

(ss) "Utility Charges" shall have the meaning ascribed to such term in Section 4.04 of this Lease.

## ARTICLE 2

### Leased Premises/Term/ Delivery of Premises

**Section 2.01.** City, in consideration of the covenants and agreements to be performed by Refuge and upon terms and conditions hereinafter stated, and set forth in this Lease, does hereby demise and lease

unto Refuge, and Tenant hereby leases from Landlord, Tenant's Parcel for the term hereinafter stated, together with all the improvements, rights, privileges, easements, and appurtenances belonging to or in any way pertaining to said Tenant's Parcel, to be used for the construction and operation of the Improvements and Tenant's Building in accordance with the City's public purpose; reserving, however, to City a non-exclusive easement, right and privilege for it and its Permittees and the Permittees of any tenant, subtenant, concessionaire or licensee of Landlord, to use the sidewalks and any other Common Facilities located within Tenant's Parcel in common with Tenant and other Occupants and their Permittees, as may be needed for the ongoing operations conducted by the City or City's Occupants or Permittees within and upon Tenant's Parcel.

**Section 2.02.** Tenant shall have and hold Tenant's Parcel, together with any and all appurtenances belonging or appertaining thereto, and the easements, rights and privileges herein granted to Tenant, for a term ("Primary Term") commencing on the Effective Date (the "Commencement Date"), and ending thirty-nine (39) Lease Years after the Date of Beneficial Occupancy (as defined below), unless terminated at an earlier date in accordance with the terms of this Lease; provided, however, that City shall have the right to terminate this lease as provided elsewhere herein.

For purposes of this Lease, the "Date of Beneficial Occupancy" shall be defined as the date a certificate of occupancy and all required regulatory permits enabling the Tenant to occupy and operate at the Leased Premises are issued after the construction of the Improvements are completed. The parties acknowledge that each phase of development may have a different Date of Beneficial Occupancy; therefore, the parties agree that the Primary Term may vary to assure that each phase is available to be used, operated and maintained by Refuge to serve the City's public purpose for an entire Primary Term. A Lease Year shall be the twelve (12) month period commencing on the first day of the first full calendar month of the Term and ending on the last day of the twelfth full calendar month thereafter. The first Lease Year shall include the partial month (if any) preceding the first full calendar month of the Term.

At all times during the lease term, Refuge will maintain its status as a non-profit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code 1986, as amended. Failure to maintain Texas Local Government Code 253.011 qualified status shall constitute a tenant default under this Lease.

**Section 2.03.**

a. City hereby grants to Tenant, its successors and assigns, two (2) conditional ten (10) year extension periods for this Lease ("extension(s)"), subject to City Council approval. In no event shall this Lease be extended for a cumulative period longer than forty (40) years following the Primary Term. If approved by City Council, each extension period shall constitute an individual renewal term and shall be upon and subject to the same terms, covenants and conditions as those specified in the Primary Term and except that Tenant may not again avail itself of any previously extended period under this section. The Primary Term and extension period(s) shall collectively comprise the term of this Lease.

b. Tenant's request to extend the term of the Lease, as granted herein is/are subject to the following conditions:

- i. Tenant shall not be in default of any material provision in the Lease beyond any applicable grace or notice periods when Tenant submits its notice requesting extension of the Lease and at the beginning date of the extension period for which such notice is given; and



- ii. Tenant shall give written notice to Landlord of Tenant's request to extend the term of the Lease, at least one hundred twenty days (120) days but not more than a year prior to the expiration date of the term of the Lease, as then in effect; and
- iii. City, in its sole discretion and convenience, as shall be evidenced by the action of the Dallas City Council, may deny Tenant's request to extend the term of the Lease.

c. Unless otherwise agreed to by the parties in writing, all the then current conditions, terms, and covenants of the Lease shall remain in full force and effect during any renewal term pursuant to said extension.

d. The first renewal term shall commence upon the expiration of the Primary Term. If subsequent extension(s) are requested and approved as set forth herein, each subsequent renewal term shall commence upon the expiration of the prior renewal term.

e. On the Commencement Date, Tenant shall pay all recording fees due and payable in connection with the delivery and recording of the Memorandum, as described in Section 14.26 of this Lease. Landlord and Tenant shall each pay its own attorneys' fees.

**Section 2.04.** Physical possession of Tenant's Parcel shall be delivered to Tenant by Landlord on/or within thirty (30) days of the Effective Date. Failure of Landlord to deliver actual possession of Tenant's Parcel to Tenant on said date shall give Tenant, in addition to such other rights and remedies as it may be accorded by law or by this lease, the right to terminate the term of this Lease by notifying Landlord of its election so to do at any time prior to such delivery being made and/or the right, as Landlord's agent and at Landlord's expense, to take whatever action is necessary to prepare Tenant's Parcel to the condition required under this Lease in order for Tenant to timely proceed to construct and open the Leased Premises for business, all as more particularly set forth in this Lease.

**Tenant shall take possession of the Leased Premises and accept the Leased Premises for Tenant's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis. Tenant acknowledges and agrees that Landlord has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (1) the value, nature, quality, or condition of the Premises, including without limitation, the title, soil, hydraulics, zoning, platting, and utilities, (2) the income to be derived from the Leased Premises, (3) the suitability of the Leased Premises for any and all activities and uses which Tenant may conduct thereon, (4) the compliance of improvements located at the Leased Premises (or their 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 Leased Premises, (6) the manner or quality of the construction or materials, if any, incorporated into improvements to the Leased Premises, (7) the manner, quality, state of repair or lack of repair of the improvements made to the Leased Premises, and (8) any other matter with respect to the Leased Premises.**

**Tenant specifically acknowledges that Landlord has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Leased Premises of Hazardous Substances. Tenant is relying solely on its own investigation of the Leased Premises and not on any information provided or to be provided by Landlord and agrees to accept the Leased Premises for use in accordance with the terms of this Lease and waives**

all objections or claims against Landlord arising from or related to the Leased Premises or for any Hazardous Substances, solid waste, or other materials located on it. Tenant shall be responsible for undertaking all necessary inspections, investigations, renovations, and improvements, including without limitation any work to address any environmental issues. Tenant shall, prior to lease commencement, be granted a 90-day inspection period (the "Inspection Period") to conduct such diligence investigation with respect to the Leased Premises as it shall desire including Phase I and Phase II environmental studies, pursuant to a reasonable right of entry acceptable to the City. Tenant shall pay all costs for such investigations and other inspections conducted during the Inspection Period.

Tenant further acknowledges and agrees that any information provided or to be provided with respect to the Leased Premises was obtained from a variety of sources and that Landlord makes no representations as to the accuracy or completeness of such information. Landlord is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Leased Premises, or the operation thereof, furnished by it or any real estate broker, agent, employee, servant, contractor, or other person.

Upon Tenant's request to City's Office of Environmental Quality or Public Works-Real Estate Division, and to extent possible without incurring any cost, City will make available for Tenant's review any information and/or investigation and inspection reports related to the condition of the Leased Premises. Tenant acknowledges and agrees, City shall have no obligation to undertake or contribute to any environmental remediation, but may do so at City's election upon City Council approval. Environmental remediation of any kind shall be the sole responsibility of Refuge; provided however if the needed remediation results in an undue financial hardship to Refuge, Refuge shall have the right to terminate the Agreement.

Without limiting any of the foregoing, the parties agree that the Lease will be subject to a reservation by the City of floodway, flood control, drainage or levee easements as reasonably deemed necessary, appropriate or convenient by the City during the term of the Lease. Furthermore, the Lease shall and is hereby subject to any and all covenants, conditions, reservation, restrictions, exceptions, easements, rights-of-way, mineral interest, mineral leases, or other instruments of record in the official real property records for the county where the Leased Premises are located effective as to the Leased Premises, or any part thereof, and any and all visible and apparent easements and encroachments, whether of record or not impacting the Leased Premises.

**Section 2.05.** If Tenant continues to occupy the Leased Premises after the last day of the term hereof and Landlord elects to accept rent thereafter, a monthly tenancy terminable by either party on not less than one month's notice shall be created, which shall be upon the same terms and conditions, including rent, as those herein specified which are in effect immediately prior to the termination of such term.

**Section 2.06.** The parties acknowledge that fee simple title to the Leased Premises and all improvements, when made thereto shall automatically vest in the City without any further action by either party hereto, free and clear of all liens and other encumbrances arising by, through or under Tenant, other than the leasehold interest created by this Lease and subleases permitted hereunder, and Tenant agrees to take no action before, during or after construction that would prejudice City's clear fee simple title, except for such leasehold interests. The improvements on the Leased Premises, excluding personal property, furniture, equipment, and trade fixtures therein (which shall remain the property of Tenant), shall be owned by the City. Upon the expiration or termination of this Lease, Tenant shall deliver up the Leased Premises with all additions and improvements thereto, to Lessor as required under surrender provisions of this lease; or, if the Lease is terminated prior to the Date of Beneficial Occupancy, in good and broom clean condition, except for: (i) ordinary wear and tear; (ii) damages resulting from fire, windstorm, hail,

tornado, explosion, and other causes, whether similar or dissimilar, over which Tenant has no control; and (iii) approved or permitted alterations, additions and improvements made to or upon the Leased Premises pursuant to this Lease.

**Section 2.07.** Tenant shall on the last day of the term of this lease, either by expiration or termination, quit and surrender the Leased Premises, Tenant's Parcel, and Tenant's Building, and any building, structure, improvements, alterations, additions and building equipment which may on that day be on Tenant's Parcel (other than trade fixtures and equipment and other personal property which Tenant shall have the right to remove under the provisions of Section 9.07 hereof captioned "Alterations; Installation and Removal of Equipment).

### **ARTICLE 3** **Title and Quiet Possession**

**Section 3.01. Covenant of Title.** Landlord represents and warrants that Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this lease for the full term hereof and has good and marketable title in fee simple to the land comprising the Tenant's Parcel.

**Section 3.02. Mortgage of Landlord's Fee Title.** Landlord also warrants and covenants that during the term of this lease Landlord will not encumber by way of a Mortgage, Landlord's fee title to Tenant's Parcel, or Tenant's Building, nor place, or permit to be placed, any other lien, encumbrance, or restriction on Tenant's Parcel, or enter into an agreement, lease or tenancy affecting Landlord's reversionary interest in Tenant's Parcel; provided, however, that the provisions of this paragraph shall not be deemed to prevent Landlord from selling or otherwise disposing of Landlord's entire right, title and interest in and to Tenant's Parcel subject to the terms of this lease.

**Section 3.03. Covenant of Quiet Enjoyment.** Landlord further covenants that if Tenant shall discharge the obligations herein set forth to be performed by Tenant, Tenant shall have and enjoy, during the term hereof, the quiet and undisturbed possession of the Leased Premises and all appurtenances appertaining thereto.

### **ARTICLE 4** **Rent; Additional Rent**

**Section 4.01.** For and in consideration of this lease and in lieu of cash rental payments, Refuge shall develop, construct, use, operate and maintain the Improvements and Leased Premises to carry out the City's public purpose.

As soon as is practical, Refuge shall, at its cost and expense, make the necessary improvements, renovations, repairs, and modifications, including removal of any environmental condition concerns hereinafter referred to as "the new improvements", to the premises, identified on Exhibit B, attached hereto and made a part hereof. The new improvements shall be performed in a good and workmanlike manner and in compliance with applicable Building Codes and shall be to the reasonable satisfaction of the Director, or designee, and ready for commencing programming and operations in accord with City's public purpose. Refuge and City agree that, in the event the leasehold improvements are not satisfactorily completed to serve the City's public purpose, Refuge will be in default of this lease and City shall have the right to terminate this lease by notice to Refuge.

*By way of illustration: Refuge agrees to complete 200,000 square feet of total build out in order to provide annual supportive services required under this Lease to 400 homeless individuals. Refuge completes only 120,000 square feet of total build out with City*

*approval based on Refuge representation and agreement that its performance to the City's public purpose would not be impacted by the reduction in the total build out-(still able to serve 400 homeless individuals). Upon completion of the improvements, the parties determine the revised total build out is in fact insufficient for Refuge to operate and perform the committed services annually to 400 homeless individuals. Under these circumstances the reduction in the total build out of improvements from 200,000 to 120,000 is insufficient to serve the City's public purpose as Refuge represented and agreed, and such insufficiency shall constitute a default under Section 4.01.*

In the event of such termination, City shall not be liable to Refuge for any costs associated with any improvements that have been performed.

**Section 4.02.** This Lease shall be deemed and construed to be a "net lease" and Tenant shall pay to Landlord, absolutely net throughout the Term of this Lease, the Rent, Additional Rent and other payments hereunder, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off, and under no circumstances or conditions, whether now existing or hereafter arising, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder with respect to the Premises.

**Section 4.03. Common Facilities Maintenance Charge.**

Tenant, at its sole cost and expense, shall be solely responsible for the maintenance and upkeep of all of the common facilities located within the Leased Premises in accordance with the maintenance standards set forth in the provisions of Paragraph A of Section 10.1 hereof captioned "Maintenance of Common Facilities".

**Section 4.04. Utility Charges.**

Except as otherwise provided in this Lease, Tenant will pay all charges for gas, electricity, water, telephone service and other utilities used on the Leased Premises, including in the City space, during the term of this Lease, and Tenant will also pay all sewer charges separately billed or assessed with respect to Leased Premises for any period included within the term of this Lease.

**ARTICLE 5**

**Payment of Taxes; Assessments**

**Section 5.01. Definitions Respecting Real Estate Taxes.**

A. The term "taxes," as used herein, shall mean all ad valorem taxes, sales taxes, income taxes and other government charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Leased Premises and/or any occupant's use and enjoyment thereof, excluding "assessments" as defined below. Tenant shall pay when due all taxes commencing with the year of the Effective Date and continuing throughout and including the last year of the term hereof.

B. The term "assessments," as used herein, shall mean all governmental assessments for public improvements or benefits which during the term shall be assessed, levied, imposed on, or become due and payable, or a lien upon the Leased Premises, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any assessment upon the Leased Premises, without the prior written consent of Tenant. In the event any assessment is proposed that affects the Leased Premises, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Any assessment on the Leased Premises

shall be made in compliance with all applicable statutes. Tenant shall pay the total amount of all assessments levied with respect to the Leased Premises and/or the leasehold estate created hereby. In no event shall Landlord be obligated to pay any assessment or any portion thereof levied or created during the term hereof, irrespective of whether such assessment or any portion thereof was specifically allocated to the Leased Premises or Landlord's reversionary interest therein. No assessment shall be payable in installments without Landlord's prior written consent, which Landlord may condition upon the posting by Tenant of a satisfactory bond guaranteeing the payment of such installments as they become due.

**Section 5.02. Taxes on Leased Premises.**

A. All payments by Tenant of taxes and/or assessments shall be made by Tenant on or before thirty (30) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Tenant shall promptly furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

B. In the event Tenant fails to pay any of the expenses or amounts specified in this Article, Landlord may, but shall not be obligated to do so, pay any such amount and the amount so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified herein below.

**Section 5.03. Tenant's Right to Contest.**

Tenant shall not be required to pay any tax, assessment, tax lien, or other charges upon or against the Premises, or any part thereof, or the improvements situated thereon, so long as it shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceeding which shall have the effect of preventing the collection of the tax, assessment, tax lien, or other charges so contested; provided that, pending any such legal proceeding it shall give Landlord such security as may be deemed reasonably satisfactory to Landlord to insure payment of the amount of tax, assessment, tax lien or other charges, and all interest and penalties thereon. Landlord shall cooperate with Tenant's efforts; provided, however, Landlord shall not have to expend any out-of-pocket funds or bring or join in any suit regarding same, and Tenant shall indemnify and hold Landlord harmless against and from any loss, liability, or expense resulting from such efforts.

**Section 5.04. Creation of Special Assessment District.**

If at any time during the term of this lease any governmental subdivision shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include any portion of Tenant's Parcel, Tenant shall be entitled to appear in any proceeding relating thereto and to exercise all rights of Landlord to have Tenant's Parcel excluded from the proposed improvement or assessment district and to determine the degree of benefit to Tenant's Parcel resulting therefrom; provided, however, that nothing herein shall prevent Landlord from taking a different position than Tenant. Landlord shall promptly advise Tenant of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district the boundaries of which include any portion of Tenant's Parcel.

**ARTICLE 6**

**Design and Construction of Improvements**

**Section 6.01. Tenant Development Obligations.**

A. To facilitate the City's public purpose, Refuge shall undertake the design and construction of the Improvements, at its sole expense, and proceed to complete the Project to achieve the below milestones by the deadlines stated below, and Refuge shall deliver to the Director or his designee evidence of the completion of each item in a form satisfactory to the Director in his or her sole discretion:

1. Final Project Documents: Refuge shall prepare a final site plan, construction and phasing schedule, project scope, project budget, and operating proforma for the Project ("Final Project Documents") and present same to Director by October 31, 2022 for the review and approval by the City Council. The final site plan shall be materially consistent with the Concept Plan attached hereto as Exhibit \_\_\_\_\_ and incorporated herein by reference and shall substantially represent in detail the agreed final planned construction components of the project including square footages, materials, elevations, and a construction budget. The construction and phasing schedule will include planned construction commencement and completion dates for each component of the site plan. The project scope shall detail the programmatic components of the Project, including planned job creation, housing options including residential affordability, workforce development programs, and all other programmatic details, including start dates for each. The project scope will also include annual and total performance goals for each program, such as persons served. The budget and proforma will detail the development budget and operating costs for the project, as stabilized, for the term of the Lease. Within 30 days of any written request, Refuge will provide any additional information requested by Director to supplement or clarify the Final Project Documents. Once Director agrees that the Final Project Documents are complete, Director shall present the Final Project Documents to the City Council for review and approval. If the City Council does not approve the Final Project Documents by May 31, 2023, the City shall have the right to terminate this Lease. If the City Council does accept the Final Project Documents, then those documents will become an addendum to this Lease and performance of the construction pursuant to the final site plan and the construction and phasing schedule, and performance of the project scope, including meeting all annual and total performance benchmarks and securing all necessary partnerships to carry out the programmatic elements of the Project, will become obligations of this Lease. At any time after the City's approval of the Final Project Documents, Refuge may submit amendments which will require review and approval of the City as evidenced by a resolution of the City Council.
2. Fundraising: Refuge shall complete initial fundraising for the Project, entailing a minimum of \$8 million dollars, no later than June 30, 2023. No later than December 31, 2025, Refuge shall present to Director commercially reasonable evidence of all funding reasonably anticipated to be necessary for initial completion of the Project. If Refuge plans to apply for city incentives as a gap financing or programmatic financing source for any phase or component of the Project, Refuge will submit a complete incentive application to Director (or in the case of incentives offered by another city department, to Director's designee) on or before December 31, 2024.
3. Site Work Commencement: Site work (e.g. paving, grading, site preparation, utility connections, or demolition) shall commence no later than October 31, 2022. If building permits for site work have been submitted to City in compliance with City processes, this deadline shall automatically be extended until such date

as the building permits are approved; provided however no extensions shall take effect if issuance delays are result of tenant's actions or failure to act.

4. Project Completion: Notwithstanding that Refuge may construct in phases, the entirety of the Project, including all Improvements and other construction elements outlined in the Final Project Documents, shall be completed no later than December 31, 2026. Completion of each building and other related improvements shown on the approved Final Site Plan shall be evidenced by a certificate of occupancy and shall constitute completion of the Project.
5. Workforce Partnerships: As part of the consideration for the conveyance, to serve the City's public purpose and as a requirement of the Project, Refuge will solicit partnerships with corporations to provide job training and related services to residents and clients of the Project in conformance with the Final Project Documents. Refuge shall secure commitments of these workforce partners and present commercially reasonable evidence of same to Director by December 31, 2022. Workforce partnerships will require that the corporation prioritize training of Dallas residents, with the goal of assisting program participants in achieving a living wage job, as determined from time to time by the MIT Living Wage Calculator.
6. Extension of Deadlines: Deadlines identified in Section 6.01A, including those in the Final Project Documents may be extended by Director for up to six months (or longer as provided below), in his or her sole discretion, upon written request to Director. Each written request should explain the reasoning for the delay, and Refuge's plan to meet all future deadlines and benchmarks.
7. Reporting: During the term of the Lease, Refuge shall submit to Director annual written status reports detailing ongoing work and operation of the Project including Tenant's compliance with the obligations outlined in Section 6.01A and the Final Project Documents, in such form as is acceptable to the Director. These reports shall be due by December 31 of each calendar year. Additionally, upon request of Director, Refuge shall brief the Economic Development Committee as to the status of the Project. Director shall not request more than one such briefing per year during the term of the Lease

**B. Construction of Improvements; General Construction Requirements.**

The parties agree that the construction of all improvements within the Tenant's Parcel shall be commenced and completed by Tenant, at Tenant's sole cost and expense, in accordance with the requirements set forth in this Lease. To the extent any additional construction shall be necessary at different times during the term of the Lease, the requirements set forth in this Lease, subject to local governing building codes, ordinances, rules and regulations, shall continue to be applicable and survive the initial completion of construction, issuance of the certificate of occupancy, and opening of Tenant's Building.

Tenant at its sole cost and expense shall undertake and complete the development and construction of Tenant's Building subject to the terms of this Lease. In this regard, Tenant hereby agrees to enter into (in its own name) and perform all contracts necessary to fully complete the Tenant's Building to serve the City's public purpose at its sole cost and expense and shall undertake and complete the development and construction of the Tenant's Building, inclusive of the City Space, subject to the

terms of this Lease. In this regard, Tenant hereby agrees to enter into (in its own name) and perform all contracts necessary to fully complete the Tenant's Building to serve the City's public purpose including pursuant to accepted plans for the City space. All Tenant contracts relating to the design and construction of the Tenant's Building shall: (i) require the contractor or construction manager to use good faith efforts to comply with the City's (BID) Business Inclusion and Development Plan, (ii) contain language subordinating and subjecting such contract to the terms of this Lease and exculpating the City from any obligations and liability thereunder, (iii) if applicable, contain insurance requirements for coverages and limits not less than those which are customarily required by the City of its like contractors, naming the City and its officers and employees as additional insureds, (iv) indemnify the City and its officers, agents and employees against any claims, costs or liabilities thereunder, and (v) if applicable, contain contractor qualification requirements sufficiently broad so as not to exclude minority contractors as a class, and general contract specifications sufficiently broad so as not to favor a single contractor. City shall have no liability for any claims that may arise out of the construction of the Tenant's Building and Tenant shall cause all of its contractors, consultants, and subcontractors to agree in writing that they will look solely to Tenant, not to City, for payment of all costs and valid claims associated with the construction of the Tenant's Building. Tenant must hire qualified, experienced contractors and subcontractors for the Project. Director has a right to request information relating to any consultants, contractors and subcontractors used by Tenant on this project. All design development documents pertaining to the Leased Premises including the City space shall be delivered for information purposes to the Director before the preparation of construction documents plans and specifications commences.

**Section 6.02. Grant of Construction Easements.**

A. Landlord hereby grants to Tenant a non-exclusive easement, right and privilege to install, maintain, repair and replace utilities underground and within the Tenant's Parcel that is not occupied by building structures at places to be shown on the approved design plans attached and incorporated into the Lease or at such places as the same may ultimately be agreed to by the parties as necessary and are installed after completion of all on-site improvements. Landlord hereby reserves to Landlord a non-exclusive easement, right and privilege to install, maintain, repair and replace utilities underground and within that part of Tenant's Parcel which is not occupied by the structure of Tenant's Building at the places shown therefore on the approved design plans attached and incorporated into this Lease or at such places as the same may ultimately be agreed to by the parties as necessary and are installed after completion of all on-site improvements. The City exclusively reserves for its continual use during the term of the lease those access corridors located on the Tenant Parcel, the location of which are shown and designated as "access corridors" on Exhibit \_\_\_\_\_ attached hereto and made a part hereof, more specifically, for Dallas Water Utilities Department (DWU) purposes. Tenant may develop and use these access corridors only for landscaping and portable or non-permanent building improvements subject to the review and approval of DWU. Tenant with respect to utilities installed within Tenant's Parcel shall have the right, upon not less than sixty (60) days' notice to Landlord, at any time and from time to time, to move and relocate any such facility to any place or places of Tenant's choosing within Tenant's Parcel; provided, however, that (i) such relocation shall be made at Tenant's sole cost and expense, and (ii) neither such relocation nor the relocated facility shall interfere with, or increase the cost of, utility service to the City space or unreasonably interfere with the operation of any business being conducted on any such part of the City space by any other Occupant or Permittee.

B. The location and extent of all such easements granted by Landlord except for those shown on construction and approved design plans provided for in this Lease shall be subject to Landlord's reasonable approval as hereinafter provided, and the location and extent of all such easements reserved by Landlord except for those shown on said exhibit or plan shall be subject to the reasonable approval of Tenant as hereinafter provided. Either party hereto may submit to the other plans and specifications of the improvements with respect to which encroachments of the foregoing types are



planned and which show such encroachments together with a specific request for approval of the location and extent of the encroachments so shown. The granting of such approval by Landlord or Tenant shall constitute a designation by such party of the land which is to be subject to the easement permitting such encroachments. Any such approval required hereunder shall not be unreasonably withheld or delayed provided that the granting or reserving of the easement in question does not result in a significant increase in the cost of constructing buildings on the land comprising the servient tenement within areas shown on Exhibit B hereto as being reserved for the construction or expansion of buildings.

C. During any period of construction, alteration, expansion, repair or reconstruction of buildings or improvements on the Tenant's Parcel, as permitted or required by this lease, Tenant will grant Landlord or its designee a temporary license allowing the grantee and its architects, contractors, subcontractors, materialmen and others engaged in any Landlord work related to the City space to use such portion or portions of Tenant's Parcel as may reasonably be needed for the purpose of performing such work, but only (i) at reasonable times, (ii) for the period of performance of the construction, (iii) in accordance with and subject to good construction practice, and (iv) so as not to interfere with the construction or operation of any building on Tenant's Parcel or the operation of any business being conducted thereon except to the extent absolutely necessary. During any period of construction, alteration, expansion, repair, or reconstruction of any building or other improvement on Tenant's Parcel, Landlord will grant or cause to be granted to Tenant a temporary license allowing it and its architects, contractors, subcontractors, materialmen and others engaged in the project to use such portion or portions of the City space as may reasonably be needed for the purpose of performing such work, but only (i) at reasonable times, (ii) for the period of performance of the construction, (iii) in accordance with and subject to good construction practice, and (iv) so as not to interfere with the construction or operation of any buildings on such portion or portions of the City space or the operation of any business being conducted thereon except to the extent absolutely necessary.

D. Each of the parties hereto and anyone else while engaged in constructing any building or other improvement within the Tenant's Parcel permitted or required by the terms of this lease shall have the right during such construction, and during any total or partial reconstruction of such building or improvement or permitted expansion thereof, to use all necessary or appropriate means of access, ingress and egress to and from the site of said improvement over and across any part of the Tenant's Parcel not occupied by building structures, but such use shall not unreasonably interfere with the performance of other construction work being lawfully undertaken within the Tenant's Parcel or with the orderly flow of traffic or access to any building thereon; provided, however, that parking areas (but not roadways) which shall have received a finishing layer of paving shall not be used for such purpose.

E. Tenant shall have the right to require Landlord to grant with Tenant's consent easements to any governmental unit, public body and/or utility company permitting the construction, installation, operation, maintenance, repair, relocation, modification, extension or alteration of sanitary sewers, storm drainage systems, fire protection installations, gas, water, power and telephone lines, mains and trunks in, under or across Tenant's Parcel, and Landlord shall have the right to grant similar easements to such entities in, under or across Tenant's Parcel for the operation of the City space. Each party hereto shall have the right to transfer or assign to any public body and/or utility company any of the easements granted or reserved to such party pursuant to paragraph A of this section without having to pay any compensation to the owner or Tenant of, or to anyone else having an interest in, the land on which such easement is located. Any easements pertaining to Tenant's Parcel granted by Landlord pursuant to the provisions of this paragraph may be limited to the term of this lease.

### **Section 6.03. Miscellaneous Obligations of Landlord.**

Landlord recognizes that local law or the applicable building code may require Landlord's

documentary cooperation in the permitting necessary for the construction or operation of Tenant's Building during the term of the Lease. In any such case Landlord will at Tenant's expense undertake all steps necessary to promptly cooperate to obtain such permits.

**Section 6.04. Improvements to be Constructed by Tenant.**

A. Tenant agrees at its sole cost and expense, to commence construction of the Improvements consisting of one or more mixed use buildings to serve the City's public purpose more or less, as depicted in the conceptual site plan attached hereto as Exhibit \_\_\_\_\_. Tenant shall be responsible to construct related common facilities sufficient to support all permissible operations in Tenant's Building, including the City space.

Tenant further agrees that after having commenced such construction work it will proceed diligently to complete the same, subject, however, to force majeure and any other extension rights herein.

B. Tenant's Building shall be erected, made and completed in accordance with the plans submitted to the City in accordance with this Lease.

C. Notwithstanding anything to the contrary stated in this Lease, Tenant acknowledges and agrees that no improvements, other than those specifically allowed by DWU, shall be constructed or erected on that portion of the Tenant's Parcel designated as "Limited Build Zone" on Exhibit \_\_\_\_, without the prior written consent of the City.

**Section 6.05. Certification of Floor Area.**

A. On or prior to the opening of Tenant's Building to the public for business, and upon completion of Tenant's Building, Tenant shall furnish Landlord a certificate of Tenant's architect providing the gross Floor Area for each level of all Buildings and Improvements.

B. Promptly following the close of each Lease Year, Tenant shall furnish Landlord if there shall have been any change during such year in the Floor Area of the improvements on Tenant's Parcel, a new certificate of such party's architect containing current figures for each item of information furnished the Landlord under the foregoing provisions of this section.

**Section 6.06. Performance and Payment Bonds.**

A. As security for the timely completion by the Tenant of the Tenant's Building and all related on-site improvements and for the faithful performance of all of Tenant's obligations under this Article VI, Tenant shall, prior to the commencement of any construction, obtain construction performance and payment Bonds as described in 6.6 B. below. Thereafter, operating performance and payment bonds shall be obtained and maintained during the Term of the Lease.

B. All construction contracts entered into between Tenant and its contractor(s) (except for projects where the total expenditure will be \$50,000 or less) involving the Leased Premises shall require performance and payment bonds and minimum insurance requirements (including All-Risk Builders Risk insurance if applicable) in the form and amounts normally required by City for construction projects of this magnitude. Each performance and payment bond shall name Tenant and City as joint obligees. The form of the bonds shall be as approved by the City Attorney's office and be issued in accordance with Chapter 2253, Texas Government Code, as amended by a corporate surety or sureties licensed to issue surety bonds in the State of Texas, authorized to do insurance business in the State of Texas, listed on the United States Treasury List of Sureties authorized to Issue Bonds for Federal jobs, and otherwise acceptable to City. The bonds shall be maintained during the full term of the construction contract. If

Tenant procures construction of the project in packages, and an individual construction package has a total expenditure of \$50,000 or less, no bonds will be required; Tenant agrees, however, that prior to final completion of work included in the construction documents it will not pay a construction contractor for work on an un-bonded construction package for which \$50,000 or less is to be spent until final completion of such construction package and receipt of releases or waivers of liens for the un-bonded construction from the construction contractor and any subcontractors used on such construction package. In addition, the contracts shall also require the contractor(s) to name City and Tenant, their respective officers, agents and employees, and such other parties as additional insureds and as indemnitees under the indemnification, defense and hold harmless provisions of the construction contracts, in a form substantially similar to that found in Section 8.1. The contractor(s) shall also be required to name City and Tenant, their respective officers, agents and employees, as additional insureds on all liability insurance policies required for the project regarding the Leased Premises. Lastly, Tenant agrees to require its construction contractor on any improvement project under this Section to provide, at a minimum, the insurance required as described in City of Dallas Construction Standards. Tenant acknowledges receipt of a copy of the City of Dallas Construction Standards that will be used for similar facilities.

**Section 6.07. Tenant's Obligations for Site Work Costs.**

Tenant shall, at its sole cost and expense, be responsible to perform all site work (on-site and off-site) necessary for the commencement and timely completion of construction of Tenant's Building and all related on-site improvements. To the extent necessary and as allowed by law, upon tenant's request City shall cooperate in its capacity as the landowner.

Commencing construction by Tenant is strictly conditioned upon the following:

- (a) Tenant obtaining all building permits, zoning and other approvals required for the construction;
- (b) Tenant providing the Director with proof of the commitment of sufficient financing and financial resources to ensure that upon commencement of the construction, the Tenant's Building and all related work shall be completed in accordance with the plans and specification within the time allotted. (Note: providing bonds does not satisfy the proof of having sufficient financing and financial resources as required herein.);
- (c) Tenant providing City with copies of all construction contracts and required payment and performance bonds;
- (d) Tenant providing certificates, policies or other proof of the required insurance; and
- (e) Tenant providing lien waivers from all general contractors.

Upon satisfaction of conditions set forth in Section 6.7, Tenant shall provide City with the notice of the commencement of construction.

**Section 6.08. Environmental Management System.** City has developed an Environmental Management System ("EMS"), based upon International Standards Organization (ISO) Standard 14001. As part of the EMS, City has adopted an environmental policy. Tenant agrees to have its engineer and architect review such environmental policy prior to performing all design and engineering and shall adhere to the policy and provide information to City in the form and at the times requested by City in furtherance of the policy.

**Section 6.09. Energy and Environmental Standards.** Tenant's construction manager, contractors, engineers or architects as well as their sub-consultants shall make themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any laws now in effect), relating to the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the project.

**Section 6.10. Review of Construction Documents for City Space.**

(a) All construction plans and specifications for the construction of the City space portion of the Tenant's Building must be reviewed and accepted in writing by the Director, prior to commencement of any work. Tenant shall provide at least three sets of construction documents to the Director not less than thirty (30) days prior to the date of distribution of the documents to potential contractors. All design and construction shall conform to applicable City, state and federal codes, ordinances, regulations, building standards and specifications. All revisions to approved plans and specifications shall be submitted to the Director for prior written approval.

(b) Director's review of any plans or specifications is solely for City's own purposes, and City does not make any representation or warranty concerning the appropriateness of any such plans or specifications for any purpose. Director's approval of (or failure to disapprove) any such plans and specifications shall not render City liable for same, and Tenant assumes and shall be responsible for any and all claims arising out of or from the use of such plans and specifications.

(c) The construction general conditions utilized by Tenant to govern construction of the Tenant's Building, inclusive of the City space, shall be at a minimum substantially equivalent to the to the City of Dallas construction standards. For purposes of this Lease, City of Dallas construction standards is defined as Public Works Construction Standards – North Central Texas, as published by the North Central Texas Council of Governments, October 2011, as amended, the most current City of Dallas Addendum to the Public Works Construction Standards, and other such specifications required by the City (hereinafter referred to as "City of Dallas Construction Standards"). Tenant shall provide the Director with a set of approved specifications and drawings, including an electronic version of the documents, prior to commencement of construction of the Tenant's Building covered thereby, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas, and approved by the construction manager or the contractor. Any material changes to the final plans and specifications regarding the City space shall require prior written approval of the Director. Tenant shall also furnish the Director with complete as-built documents (including warranties) for the Tenant's Building, inclusive of the City space, including the documents in electronic format, within sixty (60) days after construction is complete. Refuge shall be responsible for making the Leased Premises and any improvements thereon compliant with the Americans With Disabilities Act, as amended from time to time.

(d) Within thirty (30) days after receipt of the City space plans and specifications for approval, Director shall, in writing, either approve or disapprove the plans and specifications or inform Tenant of the additional time required to complete the review thereof, such additional time not to exceed thirty (30) days.

(e) The drawings, specifications and other documents prepared by Tenant for the City space are for use solely with respect to this project and City shall be deemed to retain ownership of these documents. Tenant shall be permitted to retain copies, including reproducible copies, of the drawings, specifications and other documents for information and reference in connection with Tenant's use and occupancy of the Leased Premises.

**Section 6.11. Permits and Other Approvals.**

Tenant shall acquire, as required by applicable laws, ordinances, or regulations and at its sole cost and expense, all building permits, certificates of occupancy, and other permits, licenses, permissions, consents, and approvals required to be obtained from government agencies or third parties in connection with the design and construction of the Tenant's Building, and any repairs, replacements, or renovations to the Leased Premises. Tenant shall furnish Director evidence thereof.

**Section 6.12. Project Construction.**

Subject to all applicable laws and regulations, Tenant shall be responsible for all material, labor, facilities, furniture, fixtures and equipment, landscaping, signage, and any other activities necessary to begin and fully complete the construction of the Tenant's Building. All work shall be performed in a good and workmanlike manner. Tenant shall be financially responsible for acquiring any new utility service or increased capacity of existing utility services that it may need.

**Section 6.13. City Right to Observe and Inspect.**

City shall have the right (but not the obligation) to observe and inspect work performed by any contractor(s) related to the Leased Premises. City inspection of the job site shall be coordinated with Tenant's contractor(s), construction manager, architect or engineer. City shall perform such inspections in an expeditious manner calculated to minimize inconvenience and delay. During construction, Tenant's contractor, construction manager or engineer shall be accessible to Director and shall provide sufficient on-site representatives, construction administrators and/or inspectors to assure that the Tenant's Building will be completed in accordance with the submitted plans and specifications. The Director shall be entitled to receive notice of and attend all construction meetings, at which a representative of Tenant shall be present, and shall be provided with copies of minutes by Tenant's contractor, engineer or construction manager regardless of Director's presence.

**Section 6.14. Access.**

Tenant shall not interfere with public access to the public rights of way abutting the Leased Premises at any time during Tenant's construction activities except as specifically permitted by City in accordance with the Dallas City Code .

**Section 6.15. Vehicular and Pedestrian Access.**

Tenant shall require its construction manager and contractors to be responsible for maintaining reasonable vehicular and pedestrian access to property and buildings on and abutting City's right-of-way at all times during Tenant's construction activities.

**Section 6.16. Staging Area.**

Tenant shall be solely responsible to provide for itself or its contractors, to extent reasonably available, a staging area for use by Tenant's contractors for storage of construction supplies and equipment at a location within the Tenant's Parcel. Tenant agrees to maintain the staging area and agrees that upon completion of all construction activities, the staging area shall be returned to its original use in an equal or better condition than when originally entered onto. City shall not be required to incur any cost or expense in providing any staging area outside of the Tenant's Parcel.

**Section 6.17. Site Security and Securing Construction Materials.**

Tenant and its construction manager, contractors and subcontractors shall be solely responsible for construction site security and securing construction tools, equipment, supplies, and materials when left on the Tenant's Parcel, including but not limited to any staging areas.

**Section 6.18. City's Business Inclusion and Development Plan.**

Tenant, and its engineers, construction manager, contractors and subcontractors shall adopt good faith efforts in compliance with the City's Business Inclusion and Development Plan (BID Plan) in hiring and contracting with minority and women-owned local businesses certified by the City of Dallas, or the North Central Texas Regional Certification Agency in construction of the Tenant's Building.

**Section 6.19. Construction Field Changes.**

All material field changes that affect the City space shall be submitted for written approval in advance to the Director. Within ten (10) business days after receipt for approval of any material changes affecting the City space, the Director shall either approve or disapprove same.

**Section 6.20. Construction and Materials Testing.**

Any construction and materials testing, as agreed to by City and Tenant, shall be performed by certified independent laboratories under contract to Tenant or its construction manager to ensure the Leased Premises are constructed in accordance with the approved plans. Tenant shall furnish City with certified copies of the results of all tests. Tenant shall have the right to submit to City a list of certified independent laboratories for advance approval by City, and City agrees to notify Tenant promptly whether any laboratories on this list are not approved.

**Section 6.21. Repair - Restoration of Properties.**

During construction, Tenant shall be responsible for obtaining timely repair, replacement or correction of all damage to any property or facilities of City or any other entity caused by the acts or omissions or misconduct (whether or not negligent) of Tenant, its engineers, construction manager, contractors and subcontractors, to City's reasonable satisfaction. All costs thereof shall be borne by Tenant or its contractors, and shall not be a charge against the City. If Tenant fails to make timely repair, replacement or corrections of damage, City may undertake same, but shall not be obligated to so act. The cost of repairs, replacements or corrections made by the City on account of damage caused by the acts or omissions or misconduct of Tenant, its engineers, construction manager, contractors and subcontractors, shall be reimbursed to City by Tenant.

**Section 6.22. Nuisances.**

Tenant and City recognize the authority of City under its charter and ordinances to exercise its police powers to protect the public health, safety, and welfare. Such powers extend to Tenant or its

contractor's construction activities on the Leased Premises, and Tenant recognizes City's authority to take appropriate enforcement action under its charter and ordinances to provide such protection. If City, acting through its appropriate departments and officials, determines that construction in progress should halt in order to protect the public health, safety and welfare, City shall give prompt notice and opportunity to cure to Tenant before City halts the work progress. If the situation is not resolved to City's satisfaction, Tenant shall halt the work in progress and, if the threat to the public health, safety and welfare is the fault of Tenant, Tenant shall promptly resolve the situation. If the threat to the public health, safety and welfare is due to the fault of City, City shall promptly resolve the situation. If the threat to public health, safety and welfare is due to the fault of a third party, City may (but is not obligated to) take reasonable steps to resolve the situation or cause such third party to promptly resolve the situation, at the third party's expense.

**Section 6.23. City Inspection Upon Substantial Completion.**

Tenant shall perform the work contemplated by this Lease or cause it to be performed in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon substantial completion of construction, Tenant shall furnish City with a certificate of substantial completion executed by Tenant's construction manager or engineer for the Tenant's Building, including but not limited to the City space, in a form and of a substance acceptable to the Director. Tenant shall also furnish to City copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

Notwithstanding the foregoing, the Director may require a walk-through inspection and equipment testing to confirm substantial completion of Tenant's Building and other related construction in conformity herewith; and, Tenant, its construction manager, representatives and contractor(s) shall attend if requested. If the Tenant's Building improvements are substantially complete but still have minor punch list items that need to be corrected, Tenant shall cause its construction manager or contractor to promptly complete said items to the Director's satisfaction. In accordance with the terms of this Lease, upon final completion of the Tenant's Building and acceptance of the City space, the construction shall remain the property of the Tenant.

**Section 6.24. Mechanic's Liens.**

Tenant agrees that Tenant will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Leased Premises in connection with any construction, improvements, maintenance or repair thereof made by Tenant or any contractor, agent or representative of Tenant. Tenant shall cause any such claim of lien to be fully discharged no later than ten (10) days after the date of actual notice thereof; provided, however, that in the event Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall give to City such security as City may reasonably require to insure payment thereof and prevent any attempted sale, foreclosure, or forfeiture of the Leased Premises or any portion thereof by reason of such nonpayment, Tenant shall not be deemed to be in breach of this section so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results there from, immediately discharges said lien.

**Section 6.25. Fixtures, Equipment, and Personal Property.**

During construction, Tenant may place or install in the Leased Premises such personal property, removable fixtures and equipment as Tenant deems desirable for the operation of the Leased Premises. Said personal property, removable fixtures, and equipment used in the conduct of activities by Tenant and placed by Tenant on the Leased Premises shall not become part of the Tenant's Building, but shall retain

their status as personal property (“personalty”) and belong solely to the Tenant. In the event Tenant does not remove Tenant’s personalty that it is permitted by this section to remove from the Leased Premises within ten (10) days following the termination or expiration of the Lease, City may treat said personalty as abandoned and retain the personalty and treat it as part of the Tenant’s Building and have the personalty removed and stored at Tenant’s expense. Tenant shall promptly reimburse City for any damage caused to the Leased Premises by the removal of personalty whether removal is by Tenant or City or any cost or expenses incurred by City for the storage or disposal of such personalty.

**Section 6.26. Construction Warranties.**

Tenant shall obtain and administer for the benefit of City all warranties and warranty obligations of the contractor(s) and equipment manufacturers. Correction of defective work shall be the responsibility of Tenant and its contractor(s). Tenant shall administer said warranties during the Term of this Agreement and any extension period thereof. Tenant shall provide Director with copies of all building systems, training, operation and maintenance manuals for the Leased Premises and/or improvements constructed by Tenant.

**Section 6.27. Right of Tenant to Make Changes.**

At any time and from time to time during the Term, Tenant may, at Tenant’s sole cost and expense, make changes and additions to the Leased Premises, exclusive of the City space, or any part thereof so long as such changes and additions are not “material”. For purposes of this section, changes and additions to the Premises are “material” if said change or addition or any series or group of changes or additions (i) involve a cost in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) within any twelve (12)-month period, (ii) entail demolition or removal of part of the Tenant’s Building or addition to the Tenant’s Building not contemplated by or which serves the City’s public purpose, or (iii) changes the character of the Leased Premises contrary to the City’s public purpose. Material changes and additions may be made only with the prior written consent of the City and shall be subject to the City’s review and approval of the plans and specifications.

**Section 6.28. Right of City to Make Repairs.**

City, its agent and employees, shall have the right, at any time and from time to time, to enter the Leased Premises for the purpose of inspection or making any repairs or alterations to the Leased Premises, or any improvements thereon, both interior and exterior, and of every kind or nature which are required of Tenant under the lease but which Tenant has failed to perform; and Tenant shall not offer any obstruction, or hindrance to any such repairs or alterations; provided; however, that nothing contained in this paragraph shall be deemed to impose on City any obligation to actually make repairs or alterations. Furthermore, Tenant acknowledges, during the Term of this lease, that City may require Tenant to make modifications to the City space or the remainder of the Leased Premises as deemed reasonably necessary by the City to serve the City’s public purpose.

**Section 6.29. Tenant’s Remedies.**

Subject to City Council authorization process which may result in a withdrawal of City’s initial approval of this Lease, and in the event that Landlord fails to deliver possession of Tenant’s Parcel to Tenant, then, and in any such event, Landlord shall be deemed in default under this lease and Tenant, without notice and opportunity to cure, may at Tenant’s option, and in its sole discretion, elect to terminate this lease by so notifying Landlord. Upon such termination notice being given this lease shall terminate, and Tenant shall thereupon be released from and relieved of any further obligations hereunder.



**Section 6.30. Signage.**

Tenant shall have the right to place and maintain on any building on Tenant's Parcel signs or other directional devices, electrical or non-electrical, either parallel to said building or at any angle thereto, at or on either the front, back or sides thereof. Tenant agrees to comply with any applicable laws or ordinances in erecting any of the foregoing signs. Tenant agrees that no sign shall be installed on the roof of any building on Tenant's Parcel or which will project above the top of any parapet wall or above the roof line if it is to be affixed to the side of a building not having a parapet wall. Any signage placed on the Premises by Tenant shall conform to any and all applicable laws, ordinances or regulations of any Governmental Authorities and shall be maintained by Tenant in good condition and repair. Tenant shall obtain and pay for all permits and licenses required in connection with any such signage and shall be responsible for the proper installation thereof.

**ARTICLE 7**  
**Operation and Use of the Leased Premises**

**Section 7.01. Tenant's Building Opening.**

Subject to requirements set forth in Article 6 of this Lease, the parties acknowledge the Project may proceed under a phased development and construction schedule mutually agreed to by Refuge and City. Notwithstanding phasing of the Project, Tenant shall program, open, operate and maintain each building and related improvement for each phase of the Project, as evidenced by issuance of a certificate of occupancy sufficient for endeavoring to provide all or a portion of the City's public purpose or services related to the City's public purpose, commencing no later than October 31, 2022 and/or within eighteen (18) months of City Council approval subject to force majeure and other unavoidable delays and extensions allowed herein. Provided however, the Project shall be completed no later than December 31, 2026.

**Section 7.02. Use; Prohibited Uses; and Operations of Leased Premises.**

A. The parties hereto acknowledge and agree that Tenant's Parcel is leased by the City as a transaction in accordance with Texas Local Government Code 253.011 to Refuge, or its successor and assigns reasonably approved by the City, for development, construction, operation and maintenance of the Tenant's Building and Leased Premises, to serve the City's public purpose and for no other purpose. Specifically, Refuge shall develop, construct, use, maintain and operate the Tenant's Building and Leased Premises to provide youth services, living accommodations, counseling, mental health services, medical services, job training, a coffee shop, restaurant, and other related services, and related services to women and children recovering from abuse and/or sex trafficking and individuals and families experiencing homelessness.

In the event, (i) the Director reasonably and in good faith determines that the Leased Premises are not used for the intended City public purpose, and (ii) such failure continues for thirty (30) days after the City gives written notice thereof to Tenant, then pursuant to Texas Local Government Code 253.011 the reverter shall be effective and the City, upon recommendation of the Director, may terminate this lease, repossess and re-enter the Leased Premises, upon expiration of such thirty (30) day period.

B. In addition, and without in any way limiting the terms in subparagraph A above, Tenant shall not permit the Leased Premises to be used in any manner that (collectively with terms of subparagraph A above "Prohibited Uses")

- (i) is contrary to the City's public purpose as described in this Lease;

- (ii) would render the insurance on the Leased Premises thereon void or the insurance risk more hazardous;
- (iii) would render a change to the tax exempt status of City's bond issuances related to the Leased Premises;
- (iv) is contrary to any federal, state or local statute, rule, order, ordinance, requirement, or regulation applicable thereto;
- (v) would violate any certificate of occupancy or permit affecting same;
- (vi) would cause structural injury to the improvements, or cause the value or usefulness of the Leased Premises, or any part thereof, to diminish;
- (vii) would constitute a public or private nuisance or waste;
- (viii) would be immoral or obscene or create a threat to the health, safety, and welfare of the general public;
- (ix) would constitute an act of public or private discrimination, limitation of use, or exclusion from the Leased Premises on the basis of race, color, religion, gender, age, national origin, citizenship, disability, or sexual orientation; or
- (x) would result in the Leased Premises to be occupied for any business or purpose deemed extra hazardous because of the threat of fire or otherwise.

A use of the Leased Premises contrary to the City's public purpose and for any of the above listed prohibited uses shall constitute a default hereunder and City shall, after notice and cure, have the right to terminate this Lease and repossess the Leased Premises without any liability to Tenant.

C. Tenant shall, at its sole cost and expense, be responsible for operating, managing, programming and staffing the Leased Premises, exclusive of the City space, to carry out the City's public purpose, and for making any payments related thereunder. All personnel engaged by Tenant shall be considered employees and/or agents of Tenant and not employees or agents of the City. The parties agree that a necessary aspect of Tenant's operations will depend on tenancing portions of the Leased Premises, or any portion thereof depicted on the approved plans as shown in Exhibit \_\_\_\_\_, to sublessees to serve the City's public purpose. Tenant shall be responsible to maintain operations on the Leased Premises and/or cause all subtenants within the Leased Premises during the Term to operate in accordance with the City's public purpose. Any closure or temporary cessation of operations within the Leased Premises, to avoid a termination of the lease, shall be (i) coordinated and subject to a schedule approved by the City and (ii) ensure that any actions by Refuge and/or its successor and assigns reasonably approved by the City does not materially alter, amend, or discontinue said City public purpose use without the prior written consent of the City which shall not be unreasonably withheld.

Tenant will be responsible for securing all third-party contracts as are necessary in relation to all activity within the Leased Premises and for attaining its operational purpose. Tenant shall be responsible to insure that all Tenant contracts and subleases in connection with the operation and management of the Leased Premises shall: (i) require the contractor to use good faith efforts to comply with the City's Business Inclusion and Development Plan, (ii) terminate upon termination of this Lease unless City, at its sole option, elects to assume the specific management contract, (iii) provide the right to City to assume the contract upon termination of this Lease without liability for any obligation arising prior to said

assumption (iv) if applicable, contain insurance requirements for coverage and limits not less than those which are customarily required by City of its like contractors, naming City and its officers and employees as additional insureds, (v) indemnify City and its officers and employees against any costs or liabilities thereunder, (vi) if applicable, contain vendor qualification requirements sufficiently broad so as not to exclude minority vendors as a class and general contract specifications sufficiently broad so as not to favor a single vendor, and (vii) contain the following provision (or substantially similar wording approved by the Director) in bold print, underlined and uppercase lettering

**“THIS AGREEMENT IS SUBJECT TO THE TERMS AND PROVISIONS OF THE LEASE AGREEMENT WITH CITY OF DALLAS), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE, IN THE EVENT OF THE TERMINATION OF SAID LEASE AGREEMENT, UNLESS THIS AGREEMENT IS ASSUMED OR EXTENDED BY THE CITY. THE CITY OF DALLAS SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY UNDER THIS AGREEMENT, AND THE PARTIES HERETO RELEASE THE CITY OF DALLAS FROM LIABILITY FOR ANY CLAIMS, SUITS, OR JUDGMENTS IN CONNECTION WITH THIS AGREEMENT.”**

D. Tenant agrees, at its expense, to be solely responsible for developing promotional and marketing programming to promote and serve the City’s public purpose anticipated in this Lease and without limiting the operations of the Leased Premises in accordance with this Lease. Tenant shall plan, prepare, implement, coordinate and supervise all advertising, marketing, public relations and other promotional materials and programs for the Leased Premises. Tenant shall also negotiate, execute (in its own name and not the name of City) and perform all promotions and contracts concerning the sale, promotion, marketing and use of trademarks, trade-names, logos and similar intellectual property rights relating to the Leased Premises; (but in no event or circumstances shall include “Dallas”, “City of Dallas”, or other city logos without express written consent of the Director) and is in all respects subject to applicable copyright, trademark and trade-name laws. And, as described in paragraph B above, all contracts negotiated and executed pursuant to this section shall contain the same provision in bold print, underlined and uppercase lettering (or substantially similar wording approved by the Director, subordinating and subjecting the contract to the terms of this Lease and exculpating City from any obligation or liability, and each shall contain a primary term not to exceed five (5) years, unless the Director waives this requirement in writing.

E. Notwithstanding any of the foregoing, City shall be entitled, but not obligated, to review the contracts for compliance with the requirements of this section. All contracts as well as staff salaries, compensation, perquisites and benefits shall be commercially reasonable and consistent with good practice and industry standards for similar facilities. City acknowledges that Refuge is an entity committed in carrying out its mission through the hiring process and has represented to City that it will conduct in such practice in the performance of its obligations.

Refuge agrees to keep adequate and satisfactory records of its service operations on the Premises and City shall have access at all convenient times to any of such records for the purpose of examination and study thereof for a minimum time period of three (3) years at any given time. Accordingly, Refuge agrees and understands that Director or designee and the City Audit Department may enter the Premises from time to time for purpose of inspection and enforcement of the terms, conditions and restrictions of this lease, upon at least 3 days prior notice. Whenever possible, a representative of Refuge may be present at said inspections.

F. In addition to the City space, Refuge agrees that City shall have the right of first lease to any available space within the Leased Premises if the City determines that it has need for leasable space

greater than provided for in the City space. City shall notify Refuge with its request for additional space if available on terms negotiated by the parties.

G. Notwithstanding anything herein to the contrary, City may terminate this lease in whole without the need for prior written notice if Refuge violates any provision of this Section or any provision of local, state, or federal law or regulation relating to the protection of human health or the environment.

**Section 7.03. Performance Measures.**

**A. Performance Plan.**

In order for the City to evaluate the performance of Refuge to carry out the City's public purpose during the Term, Refuge shall submit to the City a Performance Plan for Refuge (the "Performance Plan"). The Performance Plan will identify "performance indicators" reasonably related to the performance objectives. Such preliminary performance indicators are subject to approval by the Director of the Office of Homeless Solutions (OHS), such approval not to be unreasonably withheld. No later than \_\_\_\_\_ date prior to project wrap, Refuge and Director by and through City OHS and Eco/Housing Departments staff shall finalize and identify the performance indicators approved by the Director to be included in the Performance Plan and shall provide a written report to the Economic Development/ Housing committees, at Director's request, with respect to same.

**B. Performance Indicators.**

The performance indicators to be included in the Performance Plan shall include but not necessarily be limited to (i) the number of persons served and housed - to include types of housing offered - by the \_Center's programming as set forth in the goals of the Recitals, Section A.; (ii) including but not limited to: the number of educational, work force training events held annually on the Leased Premises and at the various facilities located thereon; (iii) Refuge's projected net and gross operating revenues generated by the retail components of the Improvements and projected distribution among programming; (iv) status of capital improvements, if any; (v) contributions to Refuge or other contributions obtained for the benefit of the Project, from non-City sources, which means funding obtained from private foundations, for-profit corporations, non-profit corporations, federal, state, or local (non-City) governmental entities, or any other source of funding other than the City; (vi) Refuge's progress in meeting the City's BID Plan as described in Sections 6.01 and 6.18; and (vii) community engagement and outreach policies; and (viii) number and type of homeless support and housing programs. The period beginning on the Commencement Date and ending on \_\_\_\_\_, (annualized for a full year) will serve as the base year to measure Refuge's performance under the Performance Plan. During the Term, the Performance Plan will be updated by Refuge in and from time to time to meet performance objectives or as may be mutually agreed to by the parties, all in accordance with the City's Public Purpose.

**C. Reports to City.**

During the first two (2) years of the Term, Refuge shall provide to the Director a report regarding status of the Project, no less than twice a year. Starting in the fiscal year beginning on \_\_\_\_\_, Refuge shall provide to the Director an annual report summarizing its performance under the Performance Plan during the preceding fiscal year, such annual report to be provided to the Director no later than October 30 of each year. The annual report will also include other significant activities and accomplishments that occurred at the Leased Premises during the preceding year and information regarding activities or improvements planned for the future.

**D. Remediation Plan.**

If, during the Term, Refuge fails for a consecutive two (2) year period to meet any one of the performance indicators as set forth in the Performance Plan, and such failure is material and is not a result of (i) a Force Majeure, (ii) a lack of sufficient funds being available to Refuge from reserve funds created by Refuge from the operation of the Leased Premises after the Commencement Date, and other third party funding sources, or (iii) the failure of the City to comply with its obligations under this Agreement, the Director may, after taking all factors into consideration, require Refuge to engage an independent consultant, approved by the Director, to develop and oversee the implementation of a remediation plan. As part of the remediation plan, Refuge shall provide periodic updates to the Director on the remedial action being taken. If Refuge is unable to meet the performance indicators in all material respects within ten (10) months following the implementation of the remediation plan, the City may terminate this Agreement with sixty (60) days prior written notice.

**D. Emergency Action Plan.**

In the interest of serving the City's Public Purpose, Refuge shall provide an annual Emergency Action Plan for the Project, including each of the facilities and or operating components located on the Leased Premises, setting forth actions to be taken and responses in an emergency. The Plan shall provide for emergency personnel, the roles of first responder, emergency communication, emergency equipment, emergency transportation and all other items required upon review by the City's Office of Emergency Management. The Emergency Action Plan shall be reviewed every two (2) years and emergency preparedness activities with staff shall be conducted at least twice per year.

**Section 7.04 Accessibility.**

**A. Policies and Programs.**

Refuge, to serve the City's public purpose, shall manage and operate the Leased Premises with a goal of providing broad, nondiscriminatory access to the Project programming and operations for qualifying City's residents and the general public. In furtherance of that goal, Refuge will develop and maintain policies and programs designed to ensure broad access to the Project by economically disadvantaged City residents, and identified resident groups within the Project's programming objectives. Refuge shall provide Director an annual written report on said policies and programs.

**B. Control.**

In the administration of Refuge programs and operations on the Leased Premises, Refuge agrees there will be no discrimination by reason of race, age, color, ancestry, national origin, place of birth, religion, gender identity and expression, political adherence, sex, sexual orientation, military or veteran status, genetic characteristics or disability or otherwise; provided, however, that this will not prevent or prohibit reasonable and lawful rules and regulations for participation in Refuge programs and operations. Nothing herein shall prevent the exclusion or ejection from the Leased Premises, or any program and operations, of any person or group of persons whose conduct is, or in the past has proven itself to be, offensive, disruptive, dangerous, or otherwise detrimental to good order and decorum, or to the peace, safety, and quiet enjoyment of other persons properly attending, residing, or participating in any program.

**ARTICLE 8**  
**SUBLEASES, ASSIGNMENTS AND MORTGAGES**

**Section 8.01. Subletting and Assigning by Tenant.**

A. Subject to obtaining City's prior written consent, which shall not be unreasonably withheld, Tenant shall have the right to sublet any part of the Leased Premises, during the term of this Lease for purposes not contrary to the City's public purpose.

B. Tenant shall not have the right to assign this Lease, in whole or in part, with the prior written consent of the City, which consent shall not be unreasonably withheld. An assignment shall not be considered a release of Tenant of any of Tenant's obligations under the terms of this Lease unless the consent of the City specifically states otherwise. The consent of Landlord to any one assignment shall not constitute a waiver of Landlord's right to approve subsequent assignments, nor shall consent of Landlord to any assignment relieve any party previously liable as Tenant from any obligations under this Lease. The acceptance by Landlord of the payment of rent following an assignment shall not constitute consent to any assignment, and Landlord's consent to an assignment or sublease shall be evidenced only in writing. Notwithstanding anything to the contrary in this Section 8, except Section 8.A above, Tenant may transfer all or part of its interest in this Lease or all or part of the Leased Premises without the written consent of Landlord to an Affiliate of Tenant qualified under Texas Local Government Code 253.011 as may be amended. As used herein, an "Affiliate of Tenant" means any entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Tenant, including, without limitation, a special purpose entity formed by Tenant for purposes of assuming the obligations of Tenant hereunder. Tenant shall promptly notify Landlord of a transfer to an Affiliate of Tenant. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder.

C. If this lease is assigned or the whole or any part of Leased Premises is sublet, Tenant herein named, shall remain liable and responsible under this lease; provided, however, that:

(i) if this lease is assigned to an Acquisition Corporation, or to a Successor Corporation of Tenant, qualified under Texas Local Government Code 253.011 as may be amended, and such Acquisition Corporation, or such Successor Corporation of Tenant, as the case may be, by written instrument duly executed, acknowledged and delivered to Landlord, assumes and covenants and agrees with Landlord to pay the rent to be paid by Tenant hereunder and to carry out and perform all the terms, covenants and conditions of this lease which by the terms hereof are to be carried out and performed by Tenant, then and in such case Tenant shall be released and relieved of and from all further liability under this lease; and

(ii) if this lease shall continue in effect after the last day of the Primary Term hereof and an assignee of Tenant's interest herein by written instrument duly executed, acknowledged and delivered to Landlord shall assume, or shall have assumed, the performance of the covenants and obligations of Tenant hereunder, including but not limited to payment of the rent, then and in such case Tenant shall be released and relieved of and from all further liability arising or accruing under this lease in respect of any period after the last day of such Primary Term or the date of delivery to Landlord of such written instrument, whichever shall be the later date.

D. Anything in this lease to the contrary notwithstanding, it is expressly understood and agreed as follows:

(i) at any time during the term of this lease Tenant may lease or license departments or grant concessions giving other persons, firms, or corporations the right to sell only vending machine dispensed

goods in the Leased Premises, it being understood that such leasing or licensing of departments or granting of concessions shall not be considered a subletting within the provisions of this lease or contrary to the City's public purpose;

(ii) at any time during the term of this lease Tenant shall have the right to assign this lease or sublet all of Leased Premises to a Related Corporation of Tenant or to a Successor Corporation of Tenant, it being agreed that (i) the use of Leased Premises by any such corporation other than Tenant for the operation of a medical clinic or medical related business shall be deemed to be the continued use of the Leased Premises in accord with the permissible use and operations conducted by Tenant, and (ii) the rent payable by any such corporation shall be the same as if Tenant were operating a permissible use under this Lease in the Leased Premises.

E. The Parties hereby agree that no assignment, in whole or in part, other than a transfer to an Affiliate of Tenant, qualified under Texas Local Government Code 253.011 as may be amended, may occur prior to the completion of construction of Tenant's Building and related improvements, including the City space.

**Section 8.02. Sublease to City.**

A. The Parties hereby agree that in consideration for City's lease to Tenant of Tenant's Parcel, Tenant shall, at City's discretion and upon six (6) months advance notice, make arrangements to sublease the City space to the City, at no cost to the City, to allow City to operate and maintain a related use within the Leased Premises to serve the public purpose. The City's use shall be at the discretion of the City and shall be subject to the direction of the Director. Without limiting any of the foregoing, the Lease shall be subject to sublease back rights in favor of the City as follows:

B. City shall have a right to elect to operate an office for services related to the City's public purpose or public safety office within the Leased Premises, in the space allocated for the City's use by agreement of the parties. Provided City notifies Refuge of City's election to operate an office, Refuge shall coordinate and work with the Director, or his/her designee, in its design and construction planning to include up to 2,000 square feet of leasable space for City's exclusive operations (previously defined as "City space"). Refuge, or its assignee, shall be City's Sublandlord and shall build the City's space, as planned, coordinated and agreed to by the parties, at Refuge's sole cost and expense. Refuge, or its assignee, shall comply with all applicable federal, state, and local laws, ordinances and regulations, including but not limited to applicable building codes, Dallas City Code and the Americans with Disabilities Act. Refuge shall be solely responsible for obtaining and maintaining all necessary permits, licenses, consents, etc. for construction and operations at the Leased Premises.

C. Additional sublease terms shall include the following:

- i. The City space leasehold improvements shall be performed in a good and workmanlike and in compliance with applicable Building and Fire Codes, including but not limited to the American with Disabilities Act, and shall be to the reasonable satisfaction of the Director or designee. Notwithstanding anything herein to the contrary, City reserves the right to terminate its sublease of City space by notice to Sublandlord, and City shall not be liable to Sublandlord for any cost associated with the leasehold improvements. City shall provide three (3) months advance notice to Sublandlord of City's election to terminate the sublease. In such event, Sublandlord's shall thereafter be responsible for ground rent due under the ground lease between Sublandlord and City, provided however such ground rent shall abate during any period that City space remains untenanted by Sublandlord.

- ii. Sublandlord shall pay all charges and initial connection charges for electric, water, sewer, and gas to City space.
- iii. Sublandlord shall pay all charges for sanitation and janitorial services to City space, including providing adequate trash facilities.
- iv. Sublandlord shall be responsible for all improvements, repairs and maintenance to City space, at no cost to City.
- v. Sublandlord shall be responsible for the installation, maintenance and expense of any outdoor signage for the benefit of City space.
- vi. Sublandlord shall provide City with as-built plans and a Certificate of Occupancy for the City space.
- vii. Sublandlord shall be responsible to pay all taxes on City space.
- viii. Sublandlord shall provide City with reserved parking spaces, number to mutually agreed to upon completion of Improvements
- ix. Sublandlord agrees at its cost to repair and maintain all equipment and systems, including, but not limited to, all electrical, mechanical and plumbing systems, including heating and air conditioning equipment, (elevator), front and rear doors, light fixtures and bulb replacements, plumbing and floor drains, exhaust fans, windows, interior walls, ceiling and floors in, constituting a part of and/or servicing City space and further agrees that it shall be in good working order and condition upon delivery of the City space to City.
- x. Sublandlord, at its cost and expense, shall maintain in good repair the roof, foundation, exterior walls, exterior lighting, termites and pest extermination, parking areas and all public and common areas of and/or serving the City space during the Lease Term.
- xi. Sublandlord also at its cost and expense shall maintain in good repair the roof, foundation, exterior walls, exterior lighting, termites and pest extermination, parking areas and all public and common areas of and/or serving the Leased Premises during the Lease Term.
- xii. Sublandlord shall, at Sublandlord's expense, repaint and/or touch-up paint interior walls as needed through-out City space, on or before 3 years from City's opening of City space, during the 3rd year of this lease.
- xiii. City agrees to give Sublandlord notice of defects and any need for repairs to the City space and to provide Sublandlord with a reasonable opportunity to make such repairs.
- xiv. City shall take good care of City space and permit no waste; and City shall not make leasehold improvements to City space without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld. All leasehold improvements to be made by City, shall be made in good and workmanlike manner. City shall be responsible to repair all damages to the City space cause by its gross negligence.



- xv. City shall comply with all State, Federal and local laws, ordinances, rules and regulations applicable to City space because of City's use of City space during the Lease term.

**Section 8.03. Rights of Leasehold Mortgagees and Subtenants.**

A. For the purpose of and as used in this article the following terms shall have the meanings hereinafter specified:

1. "Leasehold Estate" shall mean Tenant's estate and right, title and interest in and to Leased Premises during the term of this lease.
2. "Subleasehold Estate" shall mean an estate in Leased Premises created by a Sublease as hereinafter defined.
3. "Leasehold Mortgage" shall mean a mortgage or deed of trust constituting a lien on or security interest in Tenant's Leasehold Estate or a lien on or security interest in a Subleasehold Estate.
4. "Leasehold Mortgagee" shall mean the mortgagee under or holder of a Leasehold Mortgage.
5. "Sublease" shall mean a demise and letting by Tenant to a third party of all of Leased Premises.
6. "Subtenant" shall mean any subtenant under a Sublease.

B. Tenant and any Subtenant may from time to time without further consent of Landlord execute and deliver a Leasehold Mortgage as security for payment of an indebtedness and may from time to time cause such mortgage to be renewed, modified, consolidated, replaced or extended. Any such Leasehold Mortgage shall be a lien only upon the Leasehold or Subleasehold Estate so mortgaged and shall not be a lien upon the Landlord's reversionary interest in Tenant's Parcel, and the related fee estate. Subject to the requirements of Texas Local Government Code 253.011, any such Leasehold Mortgage may be enforced by the Leasehold Mortgagee who holds such mortgage, and any such Leasehold Mortgagee may acquire title to the Leasehold or Subleasehold Estate so mortgaged in any lawful way, provided however, said Leasehold Mortgagee shall have no right, notwithstanding a foreclosure of such mortgage, to take possession of the premises comprising such estate, or assume Tenant's position in the Lease, unless and until said Leasehold Mortgagee is qualified under Texas Local Government Code 253.011 and shall have provided Landlord with an Attornment agreement, approved as to form by Landlord's Attorney, in which said qualified Leasehold Mortgagee, recognizes the tenant obligations under the Lease and agrees to undertake and perform all of Tenant's obligations pursuant to the terms of this Lease in Tenant's stead, subject to Texas Local Government code 253.011 as may be amended. Having so provided Landlord with an acceptable Attornment agreement said qualified Leasehold Mortgagee, , may take possession and subject to the consent of Landlord sell and assign the Leasehold or Subleasehold Estate so mortgaged; provided said subsequent sale and assignment (i) is to a qualified person or entity, under Texas Local Government Code 253.011, qualified and authorized to do business with the City of Dallas; and, (ii) includes an Attornment Agreement as described above and does not abrogate the terms of the Lease. An assignment or sale of the Leasehold or Subleasehold Estate that abrogates the terms of the Lease shall constitute an event of default under the Lease. Any person or entity, qualified under Texas Local Government Code 253.011 as may be amended, acquiring Tenant's Leasehold Estate hereunder by or after such foreclosure of a Leasehold Mortgagee thereon shall be liable

to perform the obligations imposed on Tenant by this lease only during the period such qualified person or entity has ownership of said Leasehold Estate or possession of the Leased Premises subject thereto.

C. Tenant or any Leasehold Mortgagee or any Subtenant may give notice to Landlord in the manner provided in Section 14.08 hereof captioned "Notices" of the existence of any Leasehold Mortgage or any Sublease together with the name and address to which notices are to be sent to such Leasehold Mortgagee or Subtenant thereunder. The following provisions of this section are for the benefit of, and may be enforced by, any such Leasehold Mortgagee or Subtenant with respect to whose Leasehold Mortgage or Sublease such a notice has been given to Landlord, but may not be availed of in the absence of such notice.

D. When giving notice to Tenant with respect to any default hereunder or when giving any other notice to Tenant hereunder, Landlord may also serve a copy of each such notice upon each such Leasehold Mortgagee and Subtenant who has provided notice to Landlord per subparagraph C. requirements. All notices which may be given by Landlord to each such Leasehold Mortgagee and Subtenant pursuant to this section shall be sent by certified mail, return receipt requested, or by a recognized national courier service, such as, but not limited to, Federal Express or United Parcel Service, addressed to such Leasehold Mortgagee or Subtenant at the address last specified by Tenant or such Leasehold Mortgagee or Subtenant in a notice to Landlord given in the manner provided in Section 14.08 hereof captioned "Notices", and any such notice shall be deemed to have been given and "served" when so mailed.

E. Prior to and in the absence of any foreclosure action, in case Tenant shall default in the performance of any of the terms, covenants, agreements and conditions of this lease on Tenant's part to be performed, each such Leasehold Mortgagee and Subtenant may with prior notice to Landlord take action within the grace period available to Tenant for curing such default cure or make good such default or cause the same to be cured or made good whether the same consists of the failure to pay rent or the failure to perform any other matter or thing as required under the Lease, and Landlord shall accept such performance on the part of any such Leasehold Mortgagee or Subtenant as though the same had been done or performed by Tenant, notwithstanding that said Leasehold Mortgagee or Subtenant is not a qualified entity under Texas Local Government Code 253.011 as may be amended. In case of a default by Tenant in the payment of money, Landlord will take no action to effect a termination of the term of this lease by reason thereof unless such default has continued beyond 60 days after Landlord shall have served a copy of such notice upon each such Leasehold Mortgagee and Subtenant, it being the intent hereof and understanding of the parties that each such Leasehold Mortgagee and Subtenant shall be allowed up to but not in excess of 60 days after the service of such notice to cure any default of Tenant in the payment of rent or in the making of any other payment required under the terms of this lease. In case of any other default by Tenant, Landlord will take no action to effect a termination of the term of this lease by reason thereof unless such default has continued beyond the grace period available to Tenant for curing said default, and then only after Landlord shall have:

1. given each such Leasehold Mortgagee, qualified under Texas Local Government Code 253.011, a reasonable time after the expiration of Tenant's grace period for curing such default within which to either, subject to the requirements of Texas Local Government Code 253.011 (i) obtain possession of the Leasehold on which the Leasehold Mortgage held by such Leasehold Mortgagee is a lien (not including possession by a receiver) and cure such default in Tenant's stead in the case of a default which is susceptible of being cured when such qualified mortgagee has obtained possession thereof, or (ii) institute foreclosure proceedings and complete such foreclosure or otherwise acquire such Leasehold with reasonable and continuous diligence in the case of a default which is not so susceptible of being cured by such qualified mortgagee;

provided, however, that any such qualified mortgagee shall not be required to continue such possession or such foreclosure proceedings if the default which was the reason for serving such a notice has been cured; and

2. given each such Subtenant a reasonable time after the expiration of Tenant's grace period for curing such default within which, subject to the requirements of Texas Local Government Code 253.011, to obtain possession of Leased Premises from anyone who may then be occupying them under such Subtenant and cure such default in the case of a default which is susceptible of being cured when such Subtenant has obtained possession of Leased Premises; provided, however, that any such Subtenant shall not be required to continue such possession or any proceedings to obtain possession if the default which was the reason for serving such a notice has been cured.

F. The time available to any such Leasehold Mortgagee to initiate proceedings to obtain possession and/or to foreclose as aforesaid and to any such Subtenant to initiate proceedings to obtain possession as aforesaid shall be deemed extended by the number of days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Leasehold Mortgagee's or Subtenant's control. Any such Leasehold Mortgagee and/or qualified 253.011 purchaser at a mortgage foreclosure sale, following the acquisition of such Leasehold or Subleasehold Estate by such qualified mortgagee or qualified 253.011 purchaser (or a designee thereof), either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, and any such Subtenant, following the acquisition of possession of Leased Premises by such Subtenant (or a designee thereof), shall as promptly as possible cause all defaults hereunder to be cured and all unperformed covenants of Tenant to be performed, except such defaults and covenants which cannot, in the exercise of reasonable diligence, be cured or performed by such mortgagee or purchaser or such Subtenant (or a designee thereof), whereupon Landlord's right to effect a termination of this lease based on the default in question shall be deemed waived, and such mortgagee or purchaser and such Subtenant, and their successors and assigns, shall be immune from any liability by reason of such default, but such immunity shall not extend to Tenant or to anyone other than such mortgagee or purchaser and such Subtenant, and their successors and assigns; provided further however that such immunity shall not extend to amend the terms of this lease and or remove the requirements of Texas Local Government Code 253.011. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of forbearance required of Landlord hereunder subject to the rights of each such Leasehold Mortgagee and Subtenant as herein provided.

G. In order to facilitate any financing or refinancing by Tenant which involves a Leasehold Mortgagee, Tenant may request Landlord agree to have included in this lease any or all of the following provisions, subject to and without abrogating the requirements of Texas Local Government Code 253.011 as may be amended :

1. a provision to the effect that Tenant shall not have the right without the consent of such Leasehold Mortgagee to exercise any option which Tenant may have to cancel or terminate this lease;
2. a provision to the effect that any agreement purporting to surrender, cancel, terminate, modify or amend this lease, or any attempted exercise of any such option, not so consented to by such Leasehold Mortgagee shall be ineffective, null and void;
3. a provision granting to any such Leasehold Mortgagee or Subtenant, qualified under Texas Local Government Code 253.011, the right to act for Tenant in enforcing any of Tenant's rights or remedies under this lease; and

4. any other provision or amendment to this Lease requested by such Leasehold Mortgagee which does not materially alter any economic, public purpose, public use, or required Texas Local Government Code 253.011 terms set forth in this Lease or,

If Tenant elects to make such a request, it shall do so by giving Landlord notice of such election and of each of the aforesaid provisions which it so elects to have included in this Lease, and upon such notice being given Landlord may, but shall not be obligated, agree to include said provisions in this lease. Upon such agreement, notice of which shall be delivered in writing to Tenant, Landlord and Tenant shall enter into an amendment to this lease confirming the inclusion in this lease of the provision or provisions.

## **ARTICLE 9**

### **Operation and Maintenance of the Leased Premises Common Facilities**

#### **Section 9.01. Maintenance of Common Facilities.**

A. Tenant will, at its sole cost and expense, throughout the term of this lease keep and maintain, or cause to be kept and maintained, the Common Facilities on the Leased Premises, as such Common Facilities may exist from time to time, it being agreed that such obligation shall include, without limitation, the following specific items of maintenance and upkeep in a good and safe state of repair and in a clean and orderly condition:

1. Illuminating all of the common facilities areas located within the Leased Premises. Further, for purposes of security, Tenant shall keep or cause to be kept all parking areas, sidewalks, aisles, open malls, streets, roads and driveways located within the Leased Premises lighted during night hours of non-business operations in accordance with generally accepted practices. Tenant shall be responsible for the cost of such lighting (i.e., the electric power consumed for such purpose) on the Leased Premises.
2. keeping and maintaining the parking areas, fire corridors, sidewalks, aisles, streets, roads and driveways in a good, safe, clean and sanitary condition;
3. causing such of the Common Facilities as are exposed to the elements to be properly drained and kept free, to the extent reasonably practicable, of snow, ice, surface water and debris;
4. keeping all directional signs and pavement signs and striping in the Common Facilities distinct and legible;
5. repairing, replacing and renewing lighting in the Common Facilities as may be necessary;
6. irrigating and maintaining in an attractive and healthy condition and replanting as needed all landscaped and planted areas including between the exterior walls of Tenant's Building and the inside curb lines of the parking areas adjacent thereto; and
7. maintaining and repairing, as necessary, any utility and sewer lines and systems traversing such area.
8. If any dispute arises between the parties as to whether Tenant is properly performing its maintenance obligations under the provisions of this section and Landlord and Tenant are unable to resolve their differences within sixty (60) days, then either party

may, at its option submit the dispute to mediation using a qualified independent mediator selected by Tenant and Landlord. If the parties are unable to reach a binding settlement through mediation, then either party, at its option may submit the dispute to arbitration in accordance with the provisions of Section 14.29 hereof captioned "ARBITRATION".

9. Landlord may, upon at least ninety (90) days written notice to Tenant, elect to take over and assume from Tenant the maintenance of the Common Facilities on the Leased Premises (specifically excluding the common utility facilities). In the event that Landlord so elects, Tenant shall reimburse Landlord for the cost to maintain, which cost shall be payable by Tenant to Landlord in monthly payments within 7 days after Landlord presents invoices to Tenant for the incurred costs. Notwithstanding that Landlord shall elect to take over the maintenance of the Common Facilities on the Leased Premises pursuant to this paragraph, Tenant shall still be required to maintain the commercial general liability for the Common Facilities.

10. Notwithstanding the foregoing, (i) all irrigation systems located on the Leased Premises. Tenant shall be responsible for, and shall pay for all expenses related to, the maintenance, repair and replacement of all landscaping and irrigation systems located on the Leased Premises. Tenant shall also be responsible for all electricity costs of the parking lot lighting on the Leased Premises, which shall be paid by Tenant directly to the utility company.

#### **Section 9.02. Operation of Common Facilities.**

Tenant will, subject to the provisions of Articles XII and XIII and hereof, captioned, respectively, "DAMAGE AND RESTORATION" AND "CONDEMNATION" during the term of this Lease:

1. maintain or cause to be maintained all of the parking facilities operations on the Leased Premises, including that Tenant shall control: (i) the parking lot lighting within the Leased Premises, including for that parking servicing the City space, and
2. cause the parking areas, sidewalks, aisles, open malls, streets, roads and driveways within the Leased Premises to be maintained and operated as such during the term of this lease, it being agreed that such facilities (i) shall not be fenced or otherwise obstructed, (ii) shall be kept open at all times; and (iii) shall not be used for any unlawful purpose, or the display or sale of merchandise or for any other purpose not contemplated by this lease, and further agreed that Tenant will take appropriate action to insure that the parking areas within the Leased Premises shall be used for parking purposes to serve the City's public purpose.; and
3. Tenant shall maintain adequate parking to support all operations conducted on the Leased Premises in accordance with the Dallas City Code.

#### **Section 9.03. Precautions against Public Dedication.**

Nothing contained in this lease, including without limitation the easements herein granted or reserved, shall be deemed to constitute a dedication of any part of the Leased Premises to any governmental body or agency or to the general public. Anything herein to the contrary notwithstanding, Tenant with respect to Leased Premises shall have the right from time to time to close off all or any part of the Common Facilities within such areas for such reasonable period of time as may be necessary in order to avoid such dedication or prevent the acquisition of any easement or other special rights therein,

such closing preferably to be at a time or upon a day when the Tenant's Building is not open for business. Before taking such action, Tenant shall notify the City of such intention and shall attempt to coordinate its closing with all activities in the Leased Premises.

**Section 9.04. Ordinances.**

A. Tenant shall at all times during the term hereof promptly comply with, or cause to be complied with, all present and future laws and ordinances and all rules and regulations of duly constituted governmental authority and the local fire insurance rating organization having jurisdiction (and any other organization or board exercising similar functions) affecting the Leased Premises, the businesses conducted therein, and the cleanliness, safety, use and occupation thereof, and Tenant shall also be responsible for such compliance as respects construction work which Tenant performs or causes to be performed on the Leased Premises.

B. Tenant shall at all times during the term hereof promptly comply with, or cause to be complied with, all present and future laws and ordinances and all rules and regulations of duly constituted governmental authority and the local fire insurance rating organization having jurisdiction (and any other organization or board exercising similar functions) affecting the Leased Premises, the improvements thereon, the business conducted therein, and the cleanliness, safety, use and occupation thereof, and which do not require the making of any changes, improvements, alterations or additions; provided, however, that Tenant shall not be responsible for such compliance as respects construction work which Landlord performs or causes to be performed on the Leased Premises. Notwithstanding the foregoing, in the event that any law, ordinance, rule or regulation which becomes effective after the date of this lease would require Tenant to make structural changes to Tenant's Building, Tenant shall with all diligence take all necessary steps to comply with such laws, ordinance, rules or regulations to update the Tenant's Building into compliance.

C. Notwithstanding the foregoing, either party hereto may refrain from complying with or causing compliance with any such law, ordinance, rule or regulation so long as the validity thereof shall be contested in good faith by appropriate proceedings; provided that (i) such party shall defend and hold harmless the other party hereto from penalties or other expenditures arising from or as a result of such non-compliance, (ii) the other party hereto would not be in danger of incurring any civil or any criminal penalty or liability by reason of such contest, and (iii) neither the Leased Premises nor any part thereof or interest therein would be in danger of being sold, forfeited or lost by reason of such proceedings or would be subject to the imposition of any lien as a result of a failure to comply with any such law, ordinance, rule or regulation.

**Section 9.05. Signs.**

Tenant shall have the right to place and maintain on any building on Tenant's Parcel signs or other directional devices, electrical or non-electrical, either parallel to said building or at any angle thereto, at or on either the front, back or sides thereof. Tenant agrees to comply with any applicable laws or ordinances in erecting any of the foregoing signs. Tenant agrees that no sign shall be installed on the roof of any building on Tenant's Parcel or which will project above the top of any parapet wall or above the roof line if it is to be affixed to the side of a building not having a parapet wall.

**Section 9.06. Repairs.**

Subject to the provisions of Articles XII and XIII hereof captioned, respectively, "DAMAGE AND RESTORATION" and "CONDEMNATION", Tenant agrees to make all leasehold improvements and repairs to the Leased Premises and all other improvements, repairs and maintenance necessary to

keep the Leased Premises safe and in good condition and repair (ordinary wear and tear expected), at no expense to City and that City shall be absolutely exempt from making any improvements or repairs, or undertaking any maintenance to the Leased Premises or other appurtenances and improvements during the Term.

Refuge agrees to allow City, upon reasonable prior notice to Refuge, to inspect the Leased Premises during Refuge's normal business hours at City's discretion, to ensure compliance with Refuge's maintenance responsibilities set out in this lease. City agrees to give Refuge notice of any observed defects and any need for repairs to the Leased Premises and to provide Refuge with a reasonable opportunity to make such repairs. Refuge agrees to exercise reasonable diligence in making repairs so as to not lay wasted to the Leased Premises.

**Section 9.07. Alterations; Installation, Removal and Financing of Equipment.**

A. Subject to continued compliance with Texas Local Government Code 253.011 to serve the City's public purpose, Tenant shall have the right and privilege at all times during the term of this lease to make, at its own expense, such alterations, changes, improvements and additions to Tenant's Building, exclusive of the City space, and other buildings and improvements on Tenant's Parcel as Tenant may desire provided that Tenant obtains the approval of Landlord, which approval shall not be unreasonably withheld, prior to making such alternations, changes, improvement and additions, and the height of Tenant's Building as initially constructed shall not be increased.

Upon the initial completion of the Tenant's Building and related improvements on Tenant's Parcel, Refuge shall not make leasehold improvements to the Leased Premises consisting of additional structural improvements or effecting a material change to the layout of the existing leasehold improvements or effecting a redesign of the layout of the leasehold improvements on the Premises without the prior review and written approval by the City of the plans and specifications for same, which approval shall not be unreasonably withheld. All leasehold improvements to be made by Refuge shall be made in a good and workmanlike manner and shall be directed to serve the City's public purpose. Any alterations, changes, and improvements made by Refuge shall immediately become a part of the Leased Premises.

B. Any and all trade fixtures and equipment, signs, appliances, furniture and other personal property of any nature installed within the Leased Premises at any time by Tenant shall not become part of the realty and may be removed from the Leased Premises by Tenant at any time during the term of this lease or within 60 days thereafter; provided however any personal property installed in the City space shall belong to the City and not be subject to removal. Tenant need not remove such items of personal property from Leased Premises at the end of the term of this lease, but if it does not do so within 60 days after the termination of the term, unless the Landlord grants written permission for an extension of time, all unremoved items shall be deemed to have been abandoned by Tenant and shall become the property of Landlord.

C. Tenant may convert to Tenant's own use all old materials removed by Tenant when making alterations, changes, improvements, and/or additions to Leased Premises and in performing any term, provision, covenant or condition of this lease which Landlord is obligated, but fails, to perform.

D. Tenant shall have the right to obtain financing secured by any equipment, signs, appliances, furniture and other personal property of any nature, which may be installed or located on the Leased Premises, except for within the City space, at any time during the term of this Lease. Landlord agrees to cooperate with Tenant and any lender of Tenant, to provide waivers, releases and any other

items or agreements which may be reasonably requested by Tenant or any lender of Tenant in relation to any such equipment financing.

**Section 9.08. Mechanics' Liens.**

A. If any mechanic's, materialman's, or other similar lien shall at any time be filed against Leased Premises on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of Tenant or anyone holding or occupying Leased Premises through or under Tenant, Tenant shall, without cost or expense to Landlord, forthwith cause the same to be either (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

B. If any mechanic's, materialman's or other similar lien shall at any time be filed against any part of the Leased Premises comprising Common Facilities for any reason whatsoever or be filed against any other part of the Leased Premises (including, without limitation, the City space) on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of Landlord, Landlord shall, without cost or expense to Tenant, forthwith cause the same to be either (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

**Section 9.09. Compliance with Law.**

Tenant shall comply with all present and future laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, applicable to Landlord, Tenant or subtenants thereof, or of any federal, state, municipal, health or other public department and shall protect, hold harmless and indemnify Landlord of and from all fines, penalties, claim or claims for damages of every kind and nature arising out of any failure by Tenant to comply with any such laws, acts rules, requirements, orders, directions, ordinances and/or regulations, the intention of the parties being with respect thereto that Tenant during the Term hereby granted, shall discharge and perform all the obligations of Tenant, arising as aforesaid, and save Landlord harmless therefrom, so that at all times the Rent for the Premises shall be absolutely net to Landlord; provided, however, that Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord), and after having secured Landlord to its reasonable satisfaction by cash or by a surety company bond in an amount, in a company and in substance reasonably satisfactory to Landlord against loss or damage, contest the validity of any such law, act, rule, requirement, order, direction, ordinance or regulation and pending the determination of such contest, may postpone compliance therewith but not so as to subject Landlord to any fine or penalty or to prosecution for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

**ARTICLE 10**

**Insurance and Indemnification**

Refuge shall at all times during the term of the lease, maintain in full force and effect adequate insurance, including without limitation worker's compensation, liability and builder's risk insurance, on the Leased Premises, in such form and amounts as, City shall reasonably require, subject to City's risk management department review and approval. More specifically:

**Section 10.01. Property Insurance.**



At all times during the term of the Lease, Tenant shall maintain property insurance upon the Leased Premises, any building and other structures (including all improvements, alterations, additions and changes thereto) which are located within Tenant's Parcel in accordance with the insurance requirements set forth **Exhibit** attached hereto and made a part of this Lease for all purposes herein.

**Section 10.02. Payment and Disposition of Insurance Proceeds.**

Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance which a party to this Lease is obligated to maintain in accordance with the insurance requirements set forth **in Exhibit**, or cause to be maintained, hereunder may be made payable to the holder of any first Mortgage which is a lien upon the insured property, as its interest may appear, under a standard mortgagee clause, provided such mortgagee is an Institutional Lender and agrees that it will in the event of loss hold the proceeds for payment of the cost of repairing, rebuilding or restoring the damaged premises as may be required pursuant to the provisions of Article XII hereof captioned "DAMAGE AND RESTORATION".

**Section 10.03. Liability Insurance.**

Tenant shall maintain from and after the execution and delivery of this Lease and until the expiration of the term hereof commercial general liability insurance in accordance with the insurance requirements set forth in **Exhibit**.

**Section 10.04. General Provisions.**

All insurance policies required to be maintained hereunder shall be in accordance with the insurance requirements set forth in **Exhibit**.

**Section 10.05. Evidence of Insurance.**

Each party shall deliver to the other party evidence of insurance, if any, as may be required, in accordance with the insurance requirements set forth in **Exhibit**.

**Section 10.06. Indemnification.**

All terms of indemnification between the parties shall be in accordance with the insurance indemnification requirements set forth in **Exhibit**.

City and its agents shall not be liable to Refuge or to Refuge's employees, guest, and invitees or any other persons for any injury to any such persons or any damage to personal property occurring on the Leased Premises caused by the negligence or misconduct of Refuge and its employees, guest, and invitees.

**As a condition hereof, Refuge agrees and is bound to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the Leased Premises or Refuge's installations and improvements within the Leased Premises, from any act or omission of any representative, agent, customer and/or employee of Refuge, or by Refuge's breach of any of the terms or provisions of this Lease, or by any negligent or strictly liable act or omission of Refuge, or its officers, agents, employees or subcontractors in the use, occupancy and maintenance of the Leased Premises or**

Refuge's installation and improvements within the Leased Premises; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the Refuge and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of Refuge's use of the Leased Premises or Refuge's improvements and equipment located thereon. In addition to the foregoing, Refuge covenants and agrees never to make a claim of any kind or character whatsoever against the City for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

Refuge assumes all liability resulting from any and all environmental contamination caused, contributed to, or introduced to the Leased Premises, improvements or grounds by Refuge, its agents employees, clients or contractors. Refuge shall not be responsible for any loss, liability, claim or expense resulting from, or for compliance with any law, order or directive relating to, any environmental contamination or hazardous substances that existed on, in or under the Leased Premises, building or grounds prior to the commencement of the Term, to the extent that Refuge did not cause, contribute to, or introduce the environmental contamination or hazardous substances.

In case City shall, without fault on City's part, be made a party to any litigation commenced by or against Refuge or relating to this lease or the Leased Premises, Refuge shall pay all costs and expenses, including reasonable attorney's fees, incurred by or imposed upon City by and in connection with such litigation; and Refuge shall pay all costs and expenses including reasonable attorney's fees that may be incurred by City in enforcing any of the covenants and agreements contained in this lease and the amount of all such costs and expenses and reasonable attorney's fees, if paid by City herein, shall be additional rental due from Refuge to City.

## **ARTICLE 11**

### **Damage or Destruction and Restoration**

#### **Section 11.01. Damage to Improvements and Common Facilities on Leased Premises.**

In the event that all or part of the Leased Premises or improvements and common facilities located thereto are damaged or destroyed by fire, water, natural disaster, or other damage or casualty, but can reasonably be rebuilt, repaired or restored within ninety (90) days of the casualty event, Refuge shall repair and restore said damage and destruction at Refuge's sole expense, to substantially its condition immediately prior to the occurrence.

In the event the Leased Premises or improvements and common facilities are substantially or totally damaged or destroyed by fire, water, natural disaster or other damage or casualty such that rebuilding, or repairs reasonably cannot be completed within ninety (90) days after the date of such damage or destruction, either Refuge or City may elect to terminate this lease. If either party terminates this lease, all insurance proceeds attributable to the casualty shall be paid to and become the property of City and Refuge shall pay any deductible amount to City. If neither party elects to terminate this lease,

Refuge shall repair and restore said damage and destruction at Refuge's sole expense to substantially its condition immediately prior to the occurrence, as set forth in Section 11.02 below.

**Section 11.02.** If, at any time during the Term of this Lease, the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable), and neither party shall have elected to terminate the lease as may be permitted under Section 11.01 above, Tenant shall promptly proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting such loss) to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Such repairs, alterations, restoration, replacement or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any work thereof, are sometimes referred to in this Lease as the "Work". Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the Work. Landlord acknowledges that neither it nor its mortgagee(s) shall have any right, title, or interest in and to any insurance proceeds payable under Tenant's casualty insurance policy, and that any such carrier shall be directed to pay such proceeds directly to the Leasehold Mortgagee or Tenant to be applied to the cost of such rebuilding or repair. Notwithstanding the foregoing, Tenant's obligations under this Section 11.02 shall be limited to the amount of insurance proceeds actually received by Tenant.

**Section 11.03.** In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of any either monetary and non-monetary obligations required under this lease because part or all of the Premises shall be untenable owing to the partial or total destruction thereof, and anything herein to the contrary notwithstanding, no such damage or destruction shall affect in any way the obligation of Tenant to pay the Rent and other charges herein reserved or required to be paid by Tenant, nor release Tenant of or from any obligation imposed upon Tenant under this Lease.

**Section 11.04.** Notwithstanding anything in this Lease to the contrary, when there are one or more unpaid Leasehold Mortgages (i) any Leasehold Mortgagee shall have the right to participate in any adjustment of losses as to any casualty, and (ii) Tenant shall not be entitled to receive any insurance proceeds except as permitted by the Leasehold Mortgagee(s).

**Section 11.05.** If Tenant does not rebuild the Improvements, then all insurance proceeds will first be allocated to the Leasehold Mortgagee(s) until the Leasehold Mortgages are paid in full. Any remaining insurance proceeds will then be equitably apportioned between Landlord and Tenant based on the then fair market values of their respective interests in the Improvements before the casualty event.

## **ARTICLE 12**

### **Condemnation**

#### **Section 12.01. Condemnation of Tenant's Building and Common Facilities.**

A. If all or any portion of Tenant's Building shall be taken by Condemnation and in Tenant's judgment reasonably exercised it shall not be feasible to restore or replace the same to a complete architectural unit capable of being operated in an economical manner as a medical facility in accordance with the City's public purpose, Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of such election within six (6) months after Tenant shall have been deprived of possession of the property so taken, and if such notice is given, said covenant and all such restrictions, or the term of this lease, as the case may be, shall terminate as of the date 30 days after the giving of such notice. Unless such option shall be given to Tenant by reason of such a Condemnation and Tenant shall exercise same, Tenant shall restore said building to a complete medical facility unit which

may contain the same or more or less Floor Area than said building contained when originally constructed and have the same or a lesser or greater value than the value of said building immediately prior to such taking; provided however the final improvements serve the City's public purpose.

B. Intentionally deleted.

C. In any Condemnation proceeding the award made for, or the portion of the award equitably attributable to, the taking of any building or other improvement located on the Leased Premises or the taking of Tenant's fixtures, equipment, signs or other personal property shall belong to Landlord, and any award or so much of any award as is granted as compensation for the taking of land within the Leased Premises, shall be divided between Landlord and Tenant in accordance with the values of their respective interests in such land. In any such proceeding whereby all or part of Leased Premises is taken, whether or not Tenant elects to terminate the term of this lease, each party shall have the right to make claim against the condemning authority for the amount of the actual provable damage done to each of them by such proceeding. If the condemning authority or the court having jurisdiction shall refuse to permit separate claims to be made, then and in that event Landlord shall prosecute with counsel satisfactory to Tenant the claims of both Landlord and Tenant, and the proceeds of the award, after deducting all reasonably legal fees and other expenses incurred in connection with prosecuting such claims, shall be paid over to Landlord and Tenant, respectively, as hereinbefore provided.

#### **Section 12.02. Condemnation of the Common Facilities.**

If all or any portion of the Common Facilities located on the Leased Premises shall be taken by Condemnation and the means of access to the Leased Premises from any public street abutting the Leased Premises shall be adversely affected, and in Tenant's judgment reasonably exercised it shall not be feasible to restore or replace the same to a complete Common Facilities area capable of being operated in an economical manner to serve the Tenant's Building and other remaining improvements on the Leased Premises in accordance with the City's public purpose, Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of such election within six (6) months after Tenant shall have been deprived of possession of the property so taken, and if such notice is given, said covenant and all such restrictions, or the term of this lease, as the case may be, shall terminate as of the date 30 days after the giving of such notice. Alternatively, at Tenant's sole election, Tenant may undertake to replace the lost Common Facilities area. Landlord shall have no obligation to construct any replacement Common Facilities and at Tenant's election, Tenant may undertake at its cost to construct said Common Facilities.

#### **Section 12.03. Other Provisions Relating to a Permanent Taking.**

A. If there shall be a Condemnation of any part of the Leased Premises which shall not result in a termination of this lease, the parties hereto shall enter into an amendment to this lease in recordable form (i) substituting for the description of each parcel of property described in Exhibit A hereto which shall have been reduced in size because of such condemnation and/or added to by reason of the creation of a substitute building or substitute Common Facilities a revised description of such parcel as so changed, and (ii) substituting for the description of the Leased Premises set forth in Exhibit A hereto a revised description thereof taking into account the changes in the description or the Leased Premises and the description of any additional individual parcels which Tenant may have added to its operations to serve the City's public purpose.

B. If the term of this lease shall be terminated under the provisions of this article, rent payable hereunder for the period during which such termination occurs shall be pro-rated and any unearned rent shall be refunded to Tenant.

**Section 12.04. Award for Temporary Taking.**

If by reason of any proceeding involving an exercise of the power of Condemnation Tenant shall be temporarily deprived in whole or in part of the use of any portion of Leased Premises, the entire award made as compensation therefor shall be paid over to Tenant, and there shall be no abatement of rent payable hereunder.

**Section 12.05. Disputes Relating to Condemnation.**

A. If Landlord or Tenant cannot agree upon:

1. the division to be made between them of an award made for, or equitably attributable to, the taking of all or part of Leased Premises by Condemnation and such matter shall not have been determined by the court before whom the proceeding for the Condemnation of such property was brought;
2. the portion of an award which is attributable to the taking of any particular property; or
3. the application of any provision of this article;

Then and in any such event the matter or matters in dispute shall be settled first by referring the matter in dispute to mediation using a qualified independent mediator selected by Tenant and Landlord. If the parties are unable to reach a binding settlement through mediation, then either party, at its option may submit the dispute to arbitration in accordance with the provisions of Section 14.29 hereof captioned "ARBITRATION".

**Section 12.06.** In the event Landlord or Tenant receives notice of any proposed or pending Condemnation Proceeding affecting the Premises, the party receiving such notice shall promptly notify the other party and any Leasehold Mortgagees.

**Section 12.07.** Landlord and Tenant each covenant to seek separate awards in all such Condemnation Proceedings and to use their respective best efforts to see that such separate awards are made at all stages of all such proceedings. If a certain Condemnation Proceeding is to govern the awards granted to both Landlord and Tenant, then Landlord, Tenant and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any such Condemnation Proceeding and to participate in any and all hearings, trials and appeals therein.

**ARTICLE 13**  
**Default**

**Section 13.01. Tenant's Default and Landlord's Remedies.**

A. Tenant's Default. A "Tenant Default" shall mean the occurrence of one or more of the following events:

1. failure of Tenant to complete construction of the Improvements under the terms of this Lease;
2. failure of Tenant to pay when due any monetary amount due to Landlord or rental amount, pursuant to this Lease, and the continuation of the failure without cure for

a period of thirty (30) days after Landlord notifies Tenant of the failure in writing in accordance with the notice provisions under this Lease;

3. failure of Tenant to maintain any of the insurance or bonds provided for herein and the failure by Tenant to cure such failure within five (5) days after Landlord notifies Tenant in writing of the failure to comply in accordance with the notice provisions under this Lease;

4. failure of tenant to use the Leased Premises to serve the City's public purpose, thereby triggering the reverter pursuant to Texas Local Government Code 253.011;

5. failure of Tenant to comply with any other term, covenant, or provision of this Lease, and the failure by Tenant to cure (or commence and thereafter diligently work to cure) the failure within ninety (90) days after Landlord notifies Tenant in writing of the failure to comply in accordance with the notice provisions under this Lease;

6. filing by Tenant of a voluntary petition in bankruptcy, or any similar petition seeking relief under any present or future federal, or other bankruptcy or insolvency statute or law; or if a proceeding under any present or future federal, state or other bankruptcy or insolvency statute or law shall be filed against Tenant or any asset of Tenant, and such proceeding shall not have been dismissed or vacated within sixty (60) days of the date of such filing;

7. appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant; or if any action is taken or suffered by Tenant pursuant to its insolvency, bankruptcy, or reorganization act; or if Tenant makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days;

8. failure of tenant to maintain its qualified non-profit status required under Texas Local Government Code 253.011;

9. failure of tenant to operate the Leased Premises in accord with the City's public purpose as required under Texas Local Government Code 253.011; and/or, impair the tax-exempt status of the bonds encumbering the Land; and

10. there is any intentional and knowing misrepresentation by Tenant in this Lease.

B. Landlord's Remedies. Upon the occurrence of a Tenant Default under this Lease, subject to any applicable cure period provided for hereunder, subject to any applicable cure period provided for thereunder, to the extent allowed by applicable law, Landlord may pursue any legal or equitable remedy or remedies, including without limitation specific performance, suit for damages, and termination of this Lease. Termination or non-termination of this Lease upon a Tenant Default under this Lease shall not prevent Landlord from pursuing its other remedies. Upon termination by Landlord, Landlord may re-enter, repossess, and occupy the Leased Premises, and Tenant shall assign to Landlord, to the extent requested by Landlord, any of Tenant's interest in and to contracts and agreements relating to the Leased Premises, and fixtures installed therein, and the operation thereof. All such contracts not assigned to Landlord shall terminate upon termination of this Lease. Landlord is not obligated to assume any of the above-described contracts. All of Tenant's material contracts and agreements for the use of all or any part of the Leased Premises must include a clause stating that if the contract is not assumed by Landlord it shall terminate immediately upon termination of this Lease. Tenant does hereby appoint Landlord as its

agent and attorney in fact for purpose of effecting said assignment(s) and/or termination, said appointment being coupled with an interest therein. Should the term of this lease at any time be terminated under the terms and conditions hereof, or in any other way, Tenant hereby covenants and agrees to surrender and deliver up the Leased Premises peaceably to Landlord immediately upon the termination of the term hereof.

C. Landlord's Lien. Without limiting any of City's statutory rights of recovering the Lease Premises or otherwise pursuant to Texas Local Government Code 263.011, to assure payment of all sums due under this Lease and Tenant's faithful performance of all other covenants hereunder, Tenant hereby contractually grants to Landlord an express contractual lien on and security interest in and to all improvements owned by Tenant which may be placed on the Leased Premises, and upon all proceeds of any insurance or condemnation which may accrue to Tenant by reason of any such property or this Lease. Tenant shall execute appropriate financing statements and any extension thereof necessary to perfect this lien. Landlord shall have the rights and remedies of a secured party under the Texas Business and Commerce Code and this lien and security interest may be foreclosed by operation of law. Any statutory landlord's lien applicable hereto is not waived, the contractual security interest herein granted being in addition and supplementary thereto.

#### **Section 13.02. Landlord Default and Tenant's Remedies.**

A. Landlord Default. A "Landlord Default" shall mean Landlord failing to comply with any provision of this Lease within sixty (60) days after written notice of said specific non-compliance and the cure action requested.

B. Tenant's Remedies. Subject to terms of subparagraph C below, upon the occurrence of Landlord Default under this Lease, following any applicable cure period, to the extent allowed by applicable law, Tenant's sole and exclusive remedy for a Landlord Default shall be to terminate the Agreement. In no event shall Landlord ever be liable to Tenant for construction costs or exemplary or punitive damages. In no event shall Landlord ever be liable for consequential, exemplary or punitive damages by reason of any Landlord Default.

C. Tenant's Right to Self-Help. If Landlord fails to cure any Landlord Default, following any applicable cure period, Tenant shall have the right, but not the obligation, to cure, at its sole cost and expense, Landlord Default and avoid electing termination of the Lease. Upon such election, Tenant shall provide Landlord of its election and release Landlord from any future liability arising out of Tenant's self-help actions.

### **ARTICLE 14**

#### **Miscellaneous Provisions**

#### **Section 14.01. Quiet Enjoyment; Recordation.**

Landlord covenants and agrees that if Tenant is current and in compliance with Tenant's obligations under the Lease, Tenant shall be entitled to peaceful and quiet possession and enjoyment of the Leased Premises, subject to the terms and conditions of the Lease.

#### **Section 14.02. Successors and Assigns.**

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and, except as otherwise provided in this Lease, their assigns, subject to the requirements of Texas Local Government Code 253.011. The covenants, terms and conditions of this lease may be changed, modified or discharged only by an instrument in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by such party's duly authorized agent.

**Section 14.03. Compliance with Laws and Regulations.**

This Lease is entered into subject to and controlled by the Charter and ordinances of the City of Dallas and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Tenant shall, during the course of performance of this Lease, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

**Section 14.04. Nondiscrimination.**

As a condition of this Lease, Tenant agrees that Tenant will take all necessary actions to insure that, in connection with any operations under this Lease, Tenant, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Tenant agrees that no person shall be denied membership in, admission to or use of the public access areas of the Leased Premises or any related facilities or programs because of race, color, sex, age, sexual orientation, religion, national origin, physical handicap, or disability. Tenant shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Tenant shall keep, retain and safeguard all records relating to this Lease or work performed hereunder for a minimum period of three (3) years from final Lease completion, with full access allowed to authorized representatives of City, upon request, for purposes of evaluating compliance with this and other provisions of the Lease.

**Section 14.05. Place of Performance of Obligations and Venue.**

All obligations of the parties under the terms of this Lease reasonably susceptible of being paid or performed in Dallas County, Texas, shall be payable and performable in Dallas County, Texas, and venue for any legal actions arising out of this Lease shall lie exclusively in Dallas County, Texas.

**Section 14.06. Texas Law.**

This Lease shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

**Section 14.07. Captions.**

The captions, section numbers, article numbers, and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease, nor in any way affect this Lease.

**Section 14.08. Notices.**



Any notice required or desired to be given under this Lease shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified return receipt requested and postage prepaid, and addressed to the party to be served at the last address given by that party to the other party under the provisions of this Article. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

If to Landlord: City of Dallas-City Manager's Office  
1500 Marilla, 4<sup>th</sup> Floor  
Dallas, Texas 75201  
Attn: City Manager  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

With copy to: City of Dallas  
Public Works-Real Estate Services Division  
320 E. Jefferson Blvd., Rm. 203  
Dallas, Texas 75203  
Attn: Director of Public Works  
(214) 948-4100  
(214) 948-4118 facsimile

City of Dallas  
Dallas Water Utilities  
1500 Marilla  
Dallas, Texas 75201  
Attn: Director  
(214) \_\_\_\_\_  
(214) \_\_\_\_\_ facsimile

If to Tenant: Refuge City of Dallas, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: David Williams  
Phone: 214.697.0684  
Email: david@cityofrefugelh.org

With copy to: Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: Tommy Mann  
Phone: 214.745.5724  
Email: tmann@winstead.com

**Section 14.09. Severability; Partial Invalidity.**

In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Lease shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein, unless the invalid, illegal, or unenforceable provision is reasonably viewed as constituting a material benefit to and primary consideration for either party entering into this Lease, in which case the City and Tenant will diligently and in good faith negotiate and implement a substitute provision providing the party, to the greatest extent possible, the equivalent material benefit and primary consideration as the provision held to be invalid, illegal, or unenforceable.

**Section 14.10. No Implied Waiver.**

The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

**Section 14.11. Cumulative Remedies.**

Each right, power, and remedy of Landlord and Tenant provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all such other rights, powers, or remedies.

**Section 14.12. Force Majeure.**

Neither Tenant nor City shall be liable to each other for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Lease due to causes beyond their respective control, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of nature, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not in its own power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer a period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch. Nothing in this Section shall be construed to preclude the use of available insurance proceeds from insurance required under this Lease to remove or overcome any event of force majeure.

**Section 14.13. Offset.**

Notwithstanding anything to the contrary herein, Landlord may, at its option, offset any amounts due and payable under this Lease against any debt (including taxes) lawfully due to Landlord from Tenant, regardless of whether the amount due arises pursuant to the terms of this Lease, or otherwise and regardless of whether or not the debt due to such party has been reduced to judgment by a court.

**Section 14.14. Notice of Contract Claim.**

This Lease is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Lease as if written word for word in this Lease. Tenant shall comply with the requirements of this ordinance as a precondition of any claim relating to this Lease, in addition to all other requirements in this Lease related to claims and notice of claims.

**Section 14.15. Relationship of the Parties; No Partnership.**

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.

No term or provision of this Lease or act of Tenant, its architect, construction manager, contractor, subcontractors, officers, agents and employees or any person under the control of Tenant in the performance of this Lease shall be construed as making them the agent, servant or employee of Landlord, or making them eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Landlord provides its employees.

Nothing in this lease shall be construed as making either of said parties liable for the debts or obligations of the other party.

**Section 14.16. Conflict of Interest of City Employees.**

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Agreement, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)".

**Section 14.17. Gift to Public Servant.**

(a) City may terminate this Lease immediately if Tenant has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

(b) For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(c) Notwithstanding any other legal remedies, City may require Tenant to remove any employee of Tenant from the Leased Premises who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**Section 14.18. Holdover.**

This Lease shall terminate without further notice at the expiration of the term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Leased Premises, and such occupancy shall be construed to be a tenancy from month to month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that Tenant shall be subject to an annual rent obligation equal to the market rent for similar premises as a minimum fixed rent. Said holdover rent shall be due and payable in monthly installments on the first of each month of said hold over period. Tenant shall pay said holdover rent until a different rate is determined through an appraisal procedure, which shall be undertaken promptly by the parties, at Tenant's cost, to determine market rent rates which shall be used to set the annual fixed rent rate. Acceptance of any holdover payments under the Lease by Landlord shall not be deemed an obligation by Landlord to enter into an extension of the lease. The holding over period may be cancelled by either Refuge or City upon thirty (30) days notice to the non-cancelling party.

**Section 14.19. Late Fee and Interest.**

In the event of a late rental payment, Tenant shall pay a late fee equal to three percent (3%) of the late amount. Notwithstanding any provision in this Lease to the contrary, interest on any amounts owed hereunder shall never exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under law. Any interest in excess of that maximum amount, after due application of the spreading doctrine and all rules of construction and presumptions against the contracting for, taking, reserving, charging or receiving of excessive interest, will be credited to the principal of any debt or, if that has been paid, refunded.

**Section 14.20. Conveyance By Landlord.**

Subject to the requirements of Texas Local Government Code 253.011, in the event Landlord or any successor to same shall convey or otherwise dispose of the Leased Premises, then, in such event, provided that such transferee expressly assumes all future obligations and liabilities of Landlord under this Lease, Landlord herein named (or the then grantor if Landlord herein named shall have previously made such a transfer or conveyance) shall be automatically released of all liability with respect to the performance of any and all obligations on the part of Landlord accruing after such transfer or conveyance (but not those accruing prior to such transfer or conveyance).

**Section 14.21. Brokerage.**

Tenant warrants that it has had no dealings with any broker or agent in connection with this Lease. Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all costs, expenses or liability for any compensation, commissions, or charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

**Section 14.22. Language.**

The terms used herein, shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The words “persons” and “parties” whenever used shall include individuals, firms, associations, and corporations. Landlord and Tenant have freely negotiated this Lease and its terms. Separate legal counsels have represented both parties. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly against a party by reason of authorship.

**Section 14.23. Entire Lease.**

This Lease embodies the complete Lease of the parties hereto, superseding all oral or written previous and contemporary Leases between the parties that relate to the subject of this Lease. This Lease cannot be modified or amended without written agreement of the parties. Oral modifications are not permitted. Any exhibits attached to and referred to in this Lease are incorporated in this Lease as a part of this Lease for all purposes.

**Section 14.24. Estoppel Certificates.**

Tenant and Landlord hereto agrees, at any time, but not more than twice in any twelve month period, upon not less than thirty (30) days' prior written request by the other Party, to execute, acknowledge and deliver to the party making such request, as the case may be, a statement in writing certifying (a) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) to the extent applicable, the dates to which any rental amounts described in this lease and any other charges have been paid, and (d) that, to the best knowledge of Landlord or Tenant, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

**Section 14.25. Confidentiality of Information.**

Refuge acknowledges that City as a municipal corporation formed under the laws of Texas is subject to the Texas Open Records Act and other public disclosure laws. Subject to the Texas Open Records Act, and or other applicable disclosure laws, with respect to any information, documents, leases and financial statements provided or made available to Landlord by Tenant pursuant to this Lease, Landlord and Tenant agree that such information may, from time to time, be proprietary and confidential, and the disclosure of such information may be detrimental to the success of the Lease, and Landlord's and Tenant's interests therein. To the extent allowed by law, City shall use commercially reasonable good faith efforts to limit disclosure of such information to its representatives who reasonably need to know such information. City as Landlord further covenants and agrees that if it is requested (orally or in writing) in connection with any request or legal proceeding to disclose such confidential or proprietary information, Landlord will provide Tenant with prompt notice in advance of such disclosure so that Tenant may seek such disclosure exemptions, protective orders or other appropriate remedy, and/or waive compliance with this Lease, and Landlord agrees to cooperate with Tenant in pursuing any such course of action. City's failure to provide prior notice to disclosure shall not constitute a Landlord default under this lease.

**Section 14.26. Lease not to be Recorded.**

Upon mutual agreement of the parties, the parties may execute and deliver an memorandum of this lease for recording purposes. Tenant agrees to record the Memorandum of Lease and to pay all fees associated therewith. If in the opinion of Tenant's counsel such memorandum will not afford Tenant the protection of the recording statutes, the parties hereto agree to take whatever action may in the opinion of Tenant's counsel be necessary to obtain such protection for Tenant. Landlord agrees that Landlord will not record this lease unless Tenant shall have consented to Landlord's so doing.

**Section 14.27. Counterparts.**

This lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. If this Lease is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Lease to be executed.

**Section 14.28. Easements and Covenants Running with the Land.**

Each of the easements granted by this lease shall constitute a servitude on the property of the grantor and an appurtenance to the property of the grantee, shall survive the total or partial destruction of the subject matter of the easement and/or the servient tenement of such grant, and shall run with the land. The grantee of any such easement may extend the benefits thereof to each of its Permittees. An estate for whose benefit an easement is reserved hereunder shall for the purposes of this section be deemed to be the grantee of such easement.

**Section 14.29. Arbitration.**

In the event the parties agree to arbitrate any dispute, such arbitration proceeding shall be held before JAMS in Dallas, Texas or such other arbitrator and at such other location mutually acceptable to the parties. In the event of any such arbitration, the parties agree to submit the dispute to final and binding arbitration in accordance with the JAMS Comprehensive Arbitration Rules and Procedures effective as of July 1, 2014 (found at <http://www.jamsadr.com/rules-comprehensive-arbitration>), and each party shall have the full rights to discovery. Each party shall bear its own costs of the arbitration. Any final decision of the arbitrator (or arbitrators if the parties so elect) shall be binding on the parties and enforceable in any court of competent jurisdiction.

**Section 14.30. Right to Enjoin.**

In the event of any violation or threatened violation by Tenant of Section 7.02, 7.03, or any other term, restriction, condition or covenant of the terms of this lease, Landlord shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin such violation or threatened violation in a court of competent jurisdiction.

**Section 14.31. Right of Review and Audit.**

City may review any and all of the services performed by Tenant under this Lease. City is granted the right to audit, at City's election, all of Tenant's records and billings relating to the performance of this Lease. Tenant agrees to retain such records for a minimum of three (3) years following completion of this Lease. Any payment, settlement, satisfaction, or release provided under this Lease shall be subject to City's rights as may be disclosed by such audit. Notwithstanding anything contained herein to the contrary, the City does not have the right to audit any Tenant accounts or records unrelated to performance under this Lease.

**Section 14.32. Authority to Execute and Perform Lease.**

Each party, as to itself only, represents and warrants that it has the full power and authority to enter into this Lease and perform its obligations under this Lease.

**Section 14.33. 1295 Certification.**

Prior to entering into this Agreement, and unless otherwise exempt therefrom, Tenant has filed a certificate of Interested Parties Form 1295 (a "1295 Certification") with the Texas Ethics Commission through its electronic portal in accordance with Section 2252.908, Texas Government Code, as amended, and has delivered evidence of filing to Landlord. Tenant acknowledges that Landlord has no obligation, and have not undertaken any responsibility, for advising Tenant with respect to the completion of its 1295 Certification, except for the provision of the contract identification numbers and description of services.

**Section 14.34. Miscellaneous.**

(a) Pursuant to Section 2271.002, Texas Government Code, Tenant hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2271.001, Texas Government Code.

(b) Tenant hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

(c) Where applicable by law, pursuant to Section 2274.002, Texas Government Code, Tenant hereby represents that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the lease against a firearm entity or firearm trade association. As used in the immediately preceding sentence, "firearm entity" and firearm trade association" shall have the meanings given such terms in Section 2274.001, Texas Government Code.

## ARTICLE 15

### **Landlord's Right of Entry and to Perform; Exercise of Remedies; Waiver**

**Section 15.01.** Landlord or its authorized representatives shall, following not less than two (2) business day's prior notice to Tenant, and subject to the rights of Tenant's subtenants, have the right to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease, provided Landlord shall not have any duty to make any such inspection nor shall it incur any liability or obligation for not making any such inspection; and

(b) To serve, post or keep posted any notice as required or allowed under provisions of this Lease.

To the extent Landlord desires to enter into any space leased by Tenant to subtenants, Landlord shall provide any additional notice as required by any applicable law.

**Section 15.02.** If Tenant shall fail to pay any imposition or to make any other payment required to be made by Tenant under this Lease or shall default in the performance of any covenant, agreement, term, provision or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such Default, may make such payment and/or remedy such other Default for the account and at the expense of Tenant, immediately and without notice in the case of emergency, or in any other case where Tenant shall fail to make such payment or remedy such Default within fifteen (15) days or such other time as provided in this Lease, after Landlord shall have notified Tenant in writing of such Default. Any expenses incurred by Landlord in connection therewith, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees actually incurred, involved in collecting or endeavoring to collect the Rent or any part thereof, or enforcing or endeavoring to enforce any right against Tenant under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings, as well as bills, for any property, material, labor or services provided, furnished or rendered, by Landlord, with respect to the Premises, and/or other equipment or construction work done for the account of Tenant (together with interest at the rate of twelve percent (12%) per annum from the respective dates of Landlord's making of each such payment or incurring of each cost or expense), may be sent by Landlord to Tenant monthly, or immediately at Landlord's option, and shall be due and payable in accordance with the terms of said bills, and if not paid when due, the amount thereof shall immediately become due and payable as Additional Rent under this Lease.

**Section 15.03.** Landlord may restrain any breach or threatened breach of any covenant, agreement, term, provision or condition contained in this Lease, and the mention in this Lease of any particular remedy shall not preclude Landlord from pursuing any other remedy at law or in equity.

**Section 15.04.** Consent of Landlord to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve Tenant from the obligation wherever required under this Lease to obtain the written consent of Landlord to any other act or matter or subsequent occurrence of the same or similar act or matter.

**Section 15.05.** Receipt or acceptance by Landlord of Rent, Additional Rent, or other charges or monetary payments shall not be deemed to be a waiver of any Default under the covenants, agreements, terms, provisions and conditions of this Lease, or of any right which Landlord may be entitled to exercise



under this Lease. In the event that Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

**ARTICLE 16**  
**Landlord Representations and Warranties**

**Section 16.01.** Landlord hereby represents and warrants to Tenant as follows:

(a) Landlord has full right, power and authority to make, execute, deliver and perform its obligations under this Lease. Landlord has obtained and received all required and necessary consents and approvals from Landlord's members, stakeholders, officers and directors to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions and conditions contained herein does not and will not violate or cause a breach of, or default under any agreement or obligation to which Landlord is a party or by which it is bound.

(b) The person signing this Lease on behalf of Landlord is authorized duly and validly to so sign.

**ARTICLE 17**  
**Tenant Representations and Warranties**

**Section 17.01.** Tenant hereby represents and warrants to Landlord as follows:

(a) Tenant is a duly organized and lawfully existing entity under the laws of the State of Texas, is a qualified entity under Texas Local Government Code 253.011, and Tenant (or any assignee of Tenant who will operate on the Premises) shall be duly authorized to conduct business in the State of Texas.

(b) Tenant has the full right, power and authority to make, execute, deliver and perform this Lease.

(c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of the Tenant, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

(d) There is no action, suit, litigation or proceeding pending or, to Tenant's knowledge, threatened against Tenant which could prevent or impair Tenant's entry into this Lease, performance of its obligations hereunder, or both.

(e) The person signing this Lease on behalf of Tenant is authorized duly and validly to so sign.

[See Following page for Signatures]

EXECUTED and effective this \_\_\_\_th day of \_\_\_\_\_, 202\_\_ (“Effective Date”) by the CITY OF DALLAS, Landlord, acting by and through its City Manager in the manner required by the City Charter, being duly authorized by Resolution No. \_\_\_\_\_ approved by the Dallas City Council on \_\_\_\_\_, 20\_\_\_\_\_, and by, Refuge, Tenant, acting by and through its duly authorized officer.

**REFUGE:**  
**REFUGE CITY OF DALLAS,**  
a 501 (c) (3) non-profit corporation

**CITY:**  
**CITY OF DALLAS**  
**T.C. BROADNAX, City Manager**

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Assistant City Manager

**RECOMMENDED BY DIRECTOR**

BY: \_\_\_\_\_  
, Director  
Economic Development Department

**RECOMMENDED BY DIRECTOR**

BY: \_\_\_\_\_  
, Director  
Dallas Water Utilities Department

**RECOMMENDED BY DIRECTOR**

BY: \_\_\_\_\_  
, Director  
Office of Homeless Solutions

**APPROVED AS TO FORM:**  
**Christopher J. Caso, Interim City**  
**Attorney**

BY: \_\_\_\_\_  
Assistant City Attorney

DRAFT

**EXHIBIT A**

**The Land**

DRAFT

**EXHIBIT A-1**

**Depiction of the Land**

DRAFT

Exhibit \_\_\_\_\_

Insurance Requirements

DRAFT