

# EL DORADO PROPERTIES, LTD

## COMMERCIAL LEASE

### *An Extension and Modification, in its entirety, of the Original Commercial Lease For the Leased Premises by and between the Landlord and Tenant Identified Below*

This lease agreement is made and entered into by and between El Dorado Properties, LTD (Landlord) and City of McKinney (Tenant) extending and modifying, in its entirety, the original Commercial Lease by and between the Landlord and Tenant upon the Effective Date (defined below) of this Commercial Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain property with the improvements thereon, containing approximately 1,560 square feet, hereinafter called the "Leased Premises", also known as 216 N. Tennessee (Address), Lot 64A, 65A & 65B, Block 8, of the McKinney Old Donation Addition, City of McKinney, Collin County, Texas.

The primary term of this lease shall be sixty (60) months, commencing on the 1st day of July, 2016 ("Effective Date"), and ending at 11:59 p.m. on the 30<sup>th</sup> day of June, 2021, upon the following terms, conditions, and covenants:

1. **TAXES.** Each year during the term of this lease, Landlord shall pay real estate taxes and insurance assessed against the Leased Premises in an amount equal to the total real estate taxes and insurance assessed against the Leased Premises in the Base Year (defined below). Each year during the term of this lease, Tenant shall pay as additional rental, upon receipt of a statement from Landlord together with tax statements and or insurance invoices from the proper authority, any increase in real estate taxes or building insurance over the Base Year on the Leased Premises ("Additional Rent"). The Base Year shall be 2016.
2. **UTILITIES.** Landlord is responsible for the payment of all utility charges.
3. **HOLDING OVER.** If Tenant fails to surrender the Leased Premises upon the termination of this agreement and if no new written lease or extension is agreed to by both parties, an additional fee of \$400 per month shall be added to the monthly charges as outlined in Paragraph No. 4 below.
4. **RENT.** Tenant agrees to and shall pay Landlord at 2107 W. Eldorado Parkway, Suite 102-J, McKinney, TX 75070, County of Collin, Texas, or at such other place Landlord shall designate from time to time in writing, as rent for the Leased Premises, the total sum of One Hundred Fifty-Seven Thousand Nine Hundred Twenty Dollars (\$ 157,920.00), payable without demand in equal monthly payments of Two Thousand Six Hundred Thirty-Two Dollars (\$2,632.00) each in advance on or before the 1<sup>st</sup> day of each month, commencing on July 1, 2016, and continuing thereafter until the total sum shall be paid ("Basic Rent").

Adjustment to the Basic Rent, if any, for attributable to increases in building operation costs (limited solely to building insurance and real estate taxes) for the Leased Premises, which amounts were previously defined above as "Additional Rent" in Paragraph No. 1 shall be as set forth herein. The term "building insurance," as used in this provision, shall mean and include the cost of all insurance identified in Paragraph No. 7, below. "Building insurance" does not mean or include any insurance deductibles, levels of self-insurance coverage or retainage for which the Landlord may be responsible. The phrase "real estate taxes," as used in this provision, shall exclude the following: (A) penalties and interest on real estate taxes due to Landlord's failure to timely pay real estate taxes, (B) inheritance taxes, (C) gift taxes, (D) franchise taxes, (E) federal and state taxes on income, (F) transfer taxes, (G) excise taxes, (H) capital stock taxes, (I) estate taxes, and (J) succession taxes. During each calendar year or partial calendar year of the term of this lease after the Base Year, Tenant shall pay to Landlord, in advance concurrently with each monthly installment of Basic Rent, an amount equal to the Additional Rent for such calendar year or part thereof divided by the number of months therein. Should the term of this lease agreement commence or terminate as to any portion of the Leased Premises at any time other than the 1<sup>st</sup> day of a calendar year, Tenant's Proportionate Share of Additional Rent shall be prorated accordingly.

Rent received after the first day of the month shall be deemed delinquent. If rent is not received by Landlord by the 5<sup>th</sup> of each month, Tenant shall pay a late charge of \$25.00 plus a penalty of \$15.00 per day until rent is received in full. Tenant shall pay \$30.00 for each returned check.

5. **USE.** Tenant shall use the Leased Premises for the following purpose and no other: General Office.
6. **SECURITY DEPOSIT.** No security deposit required.

7. **INSURANCE.** Landlord shall pay for fire and extended coverage insurance on the buildings and other improvements on the Leased Premises in an amount not less than appraised value, which amount may increase yearly in proportion to the increase in market value of the premises. Tenant shall provide public liability and property damage insurance for its business operation on the leased premises in an amount of \$500,000 which policy shall cover the Landlord as well as the Tenant. Said insurance policies required to be provided by Tenant herein shall name Landlord as an insured and shall be by an insurance company approved by Landlord, which approval shall not be unreasonably withheld. Tenant shall provide Landlord with certificates of insurance evidencing the coverage required herein. Tenant shall be solely responsible for fire and casualty insurance on Tenant's property on or about the Leased Premises. If Tenant does not maintain such insurance, Landlord may notify Tenant of such failure and if Tenant does not deliver to Landlord within thirty (30) days after such notice certification showing all such insurance to be in full force and effect, Landlord may at his option, take out the necessary insurance to comply with the provision hereof and pay the premiums on the items specified in such notice, and Tenant covenants thereupon on demand to reimburse and pay Landlord any amount so paid or expended in the payment of the insurance premiums required hereby and specified in the notice.
8. **CONDITION OF PREMISES.** Tenant has examined and accepts the Leased Premises in its present condition as suitable for the purposes for which the same are leased, and does hereby accept the Leased Premises regardless of reasonable deterioration between the date of this lease and the date Tenant begins occupying the Leased Premises.
9. **MAINTENANCE AND REPAIRS.** Landlord shall keep the plumbing, electrical, foundation, the exterior walls (except glass; windows; doors; closure device; molding, and hardware; and interior painting or other treatment of exterior walls), and the roof of the Leased Premises in good repair except that the Landlord shall not be required to make any repairs occasioned by the act or negligence of Tenant, its employees, subtenants, licenses, and concessionaires. Further, Landlord is responsible for the repair and maintenance of the heating and cooling equipment within the Leased Premises. During the term of this lease, Tenant shall keep the Leased Premises in good and clean condition, and at the termination of this lease Tenant shall deliver the Leased Premises in good order and condition, normal wear and tear excepted. Normal wear and tear means deterioration which occurs without Tenant's negligence, carelessness, accident or abuse.
10. **ALTERATIONS.** All alterations, additions, and improvements, except trade fixtures, shall become the property of Landlord and shall remain upon and be surrendered with the Leased Premises as a part of thereof on the termination of this lease. Such alterations, additions, and improvements may only be made with the prior written consent of Landlord, which consent shall not be unreasonable withheld. Any damage caused by the installation or removal of trade fixtures shall be repaired at Tenant's expense prior to the expiration of the lease term. All alterations, improvements, additions, and repairs made by Tenant shall be made in good and workmanlike manner.
11. **COMPLIANCE WITH LAWS AND REGULATIONS.** Tenant shall, at its own expense, comply with all laws, orders, and requirements of all governmental entities with reference to the use and occupancy of the leased premises.
12. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this lease nor sublet the Leased Premises or any interest therein without first obtaining the written consent of Landlord. An assignment or subletting without the written consent of Landlord shall be void and shall, at the option of Landlord, terminate this lease.
13. **DESTRUCTION.** In the event the Leased Premises is partially damaged or rendered partially unfit for occupancy by fire or other casualty, Tenant shall give immediate notice to Landlord. Landlord may repair the damage and restore the Leased Premises to substantially the same condition as immediately prior to the occurrence of the casualty. Such repairs shall be made at Landlord's expense unless due to Tenant's negligence. Landlord shall allow Tenant a fair reduction of rent during the time the Leased Premises are partially unfit for occupancy. Such reduction of rent shall be proportionate to the area of the Leased Premises that are partially unfit for occupancy. If the Leased Premises are totally destroyed or deemed by Landlord to be rendered unfit for occupancy by fire or other casualty, or if Landlord shall decide not to repair or rebuild, this lease shall terminate and the rent shall be paid to the time of such casualty.
14. **TENANT DEFAULT AND REMOVAL OF ABANDONED PROPERTY.** If Tenant abandons the Leased Premises or otherwise defaults in the performance of any obligations or covenants herein, Landlord may enforce the performance of this lease in any manner provided by Texas law. This lease may be terminated at Landlord's discretion if such abandonment or default continues for a period of 10 days after Landlord notifies Tenant of such abandonment or default and of Landlord's intention to declare this lease terminated. Such notice shall be sent by Landlord to Tenant's last known address by certified mail. If Tenant has not completely removed or cured default within the 10 day period, this lease shall terminate. Thereafter, Landlord or its agents shall have the right, without further notice or demand, to enter the Leased Premises and remove all property without being deemed guilty of trespass and without waiving any other remedies for arrears of rent or breach of covenant. Upon abandonment or default by the Tenant, the remaining unpaid portion of the rental from Paragraph No. 4 herein, shall become due and payable.

15. **INTERRUPTION OF UTILITIES.** Landlord or Landlord's agent may not interrupt or cause the interruption of utility service paid directly to the utility by Tenant unless interruption results from bona fide repairs, construction, or an emergency. If any utility services furnished by Landlord are interrupted and continue to be interrupted despite the good faith efforts of Landlord to remedy same, Landlord shall not be liable in any respect for damages to the person or property of Tenant or Tenant's employees, agents, or guests, and same shall not be construed as grounds for constructive eviction or abatement of rent. Landlord shall use reasonable diligence to repair and remedy such interruption promptly.
16. **EXCLUSION OF TENANT.** (deleted)
17. **LIEN.** (deleted)
18. **SUBORDINATION.** Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of Trust, or other lien hereafter placed on the demised premises and Tenant agrees on demand to execute such further instruments subordinating this lease as Landlord may request, provided such subordination shall be on the express condition that this lease shall be recognized by the mortgagee, and the rights of Tenant shall remain in full force and effect during the term of this lease so long as Tenant shall continue to perform all of the covenants and conditions of this lease.
19. **INDEMNITY.** Landlord and its employees and agents shall not be liable to Tenant or to Tenant's employees, patrons, visitors, invitees, or any other persons for an injury to any such persons or for damage to personal property caused by an act, omission, or neglect of Tenant or Tenant's agents or of any other tenant of the premises of which the leased premises is a part. Tenant agrees to the extent allowed by law, without the creation of a special sinking fund, to indemnify and hold Landlord and its employees and agents harmless from any and all claims for such injury and damages, whether the injury occurs on or off the Leased Premises. Notwithstanding the foregoing, nothing contained in this lease agreement is intended to, nor shall it be deemed or interpreted as, waiving Tenant's sovereign or official immunity under the laws of the State of Texas.
20. **SIGNAGE.** Tenant shall not post or paint any signs at, on, or about the leased premises or paint the exterior walls of the building except with the prior written consent of the Landlord. Landlord shall have the right to remove any sign or signs in order to maintain the Leased Premises or to make any repairs or alterations thereof.
21. **TENANT BANKRUPTCY.** If Tenant becomes bankrupt or makes voluntary assignment for the benefit of creditors or if a receiver is appointed for Tenant, Landlord may terminate this lease by giving five (5) days written notice to Tenant of Landlord's intention to do so.
22. **CONDEMNATION.** If the whole or any substantial part of the Leased Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or should the Leased Premises be sold to a condemning authority under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of the lease effective from the date of the physical taking of the Leased Premises.
23. **HAZARDOUS MATERIALS.** Landlord warrants and represents that the Leased Premises does not contain "Hazardous Materials", as that phrase is defined herein. For purposes of this provision, the phrase "Hazardous Materials" shall mean and include any toxic contaminated or other hazardous materials including, without limitation, asbestos, PCB, transformers, underground storage containers, any radioactive materials, lead, cyanide, DDT, acids, pesticides, and any other substance forming a component part of the improvements which has heretofore or may in the future be determined to contain toxic wastes, hazardous materials, or undesirable substances injurious to the health of occupants working in or around the Leased Premises.
24. **BROKER'S FEES.** Tenant warrants that it had no dealings with any real estate broker or agents in connection with the negotiation of this lease and it knows of no agent or broker who is entitled to a commission in connection with this lease.
25. **NOTICES.** Notices to Tenant shall be by certified mail or other delivery to:

City Manager  
City of McKinney, Texas  
P.O. Box 517  
McKinney, Texas 75069

Notices to Landlord shall be by certified mail to the place where rent is payable.

26. **DEFAULT BY LANDLORD.** In the event of breach by Landlord of any covenant, warranty, term or obligation of this lease, then Landlord's failure to cure same or commence a good faith effort to cure same within 10 days after written notice thereof by Tenant shall be considered a default and shall entitle Tenant either to terminate this lease or cure the default and make the necessary repairs and any expense incurred by Tenant shall be reimbursed by the Landlord after reasonable notice of the repairs and expenses incurred.
27. **SIGNS.** During the last thirty (30) days of this lease, a "For Lease" sign may be displayed on the Leased Premises and the Leased Premises may be shown at reasonable times to prospective tenants subject to Landlord's advance written request to and the written consent of the Tenant, which consent will not be unreasonably withheld.
28. **RIGHT OF ENTRY.** Landlord shall have the right during normal business hours to enter the demised premises; a) to inspect the general condition and state of repair thereof, b) to make repairs required or permitted under this lease, or c) for any other reasonable purpose. Further, Landlord shall have the right to enter at any other time in the event of an emergency such as a fire, flood, smoke or any other obvious peril.
29. **WAIVER OF BREACH.** The waiver by Landlord or Tenant of any breach of any provision of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this lease.
30. **BINDING OF HEIRS AND ASSIGNS.** Subject to the provisions of this lease pertaining to assignment of the Tenant's interest, all provisions of this lease shall extend to and bind, or inure to the benefit not only of the parties to this lease but to each and every one of the heirs, executors, representatives, successors, and assigns of Landlord and or Tenant.
31. **RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies established by this lease agreement are cumulative and the use of any right by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
32. **TEXAS LAW TO APPLY.** This agreement shall be construed under and in accordance with the laws of the State of Texas.
33. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
34. **PRIOR AGREEMENTS SUPERSEDED.** Beginning on its Effective Date, this agreement shall constitute the sole and only agreement of the parties to this lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this lease.
35. **AMENDMENT.** No amendment, modification, or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof, and duly executed by the parties.
36. **ATTORNEY'S FEES.** Any signatory to this lease agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this lease agreement or this transaction shall be additionally entitled to recover court costs, reasonable attorney fees, and all other out-of-pocket costs of litigation from the non-prevailing party.
37. **MISCELLANEOUS.** a) Landlord will not be responsible for any lost or stolen articles regardless of whether such loss occurs when the Leased Premises is locked against entry or not.  
  
b) Smoking is not allowed in any portion of the Building. No open flames, candles, etc. are allowed pursuant to city ordinance.  
  
c) Notwithstanding anything to the contrary, Tenant has the right to cancel this lease at the end of Tenant's fiscal year, which fiscal year ends on September 30 of each year, if the City Council fails or refuses to budget funds for the continuation of this lease beyond the Base Period provided that Tenant provides Landlord at least three (3) months written advance notice of its intent to terminate this contract at no cost to City.

**THIS IS A LEGAL DOCUMENT. READ IT CAREFULLY. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART OF THIS AGREEMENT, SEEK COMPETENT LEGAL ADVICE.**

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015

**LANDLORD:**

**TENANT:**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
George Bush

\_\_\_\_\_  
TOM MUEHLENBECK

El Dorado Properties, LTD  
2107 W. Eldorado Pkwy, Suite 102-J  
McKinney, TX 75070

Interim City Manager  
City of McKinney, Texas  
P.O. Box 517  
McKinney, Texas 75069

Phone: 972-547-9800  
FAX: 214-585-0581  
Email: [geobush@msn.com](mailto:geobush@msn.com)

Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

STATE OF TEXAS            §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on \_\_\_\_\_, 2015 by George Bush in his capacity as \_\_\_\_\_ of El Dorado Properties, LTD, a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of 2015.

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

(print name)

My commission expires:  
\_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on \_\_\_\_\_, 2015 by Tom Muehlenbeck, Interim City Manager of the City of McKinney, Texas, a Texas home-rule municipality, on behalf of the said municipality.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_ 2015.

Notary Public, State of Texas

\_\_\_\_\_

\_\_\_\_\_  
(print name)

My commission expires:

\_\_\_\_\_