

# **FINC 676 - Project #2**

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### **21. Rights Reserved by Landlord**

Landlord may enter the premises upon reasonable notice for purposes of inspection, making repairs, additions or alterations to the premises upon reasonable notice. No notice is required in emergencies. Furthermore, in emergencies or if otherwise required to comply with this Lease, Landlord shall have the right to use any and all means necessary to open any doors, including doors to any designated secure areas, as may be reasonably necessary under the circumstances. Landlord may erect scaffolding and other structures where reasonably required by the character of the work.

Tenant acknowledges that any extensive construction in or adjacent to the building where Tenant takes space shall not affect this lease or impose any liability on landlord, and tenant hereby waives any claim of nuisance or constructive eviction or similar claim that tenant might have against Landlord or any affiliate of Landlord, and any contractor or agent of Landlord or of any entity related to or affiliated with Landlord, which might arise from such construction.

Tenant may relocate with up to sixty days prior written notice, but no more than one time during the initial term, to relocate the Premises to any other premises within the building. If tenant decides to relocate, all reasonable expenses of moving tenant and improving the space with the same leasehold improvements shall be at the expense of the landlord, including but not limited to the physical move, telephone installation, and costs or reprinting stationary (but only in the quantity of existing immediately prior to the relocation). Within 15 business days of following receipt of land, Tenant shall fully cooperate with measures landlord deems reasonable necessary or advisable for the ongoing operation, maintenance and protection of the project - provided such measures do not impose any materially additional expense or liability on tenant.

### **22. Hazardous Materials**

The definition of a "Hazardous Material" is any toxic, ignitable, reactive or corrosive substance now or hereafter regulated by any governmental authority, including any substance defined by Applicable Law as a "Hazardous Material". For purposes of this lease, claims arising from contamination shall

include diminution in value, restrictions on use, adverse impact of leasing space, and all costs of site investigation, remediation, removal and restoration work.

The restrictions state that no hazardous material shall be brought upon, kept, used or disposed of in or about the premises of the project by any Tenant Party without Landlord's prior written consent; unless Tenant demonstrates that Hazardous Material is necessary in the ordinary course of Tenant's business and shall be used, kept and stored in compliance with Applicable Law, and gives Landlord written notice of any such Hazardous Material, including the current material safety data sheet. If contamination occurs as a result of an act or omission of Tenant Party, Tenant shall, at its expense, promptly take all actions necessary to comply with Applicable Law and to return the premises, and/or any adjoining property to its condition prior to such Contamination, subject to Landlord's prior written approval of Tenant's proposed methods, times and procedures for remediation.

### **23. Landlords Interest**

If Landlord fails to perform its obligations under this Lease, Landlord's liability shall be limited to Landlord's interest in the building. Tenant waives all rights of recovery against any Landlord Party, and all claims against any Landlord Party and Landlord's Mortgagee for consequential, special or punitive damages allegedly suffered by any Tenant Party, including lost profits and business interruption. No Landlord Party shall have any personal liability under this Lease. At any given time, the landlord may convey any or all of its interest in this Lease at any time. The term "Landlord" means only the owner of the Landlord's interest in this Lease at the time in question.

### **24. Execution and Signing Authority**

This portion of the lease is covering the execution and signing authority of the agreement. This section states that the lease becomes active after full execution of the obligations by both the landlord and tenant. Before fully committing each party has fully reviewed and revised and committed to an arms-length negotiation. The lease is put into place to bind and insure to the benefit of both parties and

related individuals. The person and or entity signing the lease is liable as the “Tenant”. In the lease agreement no beneficial rights are given to a third party none related to Tenant or Landlord.

### **25. Quiet Enjoyment**

This section of the lease is listed under “Quiet Enjoyment”. It states that if the tenant fulfills all obligations of the lease the tenant has the right to enjoy the property in peace and quiet. By executing the lease the Tenant consents to the project being open to any restrictive covenants, MUD District (No. 67) and The Woodlands Road Utility District #1. The restrictive covenants are restrictions and easements put into place by the Lake Woodlands Property Owners’ Association. Also, there are restrictive easements put in place by Montgomery County and The Woodlands as well as any future covenants and restrictions.

### **26. Methods of Calculation**

Methods of Calculation is the next section in the lease agreement. This section states that the Tenant is knowledgeable and experienced in commercial transactions and understands the charges and amounts payable are commercially reasonable. The Tenant also voluntarily and knowingly waives all rights under section 93.012 - Texas Property Code, including alterations to the code.

### **27. Waiver Of Consumer Rights**

Tenant waives all rights under the Texas Deceptive Trade Practices (DTPA)-Consumer Protection Act Section 17.41 and what follows of the Texas Business and Commerce Code. The tenant is advised to seek legal counsel as the Tenant voluntarily adopts this waiver. "Trade and commerce" means "the advertising, offering for sale, lease, or distribution of any good or service, or any property, tangible or intangible, real, personal, or mixed.

### **28. OFAC Certification**

(U.S. Department of the Treasury Office of Foreign Asset Control)-administers and enforces economic sanctions programs against countries and groups of individuals such as narcotics traffickers and terrorists. The sanctions can be implemented by using the blocking of assets and trade restrictions. Tenant has to provide the Landlord information and assurances that allows the Landlord to comply with the laws

of the US in this regard by stating that the Tenant does not support terrorism or money laundering. The Tenant also assures the Landlord that the Tenant is not associated with a blocked person under the Specially Designated Nationals and Blocked Persons list published by the OFAC. The Tenant cannot have a guarantor on the lease that is on the OFAC list.

### **29. Option To Extend**

Tenant can extend the term of the lease according to the conditions in Rider No. 1.

### **Exhibit D: Certificate of Acceptance of Premises**

Exhibit D is a certificate between the Landlord LLC and the Tenant who have agreed upon terms for the acceptance of the premises and its condition on conveyance. This exhibit certifies that the Landlord has fully completed all items included in the “punch list” found in “Addendum Two” and that the Tenant and Landlord both acknowledge that the rentable space is being delivered to the required condition stated in within the lease. This exhibit is used for the Landlord to have a signed document of the Commencement and Expiration Date signed by both parties and for both parties to acknowledge that Landlord has no further obligation to perform any other work.

### **Exhibit E: Rules and Regulations**

Exhibit E is used to give the Tenant exact rules and regulations that must be followed throughout their contracted lease. This section gives a lot of power to the Landlord in creating rules and regulations that the Tenant must obey, and provides the Landlord and Lender protection for destruction of their property. The rules in Exhibit E state specific responsibilities that the Tenant must be in control of with regards to upkeep and, additionally, what control the Landlord has over the Tenant in dictating what is allowed in the building. Ultimately, Exhibit E is made up of rules that the Landlord has control over that protect the property, both of which help keep value in the property while protecting the property if a problem is to arise.

If any glass, locks, and trimmings, or shades are broken by the Tenant or its agents or invitees, they shall be immediately replaced or repaired and put in order by Tenant under the direction and to the

satisfaction of Landlord. A general recommendation for this clause would be to include specific wording that states the replacement and repairs should not only be put in order by Tenant under the direction and to the satisfaction of Landlord but, additionally, “at the expense of Tenant.”

**Rider No. 1: Renewal Option**

Two (2) renewal periods of five (5) years each will be allowed upon written notice to Landlord. Notice shall be given no later than 9 months and no earlier than 12 months prior to expiration of initial term, provided Tenant remained occupancy of premises and avoids default under current lease. Base rent payable shall be at market rent rate, described as follows: MRR is the rate that a willing Tenant will pay and a willing landlord will accept for comparable transactions of the applicable term. Neither parties are under compulsion to lease and should both be reasonably knowledgeable of relevant facts regarding highest and most profitable use if the premises were to be offered in the open market. All factors should be considered when calculating the market rental rate such as location, quality of building, lease term, amenities, and any concessions or allowances commonly offered by the landlord. Both parties agree that although the market rental rate is determined prior to the commencement of the renewal period, the rate accurately reflects the value determined at the time the period will go into effect. Furthermore, base rent of renewal tenancy shall not be less than the base rent during the last year of original term (or the prior renewal period, as applicable). Except as noted, all terms and conditions of lease continue, except that after two (2) renewal periods, Tenant has no further option to extend lease.

Once renewal notice is given, Landlord notifies Tenant of market rental rate and Tenant may either, accept or reject the terms, in writing given within fifteen (15) days of the rental notice. If Tenant accepts the terms within fifteen (15) days, tenant executes a lease amendment confirming base rent and other terms for the renewal period. If timely notice is given as to the objection of the market rent rate by the tenant, Landlord and tenant endeavor a fifteen (15) day period to agree on the renewal period market rental rate. Landlord shall deliver Tenant Landlord’s final proposal and Tenant has five (5) days to either, accept the terms or withdraw their renewal request, both required in writing. Upon acceptance of the Final

Proposal, within fifteen (15) days, Landlord and Tenant are to execute a lease amendment to adequately confirm the base rent and other applicable terms. If the Tenant delivers a withdrawal notice, then the option to extend automatically expires to its full effect. If neither an acceptance or withdrawal notice is given within a timely manner, then the Tenant is deemed to have accepted the final proposal. Upon assignment of this lease or subletting of all or any part of the premises, the option to extend terminates.