

## **LAKESHORE RESIDENTIAL SUBLEASE AGREEMENT**

This **LAKESHORE RESIDENTIAL SUBLEASE AGREEMENT** (this Sublease) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **CITY OF GARLAND, TEXAS**, a Texas home-rule municipality (the City of Garland), and \_\_\_\_\_ (Sublease, whether one or more).

The City of Garland and Sublessee acknowledge and agree that the following preliminary statements are true and correct and that the same are a material part of this Sublease:

(A) The City of Dallas, Texas, a Texas home-rule municipality (the City of Dallas), as lessor, and the City of Garland, as lessee, made and entered into that certain Interlocal Agreement and Lease (the Interlocal Agreement), dated January 22, 2001, whereby the City of Dallas leased to the City of Garland certain property defined in the Interlocal Agreement as the Leased Area as more particularly described by metes and bounds in the Interlocal Agreement.

(B) In connection with Sublessee's proposed development, use, operation, and maintenance of the Project (defined below) and pursuant to the Interlocal Agreement, Sublessee desires to lease from the City of Garland certain property that is a portion of the Leased Area under the Interlocal Agreement, being defined in this Sublease as the Subleased Area, all upon and subject to the terms and provisions of this Sublease.

**NOW, THEREFORE**, for and in consideration of the sum of the Sublease Rent (as hereinafter defined) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **Section 1. Definitions.**

In addition to the terms defined above, the following additional defined terms will be used in this Sublease:

- (A) Lake means Lake Ray Hubbard.
- (B) Take Line means the perimeter boundary of the City of Dallas property at the Lake.
- (C) Take Area means the land owned by the City of Dallas between the Take Line and the Shore Line.
- (D) Lake Area means the City of Dallas property, known as Lake Ray Hubbard, that is normally submerged by the Lake at normal Lake pool elevation (property at or below elevation 435.5 mean sea level).
- (E) Leased Area means the Take Area that is within the city limits of the City of Garland, and

those portions of the Take Area that are not within the city limits of the City of Garland but which are directly adjacent to the city limits of the City of Garland (and not within the city limits or the Leased Area of another municipality).

- (F) Subleased Area means the area hereby subleased and more particularly described in Exhibit A under the conditions stated in Article 2 of this Sublease.
- (G) Shoreline means the line along the shore of the Lake, established by the normal Lake pool elevation (435.5 mean sea level).
- (H) New Immediate Action Area means any section of the Leased Area where any of the following has occurred:
  - 1. The Shoreline is within thirty (30) feet or less of the Take Line;
  - 2. A public hazard exists or can be expected to be created by erosion within a short period of time;
  - 3. Structures are at risk of structural damage due to erosion;
  - 4. Existing adjacent erosion protection is impeded if erosion is allowed to continue.
- (I) Critical Area shall have the meaning as provided in the Interlocal Agreement, as that definition may be amended from time to time.

## **Section 2. Demise of Subleased Area; Conditions of Occupancy.**

(A) Subject to the terms and conditions of this Agreement, the City of Garland, for and in consideration of the covenants and promises herein contained to be kept, performed and observed by Sublessee, has demised and leased and by these presents does hereby demise and lease unto Sublessee, and Sublessee does hereby accept from the City of Garland, the Subleased Area.

(B) The City of Garland demises and leases the Subleased Area subject to a blanket pedestrian and recreational easement retained by the City of Garland for the benefit of the public. The City of Garland shall have the right to occupy, maintain, re-grade, modify, expand and use the surface of the Subleased Area for the purpose of pedestrian, passive recreational trail purposes, such as walking, hiking, jogging, bicycling, and other similar recreational purposes. The City of Garland shall have the right to construct, maintain, modify, and expand trail improvements, including but not limited to lighting, utilities, surface improvements, signage, grading improvements, and other improvements consistent with recreational trail uses. The easement retained by the City of Garland shall be a blanket easement on, across, under, within, and upon the Subleased Area, in a location that the City of Garland determines, in its sole discretion, is beneficial to the public, while taking into consideration the Sublessee's intended use of the Subleased Area and any of Sublessee's improvements constructed or maintained within the Subleased Area. Notwithstanding any other language contained herein to the contrary, the Lessee is responsible for all maintenance obligations contained herein, including but not limited to any landscaping or vegetation within the Subleased

Area. The City of Garland shall only be responsible for maintaining the pedestrian and passive recreational trail, including any ancillary improvements, constructed by the City of Garland within the Subleased Area.

(C) Sublessee acknowledges that Sublessee has inspected the Subleased Area to the complete satisfaction of Sublessee and, by entry onto the Subleased Area under this Sublease, accepts the Subleased Area **AS IS - WHERE IS** with all faults. Sublessee acknowledges that the decision to lease the Subleased Area is based solely upon the Sublessee's comprehensive inspection of the Subleased Area and is not based upon any warranty or representation of the City of Garland, or of the City of Garland's employees, agents, or representatives with regard thereto. Sublessee is not being charged, nor has Sublessee made, a security deposit for the occupancy or use of the Subleased Area under this Sublease. In consideration of the waiver of the payment of a security deposit, **SUBLESSEE ACKNOWLEDGES THAT THE CITY OF GARLAND HAS MADE NO WARRANTY OR REPRESENTATION OF ANY SORT, EXPRESS OR IMPLIED, AS TO THE CONDITION, HABITABILITY OR USEFULNESS OF THE LEASED AREA, INCLUDING, WITHOUT LIMITATION THE SUBLEASED AREA, AND FURTHER ACKNOWLEDGES THAT THE CITY OF GARLAND HAS NOT MADE ANY OTHER REPRESENTATIONS TO SUBLESSEE AS TO WHETHER THE LEASED AREA OR THE SUBLEASED AREA IS OR ARE FIT AND SATISFACTORY FOR THE USE OR USES INTENDED BY SUBLESSEE. TO THE FULLEST EXTENT OF THE LAW, SUBLESSEE WAIVES AND DISCLAIMS ANY CAUSE OF ACTION THAT SUBLESSEE MAY HAVE OR HEREAFTER OBTAIN ARISING FROM THE USE, OCCUPATION OR CONDITION OF THE LEASED AREA AND THE SUBLEASED AREA, OR THE EXISTENCE OF THIS SUBLEASE.**

(D) **SUBLESSEE UNDERSTANDS AND ACKNOWLEDGES THAT THE WATER LEVEL IN THE LAKE WILL NOT REMAIN CONSTANT AND THAT ALL LAND IN THE SUBLEASED AREA IS SUBJECT TO FLOODING. THE PARTIES AGREE THAT NEITHER THE CITY OF DALLAS NOR THE CITY OF GARLAND SHALL BE RESPONSIBLE FOR DAMAGES TO ANY STRUCTURES, FACILITIES, LANDSCAPING, OR OTHER PROPERTY DAMAGE ON THE SUBLEASED AREA DUE TO WIND, WATER, EROSION, FLUCTUATING WATER LEVELS, OR FLOATING DEBRIS.**

(E) Sublessee acknowledges that the conditions of occupancy, disclaimers and waivers, and indemnities contained in this Sublease are material inducements to the City of Garland's agreement to and execution of this Sublease and that the City of Garland would not have entered into this Sublease without those conditions, disclaimers, and waivers. Sublessee agrees that those conditions, disclaimers, and waivers shall survive the termination of this Sublease and further agrees that Sublessee shall never contest, dispute or disavow the validity of those conditions, disclaimers or waivers.

### **Section 3. Sublease Term.**

(A) Subject to the terms and conditions of this Sublease, unless sooner terminated as provided

below, the demise and sublease set forth in Section 2 above shall be for a term commencing on the date of this Sublease and continuing until the earlier of (i) the expiration of the term of the Interlocal Agreement, as the same may be extended by amendment and any other agreement of the City of Dallas and the City of Garland, or (ii) twenty (20) years following the effective date of this Sublease (the Sublease Term). This Sublease may be extended by agreement of the parties for four additional five-year periods (the Renewal Option). If a Renewal Option is exercised, the extended Sublease Term shall be subject to all the terms and conditions of this Sublease subject, however, to a negotiated adjustment of rent for the additional term of the Sublease. To exercise a Renewal Option, Sublessee must deliver written notice to the City stating that Sublessee desires to exercise the option. The written notice must be given on or before 30 days prior to expiration of the preceding term. Any holding over, use or occupancy by Sublessee after the termination of this Sublease or beyond the Sublease Term shall not constitute a renewal hereof or give Sublessee any rights hereunder in or to the Subleased Area.

(B) This Sublease shall terminate and be of no further force or effect in the event, for whatever reason, the Interlocal Agreement is terminated or cancelled. At the termination of this Sublease, title to the Subleased Area Improvements and facilities within the Subleased Area, and any fixtures or appurtenances in connection therewith shall revert to the City of Garland (provided, however, that the City of Garland may in its sole discretion disclaim title to any or all of the Subleased Area Improvements in which event Sublessee shall remove such Subleased Area Improvements that have been disclaimed by the City of Garland in the same manner as is provided in the following sentences). Sublessee shall retain title and ownership of any goods, inventory, personal property, merchandise, vehicles, boats, movable buildings, movable equipment and facilities that are not permanently affixed to the Subleased Area and not otherwise required to operate any of the Subleased Area Improvements to which the City of Garland has not expressly disclaimed title. Within thirty (30) days of termination, Sublessee shall remove any such personal property from the Subleased Area. In removing Sublessee's movable personal property, Sublessee shall not damage or render inoperable any of the Subleased Area Improvements within the Subleased Area or otherwise damage the Subleased Area. Upon termination of this Sublease, Sublessee shall execute and deliver to the City of Garland within thirty (30) days of the termination date a good and sufficient quitclaim deed to any rights arising hereunder. To the extent that the execution of a bill of sale or other instrument of conveyance is necessary to convey ownership of property to the City of Garland as otherwise required by the terms and conditions of this Sublease, Sublessee shall convey any such instrument as reasonably requested by the City of Garland. In the event of the termination of this Sublease or the Interlocal Agreement for whatever reason (or no reason), Sublessee shall be entitled to no compensation from the City of Dallas or the City of Garland, or either of them, and Sublessee hereby disclaims and waives any right to such compensation, whether arising by or through this Sublease, the Interlocal Agreement or otherwise.

#### **Section 4. Sublease Rent.**

Sublessee shall pay to the City of Garland, for the initial rental payment, a rental payment in the amount of \$750.00, to be paid concurrently with Sublessee's execution of this Sublease. Thereafter,

Sublessee shall pay to the City of Garland, on or before the first business day of each calendar year, an annual rental payment in the amount of Fifty and No/100 Dollars (\$50.00) (the Sublease Rent), beginning on the first business day of the first calendar year following commencement of the Sublease Term. The Sublease Rent shall be paid to the City of Garland at the City of Garland's address as provided on the signature page of this Sublease or to such other person or at such other address as the City of Garland may from time to time designate in writing. The City of Garland may, at its option, bill Sublessee for Sublease Rent, but no delay or failure by City of Garland in providing such bill shall relieve Sublessee from the obligation to pay the Sublease Rent on the first business day of each calendar year as provided herein. All payments shall be in the form of wired funds, check or such other manner agreeable to the parties.

#### **Section 5. Use and Occupancy of the Subleased Area.**

(A) The Subleased Area may be used and occupied by Sublessee for any lawful purpose permitted by the Interlocal Agreement and this Sublease, but for no other use or purposes whatsoever without the written consent of the City of Garland and the City of Dallas.

(B) Sublessee agrees to use and maintain the Subleased Area in accordance with this Sublease; all ordinances, regulations, permit requirements, and other laws of the City of Garland that may be applicable to such use and maintenance; to comply with all applicable provisions of the Interlocal Agreement; and to abide by all applicable ordinances, regulations and permit requirements of the City of Dallas. This Sublease contains and hereby incorporates the clauses set forth in Section IV of the Interlocal Agreement, as required by Section IV (9) of the Interlocal Agreement. This Sublease does not provide any zoning classification or in any manner change or affect the applicable ordinances (including the zoning ordinances) of the City of Garland. Any violation of such ordinances, regulations, permit requirements or lease provisions shall constitute a breach by Sublessee of this Agreement, for which the City of Garland shall be entitled to take appropriate action if such violation is not cured within the time period provided in this Sublease. Sublessee specifically recognizes that the City of Dallas, as a third party beneficiary, has the right to enforce the terms of this Sublease in the event of the Sublessee's breach of any of the terms contained herein.

(C) The terms and provisions of the Lake Edge Development Standards, adopted by the City Council of the City of Garland on February 23, 2007 by Ordinance No. 6088, are fully incorporated herein by reference. By entering into this Sublease, Sublessee expressly agrees to be bound by the terms and conditions of this Sublease, the City of Garland's Lake Edge Zoning District ordinances, and the City of Garland's Lake Edge Development Standards even if Sublessee's uses and improvements extend beyond the city limits of the City of Garland or extend into or over the Lake itself.

(D) Sublessee shall maintain the Subleased Area at all times during the Sublease Term in good condition and repair, and in a safe, neat and attractive condition, and shall not permit the accumulation of trash or debris within the Subleased Area. The Subleased Area shall be regularly

mowed, weeded, and appropriately landscaped for the season, as applicable.

(E) Sublessee agrees that Sublessee will not make nor allow to be made, any unlawful, improper or offensive use of the Subleased Area that would violate the laws of the United States or the State of Texas, or any ordinance of the City of Garland. Sublessee shall be subject to the terms and penalties associated with the violation of any ordinances, regulations, permit requirements, and other laws of the City of Garland, in addition to the provisions of this Sublease. The enforcement of any ordinance, regulation, permit requirement, and other law is not exclusive of the enforcement of any provision of this Sublease even if the conduct providing the basis of the violation(s) is the same.

(F) The following structures and appurtenances, uses, and activities are prohibited within the Subleased Area and the Lake Area without the express written approval of the City of Garland and the City of Dallas:

- (1) Propane tanks.
- (2) The storage of gasoline, oils, diesel fuel, or other petroleum products.
- (3) The storage of pesticides, herbicides, fungicides or preservatives.
- (4) The use of pesticides, herbicides, fungicides or preservatives that are not approved by the Texas Commission on Environmental Quality or the US Environmental Protection Agency for use around water supplies, or not approved by the City of Dallas.
- (5) The storage of any hazardous materials, regardless of its nature.
- (6) Septic tanks and lateral lines.
- (7) Toilets.
- (8) Habitable structures.
- (9) Diving boards or slides.
- (10) The keeping or grazing of livestock including, but not limited to, cattle, horses, swine or poultry.
- (11) Living quarters for pets and any other structure that houses or shelters livestock or pets, including, but not limited to, cattle, horses, swine or poultry.
- (12) Water wells.

- (13) Chemically preserved wood (such as railroad ties and telephone poles) (in the Lake Area).
  - (14) The tapering, cutting, smoothing or altering of the Shoreline (bank or Lake) in any manner.
  - (15) The excavating, channeling, cutting, boring, digging, filling, smoothing, or altering of the Leased Area in any manner.
  - (16) The operation of wheeled vehicles or any other motorized equipment on the lake bottom.
  - (17) The construction of sandy beaches on the lake bottom at the Shoreline.
  - (18) The removal of vegetation from the lake bottom at the Shoreline.
  - (19) The placement of railroad ties on the Shoreline or in the shore area.
  - (20) The dumping of brush, leaves, bricks, logs, concrete rubble, asphalt rubble, soil, sand, gravel, rock, mulch, or any other material on the Shoreline or Take Area.
  - (21) The placement of garbage cans and waste receptacles anywhere within the Leased Area.
  - (22) The placement of signage within the Leased Area.
  - (23) The performance of any business activity from within the Leased Area.
  - (24) The storage of personal items on the shore area or Shoreline, including but not limited to boats, jet skis, water craft, boat trailers, vehicles, campers, recreational vehicles, wood piles, lawn equipment, appliances, storage facilities, and construction material.
  - (25) The drawing of lake water for personal use, including the use of water for irrigation purposes.
- (G) Sublessee agrees to comply with the following additional requirements:
- (1). All tree removals will comply with the City of Garland Tree Preservation Ordinance.
  - (2). Sublessee shall obtain a permit for any and all types of lake dredging and lake bottom earthwork.

- (3). Sublessee shall immediately remove personal items littering the lake, particularly after a storm.
- (4). Sublessee shall obtain a permit for modifications and alterations to existing erosion control structures. No permit, however, is required for the minor repair or general maintenance of an authorized existing erosion control structure unless the repair or general maintenance will include different material than what was originally approved.
- (5). Sublessee shall not permanently store, nor allow the permanent storage of a boat at the Lake Shoreline other than in an approved boathouse. All other boats on the shoreline must comply with the mooring time limit as specified in the Garland Lake Edge Zoning Ordinance.
- (6). Sublessee shall not operate, nor permit the operation of, a boat that pollutes Lake waters for any reason including, but not limited to, bilge discharges, septic waste, fueling, cleaning, maintenance and painting.
- (7). All boats in boathouses or on the Shoreline must be operable and in good repair. Sublessee shall remove inoperable boats immediately.
- (8). Sublessee shall not build any structure over the Lake within the Subleased Area without obtaining the prior review and written approval from the City of Garland, in accordance with applicable local ordinances governing the demised premises, and the City of Dallas. No structure may exceed forty (40) feet from the Shoreline.
- (9). Sublessee shall obtain a building permit from the City of Garland prior to erecting any structure or making any improvement in the Take Area. No provision in this agreement shall be construed as authorizing the construction of any structure or building within the Lake Area without first obtaining the prior written consent of the City of Dallas.

(H) The City of Garland and the City of Dallas each retain the right to make regular or special inspections of the Subleased Area in a commercially reasonable manner to ensure that the Subleased Area is being maintained and used in accordance with the terms of this Sublease and the Interlocal Agreement and that all terms of this Sublease and the Interlocal Agreement are being upheld.

(I) Sublessee shall commit no waste of the Subleased Area and shall be responsible for any damages to the Subleased Area caused by the activities of Sublessee, its agents, employees, guests, and invitees. Sublessee may not discharge any waste or hazardous materials on the Subleased Area. Any use of fertilizers, herbicides, pesticides or other hazardous or regulated chemicals by Sublessee shall be done in strict accordance with all applicable federal, state and local laws.



(J) Sublessee shall assume and pay when due all charges for water, gas, power, telephone, light, and any other utility services accruing or payable in connection with its occupancy of the Subleased Area, including deposits, connection fees or charges, and equipment rental required by the supplier of any such utility service.

(K) Sublessee acknowledges that the Subleased Area contains, or may contain, certain utilities including, without limitation, storm drains, sanitary sewers, gas, electric, telecommunications, and other facilities. Sublessee agrees that the City of Garland, the City of Dallas, and the owner or operator of its authorized utilities may enter the Subleased Area and may inspect, repair, revise, extend into, expand, replace, improve or otherwise modify those utilities, without compensation to the Sublessee. Any uses of the Subleased Area, and all improvements placed within the Subleased Area by Sublessee shall be made and done in a manner so as to cause no disturbance to such utilities unless authorized by the owner or operator of the affected utility.

(L) If improvements or structures have been constructed in the Take Area or the Shoreline prior to execution of this Sublease, all existing noncompliance items or encroachments that are not approved must be abated prior to execution of this Sublease Agreement. No Structures or improvements that are in noncompliance or are encroaching will be grandfathered.

#### **Section 6. Erosion Protection.**

(A) Sublessee shall pay for and install shoreline erosion protection if the Subleased Area is included in Critical Areas, as the term is defined in Section I of the Interlocal Agreement, or if the Subleased Area becomes a Critical Area or New Immediate Action Area at the time of execution of this Sublease, or at any time where encroachment onto Sublessee property is imminent as identified by Dallas. If the Subleased Area is not in a Critical Area, Sublessee may install erosion protection in accordance with Section VI of the Interlocal Agreement. All such optional erosion protection must be completed prior to Sublessee's commencement of construction of any improvements of any kind in the Subleased Area (including, but not limited to, gardens, docks, walls, pools, tennis courts, on the Subleased Area).

(B) In areas determined to be Critical Areas or New Immediate Action Areas, as defined above (collectively referred to as Critical Areas), Sublessee will be responsible for installation and maintenance of erosion control. Such required erosion protection must be completed no later than twelve (12) months from the date of execution of this Sublease, but prior to, or concurrent with, the Sublessee's commencement of construction of any improvement. If the City of Dallas has installed or performed maintenance or erosion control in any Critical Area, the Sublessee will reimburse the City of Dallas for the cost of installation and maintenance from the date of execution of the Interlocal Agreement to the later of, the date of execution of the Sublessee's sublease with the City of Garland, or the date of installation of the erosion control. If the City of Dallas installed or performed maintenance or erosion control in any area that is not a Critical Area, the Sublessee will reimburse the City of Dallas for the cost of installation and maintenance from the date of execution

of the Interlocal Agreement to the date of execution of the Sublessee's sublease with the City of Garland (i.e. there will be no retroactive reimbursement required of a Sublessee in any non-Critical Area; the full extent of the erosion reimbursement obligations of the Sublessee in a non-Critical Area will be known at the time of execution of the sublease). Reimbursements may be paid in a lump sum or over a term to be determined by the City of Dallas. Term payments will include interest charges and the term will not exceed the life of the asset. Sublessee shall assume maintenance responsibility for existing or proposed erosion control. **Maintenance responsibility** shall include keeping the erosion control structure(s) in good condition throughout the term hereof so that such structures remain capable of proper protection against erosion.

(C) Sublessee may install erosion control subject to the approval of the City of Dallas and the City of Garland. Sublessee will be responsible for maintenance of the installed erosion control in the same manner as set out above.

(D) The City of Dallas and the City of Garland will establish a listing of types of erosion control approved for use around the Lake, based on the Bernard Johnson Report or engineering data or criteria list. The list may be expanded jointly by the City of Dallas and the City of Garland if new and approved technology becomes available for such erosion control. If Sublessee installs erosion control, Sublessee may install any type listed in the Bernard Johnson Report, or on the updated/approved listing, as Sublessee deems economically feasible. Sublessee shall not use a type of erosion control other than a type approved by the City of Dallas, without the advance written approval of the City of Dallas and the City of Garland. The City of Dallas and the City of Garland may require engineering studies or other evidence acceptable to them that the proposed erosion control will be functionally equivalent or better than the types of erosion control contained in the approved list of erosion control measures.

(E) Sublessee (with approval of the City of Garland), may reclaim lost Shoreline with the prior written approval of the City of Dallas, as determined on a case-by-case basis. Any reclamation or cut and fill in the Lake or at the Shoreline shall not reduce the usable water storage capacity or flood storage capacity of the Lake, as determined by the City of Dallas. Sublessee, or the parties performing the reclamation, shall be responsible for obtaining all related permits for the reclamation, such as Corps of Engineer permits.

(F) No activities by Sublessee will be allowed which will increase the erosion of the Shoreline property, including any alteration of vegetation or to property, as determined by the City of Dallas.

(G) Erosion control installations must comply with all local state and federal laws, regulations and requirements and shall be designed by a licensed professional engineer and installed by a competent contractor with demonstrated experience in the installation of that system. Sublessee shall obtain written approval of the City of Garland prior to installing erosion controls.

(H) Sublessee agrees to allow any abutting Sublessee to connect to the erosion protection mechanism so installed, so as not to create gaps in erosion protection between abutting properties.

## **Section 7. Indemnity; Insurance.**

**(A) Sublessee hereby agrees to defend, indemnify and hold the City of Garland and the City of Dallas and all of their present, future and former officers, agents, employees, officials and representatives in their official, individual and representative capacities fully harmless from any claims, lawsuits or expenses for personal injury (including death) property damage or other harm for which damages may be recovered under law, suffered by any person or persons (including but not limited to Sublessee), that may arise out of or be occasioned by Sublessee's fault or negligence in the use, occupancy, maintenance or operation of the Subleased Premises for any purpose, or that arises out of or is occasioned by erosion control improvements installed, used or maintained by Sublessee, or by Sublessee's failure to install erosion control devices as required under the Sublease, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE OR FAULT OF THE CITY OF DALLAS OR THE CITY OF GARLAND IN OPERATING OR MAINTAINING THE LAKE AREA, OR ORIGINALLY INSTALLING OR MAINTAINING ANY EXISTING EROSION CONTROL IMPROVEMENTS ASSUMED BY SUBLESSEE, OR IN DETERMINING WHAT EROSION CONTROL IMPROVEMENTS WERE APPROPRIATE, CONTRIBUTED TO THE DAMAGE OR INJURY.**

(B) Sublessee agrees to carry, during the Sublease Term, comprehensive general liability insurance insuring against bodily injury (including death) and property damage with a company or companies qualified to do business and to write insurance in the State of Texas of the types and in the minimum amounts as set forth in Exhibit B attached to this Sublease and made a part of this Sublease for all purposes. The policy or policies shall name the City of Garland as an additional insured. The cost of premiums for all such policies shall be paid by Sublessee. The policy or policies shall bear an endorsement providing at least thirty (30) days written notice to the City of Garland of cancellation, non-renewal or material change.

## **Section 8. Miscellaneous Provisions.**

(A) Default under Sublease. Notwithstanding any matter to the contrary, neither party to this Sublease shall be in default of any obligation under this Sublease until the defaulting party has been given written notice and reasonable opportunity (not to exceed ninety days) to cure such default(s).

(B) Liquidated Damages for Breaches Subject to Cure. If Sublessee fails to meet, comply with or perform any of Sublessee's obligations under this Sublease, or otherwise materially breaches any provision of this Sublease, for any reason other than a breach of this Sublease by the City of Garland

after such written notice and opportunity to cure, then the City of Garland may assess liquidated damages against Sublessee in the sum of \$200.00 for each such failure or breach. The parties agree that the City of Garland's actual damages arising from Sublessee's breach of its obligations under this Sublease are difficult to calculate and that the sum of \$200.00 adequately represents the amount of those actual damages and does not represent a penalty. The City of Garland may exercise its option of liquidated damages without prejudice to or waiver of any other remedy contained herein.

(C) Default Under Interlocal Agreement. No default of the City of Dallas under the Interlocal Agreement shall affect, waive or defer the performance of any of Sublessee's obligations hereunder; provided, however, that in the event of any such default or failure by the City of Dallas, the City of Garland agrees, upon the City of Garland's receipt of written notice thereof from Sublessee, and at Sublessee's expense, to make demand upon the City of Dallas to perform the City of Dallas' obligations under the Interlocal Agreement in accordance with the terms of the Interlocal Agreement. The City of Garland assumes no other or further obligation with respect to such a default.

(D) Assignment or Sublease. Sublessee shall have the right to assign this Sublease, without the prior written consent of the City of Garland, only as a part of the full transfer of fee title to the adjoining property of the Sublessee. Nothing in this Sublease shall restrict Sublessee from encumbering, and Sublessee shall have the right to encumber, this Sublease and Sublessee's sublease estate in the Subleased Area and interest in the Subleased Area Improvements by one or more mortgages, deeds of trust, deeds to secure debt or other appropriate instrument to Sublessee's lienholder. This Sublease may be assigned as a result of foreclosure or as a result of a deed or assignment in lieu of foreclosure. Any party who acquires title to this Sublease by authorized assignment, at foreclosure or by deed or assignment in lieu of foreclosure shall execute and deliver in a form reasonably acceptable to City of Garland an assumption agreement from the assignee pursuant to which the assignee assumes the duties, obligations, covenants, conditions and restrictions of this Sublease.

(E) Severability. If any term or provision of this Sublease is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Sublease shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Sublease a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

(F) Waiver. Either the City of Garland or Sublessee shall have the right to waive any requirement contained in this Sublease that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended; provided however that no waiver by the City of Garland or Sublessee shall affect the rights inuring to the City of Dallas under this Sublease or the Interlocal Agreement.

(G) Governing Law; Venue. This Sublease and all of the transactions contemplated herein shall be

governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action arising under this Sublease shall be in Dallas County, Texas.

(H) Paragraph Heading; Construction. The paragraph headings contained in this Sublease are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Sublease and this Sublease shall not be construed either more or less favorably for or against any party.

(I) Complete Agreement. This Sublease made and entered into by and between the City of Garland and Sublessee contains the entire agreement between the City of Garland and Sublessee with respect to the Subleased Area and, except as set forth herein and in written instruments executed in connection herewith, neither the City of Garland nor Sublessee has made any agreements, covenants, warranties or representations of any kind or character, express or implied, oral or written, with respect to the Subleased Area, including without limitation, any warranties of habitability, merchantability, workmanship, income to be derived from the Subleased Area, expenses to be incurred in connection with the Subleased Area or with respect to any other conditions, facts or requirements relating or pertaining to the Subleased Area.

(J) Binding Effect. Except as limited herein, the terms and provisions of this Sublease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

(K) Gender. Within this Sublease, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

(L) Counterparts. This Sublease has been executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(M) Exhibits. All exhibits to this Sublease are incorporated into this Sublease by reference and made a part of this Sublease for all purposes wherever reference is made to the same.

(N) Relationship of Parties. Nothing contained in this Sublease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership, joint venture, or employment, it being expressly understood and agreed that no provision contained in this Sublease nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Sublease. Neither party has the authority to enter into contracts or to assume any obligation for the other, nor to make warranties or representations on behalf of the other except in accordance with the express terms of this Sublease or as otherwise authorized in writing by the other. In addition to the provisions of this Sublease relating to the indemnification of employees, agents and representatives of the City of Garland,

Sublessee specifically agrees that the City of Dallas is a third party beneficiary of this Sublease with a right to enforce the terms of the Sublease in the event of Sublessee's breach of any term of the Sublease.

(O) Computation of Deadlines. If any deadline contained herein ends on a Saturday, Sunday or a legal holiday recognized by the Texas Supreme Court, such deadline shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday.

(P) Notices. Any notice required or desired to be given from one party to the other party to this Sublease shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**EXECUTED** this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF GARLAND, TEXAS**

**SUBLESSEE:**

By: \_\_\_\_\_  
Title: Director of Engineering

\_\_\_\_\_  
\_\_\_\_\_

**ADDRESS FOR NOTICE:**

City of Garland, Texas  
Attn: Director of Engineering  
800 Main Street  
P.O. Box 469002  
Garland, Texas 75046-9002

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit A

## Exhibit B

Sublessee agrees to maintain in full force and effect, during the Sublease Term, commercial public liability insurance with minimum limits of \$500,000 per occurrence for bodily injury and property damage, and including coverage for contractual liability insuring the indemnity provision contained in this agreement. The insurance policy shall name the City of Garland as an additional insured and shall be written with a company authorized to transact business in the State of Texas and acceptable to the City of Garland. The insurance policy shall provide for at least thirty (30) days written notice to the City of Garland, of cancellation, non-renewal, or material change. Sublessee agrees to provide the City of Garland evidence of insurance required herein and may be required to provide copies of policies at the City's request.