**ECONOMIC DEVELOPMENT**
**CORPORATION BOARD OF DIRECTORS**

**Location:**
City of Edinburg, City Hall-Council Chambers 415
W. University Drive, Edinburg, Texas
VIA ZOOM

**SPECIAL BOARD MEETING AGENDA**
**OCTOBER 15, 2020**
**4:00 PM**

1. **CALL TO ORDER, ESTABLISH A QUORUM**

2. **CERTIFICATION OF PUBLIC NOTICE**

3. **PUBLIC COMMENTS**
*A specific portion of the meeting shall be dedicated to allowing Public Comments which will be limited to three (3) minutes. Because of the state of emergency due to the COVID-19 pandemic, public comment may be provided in-person abiding to the occupancy limits or by telephone. InÂ person requests shall be requested by completing the Public Comment Form available at City Council Chambers. Telephone requests shall be completed by (a) sending an email to publiccomment@cityofedinburg.com or (b) calling 956-388-8204.*

*All requests must be received beginning at 9am and end immediately before the start of the meeting. Your request should include your name, address, and telephone number. We ask for everyone's cooperation in following this procedure.*

4. **REGULAR AGENDA ITEMS**
   A. Discussion and possible action regarding real property 7310 N. Liberty Dr. - Lot 8, North Industrial Park Edinburg, Hidalgo, County, Texas.

5. **EXECUTIVE SESSION**
*The EEDC will convene in Executive Session, in accordance with the Texas Open Meetings Act, Vernon's Texas Statutes and Codes Annotated, Government Code, Chapter 551, Subchapter D, Exceptions to Requirement that Meetings be Open. The EEDC May Elect To Go Into Executive Session On Any Item Whether Or Not Such Item Is Posted As An Executive Session Item At Any Time During The Meeting When Authorized By The Provisions Of The Open Meetings Act.*
   A. Discussion and Possible Action regarding Real Property at 7310 N. Liberty Dr. - Lot 8, North Industrial Park Edinburg, Hidalgo County, Texas (§551.072. Deliberation Regarding Real Property; Closed Meeting)

6. **OPEN SESSION**
*The EEDC will convene in Open Session to take necessary action, if any, in accordance with Chapter 551, Open meetings, Subchapter E, Procedures Relating to Closed Meeting, §551.102, Requirement to Vote or Take Final Action in Open Meeting.*

## 7. ADJOURNMENT

*I hereby certify this Notice of an EEDC Meeting was posted in accordance with the Open Meetings Act, at the City Offices of the City of Edinburg, located at the 415 West University entrance outside bulletin board visible and accessible to the general public during and after regular working hours.*

*This notice was posted on* 10/12/20, *2020 at* 3:45 *am / pm.*

*By:*
*Signature:* ______________________
*Name:* *Ron Garza, City Manager*
*City of Edinburg, Texas*

**Edinburg Economic Development Corporation**
Meeting Date:October 15, 2020

Discussion and possible action regarding real property 7310 N. Liberty Dr. - Lot 8, North Industrial Park Edinburg, Hidalgo, County, Texas.

1. **Agenda Item:**
   Discussion and possible action regarding real property 7310 N. Liberty Dr. - Lot 8, North Industrial Park Edinburg, Hidalgo, County, Texas.
2. **Description/Scope:**
   Gateway America is proposing a short-term lease for four months at $7,500 per month and a purchase in the amount of $1,100,000 after the four-month period. The proposed use is medical sterilization with an estimated 35 jobs and $6 million in capital investment.

3. **Estimated Timeline:**
   Gateway's proposed lease term starts November 1, 2020 to March 5, 2021. The proposed sale would occur after the 90-day feasibility period, with a closing date at 30 days after the expiration of the feasibility period.

4. **Budget:**
   N/A

5. **Procurement/Selection Process:**
   N/A

6. **Staff's Recommendation:**
   N/A

7. **Justification:**
   N/A

____________________________
Blanca Davila
Director of Economic Development

**ATTACHMENTS**

Attachment A: Gateway America Environmental Research
Attachment B: Gateway America Business Information Snapshot Report
Attachment C: Gateway America Profile
Attachment D: 7310 N. Liberty Drive Proposal

| | |
|---|---|
| Approved: | ________ |
| Not Approved: | ________ |
| Tabled: | ________ |
| No Action: | |

**Research Objective**

Identify any land use or environmental impacts (air, soil, etc.) of irradiation facilities using Ethylene Oxide gas and X-Rays for medical equipment sterilization.

**Research Summary**

There are potential negative environmental impacts associated with the use EO gas to sterilize medical equipment. EO is a carcinogen and may cause cancer and other health issues to workers or residents who are exposed to it through the air by inhalation[2,3,4,5,6]. In 2005, the EPA considered banning EO in new medical device sterilizing facilities because of the cancer risk it posed to residents who lived around plants[10]. The EPA is currently looking at stricter standards for EO emissions after they found that EO was more toxic than they originally believed and after air testing results identified 25 facilities (medical device sterilization facilities and chemical manufacturing plants) in the U.S. with possible public health risks associated long-term exposure to EO emissions[7,8]. At least one medical device sterilization facility owned by Sterigenics in Willowbrook, IL, was closed due to concerns about EO emissions, after residents were notified and complained. A lawsuit representing 85 residents who claim they have health issues, including cancer, from long-term exposure to the Willowbrook facility has been filed[9]. In 2019, Attorney Generals in 16 states sent a letter to the EPA asking for stricter EO emission standards for commercial sterilization facilities[11]. The American Chemistry Council and The Ethylene Oxide Sterilization Association, claim that the EPA air testing results for EO emissions is not valid based on assumptions regarding emissions data and limited self-reported emissions.[14, 15]

**Sources**


1 A Comparison of Gamma, E-beam, X-ray and Ethylene Oxide Technologies for the Industrial Sterilization of Medical Devices and Health Products, Gamma Industry Processing Alliance and International Irradiation Association, August 31, 2017.

2 Frequent Questions: Basic Information About Ethylene Oxide, United States Environmental Protection Agency.

3 Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide, U.S. Environmental Protection Agency, December 2016.

4 Ethylene Oxide, United State Department of Labor, Occupational Safety and Health Administration.

5 Ethylene Oxide Factsheet, United States Department of Labor, Occupational Safety and Health Administration.

6 Ethylene Oxide, National Cancer Institute.

7 Prompt Action Needed to Inform Residents Living Near Ethylene Oxide Emitting Facilities About Health Concerns and Actions to Address Those Concerns, U.S. Environmental Protection Agency, Office of Inspector General, Report No. 20-N-0128, March 31, 2020.

8 Invisible gas may pose a cancer risk in towns, but experts say the EPA is failing to warn, WJLA, September 14, 2020.

9 Congress, lawsuits call for accountability surround cancer-causing gas, WJLA, September 17, 2020.

10 Cancer Risks Spur Calls to Replace Ethylene Oxide, WebMD, B. Goodman, A. Miller, September 25, 2019.

11 Letter to U.S. Environmental Protection Agency from Office of the Attorney General, State of Illinois, Kwame Raoul, October 18, 2019.

12 Ethylene Oxide Sterilization Facility Updates, U.S. Food and Drug Administration, January 28, 2020.

13 Medical device sterilization emissions spark safety concerns, Modern Healthcare, A. Kacik, February 13, 2020.

14 Ethylene Oxide Safety Facts, American Chemistry Council.

15 Flawed Science and Modeling by EPA Result in Inappropriate Conclusions That Could Have Disastrous Adverse Public Health Impacts, The Ethylene Oxide Sterilization Association, Inc.

16 Is it time to crack down on ethylene oxide emissions? Chemical makers push back on possible tighter controls of carcinogen in the US, Chemical & Engineering News, C. Hogue, September 28, 2019.

dun & bradstreet

# Business Information Report Snapshot

## GATEWAY AMERICA LLC

D-U-N-S: 07-861-9927
ADDRESS: 4300 Air Cargo Rd, Gulfport, MS, 39501, United States
**Date: 10/07/2020**

## RISK ASSESSMENT

### SCORES AND RATINGS

| Max. Credit Recommendation | PAYDEX® SCORE | Delinquency Predictor Percentile | Financial Stress Percentile | Supplier Evaluation Risk Rating |
|---|---|---|---|---|
| US$ 2,500 | 62 | 6 | 1 | 6 |
| | LOW-MODERATE RISK | HIGH RISK | HIGH RISK | MODERATE RISK |

### MAXIMUM CREDIT RECOMMENDATION

**Overall Business Risk**

| LOW | LOW-MODERATE | MODERATE | MODERATE-HIGH | HIGH |
|---|---|---|---|---|

**Maximum Credit Recommendation**

**US$ 2,500**

**The recommended limit is based on a high probability of severe delinquency.**

**Dun & Bradstreet Thinks...**

- Overall assessment of this organization over the next 12 months: SIGNIFICANT FINANCIAL STRESS AND PAYMENT BEHAVIOR CONCERNS
- Based on the predicted risk of business discontinuation: HIGHER THAN AVERAGE RISK OF FINANCIAL STRESS
- Based on the predicted risk of severely delinquent payments: VERY HIGH POTENTIAL FOR SEVERELY DELINQUENT PAYMENTS

### PAYDEX® SUMMARY

**3 Months**

68

Low Risk (100) High Risk (1)

When weighted by dollar amount, payments to suppliers average 17 days beyond terms. Value is based on payments collected over the last 3 months .

**24 Months**

62

Low Risk (100) High Risk (1)

When weighted by dollar amount, payments to suppliers average 21 days beyond terms. Value is based on payments collected over the last 24 months .

### PAYDEX®

Based on 24 months of data

| 62 | | | | |
|---|---|---|---|---|

Low Risk (100) High Risk (1)

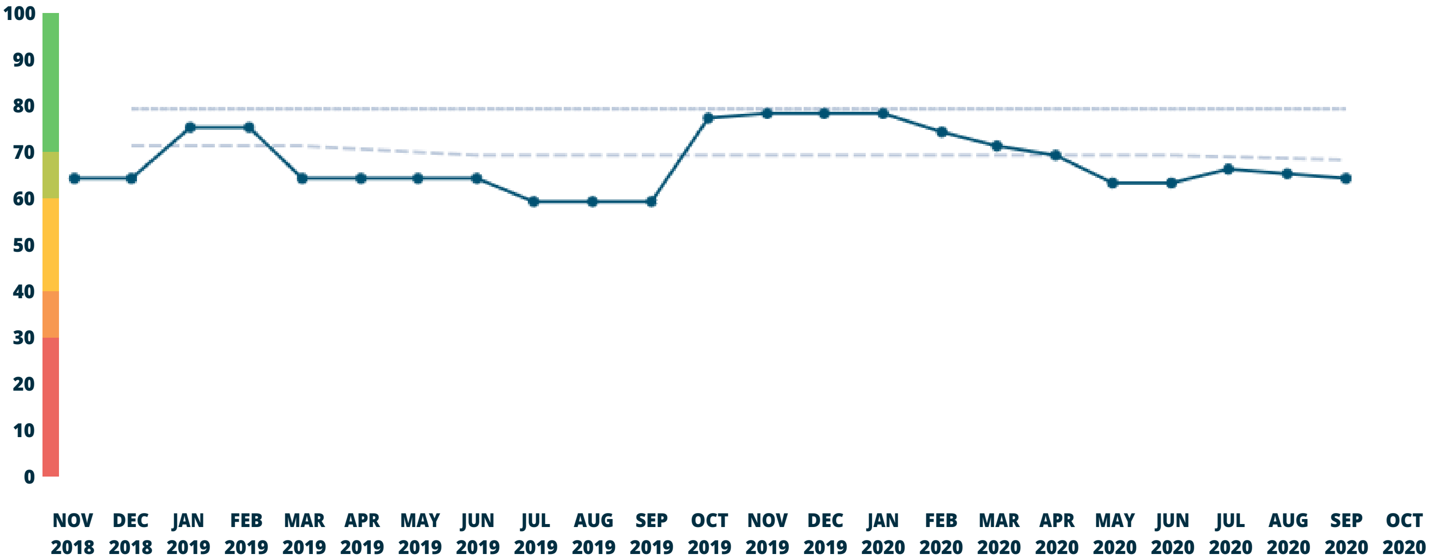
**Based on a D&B PAYDEX® of 62**

**Risk of Slow Pay**
**LOW-MODERATE**

**Payment Behavior**
**21 Days Beyond Terms**

**Business and Industry Trends** — **2099 - Mfg food preparations**

Industry Median | Industry Upper | Industry Low | GATEWAY AMERICA LLC




## DELINQUENCY PREDICTOR SCORE

| | | | | 6 |
|---|---|---|---|---|

Low Risk (100) High Risk (1)

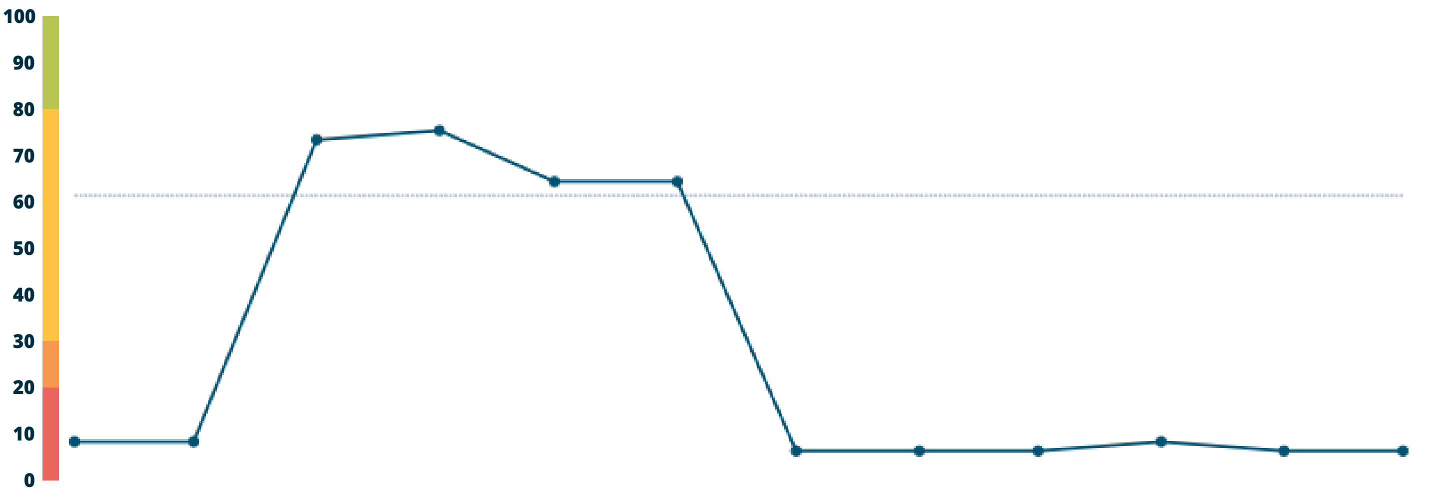
**Based on a D&B Delinquency Predictor Percentile of 6**

- Evidence of negative trade
- Recent amount past due
- Vendor payment commentary
- Proportion of slow payment experiences to total number of payment experiences reported
- Payment information indicates negative payment comments

| Level of Risk | Raw Score | Probability of Delinquency | Compared to Businesses in D&B |
|---|---|---|---|
| HIGH | 335 | 48.65% | 10.2% |

**Business and Industry Trends** — **2099 - Mfg food preparations**

Industry Median | GATEWAY AMERICA LLC



| NOV 2019 | DEC 2019 | JAN 2020 | FEB 2020 | MAR 2020 | APR 2020 | MAY 2020 | JUN 2020 | JUL 2020 | AUG 2020 | SEP 2020 | OCT 2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|

## FINANCIAL STRESS SCORE

1

Low Risk (100) High Risk (1)

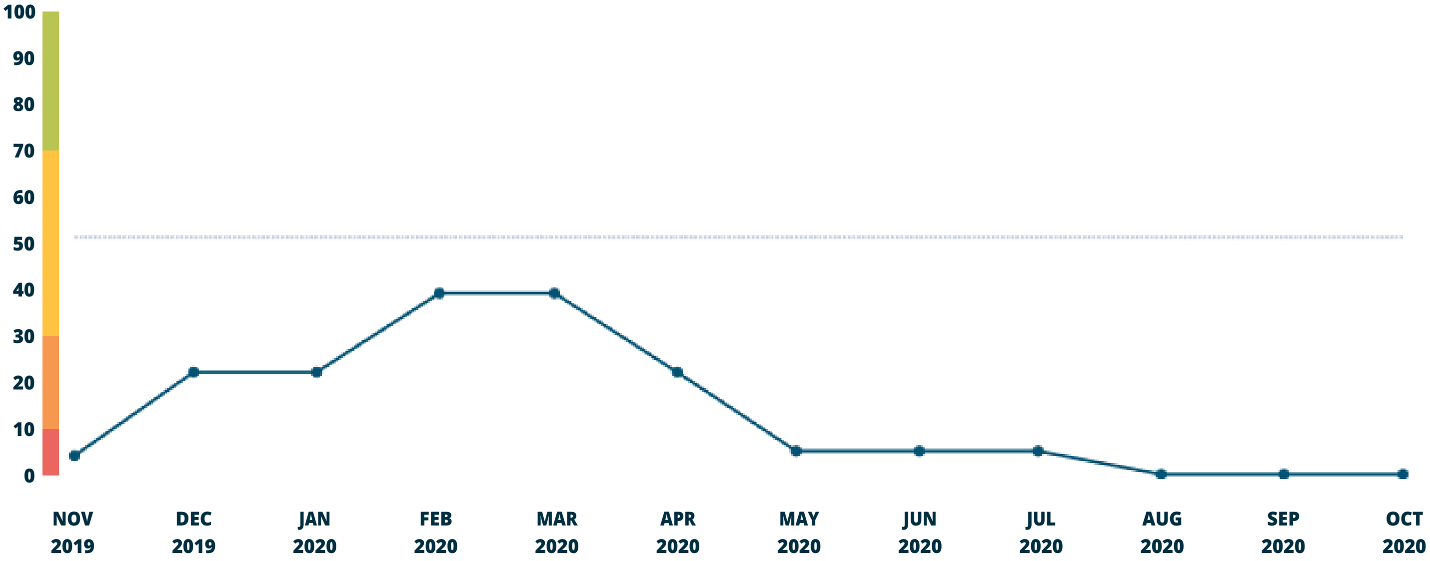
**Based on a D&B Financial Stress Percentile of 1**

- High proportion of slow payment experiences to total number of payment experiences
- Low proportion of satisfactory payment experiences to total payment experiences
- High proportion of past due balances to total amount owing
- Low Paydex Score
- Higher risk legal structure
- UCC Filings reported

| Level of Risk | Raw Score | Probability of Failure | Compared to Businesses in D&B |
|---|---|---|---|
| HIGH | 1298 | 4.7% | 0.48% |

**Business and Industry Trends** **2099 - Mfg food preparations**

Industry Median | GATEWAY AMERICA LLC




## SUPPLIER EVALUATION RISK RATING

6

Low Risk (1) High Risk (9)

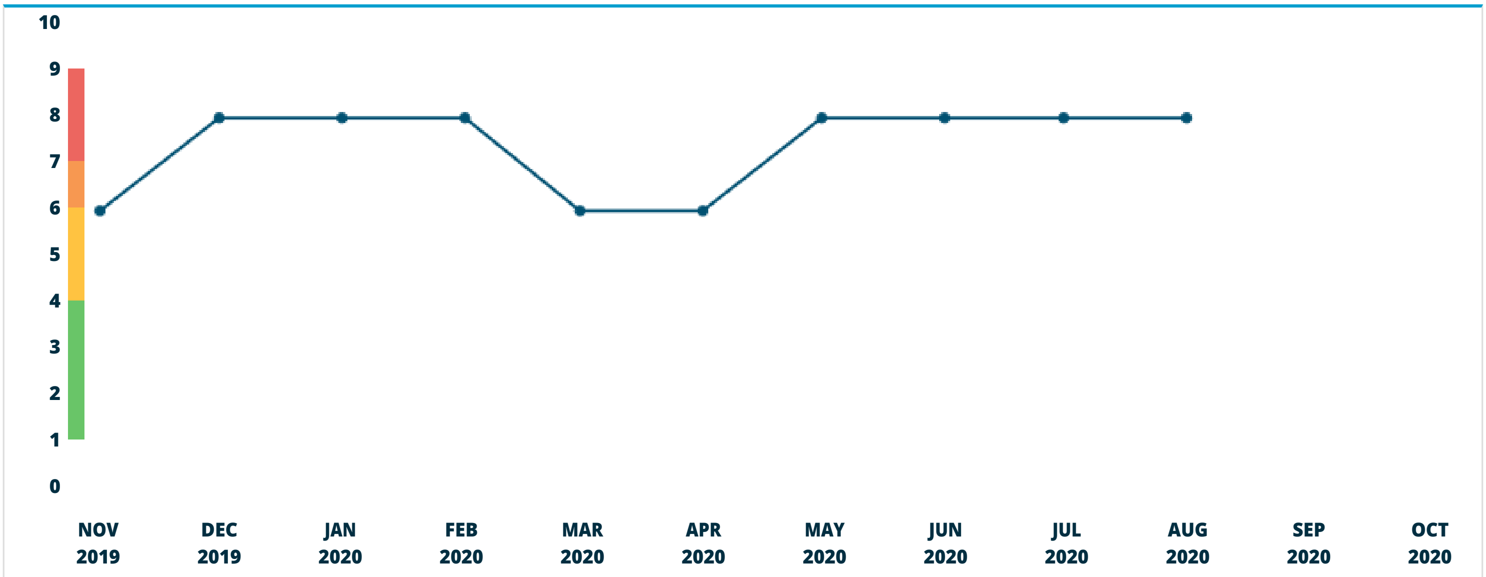
**Based on a Supplier Evaluation Risk Rating of 6**

**Factors Affecting Your Score**

- Proportion of slow payment experiences to total number of payment experiences reported
- Limited business activity signals reported in the past 12 months
- Proportion of past due balances to total amount owing
- Business belongs to an industry with above average risk of ceasing operations or becoming inactive
- Unstable Paydex over last 12 months

**Business and Industry Trends** **2099 - Mfg food preparations**

Supplier Evaluation Score




## D&B RATING

### Current Rating as of 02-09-2015

**Special Rating**

--: Undetermined

## TRADE PAYMENTS

### TRADE PAYMENTS SUMMARY

Based on 24 months of data

**Overall Payment Behavior**

**21**

Days Beyond Terms

**Highest Now Owing:** US$ 5,000

**% of Trade Within Terms**

**47%**

**Total Trade Experiences:** 13

Largest High Credit: US$ 10,000

Average High Credit: US$ 2,950

**Highest Past Due**

**US$ 5,000**

**Total Unfavorable Comments :** 0

Largest High Credit: US$ 0

**Total Placed in Collections:** 1

Largest High Credit: US$ 0

### TRADE PAYMENTS BY CREDIT EXTENDED

| $ CREDIT EXTENDED | % OF PAYMENTS WITHIN TERMS | # PAYMENT EXPERIENCES | TOTAL & DOLLAR AMOUNT |
|---|---|---|---|
| OVER 100,000 | 0% | 0 | $0 |
| 50,000 - 100,000 | 0% | 0 | $0 |
| 15,000 - 49,999 | 0% | 0 | $0 |
| 5,000 - 14,999 | 60% | 4 | $25,000 |
| 1,000 - 4,999 | 0% | 0 | $0 |
| UNDER 1,000 | 59% | 5 | $1,550 |

### TRADE PAYMENTS BY INDUSTRY

Collapse All | Expand All

| Industry Category | Number of Payment Experiences | Largest High Credit (US$) | % Within Terms (Expand to View) |
|---|---|---|---|
| 99 - Nonclassifiable Establishments | 3 | 5,000 | |
| 9999 - Nonclassified | 3 | 5,000 | 0 |
| 73 - Business Services | 2 | 10,000 | |
| 7363 - Help Supply Service | 1 | 10,000 | 100 |
| 7389 - Misc Business Service | 1 | 0 | 0 |
| 42 - Motor Freight Transportation And Warehousing | 1 | 5,000 | |

| | | | |
|---|---|---|---|
| 4213 - Trucking Non-local | 1 | 5,000 | 0 |
| ▾51 - Wholesale Trade - Nondurable Goods | 1 | 5,000 | |
| 5113 - Whol Service Paper | 1 | 5,000 | 100 |
| ▾96 - Administration Of Economic Programs | 1 | 750 | |
| 9611 - Admin Economic Prgm | 1 | 750 | 100 |
| ▾48 - Communications | 1 | 100 | |
| 4813 - Telephone Communictns | 1 | 100 | 100 |
| ▾50 - Wholesale Trade - Durable Goods | 1 | 100 | |
| 5084 - Whol Industrial Equip | 1 | 100 | 50 |

## TRADE LINES

| Date of Experience | Payment Status | Selling Terms | High Credit (US$) | Now Owes (US$) | Past Due (US$) | Months Since Last Sale |
|---|---|---|---|---|---|---|
| 09/2020 | Slow | - | 500 | 500 | 500 | Between 2 and 3 Months |
| 09/2020 | Slow | - | 5,000 | 5,000 | 5,000 | 1 Month |
| 08/2020 | Prompt | Regular terms | 10,000 | 0 | 0 | Between 4 and 5 Months |
| 08/2020 | Prompt | - | 5,000 | 0 | 0 | 1 Month |
| 08/2020 | Prompt | - | 100 | 0 | 0 | 1 Month |
| 08/2020 | placed for collection | - | - | 250 | 250 | - |
| 06/2020 | Prompt | - | 750 | 750 | 0 | 1 Month |
| 05/2020 | Slow | - | 5,000 | 250 | 250 | - |
| 12/2019 | Prompt to Slow | - | 100 | 0 | 0 | Between 6 and 12 Months |
| 04/2019 | - | Cash Account | 100 | - | - | Between 4 and 5 Months |
| 03/2019 | Prompt | - | - | 0 | 0 | Between 6 and 12 Months |
| 03/2019 | - | - | 500 | 0 | 0 | Between 6 and 12 Months |
| 01/2019 | Slow | - | 100 | 0 | 0 | Between 6 and 12 Months |

## EVENTS

### LEGAL EVENTS

**The following Public Filing data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.**

| SUITS | | JUDGEMENTS | | LIENS | | UCC FILINGS | |
|---|---|---|---|---|---|---|---|
| TOTAL | 0 | TOTAL | 0 | TOTAL | 0 | TOTAL | 2 |
| LAST FILING DATE | - | LAST FILING DATE | - | LAST FILING DATE | - | LAST FILING DATE | 07/06/2020 |

**General:** The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this was reported. This information may not be reproduced in whole or in part by any means of reproduction.

**UCC Filings:** There may be additional UCC Filings in the D&B file on this company which are available by contacting 1-800-234-3867.

**Suits, Liens, Judgements:** There may be additional suits, liens, or judgements in D&B's file on this company available in the U.S. Public Records Database that are also covered under your contract. If you would like more information on this database, please contact the Customer Resource Center at 1-800-234-3867.

**Lien:** A lien holder can file the same lien in more than one filing location. The appearance of multiple liens filed by the same lien holder against a debtor may be indicative of such an occurrence.

### EVENTS

UCC Filing **- Original**

| | |
|---|---|
| Filing Date | 2020-07-06 |
| Filing Number | 20203278811A |
| Received Date | 2020-07-20 |
| Secured Party | U.S. SMALL BUSINESS ADMINISTRATION, BIRMINGHAM, AL |
| Debtors | GATEWAY AMERICA, LLC |
| Filing Office | UCC DIVISION, JACKSON, MS |

UCC Filing **- Original**

| | |
|---|---|
| Filing Date | 2019-08-16 |
| Filing Number | 20193014489A |
| Received Date | 2019-08-20 |
| Collateral | Leased Business machinery/equipment |
| Secured Party | HANCOCK WHITNEY BANK, MONTGOMERY, AL |
| Debtors | GATEWAY AMERICA, LLC |
| Filing Office | UCC DIVISION, JACKSON, MS |

## COMPANY EVENTS

The following information was reported on: 08-08-2020

**Ownership information provided verbally by Frank Benso, President, on Sep 17 2012.**

**Business started 2009.**

**FRANK BENSO. Work history unknown.**

## SPECIAL EVENTS

**There are no special events recorded for this business.**

## Financials

**D&B currently has no financial information on file for this company.**

# COMPANY PROFILE

## COMPANY OVERVIEW

| | | |
|---|---|---|
| **D-U-N-S**<br>07-861-9927 | **Mailing Address**<br>4300 Air Cargo Rd, Gulfport<br>MS 39501, US | **Annual Sales**<br>- |
| **Business Form**<br>Partnership | **Telephone**<br>(228) 331-1473 | **Employees**<br>4 |
| **Date Incorporated**<br>- | **Fax**<br>- | **Age (Year Started)**<br>11 years (2009) |
| **State of Incorporation**<br>- | **Website**<br>- | **Named Principal**<br>FRANK BENSO, PRES |
| **Ownership**<br>- | **Line of Business**<br>Mfg food preparations | **SIC**<br>2099 |

## OWNERSHIP

**This business is not currently a part of a family tree.**

GATEWAY AMERICA

# BUYER PROFILE

PREPARED BY

HANNA SOLUTIONS

# LOCATION

## 4300 Air Cargo Rd.
## Gulfport, MS 39501


- By choosing Gulfport, Gateway America has direct port of entry access to facilitate imports and exports with ease.

- This allows for quick treatment and the expedited shipping to the Heartland of the US and beyond.

# LOCATION

## Gateway America Air Cargo Perishable Treatment Center


### Interstate Access:

- 3 Minutes from I-10
- 45 Minutes from I-59
- 1 Hour from I-65
- 2.5 Hours from I-20

### Ports:

- 5 minutes from Port of Gulfport
- 1 hour from Port of Mobile
- 1.5 hours from Port of New Orleans

# FOOD IRRADIATION FACILITY

- Since 2009 Gateway America has been building its infrastructure and establishing relationships to facilitate its growing future. This means first establishing a location that make sense not only from a geographical an logistical center but also economically.

- Gateway America worked with politicians and business leaders to educate the public and local industry on the need for a KillStep that will make food safer and extend shelf life.

# GOVERNMENT AGENCIES

Due to the nature of having a low dose gamma irradiation treatment facility on airport grounds, dealing with government agencies has become somewhat of a daily event. Agencies we've worked with:

- USDA-APHIS-PPQ-CPHST-AQI, and FSIS
- FDA, and FDA - Seafood
- Customs Border Protection (CBP)
- Transportation Security Administration (TSA)
- Nuclear Regulatory Commission (NRC)
- Department of Energy (DOE)
- Mississippi Department of Marine Resources (MDMR)
- Mississippi Department of Agriculture
- Alabama Department of Agriculture
- Alabama Department of Marine Resources (ADMR)
- Mississippi Department of Health Radiological Department (MSDH)
- Local, State, and Federal Law Enforcement
- Occupational Safety and Health Administration (OSHA)
- Federal Aviation Administration (FAA)

# IRRADIATION CERTIFICATES

## USDA Certification Imports, Exports, Domestic

USDA

United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Plant Protection
and Quarantine

# *Certificate of Approval*

For: **Irradiation**
Type of Facility

This treatment facility and associated equipment have been examined and found acceptable for use in the treatment of articles regulated under the provisions of quarantines and regulations administered by Plant Protection and Quarantine.

**Gateway America LLC.**
Name of Facility

**Ryan Hollingsworth**
Operator

**4300 Airport Cargo Rd, Gulfport MS 39503**
Location

Conditions of Approval:

**1. The facility must operate under the conditions in the compliance agreement.**
**2. The facility can conduct port of entry, export, and domestic phytosanitary irradiation treatments.**
**3. Treatments must follow approved process configurations.**
**4. See compliance agreement for conditions under which recertification is required.**

**April 24, 2013**
Date Approved

Laura Jeffers
Certifying Official

**none**
Expiration Date

**Pest Exclusion Specialist**
Title

PPQ Form 482 (Feb. 2011)

# IRRADIATION CERTIFICATES

## Department of Marine Resources

**MISSISSIPPI**
**DEPARTMENT OF MARINE RESOURCES**
**SHELLFISH CERTIFICATE**
A CERTIFICATE IS HEREBY GRANTED TO

May 1, 2013
(DATE ISSUED)

Oyster Shellstock Shipper
(Type of Certification)

April 30, 2014
(EXPIRATION DATE)

(MS-135-SS)
(Certification Number)

DESIGNATED FIXED COOLER NUMBER
(Dealer Certification Number)

Frank Benso
(BUSINESS OWNER OR AUTHORIZED AGENT)

to maintain and operate a:

**SHELLFISH BUSINESS**

UNDER THE NAME OF Gateway America

LOCATED AT 4300 Air Cargo Road (STREET, HIGHWAY OR RFD) Gulfport (CITY OR TOWN) Harrison (COUNTY)

This certificate signifies compliance on the date of issue with Shellfish Sanitation and Seafood Safety Processing Guidelines that assist in producing safe seafood in the State of Mississippi and is valid from the date of issue until the date of expiration, unless suspended or revoked.

**RUTH POSADAS**
(ISSUING OFFICIAL)

**DISPLAY FOR PUBLIC VIEW / NOT TRANSFERABLE**

# IRRADIATION CERTIFICATES

## FDA

DEPARTMENT OF HEALTH & HUMAN SERVICES • USA

FDA

DEPARTMENT OF HEALTH & HUMAN SERVICES • USA

FDA

Dear Mr. Nelson,

Thank you so much for the clarification necessary to complete my review. As I understand it, the future commercial processing of Crystal Seas oysters will be performed and monitored in exactly the same manner as was described in the validation study by Gateway America. Additionally, the process for validating your equipment was deemed sufficient by the State of Mississippi, as you were able to identify the minimum and maximum dose points for proxy products of varying densities as well as for live oysters. In addition to proxy materials, 18 boxes of oysters were utilized in the validation study and the equipment maintained the desired minimum/maximum range 0f 0.82 to 1.7 kGy for all product treated. Thank you for clarifying that all boxes containing 100 raw oysters were/are stacked in exactly the same pattern onto your irradiator carts and are monitored via dosimeters placed in the delineated grid pattern as validated.

I understand, through conversation with both you and Ms. Posadas, all Crystal Seas raw oyster product will consistently be handled in the same format. Additionally, thank you for clarifying that ANY change in container or configuration will require another validation of minimum/maximum dose. It appears the equipment validation was performed in accordance with the previously validated Post Harvest Process (PHP), performed at the irradiation facility in Florida, with which FDA previously concurred. Your process was also verified as per the National Shellfish Sanitation Programs (NSSP) Guide for the Control of Molluscan Shellfish, at a laboratory fully conforming to NSSP requirements.

Ms. Ruth Posadas, from the State of Mississippi, has provided FDA with Gateway America's data package and has explained the State's justification for approval of this equipment validation. After review, FDA does concur with the State of Mississippi's approval of the validation of this equipment and the verification of the process. An official letter of FDA concurrence will be sent to Ms. Posadas; however, per her request, this email is being sent to you and may be considered official notification of concurrence. Thank you for your efforts to implement effective PHP's to reduce levels of *Vibrio vulnificus* and *Vibrio parahaemolyticus* in molluscan shellfish.

Sincerely,

*Lizzie*

Melissa "Lizzie" Evans, MS.
Division of Seafood Safety
U.S. Food and Drug Administration
5100 Paint Branch Parkway, RM 3C-073
College park, MD 20740

# IRRADIATION CERTIFICATES

## USDA Establishment Number 45195

U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

**GRANT OF INSPECTION**

| | |
|---|---|
| 1. DATE: 07/09/2013 | 2. ESTABLISHMENT NO.: 45195/P-45195 |
| 3. DISTRICT/REGIONAL CODE: 9009 | |
| 4. NAME AND MAILING ADDRESS OF APPLICANT *(Use 9 Digit Zip Code if Known)*<br>GATEWAY AMERICA, LLC<br>4300 AIR CARGO ROAD<br>GULFPORT, MS 39501 | 5. LOCATION OF ESTABLISHMENT (PHYSICAL STREET ADDRESS)<br>SAME AS 4. |
| 7. TYPE OF INSPECTION *(Check all that apply)*<br>☑ MEAT * ☑ POULTRY ☐ EGG ☐ IMPORT | 6. ADDRESS OF DISTRICT/REGIONAL OFFICE<br>713 SOUTH PEAR ORCHARD ROAD<br>SUITE 402<br>RIDGELAND, MS 39157 |
| 8. TYPE OF GRANT<br>☑ CONDITIONAL (VERIFY HACCP PLAN) ☐ FINAL | |
| 9. DATE OF INAUGURATION OF SERVICE<br>JULY 15, 2013 | |

A survey of your establishment at the location shown above (Item 4 or 5) indicates compliance with the applicable requirements of the regulations under the Federal Meat Inspection Act or the Poultry Products Inspection Act, or both. Accordingly, inspection service is granted.

A copy of your Application for Federal Meat, Poultry or Import Inspection, Form FSIS 5200-2, is enclosed. This application specifies the type of operation conducted at your establishment and contains your agreement and certification that you will conform strictly to applicable Federal law and regulations pertaining to meat inspection, poultry inspection, or the importation of meat and poultry products.

Your establishment is under the supervision of the District/Regional Office. Call the District/Regional Office if you need help in interpreting the provisions of the regulations.

** Catfish is included under the category "Meat", as per the 2008 Food Conservation and Energy Act*

REMARKS:

CONDITIONAL GRANT OF INSPECTION

ACCORDANCE WITH PARTS 304.3(B) THIS CONDITIONAL GRANT OF INSPECTION IS ISSUED NOT TO EXCEED 90 DAYS (OCTOBER 15, 2013) DURING WHICH TIME ESTABLISHMENT 45195/P-45195 MUST VALIDATE IT'S HAZARD ANALYSIS CRITICAL CONTROL POINT (HACCP) PLAN. UPON SUCCESSFUL VALIDATION, INSPECTION WILL BE GRANTED IN ACCORDANCE WITH PARTS 304.2 AND 281, SUBPART D.THIS GRANT OF INSPECTION TO REMOVE RED FROM GRANT OF INSPECTION.

THIS IS NOT A HEADQUARTER PLANT

CC: INSPECTOR-IN-CHARGE
NATIONAL AGRICULTURE STATISTICAL SERVICE/DATA SERVICES CENTER, DES MOINES, IOWA
ASD
FPC, PRINTING, FLS, RMA, RMS, PBIS MA, Mail Room, File

| DISTRICT/REGIONAL MANAGER/HQ SIGNATURE | PRINT NAME |
|---|---|
| Dr Paul A Resweber DVM | DR PAUL A RESWEBER DVM |

FSIS FORM 5200-1 (04/28/2010) PREVIOUS EDITIONS OBSOLETE

# LETTER OF ENDORSEMENT


THAD COCHRAN

United States Senate

WASHINGTON, DC 20510-2402

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON RULES AND ADMINISTRATION

November 5, 2013

Mr. Kevin Shea
Animal and Plant Health Inspection Service
United States Department of Agriculture
1400 Independence Avenue, SW
Room 312-E
Washington, D.C. 20003

Dear Administrator Shea:

I understand representatives from Mouton Citrus of South Africa recently visited the Mississippi State Port at Gulfport and the Gulfport-Biloxi International Airport to consider shipping products to the United States utilizing both the port and the irradiation facility located at the airport. I am pleased Mouton Citrus is considering these important locations, which are logical points of entry for products being distributed throughout the southeastern and midwestern regions of the United States.

It is necessary for potential partners to see the Port's expansion efforts and the newly implemented irradiation facility at the airport. These investments will improve the shelf life of products, eliminate unwanted pests and benefit domestic and international commerce.

I appreciate your working with Gulfport-Biloxi International Airport to permit the irradiation facility and facilitating the test shipment of persimmons from South Africa. I also appreciate your working with those who view irradiation as an alternative treatment protocol for imported produce. I understand Laura Jeffers and Vanessa Dellis worked hard and were committed to these projects and I appreciate their efforts.

Sincerely,

THAD COCHRAN
United States Senator

# LETTER OF ENDORSEMENT

USDA

Animal and Plant Health Inspection Service

Plant Protection and Quarantine

Science and Technology

October 7, 2013

**Subject: Phytosanitary Irradiation of South African Persimmons at Gateway America in Gulfport, MS.**

To whom it may concern:

As per the new Code of Federal Regulations (CFR) rule, *Irradiation Treatment; Location of Facilities in the Southern United States* published in July 2012 (http://www.gpo.gov/fdsys/pkg/FR-2012-07-20/pdf/2012-17725.pdf), certified irradiation facilities can conduct port of entry phytosanitary treatments in the Southern United States.

Gateway America was the first facility to be certified after this landmark rule change and the first facility to conduct a port of entry irradiation treatment in the Southern United States.

Currently, the United States is waiting for South Africa to sign the commodity-specific addendum that will allow the port of entry irradiation of South African persimmons in the United States. However, as trade negotiations can take a long time, PPQ issued a provisional permit allowing the entry of a test shipment of South African persimmons.

During the week of August 5, 2013, a small test shipment of persimmons was sent by air from Capetown, South Africa via London, England to Houston, Texas. At that point, Customs and Border Protection signed authority of the shipment to PPQ, and the commodity was moved to a refrigerated container and sent to Gulfport, MS by bonded truck. Although there are always challenges when setting up logistics for a new commodity, once the persimmons arrived at the facility, the treatment was completed with no issues.

Port of entry irradiation treatments bring their own unique challenges. Packaging and process configuration approvals can be difficult to obtain in advance. However, Gateway America, Graystar and PPQ prepared for this shipment by developing a new procedure for non-destructive process configuration testing for commodity upon arrival, while still maintaining the strict safeguarding measures that PPQ requires. The implications of this work are very profound and ultimately will benefit the entire phytosanitary irradiation program.

In conclusion, I worked very closely with the team at Gateway America for the facility approval, facility certification, and test shipments. I am very encouraged by their accomplishments and resilience, as trailblazers never have an easy path. I have high hopes for Unites States port of entry phytosanitary irradiation program, and I look forward to working with Gateway America for many years in the future.

If you have any questions, please let me know.

Sincerely,

Laura A. Jeffers, Ph.D.

Pest Exclusion Specialist
USDA-APHIS-PPQ-S&T
1730 Varsity Dr, Suite 300
Raleigh NC 27606
Office (919) 855-7455
Cell (919) 889-9747

USDA

# LETTER OF ENDORSEMENT

STATE OF MISSISSIPPI
DEPARTMENT OF AGRICULTURE AND COMMERCE

CINDY HYDE-SMITH
COMMISSIONER

April 25, 2013

Laura A. Jeffers, Ph.D.
Pest Exclusion Specialist
USDA-APHIS-PPQ-CPHST-AQI
1730 Varsity Dr, Suite 400
Raleigh, NC 27606

Dear Dr. Jeffers:

I, John G. Campbell, serve as Director of the Bureau of Plant Industry (BPI), a division of the Mississippi Department of Agriculture and Commerce (MDAC). I am the State Plant Regulatory Official for MDAC, and I work closely with the National Plant Board on issues impacting agriculture in the state. I, along with Commissioner Cindy Hyde-Smith, support the establishment of Gateway America, LLC, located at 4300 Air Cargo Rd., Gulfport, MS 39501, as a port of entry irradiation treatment facility. MDAC looks forward to working with Ryan Hollingsworth and Frank Benso as the facility becomes fully operational, and we are optimistic it will have a positive economic impact on the state. In the future, BPI requests notification before PPQ issuance of import permits. If I can be of further assistance, please contact me at (662) 325-7760.

Sincerely,

JGCampbell

John G. Campbell
Director, Bureau of Plant Industry

Cindy Hyde-Smith

Cindy Hyde-Smith
Commissioner of Agriculture and Commerce

cc: Ryan Hollingsworth
Frank Benso
Woodward D. Bailey

# IRRADIATION SYSTEM

**Reduces or eliminates harmful food borne pathogens such as:**

- E.coli 0157:H7
- Salmonella
- Listeria
- Campylobacter
- Pseudomonas
- Vibrio Vulnificus, Parahaemolyticus


# RADIATION EFFICACY

## TYPICAL RADIATION EFFICACY FOR PATHOGENIC ORGANISMS

### Meat, Poultry and Marine Products

Minimum Radiation Dose = 1.5 kGy
Maximum Radiation Dose = 3.2 kGy
Average Radiation Dose = 2.4 kGy
Typical Product Density = 0.5 g/cc

| Organism | Average D-Value (kGy)* | Effectiveness (% kill) [Minimum Dose] Worst Case | Effectiveness (% kill) [Average Dose] Typical Case (most) | Effectiveness (% kill) [Maximum Dose] Best Case |
|---|---|---|---|---|
| Salmonella | 0.45 | 99.95 | 99.9995 | 99.999992 |
| Campylobacter | 0.23 | 99.99997 | 100*** | 100*** |
| Listeria | 0.50 | 99.90 | 99.998 | 99.99996 |
| Yersinia | 0.13 | 100*** | 100*** | 100*** |
| Aeromonas | 0.17 | 99.9999999 | 100*** | 100*** |
| E. Coli O157:H7 | 0.30 | 99.9990 | 99.9999990 | 100*** |
| Vibrio | 0.11 | 100** | 100*** | 100*** |
| Staphylococcus | 0.36** | 99.993 | 99.99998 | 99.9999999 |

*"Food Irradiation: A Source Book", E.A. Murano, et al., Iowa State University Press, 1995
**"Gamma Ray Processing to Destroy Staphylococcus aureus in Mechanically Deboned Chicken Meat", D.W. Thayer and G. Boyd, Journal of Food Science, Volume 57, No. 4, 1992.
***Assumes that the starting count is one billion counts per gram.

# YOUR COMMERCIAL TEAM

HANNA SOLUTIONS

**MARK HANNA**
(956) 821-8001
mark@hanna.solutions

**LUKE LANCASTER**
(956) 292-6419
luke@hanna.solutions

# GATEWAY AMERICA IN EDINBURG


**HANNA SOLUTIONS**

## 7310 N LIBERTY DR

Edinburg, TX 78541

# BUYER PROFILE

(SEE SUPPLEMENTAL BROCHURE FOR MORE DETAILS)

ATEWAY AMERICA

**IMPORT/EXPORT**

USDA/APHIS Certified Port of Entry Gamma facility for phytosanitary treatment of commodities from around the globe.

**FOOD SAFETY**

Shelf life extension due to the elimination of bacteria and sterilization of any pest of concern. Our process maintains nutritional value of consumables and can be treated either ambient, chilled or frozen.

**SPEED TO MARKET**

Our first location is strategically located at the Port of Gulfport Mississippi airport grounds with easy access to major metropolitan areas by truck or plane.

## IRRADIATION

Irradiation safely extends shelf life of perishable products by eliminating harmful pathogens and pests of concern while maintaining nutrition. The FDA has evaluated the safety and effectiveness of irradiation of food for over 30 years.

## WAREHOUSING

We offer 20,000 sq ft. chilled storage with 3 atmospheres and 20,000 sq ft. of dry storage.

*Additional storage solutions coming soon.

## LOGISTICS

Located on airport grounds we can receive cargo planes directly to our back door. We also provide LTL and TL common carrier truck services

FDA USDA FSIS PrimusLabs™ when food safety counts

# VALUE BROUGHT

ATEWAY AMERICA + EDINBURG Economic Development Corporation

| Deal Highlights | |
|---|---|
| **Planned Usage** | Medical Sterilization Facility |
| **Additional Investment Into Property** | $6M in Sterilization Equipment |
| **Number of Jobs Added** | 35 (Phase 1) |
| **Types of Jobs** | Certified Personnel |
| **Pay Range** | $34,000-$180,000/Year |

| | |
|---|---|
| **Benefits to Edinburg** | Increased Traffic To Area |
| | Additional Industrial Park Anchor |
| | Job Creation |
| | One-of-a-Kind Facility |
| | Facility Will Attract More Development To Industrial Park |

# PATH TO PURCHASE


HANNA SOLUTIONS

## 7310 N LIBERTY DR

Edinburg, TX 78541

# OFFER DETAILS

## LEASE:

- NOVEMBER 1, 2020 TO MARCH 5, 2021
- (4 MONTHS & 10 DAYS)
- $7,500/MONTH RENT
- ZERO LANDLORD RESPONSIBILITIES

## PURCHASE:

- $1,100,000 CASH
- 90 DAY FEASIBILITY
- 30 DAY CLOSE AFTER FEASIBILITY

# YOUR COMMERCIAL TEAM

HANNA SOLUTIONS


MARK HANNA
(956) 821-8001
mark@hanna.solutions

LUKE LANCASTER
(956) 292-6419
luke@hanna.solutions


TEXAS REALTORS

# COMMERCIAL CONTRACT - IMPROVED PROPERTY



1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: **EDINBURG ECONOMIC DEVELOPMENT CORP**

Address: **415 W University Dr, Edinburg, TX 78539-4353**
Phone: **(956)383-7124)-** E-mail: **bkelsey@cityofedinburg.com, bdavila@cityofedinburg.com**
Fax: ______ Other: ______

Buyer: **GATEWAY AMERICA**

Address: ______
Phone: **(217)621-3140** E-mail: **flbenso@gmail.com**
Fax: ______ Other: ______

2. **PROPERTY:**

A. "Property" means that real property situated in **Hidalgo** County, Texas at **7310 North Liberty Drive Edinburg, Texas 78541** *(address)* and that is legally described on the attached Exhibit ______ or as follows:
**Lot Eight (8), North Industrial Park, an addition to the City of Edinburg, Hidalgo County, Texas, as per map or plat thereof filed on October 6, 2011, and recorded under Clerk's file No.2247392, Official Records, and Map Records, Hidalgo County, Texas**

B. Seller will sell and convey the Property together with:
(1) all buildings, improvements, and fixtures;
(2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
(3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
(4) Seller's interest in all licenses and permits related to the Property;
(5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
(6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
(7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: **N/A** .
Any personal property not included in the sale must be removed by Seller prior to closing.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)*
*(If mineral rights are to be reserved an appropriate addendum should be attached.)*
*(If the Property is a condominium, attach Commercial Contract Condominium Addendum (TXR-1930) or (TXR-1946).)*

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing . . . . . . . . . . . . . . . . . . . . . . . . . $ **1,100,000.00**

B. Sum of all financing described in Paragraph 4 . . . . . . . . . . . . . . . . . . . . . $ ______

C. Sales price (sum of 3A and 3B) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $ **1,100,000.00**

**4. FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows:

☐ A. Third Party Financing: One or more third party loans in the total amount of $ N/A . This contract:

☐ (1) is not contingent upon Buyer obtaining third party financing.

☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TXR-1931).

☐ B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TXR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be $ N/A .

☐ C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum (TXR-1931) in the amount of $ N/A .

**5. EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit $ $5,000.00 as earnest money with Valley Land Title (title company) at 6013 N. 10th St McAllen TX (address) Mary Barrientos (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of $ N/A with the title company to be made part of the earnest money on or before:

☐ (i) N/A days after Buyer's right to terminate under Paragraph 7B expires; or

☐ (ii) N/A .

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

**6. TITLE POLICY, SURVEY, AND UCC SEARCH:**

A. Title Policy:

(1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:

(a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and

(b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:

☐ (a) will not be amended or deleted from the title policy.

☒ (b) will be amended to read "shortages in areas" at the expense of ☒ Buyer ☐ Seller.

(3) Within 45 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 90 days after the effective date:

[X] (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer N/A *(insert amount)* of the cost of the survey at closing, if closing occurs.

[ ] (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

[ ] (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, [ ] Seller [ ] Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 30 days after the title company notifies the parties that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 30 days if necessary for the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party N/A *(insert amount or percentage)* of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

[ ] (1) Within N/A days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.

[X] (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

(1) Within 15 days after Buyer receives the last of the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an “A” or “V” zone as defined by FEMA). If the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new document is delivered to Buyer. If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: N/A ______________________________ .

B. Feasibility Period: Buyer may terminate this contract for any reason within 90 days after the effective date (feasibility period) by providing Seller written notice of termination.

(1) Independent Consideration. *(Check only one box and insert amounts.)*

☐ (a) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less $ N/A that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

☒ (b) Not later than 3 days after the effective date, Buyer must pay Seller $ 500.00 as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single period of an additional N/A days by depositing additional earnest money in the amount of $N/A with the title company. If no dollar amount is stated in this Paragraph or if Buyer fails to timely deposit the additional earnest money, the extension of the feasibility period will not be effective.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:
(a) employ only trained and qualified inspectors and assessors;
(b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
(c) abide by any reasonable entry rules or requirements of Seller;
(d) not interfere with existing operations or occupants of the Property; and
(e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*

- [ ] (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- [ ] (b) copies of all current leases, including any mineral leases, pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- [ ] (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;
- [ ] (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- [ ] (e) copies of all current service, utility, maintenance, and management agreements relating to the ownership and operation of the Property;
- [ ] (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- [ ] (g) copies of all current warranties and guaranties relating to all or part of the Property;
- [ ] (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- [ ] (i) copies of all leasing or commission agreements that currently relate to the tenants of all or part of the Property;
- [ ] (j) a copy of the “as-built” plans and specifications and plat of the Property;
- [ ] (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- [ ] (l) a copy of Seller's income and expense statement for the Property from ____________________ to ____________________ ;
- [ ] (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- [x] (n) real and personal property tax statements for the Property for the previous 2 calendar years;
- [ ] (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from ____________________________ to ____________________________; and
- [ ] (p) ______________________________________________________________________ .

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*

- [ ] (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- [x] (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied in any format; and
- [ ] (c) deliver to Seller copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

## 8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:
(1) any failure by Seller to comply with Seller's obligations under the leases;
(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
(3) any non-occupancy of the leased premises by a tenant;
(4) any advance sums paid by a tenant under any lease;
(5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
(6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than N/A by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TXR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

## 9. BROKERS:

A. The brokers to this sale are:

| Principal Broker: Hanna Solutions | Cooperating Broker: |
|---|---|
| Agent: Mark Hanna | Agent: |
| Address: 611 N. McColl Rd STE E McAllen TX | Address: |
| Phone & Fax: | Phone & Fax: |
| E-mail: mark@hanna.solutions | E-mail: |
| License No.: 676122 | License No.: |

Principal Broker: *(Check only one box)*
- [ ] represents Seller only.
- [ ] represents Buyer only.
- [x] is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: *(Check only (1) or (2) below.)*
*(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)*

- [x] (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

- [ ] (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:
☐ ________ % of the sales price.
☐ ______________________.

Cooperating Broker a total cash fee of:
☐ ________ % of the sales price.
☐ ______________________.

The cash fees will be paid in Hidalgo County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

*NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.*

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

A. The date of the closing of the sale (closing date) will be on or before the later of:
(1) ☒ 45 days after the expiration of the feasibility period.
☐ N/A *(specific date)*.
☐ ______________________.
(2) 7 days after objections made under Paragraph 6D have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a ☒ general ☐ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
(1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
(2) without any assumed loans in default; and
(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
(1) tax statements showing no delinquent taxes on the Property;
(2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
(3) an assignment of all leases to or on the Property;
(4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
(a) licenses and permits;
(b) service, utility, maintenance, management, and other contracts; and
(c) warranties and guaranties;
(5) a rent roll current on the day of the closing certified by Seller as true and correct;
(6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
(7) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply with applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
(8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.

E. At closing, Buyer will:
(1) pay the sales price in good funds acceptable to the title compan

(2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
(3) sign and send to each tenant in the Property a written statement that:
 (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 (b) specifies the exact dollar amount of the security deposit;
(4) sign an assumption of all leases then in effect; and
(5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**12. SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*
**In the event buyer does not move forward with purchase of the subject property, buyer will vacate building immediately in accordance with separate lease agreement.**

**13. SALES EXPENSES:**

A. Seller's Expenses: Seller will pay for the following at or before closing:
(1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
(2) release of Seller's loan liability, if applicable;
(3) tax statements or certificates;
(4) preparation of the deed and any bill of sale;
(5) one-half of any escrow fee;
(6) costs to record any documents to cure title objections that Seller must cure; and
(7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:
(1) all loan expenses and fees;
(2) preparation fees of any deed of trust;
(3) recording fees for the deed and any deed of trust;
(4) premiums for flood and hazard insurance as may be required by Buyer's lender;
(5) one-half of any escrow fee; and
(6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

A. Prorations:

(1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.

(2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.

(3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

## 15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(4) which Seller may pursue, or

*(Check if applicable)*

☐ enforce specific performance, or seek such other relief as may be provided by law.

B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:

(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or

(2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:

(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or

(2) enforce specific performance, or seek such other relief as may be provided by law, or both.

## 16. CASUALTY LOSS AND CONDEMNATION:

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:

(1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;

(2) extend the time for performance up to 15 days and closing will be extended as necessary; or

(3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
   (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
   (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

**17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.

B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.

D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursal of the earnest money.

E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.

F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

G. ☐ Seller ☐ Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

☐ A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TXR-1408).

☒ B. Except as otherwise provided in this contract, Seller is not aware of:
   (1) any subsurface: structures, pits, waste, springs, or improvements;
   (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;

(3) any environmental hazards or conditions that materially affect the Property;
(4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
(5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
(6) any wetlands, as defined by federal or state law or regulation, on the Property;
(7) any threatened or endangered species or their habitat on the Property;
(8) any present or past infestation of wood-destroying insects in the Property's improvements;
(9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
(10) any material physical defects in the improvements on the Property; or
(11) any condition on the Property that violates any law or ordinance.

*(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)*

20. **NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

[X] A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
[X] B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. **DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. **AGREEMENT OF THE PARTIES:**

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

[ ] (1) Property Description Exhibit identified in Paragraph 2;
[ ] (2) Commercial Contract Condominium Addendum (TXR-1930) or (TXR-1946);
[ ] (3) Commercial Contract Financing Addendum (TXR-1931);
[ ] (4) Commercial Property Condition Statement (TXR-1408);
[ ] (5) Commercial Contract Addendum for Special Provisions (TXR-1940);
[ ] (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906);
[ ] (7) Notice to Purchaser of Real Property in a Water District (MUD);
[ ] (8) Addendum for Coastal Area Property (TXR-1915);
[ ] (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916);
[X] (10) Information About Brokerage Services (TXR-2501); and
[ ] (11) Information About Mineral Clauses in Contract Forms (TXR-2509); and
[ ] (12) ______________________________________________

*(Note: Counsel for Texas REALTORS® has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by Texas REALTORS® are appropriate for use with this form.)*

E. Buyer ☐ may ☒ may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract *(the Addendum for Coastal Area Property (TXR-1915) may be used).*

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract *(the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916) may be used).*

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract *(the Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906) may be used).*

H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.

I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.

J. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

K. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: N/A.

**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on October 15, 2020, the offer will lapse and become null and void.

**READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.**

| Seller: EDINBURG ECONOMIC DEVELOPMENT CORP | Buyer: GATEWAY AMERICA |
|---|---|
| By: | By: FRANK BENSO (dotloop verified 10/12/20 10:39 AM CDT QTDS-TMAX-VVSX-OKP3) |
| By (signature): | By (signature): |
| Printed Name: | Printed Name: |
| Title: | Title: |
| By: | By: |
| By (signature): | By (signature): |
| Printed Name: | Printed Name: |
| Title: | Title: |

## AGREEMENT BETWEEN BROKERS

*(use only if Paragraph 9B(1) is effective)*

Principal Broker agrees to pay ______________________ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

☐ $ ______________ , or
☐ ________ % of the sales price, or
☐ ________ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: ______________________

By: ______________________

Cooperating Broker: ______________________

By: ______________________

## ATTORNEYS

Seller's attorney: ______________________

Address: ______________________

Phone & Fax: ______________________

E-mail: ______________________

Seller's attorney requests copies of documents, notices, and other information:
☐ the title company sends to Seller.
☐ Buyer sends to Seller.

Buyer's attorney: ______________________

Address: ______________________

Phone & Fax: ______________________

E-mail: ______________________

Buyer's attorney requests copies of documents, notices, and other information:
☐ the title company sends to Buyer.
☐ Seller sends to Buyer.

## ESCROW RECEIPT

The title company acknowledges receipt of:
☐ A. the contract on this day ______________ (effective date);
☐ B. earnest money in the amount of $ ______________ in the form of ______________ on ______________ .

Title company: ______________________

By: ______________________

Assigned file number (GF#): ______________________

Address: ______________________

Phone & Fax: ______________________

E-mail: ______________________

TEXAS REALTORS

# COMMERCIAL LEASE



## Table of Contents



**ADDENDA & EXHIBITS *(check all that apply)***

- ☐ Exhibit N/A
- ☐ Exhibit N/A
- ☐ Commercial Lease Addendum for Broker's Fee (TXR-2102)
- ☐ Commercial Lease Addendum for Expense Reimbursement (TXR-2103)
- ☐ Commercial Lease Addendum for Extension Option (TXR-2104)
- ☐ Commercial Lease Addendum for Percentage Rent (TXR-2106)
- ☐ Commercial Lease Addendum for Parking (TXR-2107)
- ☐ Commercial Landlord's Rules and Regulations (TXR-2108)
- ☐ Commercial Lease Guaranty (TXR-2109)
- ☐ Commercial Lease Addendum for Right of First Refusal (TXR-2105)
- ☐ Commercial Lease Addendum for Optional Space (TXR-2110)
- ☐ Commercial Lease Addendum for Construction (TXR-2111) or (TXR-2112)
- ☐ Commercial Lease Addendum for Contingencies (TXR-2119)
- ☐ N/A
- ☐ N/A
- ☐ N/A
- X Information About Brokerage Services (TXR-2501)

TEXAS REALTORS

# COMMERCIAL LEASE



1. **PARTIES:** The parties to this lease are:

   Landlord: Edinburg Economic Development Corporation ; and

   Tenant: Gateway America .

2. **LEASED PREMISES:**

   A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements *(Check only one box)*:

   ☐ (1) Multiple-Tenant Property: Suite or Unit Number ________ containing approximately ________ square feet of rentable area in ________ *(project name)* at ________ *(address)* in ________ *(city)*, ________ *(county)*, Texas, which is legally described on attached Exhibit ________ or as follows: ________.

   ☒ (2) Single-Tenant Property: The real property containing approximately 24,116 square feet of rentable area at: 7310 North Liberty Drive Edinburg, Texas 78541 *(address)* in Edinburg *(city)*, Hidalgo *(county)*, Texas, which is legally described on attached Exhibit ________ or as follows: Lot Eight (8), North Industrial Park, an addition to the City of Edinburg, Hidalgo County, Texas, as per map or plat thereof filed on October 6, 2011, and recorded under Clerk's file No.2247392, Official Records, and Map Records, Hidalgo County, Texas.

   B. If Paragraph 2A(1) applies:
   (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
   (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area ☐ will ☒ will not be adjusted if re-measured.

3. **TERM:**

   A. Term: The term of this lease is 4 months and 10 days, commencing on: November 1, 2020 (Commencement Date) and ending on March 5, 2021 (Expiration Date).

   B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

C. Certificate of Occupancy: Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

**4. RENT AND EXPENSES:**

A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit ______________________ or as follows:

| Dates | | Rate per rentable square foot *(optional)* | | Base Monthly Rent $ |
|---|---|---|---|---|
| From | To | $ Monthly Rate | $ Annual Rate | |
| 11/01/2020 | 03/05/2021 | / rsf / month | / rsf / year | 7,500.00 |
| | | / rsf / month | / rsf / year | |
| | | / rsf / month | / rsf / year | |
| | | / rsf / month | / rsf / year | |
| | | / rsf / month | / rsf / year | |

B. Additional Rent: In addition to the base monthly rent, Tenant will pay Landlord all other amounts, as provided by the attached *(Check all that apply.)*:

☐ (1) Commercial Lease Addendum for Expense Reimbursement (TXR-2103)
☐ (2) Commercial Lease Addendum for Percentage Rent (TXR-2106)
☐ (3) Commercial Lease Addendum for Parking (TXR-2107)
☐ (4) N/A

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

C. First Full Month's Rent: The first full monthly rent is due on or before November 1, 2020 .

D. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

E. Place of Payment: Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: Edinburg Economic Development Corporation
Address: 415 W University Dr, Edinburg, TX 78539

F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.

H. Returned Checks: Tenant will pay $ 35.00 for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

## 5. SECURITY DEPOSIT:

A. Upon execution of this lease, Tenant will pay $ 5,000.00 to Landlord as a security deposit.

B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.

C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

**6. TAXES:** Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises.

## 7. UTILITIES:

A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. *(Check all that apply.)*

| | N/A | Landlord | Tenant |
|---|---|---|---|
| (1) Water | ☐ | ☐ | X |
| (2) Sewer | ☐ | ☐ | X |
| (3) Electric | ☐ | ☐ | X |
| (4) Gas | ☐ | ☐ | X |
| (5) Telephone | ☐ | ☐ | X |
| (6) Internet | ☐ | ☐ | X |
| (7) Cable | ☐ | ☐ | X |
| (8) Trash | ☐ | ☐ | X |
| (9) ______ | ☐ | ☐ | ☐ |
| (10) All other utilities | ☐ | ☐ | X |

B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.

C. **Notice: Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.**

D. After-Hours HVAC Charges: "HVAC services" means heating, ventilating, and air conditioning of the leased premises. *(Check one box only.)*

☐ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.

☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of $ ________________ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.

☒ (3) Tenant will pay for the HVAC services under this lease.

## 8. INSURANCE:

A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:

(1) public liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: *(check only (a) or (b) below)*

☒ (a) $1,000,000; or

☐ (b) $2,000,000.

If neither box is checked the minimum amount will be $1,000,000.

(2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and

☐ (3) business interruption insurance sufficient to pay 12 months of rent payments;

B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.

C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:

(1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or

(2) exercise Landlord's remedies under Paragraph 20.

D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate.

E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

**9. USE AND HOURS:**

A. Tenant may use the leased premises for the following purpose and no other: **MEDICAL STERILIZATION** ________________________.

B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.

C. The Property maintains operating hours of *(specify hours, days of week, and if inclusive or exclusive of weekends and holidays)*: **24 hours daily / 7 days per week** ________________________.

**10. LEGAL COMPLIANCE:**

A. Tenant may not use or permit any part of the leased premises or the Property to be used for:
(1) any activity which is a nuisance or is offensive, noisy, or dangerous;
(2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
(3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
(4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
(5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
(6) the permanent or temporary storage of any hazardous material; or
(7) **N/A** ________________________.

B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.

C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. <u>Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.</u>

**11. SIGNS:**

A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.

B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.

C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

**12. ACCESS BY LANDLORD:**

A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.

B. During the last N/A days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

**13. MOVE-IN CONDITION:** Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

**14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:**

A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.

B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.

C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.

D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

**15. MAINTENANCE AND REPAIRS:**

A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. ☐ Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.

B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.

C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. *(Check all that apply.)*

| | N/A | Landlord | Tenant |
|---|---|---|---|
| (1) Foundation, exterior walls, roof, and other structural components | ☐ | ☐ | X |
| (2) Glass and windows | ☐ | ☐ | X |
| (3) Fire protection equipment | ☐ | ☐ | X |
| (4) Fire sprinkler systems | X | ☐ | ☐ |
| (5) Exterior & overhead doors, including closure devices, molding, locks, and hardware | ☐ | ☐ | X |
| (6) Grounds maintenance, including landscaping and irrigation systems | ☐ | ☐ | X |
| (7) Interior doors, including closure devices, frames, molding, locks, and hardware | ☐ | ☐ | X |
| (8) Parking areas and walks | ☐ | ☐ | X |
| (9) Plumbing systems, drainage systems and sump pumps | ☐ | ☐ | X |
| (10) Electrical systems, mechanical systems | ☐ | ☐ | X |
| (11) Ballast and lamp replacement | ☐ | ☐ | X |
| (12) Heating, Ventilation and Air Conditioning (HVAC) systems | ☐ | ☐ | X |
| (13) HVAC system replacement | ☐ | ☐ | X |
| (14) Signs and lighting: | | | |
| (a) Pylon | ☐ | ☐ | X |
| (b) Facia | ☐ | ☐ | ☐ |
| (c) Monument | ☐ | ☐ | X |
| (d) Door/Suite | ☐ | ☐ | X |
| (e) Other: ____________ | ☐ | ☐ | X |
| (15) Extermination and pest control, excluding wood-destroying insects. | ☐ | ☐ | X |
| (16) Fences and Gates | ☐ | ☐ | X |
| (17) Storage yards and storage buildings | ☐ | ☐ | ☐ |
| (18) Wood-destroying insect treatment and repairs | ☐ | ☐ | ☐ |
| (19) Cranes and related systems | ☐ | ☐ | ☐ |
| (20) ____________ | | ☐ | ☐ |
| (21) ____________ | | ☐ | ☐ |
| (22) All other items and systems. | | ☐ | ☐ |

D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(12), Tenant [X] is [ ] is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.

F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.

G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.

H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

**16. ALTERATIONS:**

A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.

B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.

C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.

D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

**17. LIENS:** Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

**18. LIABILITY:** To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;

B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

**19. INDEMNITY:** Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

**20. DEFAULT:**

A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.

B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 10 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.

C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
(1) any lost rent;
(2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
(3) repairs to the leased premises for use beyond normal wear and tear;
(4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
(5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
(6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
(7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
(8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
(9) any other recovery to which Landlord may be entitled under this lease or under law.

**21. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

**22. HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

**23. LANDLORD'S LIEN AND SECURITY INTEREST:** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

**24. ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

**25. RELOCATION:**

☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary and business cards. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.

☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

**26. SUBORDINATION:**

A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
(1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
(2) all advances made under any such lien, encumbrance, or ground lease;
(3) the interest payable on any such lien or encumbrance;
(4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
(5) any restrictive covenant affecting the leased premises or the Property; and
(6) the rights of any owners' association affecting the leased premises or Property.

B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

**27. ESTOPPEL CERTIFICATES & FINANCIAL INFORMATION:**

A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

**28. CASUALTY LOSS:**

A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.

B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.

C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.

D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.

E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.

**29. CONDEMNATION:** If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.

**30. ATTORNEY'S FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

**31. REPRESENTATIONS:**

A. Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default.

B. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the

health or safety of an ordinary person, except: N/A
.

C. Each party and each signatory to this lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

**32. BROKERS:**

A. The brokers to this lease are:

| **Principal Broker:** Hanna Solutions | **Cooperating Broker:** |
|---|---|
| Agent: Mark Hanna | Agent: |
| Address: | Address: |
| Phone & Fax: | Phone & Fax: |
| E-mail: mark@hanna.solutions | E-mail: |
| License No.: 676122 | License No.: |

Principal Broker: *(Check only one box)*
☐ represents Landlord only.
☐ represents Tenant only.
☒ is an intermediary between Landlord and Tenant.

Cooperating Broker represents Tenant.

B. Fees:

☒ (1) Principal Broker's fee will be paid according to: *(Check only one box)*.
☒ (a) a separate written commission agreement between Principal Broker and:
☒ Landlord ☐ Tenant.
☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

☐ (2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.
☐ (a) a separate written commission agreement between Cooperating Broker and:
☐ Principal Broker ☐ Landlord ☐ Tenant.
☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

**33. ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

**34. NOTICES:** All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Landlord at: Edinburg Economic Development Corporation
Address: 415 W University Dr, Edinburg, TX 78539

Phone: (956)383-7124)- Fax: ______

and a copy to: ______

Address: ______

Phone: ______ Fax: ______

☐ Landlord also consents to receive notices by e-mail at: ______

Tenant at the leased premises,

and a copy to: ______

Address: ______

Phone: ______ Fax: ______

☐ Tenant also consents to receive notices by e-mail at: ______

**35. SPECIAL PROVISIONS:**

**In the event buyer does not move forward with purchase of the subject property, buyer will vacate building immediately in accordance with lease agreement.**

**36. AGREEMENT OF PARTIES:**

A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.

B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.

C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.

D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.

E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.

F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.

G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.

H. Force Majeure: If Landlord's performance of a term in this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.

I. Time: Time is of the essence. The parties require strict compliance with the times for performance.

**Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.**

| Landlord: Edinburg Economic Development Corporation | Tenant: Gateway America |
|---|---|
| By: ____ | By: FRANK BENSO dotloop verified 10/12/20 10:39 AM CDT Y2IT-QVLG-L1QX-IHCF |
| By (signature): ____ | By (signature): ____ |
| Printed Name: ____ | Printed Name: ____ |
| Title: ____ Date: ____ | Title: ____ Date: ____ |
| By: ____ | By: ____ |
| By (signature): ____ | By (signature): ____ |
| Printed Name: ____ | Printed Name: ____ |
| Title: ____ Date: ____ | Title: ____ Date: ____ |

**Edinburgh Economic Development Corporation**
Meeting Date:October 15, 2020

Discussion and Possible Action regarding Real Property at 7310 N. Liberty Dr. - Lot 8, North Industrial Park Edinburg, Hidalgo County, Texas (§551.072. Deliberation Regarding Real Property; Closed Meeting)

1. **Agenda Item:**
2. **Description/Scope:**
3. **Estimated Timeline:**
4. **Budget:**
5. **Procurement/Selection Process:**
6. **Staff's Recommendation:**
7. **Justification:**

____________________________

Blanca Davila
Director of Economic Development

**ATTACHMENTS**

| | |
|---|---|
| Approved: | _________ |
| Not Approved: | _________ |
| Tabled: | _________ |
| No Action: | |