

**CIVIL EMERGENCY ORDER****CITY OF SEATTLE****SHORT-TERM LEASE OF PROPERTY FOR COVID-19 TESTING SITES**

**WHEREAS**, in my capacity as Mayor, I proclaimed a civil emergency exists in the City of Seattle in the Mayoral Proclamation of Civil Emergency dated March 3, 2020; and

**WHEREAS**, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to: the Charter of the City of Seattle, Article V, Section 2; Seattle Municipal Code (SMC) Chapter 10.02; and chapter 38.52 RCW; and

**WHEREAS**, the facts stated in that proclamation continue to exist, as well as the following additional facts:

**WHEREAS**, on February 29, 2020, Governor Jay Inslee proclaimed a state of emergency within the State of Washington due to COVID-19; and

**WHEREAS**, on March 1, 2020, King County Executive Dow Constantine proclaimed a state of emergency within King County due to COVID-19; and

**WHEREAS**, on March 3, 2020, the Mayor Jenny Durkan proclaimed a civil emergency exists in the City of Seattle in a Mayoral Proclamation of Civil Emergency pursuant to the emergency powers granted to the Mayor pursuant to: the Charter of the City of Seattle, Article V, Section 2; Seattle Municipal Code (SMC) Chapter 10.02; and chapter 38.52 RCW;

**WHEREAS**, on March 11, 2020, the World Health Organization (“WHO”) declared a state of pandemic due to COVID-19 disease, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO raised the global health emergency to the highest level requiring dramatic interventions to disrupt the spread of this disease; and

**WHEREAS**, on March 13, 2020, President Donald Trump declared a National Emergency due to COVID-19, and on March 22, 2020 a Major Disaster was declared for the State of Washington; and

**WHEREAS**, on March 23, 2020, Governor Inslee imposed a “Stay Home – Stay Healthy” Order throughout Washington State prohibiting all people in Washington State from leaving their homes or participating in social, spiritual, and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State; and

**WHEREAS**, on May 4, 2020, Governor Inslee issued a Proclamation modifying his “Stay Home – Stay Healthy” Order, with a phased-in approach to re-open Washington, which will increase the

number of encounters King County and City residents will have with non-household members, and will increase their risk of exposure to persons with infectious COVID-19; and

**WHEREAS**, the age, condition, and health of a significant portion of the population of King County and its local cities and towns places it at risk for serious health complications, including death, from COVID-19; and

**WHEREAS**, a large surge in the number of persons with serious infections can compromise the ability of the regional healthcare system to deliver necessary healthcare to the public; and

**WHEREAS**, individuals can be infected and contagious before or even without developing symptoms (pre-symptomatic and asymptomatic), and the evidence suggests a significant number of infections may be transmitted in this manner; and

**WHEREAS**, the United States Centers for Disease Control and Prevention (“CDC”) confirmed that a significant number of individuals who are infected remain asymptomatic and that as many as 25 percent of these individuals may contribute to transmission of the COVID-19 virus; and

**WHEREAS**, one key transmission method for COVID-19 is respiratory droplets that individuals expel when they breathe, talk, cough or sneeze; and

**WHEREAS**, to limit the spread of the COVID-19 virus, it is imperative that testing be widely available, particularly for members of our community who are at increased risk of infection and developing serious complications, including persons living unsheltered and other community members who may not have access to medical services; and

**WHEREAS**, wide scale COVID-19 testing is critical to safe reopening of the economy and recovery efforts and impacts the City and the County’s ability to contain the virus and mitigate the possibility of a second wave of outbreak; and

**WHEREAS**, PHSKC has determined there is a public health need for community testing and the City has been collaborating with UW Medicine and PHSKC to develop protocols and an implementation plan for deploying broad scale COVID-19 diagnostic testing at community sites through a combination of offering drive-by and walk-up community testing sites; and

**WHEREAS**, PHSKC acknowledges the important role of the City in working with PHSKC and other public health officials to make available wide scale testing in geographic locations where testing is not as widely available and testing individuals based on public health guidelines and priorities consistent with FEMA guidance for reimbursable costs; and

**WHEREAS**, the City and UW Medicine will enter into a separate Memorandum of Agreement to implement community testing sites consistent with PHSKC requirements and anticipate having up to 2,000 to 2,600 samples per day of COVID-19 tests to be processed by UW’s Department of Laboratory Medicine (“UW – City MOU”); and

**WHEREAS**, the City and UW Medicine will follow PHSKC’s guidance and criteria for testing of individuals at these community sites, including pre-symptomatic and asymptomatic individuals with a confirmed exposure

**WHEREAS**, the City will enter into an MOU with PHSKC regarding the community testing sites for the purpose of memorializing the partnership between the City and PHSKC to provide COVID-19 test widely available to the public; and

**WHEREAS**, the City is locating these community testing sites in geographic areas where residents who are disproportionately bearing the impact of this disease and/or have limited access to COVID-19 testing are able to easily access the testing services in partnership with PHSKC; and

**WHEREAS**, the City does not own facilities or property that are suitable for the purpose of efficiently maximizing throughput of drive-through and walk up COVID-19 testing, and

**WHEREAS**, the City anticipates having two or more community testing sites that exceed the square footage allowed for the Director of Finance and Administrative Services to execute a lease on behalf of the City pursuant to Seattle Municipal Code (SMC) 3.127.020; and

**WHEREAS**, the Charter of the City of Seattle, Article V, Section 2, gives the Mayor the authority to protect and maintain public peace and order in the city under a declared civil emergency and perform such other duties and exercise such other authority as may be prescribed by law; and

**WHEREAS**, SMC 10.02.030 authorizes the Mayor to enter into contracts and incur obligations necessary to combat such emergency and such powers shall be exercised in light of the exigencies of the situation without regard to time-consuming procedures and formalities prescribed by ordinance, statute, rules or regulation (except mandatory constitutional requirements) to protect the public peace, safety and welfare of the city; and

**WHEREAS**, pursuant to SMC 10.02.025.B, I believe it is in the best interest of the public safety, rescue and recovery efforts, and the protection of property that the exercise of certain rights be temporarily limited as set forth in this Civil Emergency Order; therefore,

**BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF SEATTLE, THAT:**

I, **JENNY A. DURKAN**, MAYOR OF THE CITY OF SEATTLE, ACTING UNDER THE AUTHORITY OF SEATTLE MUNICIPAL CODE SECTION 10.02.030, AND MY MAYORAL PROCLAMATION OF CIVIL EMERGENCY, DATED MARCH 3, 2020, HEREBY ORDER:

**SECTION 1:**

A. The Director of Finance and Administrative Services (“Director”) or his/her designee to negotiate and execute one or more short-term lease(s) for real property substantially in the form of the “COVID-19 Testing Site Lease Agreement,” attached to this order as **Exhibit 1**.

B. The lease payments contemplated by the terms of any lease agreement or amendment authorized in Section 1 of this Emergency Order shall be charged to the appropriate expenditure allowance in the budget of the Department of Finance and Administrative Services (FAS) and shall be reimbursed to FAS.

**SECTION 2:**

All mayoral proclamations and orders presently in effect shall remain in full force and effect except that, insofar as any provision of any such prior proclamation is inconsistent with any provision of this proclamation, then the provision of this proclamation shall control.

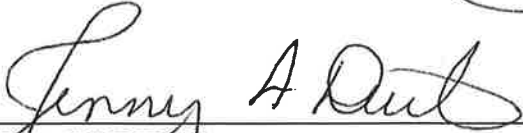
**SECTION 3:**

A copy of this Civil Emergency Order shall be delivered to the Governor of the State of Washington and to the County Executive of King County. To the extent practicable, a copy of this Civil Emergency Order shall be made available to all news media within the City and to the general public. In order to give the widest dissemination of this Civil Emergency Order to the public, as many other available means as may be practical shall be used, including but not limited to posting on public facilities and public address systems pursuant to SMC 10.02.100.

**SECTION 4:**

This Civil Emergency Order shall immediately, or as soon as practical, be filed with the City Clerk for presentation to the City Council for ratification and confirmation, modification or rejection, and if rejected this Civil Emergency Order shall be void. If the City Council modifies the order, such modification shall be effective only if it is agreed to by the ordered or contracting party. If the ordered or contracting party refused to accept the modification, the order shall be deemed to be rejected by the City Council. If the City Council rejects this Civil Emergency Order, such rejection shall not affect the City's responsibility for any actions taken prior to the rejection of the order, including the City's responsibility for the actual costs incurred by those who were ordered by or entered into contracts with the City.

DATED this 1 day of June, 2020, at 2<sup>45</sup> pm.

  
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JENNY A. DURKAN  
MAYOR OF THE CITY OF SEATTLE

# **LEASE AGREEMENT**

**BETWEEN**

**APPLUS TECHNOLOGIES, INC.,**

**LANDLORD**

**AND**

**CITY OF SEATTLE,**

**TENANT**

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**LEASE AGREEMENT  
(Single Tenant)**

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described in the terms and conditions set forth in this Lease Agreement, hereinafter called “this **Lease**”,

WHEREAS, in March 2020, the Mayor declared a State of Emergency because of the COVID-19 virus, and

WHEREAS the City has a short-term need for drive-thru COVID-19 testing facilities to protect the health and safety of persons and provide emergency assistance.

**BASIC LEASE PROVISIONS**

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- A. Lease Date: May 29, 2020
- B. Landlord: Applus Technologies, Inc., a Delaware corporation
- C. Tenant: City of Seattle, a municipal corporation of the State of Washington
- D. Tenant’s Trade Name: City of Seattle
- E. Property: The project including all improvements, structures, and parking facilities on the real property legally described on **Exhibit “A”** (the “**Property**”).
- F. Premises: The Premises shall mean the entire Property and all improvements, structures thereon, which includes a building on the Property containing approximately 4,736 square feet (“**SF**”) on a 1.18-acre (51,474-square foot) site, located at 12040 Aurora Ave N., Seattle, Washington (the “**Building**”).
- G. Permitted Use: for the use of general office, drive through medical testing and for no other purpose.
- H. Term: Three (3) months, commencing on the Lease Commencement Date and terminating on the Expiration Date (the “**Lease Term**”).
- I. Possession Date: June 1, 2020.
- J. Lease Commencement Date: June 1, 2020.

- K. Expiration Date: 11:59 p.m. on August 31, 2020.
- L. Rent Commencement Date: June 1, 2020.
- M. Minimum Monthly Rent:

Period	Monthly Rent
June 1, 2020 - August 31, 2020	\$20,000

- N. Security Deposit: \$5,000
- O. Initial Rent: \$20,000.00, to be paid by Tenant upon Tenant's execution hereof by check, wire transfer, or other "same day" funds, and which shall be applied toward Minimum Monthly Rent payable by Tenant for the month of June 2020.
- P. Landlord's Address for Notices: 120 S. Lasalle St., Suite 1450  
Chicago, IL 60603
- Q. Landlord's Address for Rent Payments: Via EFT to:  
  
Bank Name: JPMorgan Chase Bank  
Bank IL ACH routing number: 071000013  
Account Name: Applus Technologies, Inc.  
Account Number: 686536806
- R. Tenant's Address for Notices: The Premises  
  
With a copy to:  
  
City of Seattle  
Financial and Administrative Services  
P.O. Box 94689, SMT-52-60  
Seattle, WA 98124-4689  
Attn: Nonila Masmela
- S. Landlord's Broker: Thad Mallory, Newman Knight Frank
- T. Tenant's Broker: None
- U. Renewal Options: Subject to mutual agreement by the parties, Tenant shall have the right to renew the Term for up to two (2) consecutive three (3)-month periods (see **Paragraph 3.2**).



**ARTICLE 1  
PREMISES**

1.1 Construction; Suitability. On the Possession Date, Landlord shall deliver exclusive possession of the Premises to Tenant in good working order, including but not limited to parking lot drainage, roof, HVAC, triple catch basins, drains, and compressors. Tenant must notify Landlord of any deficiency in the foregoing within sixty (60) days after the Possession Date, in which event, as Tenant's sole remedy, Landlord shall cause such deficiency to be remedied at Landlord's sole cost. Except as expressly set forth in the preceding sentence, Tenant takes possession of the Premises in their current "as-is" condition. Landlord has no other obligation to perform any construction or other work to the interior or exterior of the Premises or elsewhere at the Property in preparation for Tenant's occupancy. Tenant's taking possession of the Premises or any portion thereof shall be conclusive evidence that the Premises or such portion were then in good order, repair and satisfactory condition. Except as expressly provided elsewhere herein, Tenant acknowledges that neither Landlord nor any agent or representative of Landlord has made any representation or warranty with respect to the suitability of the Premises for the use set forth in the **Basic Lease Provisions**, and that Tenant has entered into this Lease based solely upon its own investigation and inspection of the Property and the Premises.

1.2 Exhibits. The following drawings and special provisions are attached as exhibits and made a part of this Lease:

- Exhibit "A" – Legal Description
- Exhibit "B" – Confirmation of Delivery of Premises
- Exhibit "C" – Move-Out Inspection Checklist

**ARTICLE 2  
BUSINESS RIGHTS AND RESTRICTIONS**

2.1 Use. The Premises shall be used solely for the Permitted Use set forth in the **Basic Lease Provisions** and for no other purpose or use whatsoever without the prior consent of the Landlord, which consent shall not be unreasonably withheld.

2.2 Restrictions. Tenant shall not, without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion, bring or keep on the Premises any item or thing or permit any act thereon which is prohibited by any law, statute, ordinance or governmental regulation now in force or hereinafter enacted or promulgated.

**ARTICLE 3  
TERM; RENEWAL OPTIONS**

3.1 Initial Term. The Term hereof shall commence on the Lease Commencement Date defined in the Basic Lease Provisions and shall terminate on the Expiration Date defined in the Basic Lease Provisions, unless earlier terminated or extended as set forth elsewhere herein. If Landlord encounters delays in delivering possession of the Premises to Tenant, this Lease will not be void or voidable, nor will Landlord be liable to Tenant for any loss or damage resulting from such delay. If, however, Landlord is unable to deliver possession of Premises within 30 days of

the contemplated Commencement Date, in its sole discretion Tenant may void this Lease. Tenant agrees to execute a certificate confirming the date of the Lease Commencement Date in the form of the certificate attached hereto as **Exhibit "B"**, which certificate shall be initialed by Landlord and attached to, and incorporated into, this Lease. Tenant does not intend to record the Lease or any lease commencement certificate. Landlord acknowledges that this lease will be public knowledge and may be discussed in open public meetings. Landlord acknowledges that Tenant is subject to the Washington State Public Records Act, 42.56 RCW. Commencing on the Possession Date, Tenant and Landlord shall comply with each and every term, covenant, condition and provision of this Lease, excepting only those provisions pertaining to Tenant's obligation to pay Minimum Monthly Rent, which obligation shall commence on the Rent Commencement Date described in the Basic Lease Provisions.

3.2 **Renewal Options.** Provided that Tenant is not in default at the time of Tenant's exercise notice described below, or at the time of commencement of the Renewal Term defined below, and provided further that Tenant has not been in monetary default hereunder more than once, and provided Landlord accepts Tenant's Option Notice described below, Tenant shall have the right to renew the Term for up to two (2) consecutive periods of three (3) months each (each, a "**Renewal Term**"). Tenant may exercise the forgoing options only by delivering to Landlord written notice of Tenant's intention to exercise such option (the "**Option Notice**") no later than thirty (30) days prior to the last day of the then-effective Term. Subject to Landlord's acceptance of Tenant's Option Notice, each Renewal Term shall be on all of the terms and conditions contained in this Lease, except that there shall be no further renewal options after Tenant's exercise of its second (2nd) option. The foregoing options to renew the Term of this Lease are exercisable only by the original Tenant which is named in the Basic Lease Provisions and is not assignable or transferable. Once delivered, an Option Notice cannot be cancelled or revoked by Tenant; provided, however, that if Landlord rejects Tenant's Option Notice, then Tenant's Option Notice shall be void and the Term shall not be so renewed. Absent the Tenant's Option notice, this Lease shall become a month-to-month Lease, with continuance of all rights and obligations required under this Lease.

## **ARTICLE 4 RENT**

4.1 **Payment.** Tenant shall pay to Landlord without prior demand, abatement, deduction, set-off, counter claim or offset, for all periods during the Lease Term, all sums provided in this **Paragraph 4.1** and all other additional sums as provided in this Lease, at the address set forth in the **Basic Lease Provisions**, payable in lawful money of the United States of America on the first day of each month, except that the Minimum Monthly Rent due for the first month (or first partial month) shall be prepaid on the date of execution of the Lease by Tenant. All sums of money required to be paid pursuant to the terms of this Lease are hereby defined as "**rent**" or "**Rent**", including all sums as provided in **Paragraphs 4, 5, 6, 7, 8, and 9** and provided elsewhere in this Lease, whether or not the same are designated as such. Landlord's acceptance of Tenant's bank check or other funds shall not be deemed a waiver of Landlord's right to thereafter demand and receive timely payment in immediately available funds.

(a) **Minimum Monthly Rent.** Commencing on the Rent Commencement Date, but subject to any Minimum Monthly Rent abatement period provided in the **Basic Lease**

**Provisions**, Tenant shall pay to Landlord Minimum Monthly Rent at the initial monthly rate provided in the **Basic Lease Provisions**.

(b) **Late Fee**. If Tenant shall fail to pay when due any installment of Minimum Monthly Rent or any other sum due under this Lease, a late fee equal to five percent (5%) of the overdue amount shall be payable by Tenant to reimburse Landlord for costs relating to collecting and accounting for said late payment(s).

(c) **Reserved**.

4.2 **First Partial Month**. If the first day of the Lease Term occurs on a day other than the first day of a calendar month; Minimum Monthly Rent for such partial month ending on the last day of the calendar month in which the Lease Term commences shall be prorated based on a 30-day month, and as so prorated shall be paid on the date of execution of the Lease.

## **ARTICLE 5 SECURITY DEPOSIT**

Tenant has deposited with Landlord the Security Deposit set forth in the Basic Lease Provisions above, to be held by Landlord during the Term as set forth below. The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations hereunder, it being expressly understood that the Security Deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant. Landlord may, in its sole discretion, from time to time without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any default under this Lease or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned to Tenant within a reasonable period after such termination, after deducting therefrom any unpaid obligation of Tenant to Landlord as may arise under this Lease, including, without limitation, the obligation of Tenant to restore the Premises upon termination of this Lease. If Landlord transfers its interest in the Premises during the Term of this Lease, Landlord may assign the Security Deposit to the transferee provided that such transferee accepts, in writing, to be bound by the terms of this Lease as the landlord hereunder.

## **ARTICLE 6 TAXES**

6.1 **Personal Property Taxes**. Tenant shall pay before delinquency all license fees, public charges, taxes and assessments on the furniture, fixtures, equipment, inventory and other personal property of or being used by Tenant in the Premises, excluding any furniture, fixtures, equipment, inventory or other property owned by Landlord, whether or not owned by Tenant.

6.2 **Real Property Taxes**. Commencing on the Lease Commencement Date, Landlord shall pay directly to the taxing authorities all "Taxes" (as defined below). As used herein, Taxes shall mean all real property taxes, excises, license and permit fees, utility levies and charges,

business improvement districts, transport fees, trip fees, monorail and other light rail fees or assessments, transportation management program fees, school fees, fees assessed by air quality management districts or any governmental agency regulating air pollution or commercial rental taxes, and other governmental charges and assessments, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, and installments thereof (including any business and occupation tax imposed on Landlord, the Building or the Property, and any tax imposed on the rents collected therefrom or on the income generated thereby, whether or not substituted in whole or in part for real property taxes, as well as assessments and any license fee imposed by a local governmental body on the collection of rent), which shall be levied or assessed against all or any portion of the Premises, or imposed on Landlord for any period during the Term of this Lease.

6.3 Business Taxes. Tenant shall also pay (a) all special taxes and assessments or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises.

## **ARTICLE 7 UTILITIES AND SERVICES**

7.1 Utilities and Services. Tenant shall arrange and pay for all utilities and services required or desired by it at the Premises, including without limitation electricity, water/sewer, HVAC/mechanical, gas, garbage/recycling, fire alarm, snow plowing, landscaping, security alarm, and janitorial services. Tenant shall be required to ascertain whether all existing utility equipment and services available at the Premises and the Property are adequate for Tenant's needs, and Landlord shall have no obligation to provide, or to make any improvements or upgrades to Building systems to enable the provision of, any specific types or quantities of utilities or services.

7.2 Interruptions. It is understood that Landlord does not warrant that any utilities or services will be free from interruption by virtue of a strike or a labor trouble or any other cause beyond Landlord's reasonable control. Such interruption of service shall never be deemed an eviction or disturbance of Tenant's use or possession of the Premises, or any part thereof, nor shall it render Landlord liable to Tenant for damages, by abatement or reduction of rent or otherwise, nor shall it relieve Tenant from performance of Tenant's obligations under this Lease, nor shall Tenant be relieved from the performance of any covenant or agreement in this Lease because of such failure or interruption.

## **ARTICLE 8 REPAIRS AND ALTERATIONS**

8.1 No Landlord Repairs. Landlord has no duty or obligation to provide or perform any repairs or maintenance in, at, on, or about the Property or Premises at any time. Subject to the provisions herein, and except for damage caused by any negligent or intentional act or omission of Tenant, Tenant's agents, employees or invitees, Landlord, at Landlord's sole cost and expense, shall keep in good order, condition and repair the warehouse and office floor slab, foundations, exterior walls and the exterior roof of the Property, and in no event shall the expense of maintenance or repair of the same by Landlord be billed to Tenant. Landlord shall not however, be obligated to paint such exterior, nor shall Landlord be required to maintain the interior surface



of exterior walls, windows, doors or plate glass. Landlord shall have the obligation to make or commence repairs under this Article 8.1 within 14 days of receipt of written notice of the need for such repairs.

8.2 Tenant's Repairs. Subject to the provisions of Article 8.1 and Article 10, Tenant, at Tenant's expense, shall keep in good order, condition and repair the Property and every part thereof (regardless of whether the damaged portion of the Property or the means of repairing the same are accessible to Tenant) including, without limiting the generality of the foregoing, all plumbing, HVAC, electrical and lighting facilities and equipment, fixtures, interior walls, ceilings, windows, doors, plate glass, skylights, tenant identification signs within the Property, asphalt pavement, and fences surrounding the Property including but not limited to damage due to break-ins, theft or vandalism. Tenant shall cause all grease traps (if any) serving the Premises to be cleaned and serviced as often as may be required by law, ordinance or regulation or in order to keep the grease traps safe, sanitary and in good working order, and shall, within five (5) days of receipt, furnish to Landlord true copies of all receipts or other evidence of service from outside vendors who empty, clean or service the grease traps. In the event that Tenant fails to comply with the obligations set forth in this **Paragraph 8.2**, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

8.3 Alterations. Tenant shall not make any alterations, decorations, changes, installations or improvements (collectively, "**Alterations**") in, to, or about the interior or exterior of the Premises without obtaining the prior written consent of Landlord, which Landlord may withhold, condition, or deny in its sole discretion. Tenant's request for Landlord's consent to perform any Alterations which may affect the HVAC system or cause penetration through the roof of the Building, must be accompanied by plans and specifications (to be prepared by Tenant at Tenant's sole cost) for the proposed Tenant Change in detail satisfactory to Landlord, together with notice of the identity of the licensed contractor which Tenant has or will engage to perform such work, plus a review fee not to exceed \$300.00. All such work shall be accomplished at Tenant's sole risk and expense, and Tenant shall, to the extent permitted by law including any applicable anti-deficiency statutes, indemnify, defend and hold harmless Landlord from and against any and all loss, cost, liability and expense (excluding consequential damages) relating to or arising from the Alterations. All Alterations shall become a part of the realty upon installation thereof.

8.4 General Conditions. Tenant shall at all times comply with the following requirements when performing any work pursuant to **Paragraphs 8.2** or **8.3**:

(a) Contractors. All contractors used by Tenant shall be licensed contractors who are experienced in the type of work to be performed.

(b) Compliance With Laws. All Alterations shall at all times comply with all laws, rules, orders and regulations of governmental authorities having jurisdiction thereof and all insurance requirements of this Lease, and, where applicable, shall comply with the plans and specifications approved by Landlord.

(c) Tenant's Responsibility. All Alterations shall be made and completed at Tenant's sole cost and expense, and the Property and the Premises shall be kept lien-free at all times by Tenant. Landlord shall have the right to post notices of non-responsibility at the Premises.

8.5 Americans with Disabilities Act Compliance. Landlord and Tenant acknowledge that, in accordance with the provisions of the Americans with Disabilities Act of 1990, together with its implementing regulations and guidelines (collectively, the "ADA"), responsibility for compliance with the terms and conditions of Title III of the ADA may be allocated as between the parties. Notwithstanding anything to the contrary contained in the Lease, Landlord and Tenant agree that Tenant shall be responsible for compliance with the ADA of Tenant's equipment, (including the removal of communications barriers and the provision of auxiliary aids and services to the extent required). Landlord shall be responsible for compliance with the ADA by removal of any architectural barriers existing at the Commencement Date. Landlord and Tenant each agree that the allocation of responsibility for ADA compliance shall not require either party to supervise, monitor or otherwise review the compliance activities of the other party with respect to its assumed responsibilities for ADA compliance as set forth in this paragraph.

## **ARTICLE 9 INSURANCE**

9.1 Liability Insurance. Self-Insurance. The Tenant maintains a fully funded self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. Landlord acknowledges, agrees and understands that the Tenant is self-funded for all of its liability exposures for this Lease.

9.2

9.3 Waiver of Subrogation. Tenant hereby waives, and shall cause its insurance policy or policies to include a waiver of such carrier's, entire right of recovery (i.e., subrogation) against Landlord, and the officers, directors, agents, representatives, employees, successors and assigns of Landlord, for all claims which are covered or would be covered by the insurance required to be carried hereunder or which is actually carried by Tenant.

9.4 Blanket Insurance. Tenant shall be entitled to fulfill its insurance obligations hereunder by maintaining a so called "blanket" policy or policies of insurance. Such policy shall contain an endorsement that names Landlord as an additional insured or loss payee, references the Premises, and guarantees a minimum limit of coverage available for the obligations under this Lease at least equal to the insurance amounts required hereunder (e.g., via a Per Location Aggregate Limit endorsement). Tenant's right to fulfill its insurance obligations hereunder through a "blanket" policy shall be further subject to approval of such policy by Landlord's lender(s).

## **ARTICLE 10 DAMAGE AND RESTORATION**

10.1 Damage and Destruction. If the Premises are at any time destroyed or damaged by a casualty and if as a result of such occurrence:

(a) the Premises are rendered untenable only in part, this Lease shall continue in full force and effect and Landlord shall, subject to **Paragraph 10.3** below, commence diligently to reconstruct, rebuild or repair the Premises to substantially their condition as of the Lease Commencement Date hereof (Landlord shall have no obligation to reconstruct any Tenant's Changes). In such event, Rent shall not abate unless Tenant's use of the Premises are materially impacted by the damage, in which case the rent shall proportionately be adjusted to reflect those periods the Tenant was unable to conduct its business on the Premises up to and until the Landlord has made suitable repairs to the Premises that allows Tenant to fully conduct its business.

(b) the Premises are rendered totally untenable, Landlord shall, subject to **Paragraph 10.3** hereof, commence diligently to reconstruct, rebuild or repair the Premises to substantially their condition as of the Lease Commencement Date hereof (Landlord shall have no obligation to reconstruct any Tenant's Changes). Rent shall abate for that period the Tenant is unable to use the Premises to conduct its business.

10.2 Tenant's Work. Upon receipt by Tenant of written notice that Landlord's Work has been substantially completed, Tenant shall forthwith complete all remaining restoration work required to fully restore the Premises for business fully fixtured, stocked, and staffed, including without limitation all Alterations. If the Premises have been closed for business, Tenant shall reopen for business for the permitted use set forth in the **Basic Lease Provisions**, but no later than thirty (30) days after notice that Landlord's Work is substantially completed.

10.3 Limitation of Obligations. Tenant shall assign to Landlord all proceeds of insurance to which Tenant is entitled relating to the Premises, Building and Property (other than to the extent allocable to any Alterations and Tenant's personal property and inventory) except for those portions of the proceeds allocable to Tenant's improvements. Notwithstanding anything to the contrary herein, in the event the Premises or Property are damaged as a result of any cause in respect of which there are no insurance proceeds available to Landlord or Tenant has not caused to be assigned to Landlord as required above, or the proceeds of insurance are insufficient in Landlord's commercially reasonable judgment to pay for the costs of repair or reconstruction, or any mortgagee or other person entitled to the proceeds of insurance does not consent to the payment to Landlord of such proceeds to fully restore the Premises or Property, or if the Premises or Property cannot be fully restored to its prior condition under land use, zoning, and building codes in force at the time a permit is sought for repair or reconstruction, then Landlord or Tenant may, without obligation or liability, terminate this Lease on thirty (30) days' written notice and all rent shall be adjusted as of the date the damage occurred, and Tenant shall vacate and surrender the Premises on the date set forth in Landlord's termination notice. If Landlord or Tenant does not elect to terminate this Lease in accordance with the terms of this **Article 10**, Landlord shall, following such destruction or damage, commence diligently to reconstruct, rebuild, or repair, as necessary, the Property. Further, if Landlord elects to repair, reconstruct, or rebuild the Property, or any part thereof, Landlord may use plans, specifications, and working drawings other than those used in the original construction of the Property, provided that they are reasonably approved in advance by Tenant.

10.4 Damage or Destruction at End of Term. Notwithstanding anything to the contrary contained herein, Landlord shall not have any obligation to repair, reconstruct, or restore the Premises or Property when the damage or destruction occurs during the last fifteen (15) days of

the Term of this Lease, and if Landlord so elects not to repair or restore, either party may thereupon elect to terminate this Lease, all property insurance proceeds shall be retained by Landlord, and all rent shall be adjusted as of the date the damage occurred.

10.5 Waiver. Tenant hereby waives any statutory and common law rights of termination which may arise by reason of any partial or total destruction of the Premises which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

## **ARTICLE 11 RESERVED**

## **ARTICLE 12 EMINENT DOMAIN**

12.1 Definition. If there is any taking or condemnation of or transfer in lieu thereof for a public or quasi-public use of all or any part of the Property or the Premises or any interest therein because of the exercise or settlement due to threatened exercise of the power of eminent domain or inverse condemnation, whether by condemnation proceedings or otherwise (all of the foregoing being hereinafter referred to as "taking") before or during the Term hereof, the rights and obligations of the parties with respect to such taking shall be as provided in this **Article 12**.

12.2 Total Taking. If there is a taking of all or substantially all of the Premises, this Lease shall terminate as of the date of such taking. All Minimum Monthly Rent and other amounts due under this Lease shall be paid by Tenant to the date of such termination.

12.3 Partial Taking. If less than all or substantially all of the Premises shall be taken, and a part thereof remains which is reasonably susceptible of occupation hereunder for the use permitted herein, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor or transferee, and the Minimum Monthly Rent payable hereunder shall be reduced by the proportion which the floor area taken from the Premises bears to the total SF of the Premises immediately before the taking; but in such event each of Landlord and Tenant shall have the option to terminate this Lease in its entirety as of the date when title to the part so condemned vests in the condemnor or transferee by giving written notice to the other party of such election within sixty (60) days after the date that title to the portion so taken vests in the condemnor or transferee. All Minimum Monthly Rent and other amounts due under this Lease shall be paid by Tenant to the date of any such termination. If any part of the Property is taken, but no part of the Premises is taken, and Landlord does not elect to terminate this Lease, the rent payable hereunder shall not be reduced, nor shall Tenant be entitled to any part of the award made therefor. In the event of termination, all Minimum Monthly Rent and other amounts due under this Lease shall be paid by Tenant to the date of such termination.

12.4 Repair and Restoration. If this Lease is not terminated as provided in this **Article 12**, Landlord shall, at its sole expense, restore with due diligence the remainder of the improvements occupied by Tenant so far as is practicable to a complete unit of like quality, character, and condition as that which existed immediately prior to the taking, provided that the scope of the work shall not exceed the scope of the work to be done by Landlord originally in construction of the Premises, and further provided that Landlord shall not be obligated to expend

an amount greater than that which was awarded to Landlord for such taking. Tenant, at its sole cost and expense, shall restore its furniture, fixtures and other allowed leasehold improvements to their condition immediately preceding such taking.

12.5 Award. In the event of any taking, Landlord shall be entitled to the entire award of compensation or settlement in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee. Any such amounts shall belong to and be the property of Landlord. Without in any way diminishing the rights of Landlord under the preceding sentence, Tenant shall be entitled to recover from the condemnor such compensation as may be separately awarded by the condemnor to Tenant or recoverable from the condemnor by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant (meaning personal property, whether or not attached to real property, which may be removed without injury to the Premises) and for the expense of removing and relocating them, and for loss of goodwill, but only to the extent that the compensation awarded to Tenant shall be in addition to and shall not diminish the compensation awarded to Landlord as provided above.

12.6 Waiver. Tenant hereby waives any statutory and common law rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

### **ARTICLE 13 INDEMNITY; WAIVER**

#### 13.1 Indemnification and Waivers.

(a) Indemnity. To the fullest extent permitted by law, including any applicable anti-deficiency statutes, and commencing on the Possession Date, Tenant shall, at Tenant's sole cost and expense, Indemnify Landlord Parties against all Claims arising from (i) any Personal and Advertising Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Premises; (ii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Property; (iii) the use or occupancy, or manner of use or occupancy, or conduct or management of the Premises or of any business therein; (iv) any act, error, omission or negligence of any of the Tenant Parties in, on or about the Premises or the Property; (v) the conduct of Tenant's business; (vi) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant Parties in, at or about the Premises or Property, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease; (vii) any breach or default by Tenant in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Tenant under this Lease, or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (viii) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant Party in the Premises; (ix) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant; or (x) commissions or other compensation or charges claimed by any real estate broker or agent with respect to this Lease by, through or, under Tenant; provided that this Indemnification shall

not apply to the extent Claims are caused by the sole or concurrent negligent acts or omissions of Landlord.

(b) Waivers. To the fullest extent permitted by law, Tenant, on behalf of all Tenant Parties, Waives all Claims against Landlord Parties arising after the Possession Date from the following: (i) any Personal and Advertising Injury, Bodily Injury, or Property Damage occurring in or at the Premises; (ii) any loss of or damage to property of a Tenant Party located in the Premises or other part of the Property by theft or otherwise; (iii) any Personal and Advertising Injury, Bodily Injury, or Property Damage to any Tenant Party caused by other third parties at the Property, occupants of property adjacent to the Property, or by the construction of any private, public, or quasi-public work occurring either in the Premises or elsewhere in the Property; (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (v) business interruption or loss of use of the Premises suffered by Tenant; (vi) any latent defect in construction of the Building; or (vii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Property; provided that this waiver shall not apply to the extent of any injuries or damages caused by the gross negligence or intentional misconduct of Landlord or any Landlord Parties.

(c) Definitions. For purposes of this **Article 13**: (i) the term “Tenant Parties” means Tenant, and Tenant’s officers, members, partners, agents, employees, sublessees, licensees, invitees and independent contractors, and all persons and entities claiming through any of these persons or entities; (ii) the term “**Landlord Parties**” means Landlord and the members, partners, venturers, trustees and ancillary trustees of Landlord and the respective officers, directors, shareholders, members, parents, subsidiaries and any other affiliated entities, personal representatives, executors, heirs, assigns, licensees, invitees, beneficiaries, agents, servants, employees and independent contractors of these persons or entities; (iii) the term “**Indemnify**” means indemnify, defend and hold free and harmless for, from and against; (iv) the term “**Claims**” means all liabilities, claims, damages (except consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys’ and experts’ fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (v) the term “**Waives**” means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (vi) the terms “**Bodily Injury**”, “**Personal Injury**” and “**Property Damage**” will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

(d) Scope of Indemnities and Waivers. The indemnities and waivers contained in this **Article 13** shall not apply to the extent of the percentage of liability that a final judgment of a court of competent jurisdiction establishes under the comparative negligence principles of the State in which the Premises are situated, that a Claim against a Landlord Party was proximately caused by the willful misconduct or negligent acts of omissions of that Landlord Party, provided, however, that in such event the indemnity or waiver will remain valid for all other Landlord Parties.

(e) Duty to Defend. Tenant’s duty to defend Landlord Parties is separate and independent of Tenant’s duty to Indemnify Landlord Parties.

(f) Obligations Independent of Insurance. The indemnification provided in this **Article 13** shall not be construed or interpreted as in any way restricting, limiting or modifying Tenant's insurance or other obligations under this Lease, and the provisions of this **Article 13** are independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease.

(g) Waiver of Immunity. EACH OF LANDLORD AND TENANT HEREBY WAIVES ITS IMMUNITY WITH RESPECT TO THE PARTIES INDEMNIFIED UNDER THE PRECEDING PARAGRAPHS UNDER ANY INDUSTRIAL INSURANCE OR WORKERS COMPENSATION ACTS AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY'S EMPLOYEES. THIS WAIVER HAS BEEN SPECIFICALLY NEGOTIATED BY THE PARTIES TO THIS LEASE AND EACH PARTY HAS HAD THE OPPORTUNITY TO, AND HAS BEEN ENCOURAGED TO, CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(h) Survival. The provisions of this **Article 13** will survive the expiration or earlier termination of this Lease until all Claims against Landlord Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

#### **ARTICLE 14 OPERATION OF BUSINESS**

Tenant shall (a) keep the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (b) refrain from burning any papers or refuse of any kind in the Property; (c) store in the area designated by Landlord all trash and garbage in neat and clean containers so as not to be visible to members of the public and arrange for the regular pick-up and cartage of such trash or garbage at Tenant's expense; (d) observe and promptly comply with all governmental requirements and insurance requirements affecting the Premises; (e) not use or suffer or permit the Premises or any part thereof to be used for any use other than the Permitted Use set forth in the **Basic Lease Provisions** or in any manner that will constitute a nuisance or unreasonable annoyance to the public or to Landlord, or that will injure the reputation of the Property, or for any extra hazardous purpose or in any manner that will impair the structural strength of the Building; and (f) not cause or permit any waste to be committed on the Premises or the Property.

#### **ARTICLE 15 SIGNS AND ADVERTISING**

Tenant may at its own expense erect and maintain upon the interior areas of the Premises all signs and advertising matter customary and appropriate in the course of Tenant's use as permitted under this Lease. All signs and other similar advertising media shall comply with all applicable governmental requirements. Except for signs which comply with the terms of this Article, Tenant shall not erect, place, paint, or maintain in or on the Premises, any advertising device audible from outside the Premises. Tenant shall at its own expense maintain and keep in

good repair all installations, signs, and advertising devices which it is permitted to maintain under this Lease.

## **ARTICLE 16 LIENS**

Tenant shall keep the Premises and the Property free of any liens or claims of lien arising from any work performed, material furnished or obligations incurred by Tenant. Notwithstanding the foregoing, in the event that any lien is recorded in connection with Tenant's work or materials, Tenant shall, within ten (10) business days after request, post such bond as will release said property from the lien claimed.

## **ARTICLE 17 RIGHT OF ENTRY**

Landlord and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times and upon at least forty-eight (48) hours' prior notice (except in an emergency, when no prior notice shall be required), to inspect them, to make the repairs which Landlord is obligated to make under this Lease, to show them to prospective tenants, purchasers or lenders, to cure a default of Tenant, to post any notice provided by law that relieves a landlord from responsibility for the acts of a tenant, to comply with any governmental requirements or insurance requirements, and for any other lawful purpose relating to Landlord's rights and obligations under this Lease. Nothing in the preceding sentence shall imply or impose a duty to make repairs which Tenant has agreed to make hereunder. Landlord may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the parking areas and entrance to the Premises shall not be unreasonably blocked. Tenant shall not alter any lock or install a new or additional lock or any bolt on any door of the Premises, which Landlord requires access to without furnishing Landlord with a key for any lock and obtaining Landlord's prior permission. Landlord shall have the right to use any reasonable means which Landlord may deem proper to enter the Premises in an emergency. Landlord's entry to the Premises pursuant hereto shall not under any circumstances be construed to be a forcible or unlawful entry into the Premises or an eviction of Tenant from the Premises.

## **ARTICLE 18 DELAYING CAUSES**

If either party is delayed in the performance of any covenant of this Lease because of any of the following causes (referred to elsewhere in this Lease as a "**delaying cause**"): acts of the other party, action of the elements, war, riot, labor disputes, inability to procure or general shortage of labor or material in the normal channels of trade, delay in transportation, delay in inspections, or any other cause beyond the reasonable control of the party so obligated, whether similar or dissimilar to the foregoing, financial inability excepted, then, such performance shall be excused for the period of the delay; and the period for such performance shall be extended for a period equivalent to the period of such delay, except that the foregoing shall in no way affect Tenant's obligation to pay Rent or any other amount payable hereunder, or the length of the Term of this Lease.



**ARTICLE 19**  
**ASSIGNMENT AND SUBLEASE**

19.1 Consent Required. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not assign this Lease or any interest herein or any right or privilege appurtenant hereto, or hypothecate, encumber, or otherwise grant any security interest in or to the Lease, the Premises, or any alterations, betterments, or improvements therein, or sublet, license, grant any concessions, or otherwise give permission to anyone other than Tenant to use or occupy all or any part of the Premises (hereinafter sometimes referred to as a “**Transfer**”), without the prior written consent of Landlord, which consent may be withheld, conditioned, and/or denied in Landlord’s reasonable discretion. Any actual or attempted Transfer without the Landlord’s prior written consent or otherwise in violation of the terms of this Lease shall, at Landlord’s election, be void and shall confer no rights upon any third person, and shall be a non-curable default under this Lease which shall entitle Landlord to terminate this Lease upon ten (10) days’ written notice to Tenant at any time after such actual or attempted Transfer without regard to Landlord’s prior knowledge thereof. The acceptance of rent by Landlord from any person or entity shall not be deemed to be a waiver by Landlord of any provision of this Lease or a consent to any Transfer. A consent by Landlord to one or more Transfers shall not be deemed to be a consent to any subsequent Transfer. In addition, any option to extend or renew the Term hereof, to terminate this Lease early, or to expand or contract the size of the Premises shall be personal to Tenant, and shall not be Transferred without the prior written consent of Landlord in accordance with the terms of this **Article 19**.

19.2 Request For Consent. If Tenant shall desire Landlord’s consent to any Transfer, Tenant shall notify Landlord in writing, which notice shall include: (a) the proposed effective date (which shall be not less than forty five (45) days nor more than one hundred eighty (180) days after Tenant’s notice); (b) the portion of the Premises subject to the Transfer; (c) all of the terms of the proposed Transfer and the consideration therefor; (d) the name and address of the proposed transferee; (e) a copy of the proposed sublease, instrument of assignment and all other documentation pertaining to the proposed Transfer; (f) current financial statements of the proposed transferee certified by an officer, partner or owner thereof; (g) any information reasonably requested by Landlord to enable Landlord to determine the financial responsibility, character, and reputation of the proposed transferee and the nature of such transferee’s business and the proposed use the Premises; and (h) such other information as Landlord may reasonably request, together with the sum of \$1,500.00 which shall be applied towards Landlord’s review and processing expenses.

19.3 Recapture. Upon receipt of Tenant’s request for consent to any Transfer, Landlord may elect, by written notice given to Tenant within thirty (30) days after receipt of the information required pursuant to **Paragraph 19.2** above, to recapture the affected space by terminating this Lease as to that portion of the Premises covered by the proposed sublease or assignment, effective upon a date specified by Landlord, which date shall not be earlier than thirty (30) days nor later than sixty (60) days after Tenant’s request for consent, with a proportionate reduction of all rights and obligations of Tenant hereunder that are based on the area of the Premises.

19.4 General Conditions. If Landlord does not elect to recapture the affected Premises or deny its consent to a Transfer, the granting of such consent shall be subject to the following conditions:

(a) Payment of Transfer Premium. Tenant shall pay to Landlord one-half of any Transfer Premium derived by Tenant from such Transfer. “**Transfer Premium**” shall mean all rent and any other consideration payable by a subtenant, assignee, or other transferee in excess of the Minimum Monthly Rent payable by Tenant under this Lease (on a per square foot basis, if less than all of the Premises is Transferred—e.g., pursuant to a sublease), after deducting therefrom any brokerage commissions in connection with the Transfer actually paid by Tenant to an unaffiliated broker. If any part of the consideration for such Transfer shall be payable other than in cash, Landlord’s share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord. The Transfer Premium payable hereunder shall be due within ten (10) days after Tenant receives such payments.

(b) Continued Liability of Tenant. Tenant shall remain primarily liable on its covenants hereunder unless released in writing by Landlord. In the event of any assignment or sublease which is consented to by Landlord, the transferee shall agree in writing to perform and be bound by all of the covenants of this Lease required to be performed by Tenant.

19.5 Transfer to an Affiliate. The sale, assignment, transfer or disposition, whether or not for value, by operation of law, gift, will, or intestacy, of (a) twenty-five percent (25%) or more of the issued and outstanding stock of Tenant if Tenant is a corporation, or (b) the whole or a partial interest of any general partner, joint venturer, associate or co tenant, if Tenant is a partnership, joint venture, association or co tenancy, shall be deemed a Transfer and shall be subject to the provisions of this Article 19. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant’s right, without further approval from Landlord but only after written notice to Landlord, to sublease the Premises or assign its interest in this Lease (i) to a corporation that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Tenant; (ii) in the event of the merger or consolidation of Tenant with another corporation; provided that immediately following the events enumerated in clauses (i) to (ii) above, the tangible net worth of the new Tenant, calculated in accordance with generally accepted accounting principles, consistently applied, is reasonably acceptable to Landlord, and such new Tenant has a favorable credit standing (collectively, the “**Permitted Transfers**”). No Permitted Transfer shall relieve Tenant of its liability under this Lease and Tenant shall remain liable to Landlord for the payment of all Minimum Monthly Rent and Additional Rent and the performance of all covenants and conditions of this Lease applicable to Tenant.

19.6 Transfer Pursuant to Bankruptcy Code. Anything to the contrary notwithstanding, if this Lease is assigned (or all or a portion of the Premises is sublet) to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. 101 et. seq. (the “**Bankruptcy Code**”), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment or subletting shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of its estate within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord’s property under the preceding sentence not paid or delivered to Landlord

shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any assignee pursuant to the Bankruptcy Code shall be deemed to have assumed all of Tenant's obligations under this Lease. Any such assignee shall on demand by Landlord execute and deliver to Landlord a written instrument confirming such assumption.

## **ARTICLE 20 NOTICES**

All notices, requests and demands to be made hereunder shall be in writing at the address set forth in the **Basic Lease Provisions**, as applicable, by any of the following means: (a) personal service (including service by recognized overnight delivery/courier service, such as UPS or FEDEX); or (b) certified mail, return receipt or tracking service requested. Such addresses may be changed by notice to the other party given in the same manner provided above. Any notice, request, or demand sent pursuant to clause (a) of this **Article 20** shall be deemed received upon such personal delivery or service (or the date of refusal, if personal service or delivery is refused), and if sent pursuant to clause (b), shall be deemed received three (3) days following deposit in the mails.

## **ARTICLE 21 SURRENDER OF POSSESSION**

21.1 **Surrender.** At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in good condition and repair, and shall remove all of its personal property, furniture, fixtures, and equipment, and all cabling and wiring installed by or for Tenant. In addition, upon the expiration or earlier termination of the tenancy created hereunder, Tenant shall completely sanitize the Premises per Washington State Department of Health guidelines for COVID-19. Sanitization of the Premises shall extend to any and all parts thereof, including ventilation systems, and clean-up and/or removal of any hazardous and/or biohazardous substance. Notwithstanding the provisions of Article 42 below, for purposes of this Section, "hazardous and/or biohazardous substance" includes any substance or material which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health when improperly handled, treated, stored, transported, disposed of, or otherwise managed. Landlord shall have the right to elect to require Tenant to remove any or all of Tenant's Work and/or any of Tenant's Changes or other alterations, by written notice given to Tenant not later than thirty (30) days before the scheduled Expiration Date hereof. Tenant shall comply with the requirements of **Exhibit "C"** attached hereto at its sole expense, including without limitation the repair of any damage occasioned by the installation, maintenance or removal of Tenant's personal property, furniture, fixtures, equipment, cabling and wiring, as well as any Tenant's Work, Tenant's alterations or Tenant's Changes that Tenant is hereby required to remove, and the removal of any generators or storage tanks installed by or for Tenant (whether or not the installation was consented to by Landlord), and the removal, replacement, or remediation of any aspect of the Property, including but not limited to the Building, soil, material or ground water contaminated by Tenant's Permittees, all as may then be required by applicable Laws. At Landlord's election, Landlord shall have the right to perform any or all of Tenant's obligations under this paragraph, in which event Tenant shall reimburse Landlord's costs incurred in connection therewith within ten (10) days after demand by Landlord.

21.2 Holding Over. If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Minimum Annual Rent and Additional Rent due for the period immediately preceding the holdover. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from the holdover. Nothing herein shall be construed as consent to such holding over.

## **ARTICLE 22 QUIET ENJOYMENT**

Subject to the provisions of this Lease and conditioned upon performance of all of the provisions to be performed by Tenant hereunder, Landlord shall secure to Tenant during the Lease Term the quiet and peaceful possession of the Premises and all rights and privileges appertaining thereto, free from hindrance or molestation by Landlord and those claiming by, through or under Landlord.

## **ARTICLE 23 SUBORDINATION**

Unless otherwise required by a lender, this Lease shall be subordinate to any mortgage or deed of trust held by any lender, now or hereafter in force against the Premises or the Property or any part thereof, and to all advances made or to be made upon the security thereof, provided that, with respect to subsequent liens, Landlord procures from the mortgagee or lienholder an agreement for the benefit of Tenant and such mortgagee stating in part that, so long as Tenant discharges the obligations on its part to be kept and performed under the terms of this Lease, its tenancy will not be disturbed and the Lease will be recognized. If any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord, Tenant shall, at the option of the lender or other purchaser at any such foreclosure or sale, attorn to and recognize the purchaser as the Landlord under this Lease. Although this subordination shall be self-operating, Tenant agrees, within ten (10) days following the request of Landlord, to execute an agreement as may be reasonably requested by Landlord or its lender(s) to confirm such subordination and the other provisions of this Article.

## **ARTICLE 24 ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS**

Within twenty (20) days after written request from the other party, the requested party shall deliver a certificate, in form and content reasonably acceptable to the requested party, to any proposed Mortgagee of Landlord or purchaser of Landlord's interest in the Premises, or to the

requesting party, certifying (if such be the case or if not the case, specifying with particularity any exception) to the following: (i) that this Lease is in full force and effect and has not been amended, modified, supplemented or superseded; (ii) that, to certifying party's knowledge, there is no existing default on the part of the requesting party in its performance or observance of this Lease; and (iii) the date through which Rent and other charges have been paid. Tenant acknowledges that it has provided Landlord with certain financial statement(s) as a material inducement to Landlord's agreement to lease the Premises to Tenant, and that Landlord has relied on the accuracy of such financial statement(s) in entering into this Lease. Tenant represents and warrants that the information contained in such financial statement(s) is true, complete and correct in all material respects. Within ten (10) days from request by Landlord, Tenant will make available to Landlord or to any prospective purchaser or lender of the Property, audited financial statements of Tenant and any guarantor, provided, if Tenant is not a publicly traded entity, that Landlord or any such prospective purchaser or lender agrees to maintain such statements and information in confidence, and provided further that if audited financial statements of Tenant are not available at the time of such request, Tenant may deliver unaudited statements prepared in accordance with generally accepted accounting principles consistently applied and certified to be true and correct by Tenant's chief financial officer. Notwithstanding the foregoing, so long as the named Tenant herein is a publicly traded corporation and its financial information is readily available to the public, Tenant will not be required to deliver additional financial statements to Landlord.

## **ARTICLE 25 DEFAULT**

25.1 Default. The occurrence of any or more of the following events shall constitute a material breach and default of this Lease (each, an "**Event of Default**"):

(a) Any failure by Tenant to pay Minimum Monthly Rent, Additional Rent or any other charge within ten (10) days after written notice from Landlord; or

(b) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant not provided for in **subparagraph (a)** above and **subparagraphs (c), (d)** and **(e)** below where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant, provided that if the nature of such breach is such that although curable, the breach cannot reasonably be cured within a thirty (30) day period, an Event of Default shall not exist if Tenant shall commence to cure such breach and thereafter rectifies and cures such breach with due diligence, but in no event later than sixty (60) days after the written notice; or

(c) Abandonment or vacation of the Premises (which shall include Tenant's failure to take possession of the Premises at the time provided in this Lease) by Tenant; or

(d) A general assignment by Tenant for the benefit of creditors, or the filing by or against Tenant of any proceeding under any insolvency or bankruptcy law, or the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease; or

(e) The occurrence of an Event of Default as defined in any other provision of this Lease.

## 25.2 Remedies.

(a) Reentry and Termination. Upon and during the continuance of an Event of Default, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord's option, may without further notice or demand of any kind to Tenant or any other person:

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or

2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Minimum Monthly Rent and other charges, which have become payable, or which may thereafter become payable; or

3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(b) Express Termination Required. Should Landlord have reentered the Premises under the provisions of **Paragraph 25.2(a)(2)** above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Minimum Monthly Rent, or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions of this Lease, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State where the Property is situated and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(c) Damages. Should Landlord elect to terminate this Lease pursuant to the provisions of **Paragraphs 25.2(a)(1)** or **25.2(a)(3)** above, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid Minimum Monthly Rent, or other charges which had been earned at the time of such termination.

2. any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises to restore the Premises to the condition as of the Commencement Date for such reletting, plus

(d) Alternative Damages. Should Landlord elect to bring an action against Tenant in unlawful detainer or for damages or both or otherwise (and Landlord may bring as many actions as Landlord may elect to bring throughout the Lease Term), without terminating this Lease, Landlord may recover from Tenant as damages the following:

1. The worth at the time of award of any unpaid Minimum Monthly Rent or other charges which had been earned at the time Landlord recovered possession of the Premises; plus

2. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, including but not limited to, any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting,

(e) Definitions. As used in **Paragraphs 25.2(c)(1), 25.2(c)(2), and 25.2(d)(1)** above, the "worth at the time of award" is computed by allowing interest at the rate of fifteen percent (15%) per annum. As used in **Paragraphs 25.2(c)(3) and 25.2(d)(2)** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(f)

(g) Cumulative Remedies. The remedies given to Landlord in this **Paragraph 25** shall be in addition and supplemental to all other rights or remedies which Landlord may have at law, in equity or by statute and the exercise of any one remedy shall not preclude the subsequent or concurrent exercise of further or additional remedies.

(h) No Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Minimum Monthly Rent, Additional Rent or other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

25.3 Interest. Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) fifteen percent (15%) per annum or (ii) the highest rate allowed by applicable law.

## ARTICLE 26 INSOLVENCY

26.1 Breach of Lease. Subject to the applicable United States Bankruptcy Code and other laws, the filing of any petition by or against Tenant under any chapter of the Bankruptcy Act, or any successor statute thereto, or the adjudication of Tenant as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or a general assignment by Tenant for the benefit of creditors, or any other action taken or suffered by Tenant under any state or federal insolvency or bankruptcy act, shall constitute a default under and breach of this Lease by Tenant, regardless of Tenant's compliance with the other provisions of this Lease; and Landlord at its option by written notice to Tenant may exercise all rights and remedies provided for in Article 25, including the termination of this Lease, effective of such notice, without the necessity of further notice under Article 25.

26.2 Operation of Law. Neither this Lease, nor any interest herein, nor any estate created hereby, shall pass by operation of law under any state or federal insolvency or bankruptcy act to any trustee, receiver, assignee for the benefit of creditors or any other person whatsoever without the prior written consent of Landlord, which shall not be unreasonably withheld. Any purported transfer in violation of the provisions of this Paragraph 26.2 shall constitute a default under and breach of this Lease, regardless of Tenant's compliance with the other provisions of this Lease; and Landlord at its option by written notice to Tenant may exercise all rights and remedies provided for in Article 25, including the termination of this Lease, effective on service of such notice without the necessity of further notice under Article 25.

26.3 Non-Waiver. The acceptance of rent at any time and from time to time by Landlord from Tenant as debtor in possession or from a transferee of the type mentioned in Paragraph 26.2, shall not preclude Landlord from exercising its rights under this Article 26 at any time hereafter.

### 26.4 Events of Bankruptcy.

(a) Tenant's becoming insolvent, as that term is defined in Title 11 of the United States Code, entitled Bankruptcy, U.S.C. Sec. 101 et. seq. (the "**Bankruptcy Code**"), or under the insolvency laws of the State in which the Premises are situated ("Insolvency Laws");

(b) The appointment of a receiver or custodian for any or all of Tenant's property or assets, or the institution of a foreclosure action upon any of Tenant's real or personal property;

(c) The filing of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws;

(d) The filing of an involuntary petition against Tenant as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is either not dismissed within sixty (60) days of filing, or results in the issuance of an order for relief against the debtor, whichever is later; or

(e) Tenant's making or consenting to an assignment for the benefit of creditors or a common law composition of creditors.



## 26.5 Landlord's Remedies.

(a) Termination of Lease. Upon occurrence of an Event of Bankruptcy, Landlord shall have the right to terminate this Lease by giving written notice to Tenant; provided, however, that this **Paragraph 26.5(a)** shall have no effect while a case in which Tenant is the subject debtor under the Bankruptcy Code is pending, unless Tenant or its Trustee is unable to comply with the provisions of **Paragraph 26.5(d)** and **(e)** below. At all other times this Lease shall automatically cease and terminate, and Tenant shall be immediately obligated to quit the Premises upon the giving of notice pursuant to this **Paragraph 26.5(a)**. Any other notice to quit, or notice of Landlord's intention to re-enter is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice; subject, however, to the rights of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later, and any other monetary damages or loss of reserved rent sustained by Landlord.

(b) Suit for Possession. Upon termination of this Lease pursuant to **Paragraph 26.5(a)**, Landlord may proceed to recover possession under and by virtue of the provisions of laws of any applicable jurisdiction, or by such other proceedings, including re-entry and possession, as may be applicable.

(c) Non-Exclusive Remedies. Without regard to any action by Landlord as authorized by **Paragraph 26.5(a)** and **(b)** above, Landlord may at its discretion exercise all the additional provisions set forth in **Article 25**.

(d) Assumption or Assignment by Trustee. In the event Tenant becomes the subject debtor in a case pending under the Bankruptcy Code, Landlord's right to terminate this Lease pursuant to **Paragraph 26.5(a)** shall be subject to the rights of the Trustee in Bankruptcy to assume or assign this Lease. The Trustee shall not have the right to assume or assign this Lease unless the Trustee (i) promptly cures all defaults under this Lease, (ii) promptly compensates Landlord for monetary damages incurred as a result of such default, and (iii) provides adequate assurance of future performance on the part of Tenant as debtor in possession or on the part of the assignee Tenant.

(e) Adequate Assurance of Future Performance. Landlord and Tenant hereby agree in advance that adequate assurance of future performance, as used in **Paragraph 26.5(d)** above, shall mean that all of the following minimum criteria must be met: (i) Tenant must pay its estimated pro rata share of the cost of all services provided by Landlord (whether directly or through agents or contractors and whether or not previously included as part of the Minimum Monthly Rent), in advance of the performance or provision of such services; (ii) reserved; and (iii) the Trustee must agree that the use of the Premises as stated in this Lease will remain unchanged and that no prohibited use shall be permitted.

(f) Failure to Provide Adequate Assurance. In the event Tenant is unable to (i) cure its defaults, (ii) reimburse the Landlord for its monetary damages, (iii) pay the rent due under this Lease and all other payments required of Tenant under this Lease on time (or within three (3) days), or (iv) meet the criteria and obligations imposed by **Paragraph 26.5(d)** above, Tenant

agrees in advance that it has not met its burden to provide adequate assurance of future performance, and this Lease may be terminated by Landlord in accordance with **Paragraph 26.5(a)** above.

**ARTICLE 27  
REMEDIES CUMULATIVE**

The various rights, elections, and remedies of Landlord contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any other, or any right, priority, or remedy allowed or provided for by law.

**ARTICLE 28  
RESERVED**

**ARTICLE 29  
LIABILITY OF MANAGER**

If Landlord retains the services of a Property Manager, said Property Manager is Landlord's manager and rental agent in all matters concerning this Lease and the Premises, and Tenant, until notified in writing to the contrary by either the Landlord or Property Manager or the Assignee of Landlord's interest under this Lease, shall recognize and be entitled to rely on such agency and pay all rental, furnish all statements, and give any notice which Tenant may be under the duty of giving hereunder, or may elect to give hereunder, to Property Manager at its offices instead of to the Landlord. As long as such agency shall exist, the rights and options extended to Landlord shall be deemed extended to Property Manager, and each and every other term and provision of this Lease which is in any way beneficial to the Landlord, including especially every stipulation against liability, or limiting liability, shall inure to the benefit of Property Manager and its agents and shall be applicable to Property Manager and its agents in the same manner and as fully and with the same effect as to Landlord. Whenever Landlord's consent is required, Tenant shall request such consent from Property Manager. The consent of Property Manager shall be deemed the consent of Property Manager and Landlord.

**ARTICLE 30  
NO PARTNERSHIP**

Landlord shall not in any way for any purpose be deemed a partner, joint venturer or member of any joint enterprise with Tenant.

**ARTICLE 31  
SUBTENANCIES**

The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not effect a merger and shall, at Landlord's option, terminate all existing subtenancies or operate as an assignment to Landlord of any or all of such subtenancies.

**ARTICLE 32  
SUCCESSORS**

This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The term “**successors**” is used herein in its broadest possible meaning and includes, but is not limited to, every person succeeding to any interest in this Lease or the premises of Landlord or Tenant herein whether such succession results from the act or omission of such party. Every covenant and condition of this Lease shall be binding upon all assignees, subtenants, licensees, and concessionaires of Tenant.

**ARTICLE 33  
REMOVAL OF TENANT’S PERSONAL PROPERTY**

Upon the expiration of the Term of this Lease or upon any earlier termination thereof, Tenant shall remove at its own expense all trade fixtures, equipment, and personal property (collectively called “**Tenant’s Personal Property**”) in this Lease which were installed by Tenant or any subtenant, concessionaire or licensee in or upon the Premises. In case of any injury or damage to the Building or any portion of the Premises resulting from the removal of Tenant’s Personal Property, Tenant shall promptly pay to Landlord the cost of repairing such injury or damage. If Tenant fails to so remove Tenant’s Personal Property, Landlord may, at Landlord’s option, retain any or all thereof, and title thereto shall thereupon vest in Landlord without the execution of documents or sale or conveyance by Tenant; or Landlord may remove any or all items thereof from the Premises and dispose of them in any manner Landlord sees fit, and Tenant shall pay upon demand to Landlord the actual expense of such removal and disposition together with interest from the date of payment by Landlord until repayment by Tenant.

**ARTICLE 34  
EFFECT OF CONVEYANCE**

If, during the Term of this Lease, Landlord conveys its interest in the Property, the Premises or this Lease, then, from and after the effective date of such conveyance, Landlord shall be released and discharged from any and all further obligations and responsibilities under this Lease, and the transferee shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such transferee, to have assumed and agreed to carry out any and all of the subsequent covenants and obligations of the Landlord under this Lease. Any security given by Tenant to secure performance of its obligations hereunder may be transferred and assigned by Landlord to such transferee.

**ARTICLE 35  
LANDLORD’S DEFAULT; NOTICE TO LENDER**

35.1 Landlord’s Default. In the case of a default by Landlord, Landlord shall commence promptly to cure such default immediately after receipt of written notice from Tenant specifying the nature of such default and shall complete such cure within thirty (30) days thereafter, provided that if the nature of such default is such that it cannot be cured within said thirty (30) day period, Landlord shall have such additional time as may be reasonably necessary to complete its

performance, so long as Landlord has proceeded with diligence after receipt of Tenant's notice and is then proceeding with diligence to cure such default.

35.2 Notice to Lender. Whenever Tenant serves notice on Landlord of Landlord's default, written notice shall also be served at the same time upon the mortgagee under any first mortgage or beneficiary under any first deed of trust, so long as Landlord has provided Tenant with written notice of such mortgagee. Such mortgagee or beneficiary shall have the periods of time within which to cure Landlord's defaults as are provided in **Paragraph 35.1**, which periods shall commence to run ten (10) days after the commencement of the periods within which Landlord must cure its defaults under **Paragraph 35.1**. In this connection, any representative of the mortgagee or beneficiary shall have the right to enter upon the Premises for the purpose of curing the Landlord's default. Such mortgagee or beneficiary shall notify Landlord and Tenant in the manner provided by **Article 20** of the address of such mortgagee or beneficiary to which such notice shall be sent, and the agreements of Tenant hereunder are subject to prior receipt of such notice.

35.3 Independent Covenants; Limitation of Remedies and Landlord's Liability. The obligations of Landlord and Tenant, respectively, under this Lease are expressly agreed by the parties to be independent covenants

### **ARTICLE 36 CONSENT**

In consideration of each covenant made elsewhere under this Lease wherein one of the parties agrees not to unreasonably withhold its consent or approval, the requesting party hereby releases the other and waives all claims for any damages arising out of or connected with any alleged or claimed unreasonable withholding or consent or approval, and the requesting party's sole remedy shall be to seek injunctive relief to have the consent granted.

### **ARTICLE 37 INTERPRETATION**

The captions by which the articles and paragraphs of this Lease are identified are for convenience only, and shall not affect the interpretation of this Lease. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular and the neuter gender shall include the masculine and feminine genders. If there is more than one signatory hereto as Tenant, the liability of such signatories shall be joint and several. If any provision of this Lease shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby.

### **ARTICLE 38 ENTIRE INSTRUMENT**

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This is the final and complete expression of the parties' agreement,

all of the agreements heretofore and contemporaneously made by the parties are contained in this Lease, and this Lease cannot be modified in any respect except by a writing executed by Landlord and Tenant. All terms and conditions hereof shall apply on the date of mutual execution hereof except as otherwise expressly set forth herein. Time is of the essence hereof.

**ARTICLE 39  
EASEMENTS; RECORDING**

This Lease is made expressly subject to any conditions, covenants, restrictions, easements, and other matters now or hereafter of record against the Premises or the Property. Tenant does not intend to record this Lease. Landlord acknowledges that this lease will be public knowledge and may be discussed in open public meetings. Landlord acknowledges that Tenant is subject to the Washington State Public Records Act, 42.56 RCW.

**ARTICLE 40  
SALE BY LANDLORD**

The Premises and/or Landlord's interest under this Lease may be freely sold or assigned by Landlord, and in the event of any such sale or assignment, the covenants and obligations of Landlord herein shall be binding on each successive "landlord," and its successors and assigns, only during their respective periods of ownership.

**ARTICLE 41  
CHOICE OF LAW; WAIVER OF TRIAL BY JURY**

The laws of the State in which the Premises are situated shall govern this Lease. Tenant hereby waives trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto on any matters whatsoever arising out of or in any way connected with this Lease, including without limitation, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation.

**ARTICLE 42  
HAZARDOUS SUBSTANCES**

42.1 Indemnity. To the extent permitted by law, including any applicable anti-deficiency statutes, Tenant shall be solely responsible and liable for, and shall indemnify, defend and hold harmless Landlord for, from and against any and all Hazardous Substances existing on the Premises or the Property or any other property, or present in or on the air, ground water, soil, buildings or other improvements or otherwise in, on, under or about the Premises or the Property or any other property, resulting solely from the Handling by Tenant's Permittees of any Hazardous Substance during the period of Tenant's occupancy or use of the Premises. Without limiting the generality of the foregoing, Tenant shall, at any time during the Term of the Lease and at the end of the Term of the Lease, perform all work necessary to render the Premises or any other property "clean" and free of all Hazardous Substances Handled solely by Tenant's Permittees, in accordance with all present and then-applicable Laws.

42.2 Covenant. Tenant shall not cause or permit any Hazardous Substance to be Handled in, upon, under or about the Premises (or any part thereof) or any part of the Property by Tenant's Permittees without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant shall promptly deliver to Landlord true copies of all governmental permits and approvals relating to the Handling of Hazardous Substances and all correspondence sent or received by Tenant's Permittees regarding any Handling of Hazardous Substances in or about the Premises, including, without limitation, inspection reports and citations.

42.3 Definitions. As used in this **Article 42**, the following terms shall have the following definitions:

(a) **"Hazardous Substance"** means any polychlorinated biphenyls, petroleum products, asbestos, and any substance or material which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health when improperly handled, treated, stored, transported, disposed of, or otherwise managed, and/or other hazardous, toxic or radioactive substance or waste the release, discharge, emission, storage, handling or disposal of which is or becomes regulated by any existing or future Hazardous Substance Law. Notwithstanding the foregoing, Hazardous Substances do not include commercial products used or consumed in the normal course of general office or drive-through or walk-up medical testing use, to the extent and degree they are stored, used, and disposed of in a commercially reasonable manner in compliance with Hazardous Substance Laws.

(b) **"Handle"** or **"Handled"** or **"Handling"** means generated, produced, brought upon, used, handled, stored, treated or disposed of.

(c) **"Tenant's Permittees"** means and includes Tenant, Tenant's employees, licensees, contractors, subcontractors, representatives, agents, officers, partners, directors, subtenants, sub subtenants and invitees.

(d) **"Laws"** means all applicable present and future laws, ordinances, rules, regulations, statutes, requirements, actions, policies, and common law of any local, state, Federal or quasi-governmental agency, body, board or commission.

42.4 Breach of Obligations. If Tenant breaches the obligations set forth in **Paragraphs 42.1** and **42.2** of this Lease, or if the presence of Hazardous Substances in, upon, under or about the Premises caused or permitted solely by Tenant's Permittees Handling thereof, results in contamination of the Premises or any other property, or if contamination of the Premises or any other property by Hazardous Substances otherwise occurs or exists at any time during or after the Term of this Lease, resulting solely from Tenant's Permittee's Handling of any such Hazardous Substances at the Premises, then Tenant shall, to the extent permitted by law, including any applicable anti-deficiency statutes, indemnify, defend and hold Landlord harmless from and against any and all liabilities, costs, expenses, claims, judgments, damages, penalties, fines or losses (including without limitation, claims by any government agency or other third parties, and sums paid in settlement of claims, attorneys' fees, consultants' fees, experts' fees and the like) which arise at any time during the Term of this Lease or after the Term of this Lease as a direct result therefrom. The foregoing obligation of Tenant to indemnify, defend and hold Landlord harmless shall survive and extend beyond the expiration or earlier termination of this Lease and

includes, without limitation, indemnification against all reasonable costs incurred in connection with any investigation of site conditions or any studies, testing, reports, monitoring, clean-up, detoxification, decontamination, repairs, replacements, restoration and remedial work required by any federal, state or local governmental agency, authority or political subdivision because of any Hazardous Substance present in soil, ground water, air, buildings or other improvements or otherwise in, upon, under or about the Premises or the adjacent Property or any other property, air or water. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises or the Property due solely to the Handling of Hazardous Substances by Tenant's Permittees results in contamination of the Premises or the Property or any other property, air or water, Tenant shall immediately take all actions at its sole cost and expense as are necessary or appropriate to return the Premises and the Property to the condition existing prior to the Handling, provided that Tenant obtains Landlord's prior written approval of such actions and of the contractors and other persons performing such actions, which approval shall not be unreasonably withheld, so long as such actions would not potentially have any materially adverse long-term or short-term effect on the Premises or the Property. In any event, any and all actions by Tenant to return the Premises and the Property to the condition existing prior to the Tenant's Permittees Handling of any such Hazardous Substance shall be done in compliance with all Laws, and in such a manner and at such times as to avoid interference with and/or inconvenience to any tenants, occupants, contractors and invitees of any adjacent property to the maximum extent possible. It is the intent of Landlord and Tenant (and Landlord and Tenant hereby agree) that Landlord shall have no liability whatsoever for the existence or presence of Hazardous Substances in, upon, under or about the Premises resulting solely from the Tenant's Permittees Handling of any Hazardous Substances in connection with Tenant's occupancy or use of the Premises, and that Tenant shall have sole and absolute responsibility for the existence or presence of Hazardous Substances in, upon, under or about the Premises and shall, to the extent permitted by law, including applicable anti-deficiency statutes, fully indemnify and hold Landlord harmless from and against any liabilities, costs, expenses (including attorneys' fees), claims, judgments, damages, demand, penalties, fines and losses arising from or in connection with the existence or presence of Hazardous Substances in, upon, under or about the Premises or the migration thereof from or to the Premises resulting solely from the Tenant's Permittees Handling of any Hazardous Substances in connection with Tenant's occupancy or use of the Premises. Tenant's obligations under this Article shall survive the termination of this Lease.

42.5 Handling; Notices. Without in any way diminishing or waiving the limitations on and obligations of Tenant set forth in this **Article 42**, if Tenant's Permittees Handle Hazardous Substances in, upon, under or about the Premises, such Handling shall be done in full compliance with all Laws. Furthermore, Tenant shall immediately upon receipt thereof, provide to Landlord written notice of the following:

- (a) Any enforcement, clean-up or other regulatory action taken or threatened by any governmental authority (including, without limitation, any federal, state or local governmental entity) with respect to the presence of any Hazardous Substances in, upon under or about the Premises or the migration thereof from or to other property;
- (b) All demands or claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Substances;

(c) Any reportable spill, release, discharge or disposal of Hazardous Substances in, upon, under or about the Premises;

(d) All matters with respect to which Tenant is required to give notice pursuant to any applicable health and safety regulations.

Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions affecting the Premises initiated in connection with any Hazardous Substances or related laws.

#### **ARTICLE 43 AUTHORITY**

Each person executing this Lease on behalf of Tenant hereby covenants and warrants to Landlord that: such person is duly authorized to execute this Lease on behalf of Tenant; Tenant is duly qualified in all respects; all steps have been taken prior to the date hereof to qualify Tenant to do business in the state in which the Premises are situated; all franchise and other taxes have been paid to date; and all forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due. Tenant will furnish to Landlord promptly upon demand, a corporate resolution, proof of due authorization of partners, or other appropriate documentation reasonably requested by Landlord evidencing the due authorization of Tenant to enter into this Lease.

#### **ARTICLE 44 BROKERS**

Tenant and Landlord hereby represent and warrant to each other that, other than Landlord's Broker, it has not employed any broker with regard to this Lease and that it has no knowledge of any other broker being instrumental in bringing about this Lease transaction. To the extent permitted by law, including applicable anti-deficiency statutes, each party shall indemnify the other against any expense incurred by such other party as a result of any claim for brokerage or other commissions made by any other broker, finder, or agent, whether or not meritorious, employed by the indemnitor or claiming by, through or under the indemnitor. Each party acknowledges that the other party shall not be liable for any representations of such other party's leasing agent or other agents regarding this Lease transaction except for the representations and covenants expressly set forth in this Lease. Any fees or commissions to be paid by Landlord to Landlord's Broker and/or Tenant's Broker in connection with this Lease shall be set forth in a separate written commission agreement.

#### **ARTICLE 45 MISCELLANEOUS**

**45.1 Termination.** The City may terminate this agreement for cause or convenience upon thirty (30) days written notice to Landlord.



[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this lease the day and year first above written.

**LANDLORD:**

APPLUS TECHNOLOGIES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

CITY OF SEATTLE, a municipal corporate of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

THE SOUTH 230 FEET OF THE NORTH 1005 FEET OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 395 FEET THEREOF; AND EXCEPT THE WEST 45 FEET THEREOF FOR AURORA AVENUE.

**EXHIBIT "B"**

**[\*SAMPLE ONLY - DO NOT EXECUTE\*]**

**CONFIRMATION OF DELIVERY OF PREMISES**

NAME OF TENANT: \_\_\_\_\_

PREMISES LOCATION/ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

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Landlord and Tenant hereby acknowledge the following:

1. Confirmation of Key Dates. The parties confirm that:
  - a. the Possession Date is \_\_\_\_\_, 20\_\_;
  - b. the Lease Commencement Date is \_\_\_\_\_, 20\_\_;
  - c. the Rent Commencement Date is \_\_\_\_\_, 20\_\_; and
  - d. the last day of the Term of the Lease is \_\_\_\_\_, 20\_\_.
  
2. Confirmation of Rent.
  - a. The schedule of Minimum Monthly Rent payable by Tenant under the Lease is hereby confirmed as follows:

<b>Period</b>	<b>Minimum Monthly Rent</b>

[SIGNATURES ON NEXT PAGE]

**LANDLORD:**

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**[\*SAMPLE ONLY - DO NOT EXECUTE\*]**

## EXHIBIT "C"

### MOVE-OUT INSPECTION CHECKLIST

Before surrendering the Premises, Tenant shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Tenant as Landlord may have specified as being required to be removed. If Tenant fails to remove its personal property and fixtures upon the expiration or earlier termination of this Lease, the same shall be deemed abandoned and shall, at Landlord's election, become the property of the Landlord or Landlord may remove and dispose of same at Tenant's expense. The following list is designed to assist Tenant in its move-out procedures but is not intended to be all-inclusive:

1. Lights: Office, warehouse, emergency and exit lights will be fully operational with all bulbs and ballasts functioning.
2. Dock Levelers, Service Doors and Roll Up Doors: All truck doors, service doors, roll up doors and dock levelers shall be serviced and placed in good operating order. This includes necessary replacement of any dented truck door panels and adjustment of door tension to insure proper operation. All door panels which are replaced need to be painted to match Building standard.
3. Dock Seals/Dock Bumpers: Free of tears; broken backboards repaired. All dock bumpers must be left in place and be well secured.
4. Structural Columns: All structural steel columns in the warehouse and office portions of the Premises shall be inspected for damage. Repairs of these elements must be pre-approved by Landlord prior to implementation.
5. Warehouse Floor: Floors shall be free of stains and swept with no racking bolts and other protrusions left in the floor. Cracks should be repaired with an epoxy or polymer to match concrete color. All floor striping in the Premises shall be removed with no residual staining or other indication that such striping existed.
6. Tenant-Installed Equipment and Wiring: All such equipment should be removed and the space returned to its original condition when originally leased to Tenant. Remove air lines, junction boxes, and conduit.
7. Walls: Sheetrock (drywall) damage should be patched, taped, sanded and painted so that there are no holes in either office or warehouse portions of the Building.
8. Carpet and Tile: All carpet and vinyl tiles should be in a clean condition and should not have any holes or chips. Landlord will accept normal wear on these items provided they are in a reasonably well-maintained condition.
9. Roof: Any Tenant-installed equipment must be removed and all roof penetrations properly repaired by a licensed roofing contractor approved in advance by Landlord. All active leaks must be fixed and the latest Landlord-directed maintenance and repair recommendations must be

followed. Tenant must check with Landlord's property manager to determine if a specific roofing contractor is required to perform any required work.

10. Signs: All exterior signs must be removed and holes patched and paint touched-up as necessary. All window signs should likewise be removed.

11. HVAC Equipment: HVAC systems and equipment should be placed in good working order, including the replacement of filters, and the necessary replacement of any parts to return the unit(s) to a well-maintained, operating condition. The foregoing requirements apply as well to warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified HVAC/mechanical contractor.

12. Electrical & Plumbing: All electrical and plumbing equipment shall be returned in good condition and repair and conforming to code.

13. Overall Cleanliness: Thoroughly clean, disinfect, and sanitize all aspects of the Premises, including office areas, windows, bathrooms, carpets, high touch surfaces such as but not limited to door handles, cabinet pulls, taps, etc., and remove any and all debris from the office and warehouse portions of the Building. Remove all pallets and debris from exterior areas at the site. All trade fixtures, dumpsters, racking, trash, vending machines and other personal property (except for those items which are the property of Landlord, which shall be left in place) shall be removed.

14. Upon Completion: Contact Landlord's property manager to coordinate turning in of keys/keycards, utility changeovers, and scheduling a joint final inspection of Premises.

## LEASE

1. **Parties.** This Lease, dated for reference purposes only, May 24, 2020, is made by and between **Spear Investments, L.L.C.**, a Washington limited liability company (herein called "Landlord"), and **The City of Seattle, by and through its Facilities and Administrative Services Department**, a municipal corporation of the State of Washington, (herein called "Tenant").

WHEREAS In March 2020, the Mayor declared a State of Emergency because of the COVID-19 virus, and

WHEREAS the City has a short-term need for drive-thru COVID-19 testing facilities to protect the health and safety of persons and provide emergency assistance.

2. **Property.** Landlord hereby leases to Tenant and Tenant leases from Landlord upon the terms and conditions of this Lease, real property located in King County, Washington, commonly known as 3820 6<sup>th</sup> Avenue South, Seattle, Washington and more particularly described on Exhibit A attached hereto, together with all buildings, structures, fixtures and improvements now or hereafter located thereon and all rights, entitlements and appurtenances thereto (collectively, the "**Property**"). Landlord represents that it is the sole owner of the fee interest in the entire Property.

3. **Term.** The term of this Lease shall be for three ( 3 ) months. The term shall commence on June 1, 2020 (the "Commencement Date") and end on August 31, 2020,. Thereafter, the Lease continues on a month-to-month tenancy, either party can give thirty (30) day's notice to terminate the lease.

4. **Rent.** Tenant shall, without notice or demand, pay to Landlord as rent for the Property monthly installments as follows:

Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
Month	
June 1, 2020 – August 31, 2020	\$20,000.00/Month, gross
Month to Month portion	\$20,000.00/Month, gross

Tenant shall continue to be obligated for Tenant's charges and expenses as specified within this Lease Agreement. Rent for any period during the term hereof which is for less than one (1) month shall be a pro rata portion of the monthly installment. Rent shall be payable on the first



of the month, in advance, without notice or demand and without any deduction, offset, or abatement, in lawful money of the United States of America to Landlord at the address stated herein or to such other persons or at such places as Landlord may designate in writing.

If any sums payable by Tenant to Landlord under this Lease are not received by the tenth (10<sup>th</sup>) day of each month Tenant shall pay Landlord in addition to the amount due, for the cost of collecting and handling such late payment, an amount equal to the greater of \$100 or 5 percent of such overdue amount. In addition, all delinquent sums payable by Tenant to Landlord and not paid within ten days of the due date shall, at Landlord's option, bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is less. Further, the parties agree that a Twenty-Five Dollar (\$25.00) charge shall be paid by Tenant to Landlord for any returned check.

Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims.

**5. Prepaid Rent.** Upon signing this Lease, Tenant shall deposit with Landlord the sum of Twenty Thousand Dollars (\$20,000.00), which shall be applied to June, 2020 rent

**6. Use.**

**6.1 Use.** The Property shall be used and occupied only for general office, drive through medical testing and for no other purpose without prior written consent of Landlord, which consent may be withheld or conditioned as Landlord may deem appropriate within the exercise of its sole discretion. Tenant shall not allow any waste to be stored upon the Property, and any waste generated by Tenant shall be removed promptly from the Property.

**6.2 Compliance with Law.** Tenant shall not cause or permit the Property to be used in any way which violates any law, ordinance, or governmental regulation or order. Tenant shall be responsible for complying with all laws applicable to the Property as a result of Tenant's particular use. If the enactment or enforcement of any law, ordinance, regulation or code during the Lease term requires any changes to the Property during the Lease term, Tenant shall perform all such changes at its expense if the changes are required due to the nature of Tenant's activities at the Property, or to alterations that Tenant seeks to make to the Property; otherwise, Landlord shall perform all such changes at its expense.

**6.3 Condition of Property.** Landlord shall deliver the Property "broom clean" and with all electrical, mechanical and plumbing systems in good working order. Subject to the provisions of Section 6.3.1 below, Tenant accepts the Property in "as-is" condition. Tenant

hereby accepts the Property subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Property, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Property for the conduct of Tenant's business.

**6.5 Landlord's Rules and Regulations.** Tenant shall faithfully observe and comply with the rules and regulations as attached in Exhibit "B". Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon Tenant upon receipt of a copy of them. Landlord shall not be responsible to Tenant for the nonperformance of any said rules and regulations by any other tenants or occupants.

## **7. Operating Costs.**

**7.1 Definition.** "Operating Costs" shall mean all costs of operating, maintaining and repairing the Property, and including, without limitation, the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments, business improvement area (BIA) assessments and other special purpose assessments); insurance premiums paid by Landlord and (to the extent used) deductibles; management fees not to exceed 5%; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant); HVAC maintenance, refuse and trash removal; refurbishing and repainting; carpet replacement; pest control; lighting systems; fire sprinkler maintenance and testing, landscape maintenance; snow and ice removal; amortization of capital improvements as Landlord may in the future install undertaken in good faith with a reasonable expectation of reducing Operating Costs (the useful life of which shall be a reasonable period of time as determined by Landlord in Landlord's commercially reasonable discretion); labor, supplies, materials and tools. Operating Costs shall not include: (a) Landlord's income tax or general overhead, depreciation on the Property or equipment therein; (b) loan payments; (d) capital improvements to or major repairs of the Building shell (i.e. the Building structure, exterior walls and roof) not described in this paragraph; (e) major repair or replacement of parking area paving; (f) any costs regarding the operation, maintenance and repair of the Property paid directly by Tenant; (g) costs of preparing, improving or altering any space in preparation for occupancy of any new or renewal tenant; (h) equipment leasing costs, including costs of leasing equipment considered to be of a capital nature, consulting fees, brokerage commissions, accounting fees, legal fees, vacancy costs, rent or other concessions, and/or refurbishment or improvement expenses; (i) any and all collection costs, including legal fees and/or bad debt losses or reserves; (j) any otherwise permissible fees or costs to the extent in excess of prevailing and competitive rates; (k) any costs or expenses resulting from Landlord's violation of any agreement to which it is a party or violation of any applicable laws or ordinances or governmental rules, regulations or orders; (l) costs incurred by Landlord to the extent that Landlord is reimbursed by insurance

proceeds, governmental agencies or entities, or any tenant or other person; (m) costs relating to the negligence of Landlord or its contractors, agents or employees or the payment of any claims or damages; (n) costs associated with repairs or improvements the need for which arose prior to the date of this Lease; and (o) capital improvements as Landlord may in the future install to comply with governmental regulations and rules.

**7.2 Payment of Operating Costs.** All Operating Costs shall be at the Landlord's Expense and Tenant shall have no responsibility for same at any time

**8. Maintenance, Repairs and Alterations.**

**8.1 Landlord's Obligations.** Subject to the provisions of Article 10, and except for damage caused by any negligent or intentional act or omission of Tenant, Tenant's agents, employees or invitees, Landlord, at Landlord's sole cost and expense, shall keep in good order, condition and repair the warehouse and office floor slab, foundations, exterior walls and the exterior roof (see Article 8.2 below) of the Property, and in no event shall the expense of maintenance or repair of the same by Landlord be billed to Tenant. Landlord shall not however, be obligated to paint such exterior, nor shall Landlord be required to maintain the interior surface of exterior walls, windows, doors or plate glass. Landlord shall have the obligation to make or commence repairs under this Article 8.1 within 14 days of receipt of written notice of the need for such repairs.

**8.2 Tenant's Obligations.** Subject to the provisions of Article 8.1 and Article 10, Tenant, at Tenant's expense, shall keep in good order, condition and repair the Property and every part thereof (regardless of whether the damaged portion of the Property or the means of repairing the same are accessible to Tenant) including, without limiting the generality of the foregoing, all plumbing, HVAC, electrical and lighting facilities and equipment, fixtures, interior walls, ceilings, windows, doors, plate glass, skylights, tenant identification signs within the Property, asphalt pavement, and fences surrounding the Property including but not limited to damage due to break-ins, theft or vandalism.

**8.3 Surrender.** On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Property to Landlord in good condition, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the Property occasioned by Tenant's use thereof, or by the removal of Tenant's trade fixtures, signs, furnishings and equipment pursuant to Article 7.5, which repair shall include the patching and filling of holes and repair of structural damage and roof penetrations.

**8.3.A Cleaning.** On or before the last day of the term hereof, Tenant shall do a thorough cleaning of all surfaces to protect against the spread of Covid-19.

**8.4 Landlord's Rights.** If Tenant fails to perform Tenant's obligations under this Article 8, Landlord may, at its option (but shall not be required to) enter upon the Property, after

ten (10) days prior written notice to Tenant or with no prior written notice if an emergency, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of twelve percent (12%) per annum, shall become due and payable as additional rent to Landlord together with Tenant's next rental installment.

**8.5 Alterations and Additions.** (a) Tenant may make alterations, additions or improvements to the Property with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. The term "Alterations" shall not include painting or the repair, completion, or installation of similar surface finishes or the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures which may be performed without damaging existing improvements or the structural integrity of the Property, and Landlord's consent shall not be required for Tenant's installation of those items. Tenant shall complete all Alterations at Tenant's expense in compliance with all applicable laws and in accordance with plans and specifications approved by Landlord. Landlord shall be deemed the owner of all Alterations except for those which Landlord requires to be removed at the end of the Lease term. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Property, in which case Tenant shall not remove such Alteration. Tenant will provide Landlord with as-built drawings of all alterations or improvements, if available.

(b) **Removal of Improvements.** Unless Landlord requires their removal, as set forth in Article 8.5(a), all alterations, improvements, or additions which may be made on the Property shall become the property of Landlord and remain upon and be surrendered with the Property at the expiration of the term. Notwithstanding the provisions of this Article 8.5(c), Tenant's machinery, equipment and trade fixtures, other than that which is affixed to the Property so that it cannot be removed without material damage to the Property, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Article 8.3. Tenant shall immediately repair any damage to the Property caused by required removal of alterations, improvements or additions including patching roof penetrations.

## **9. Insurance.**

**9.1 Insuring Party.** As used in this Article 9, the term "Insuring Party" shall mean the party who has the obligation to obtain the insurance required hereunder. The Insuring Party in this case shall be Landlord. The cost of insurance shall be an Operating Cost in accordance with Article 7.

**9.2 Liability Insurance.** Tenant is self-insured, Tenant shall insure Landlord, Landlord's Lender, if any, and Tenant against all liability arising out of the Tenant's use, occupancy or maintenance of the Property and all areas appurtenant thereto. **Self-Insurance;** the Tenant maintains a fully funded self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. Landlord acknowledges, agrees

and understands that the Tenant is self-funded for all of its liability exposures for this Sublease. Tenant shall provide evidence of insurance coverage with additional insured endorsements. The insurance will be primary/non-contributory with any liability insurance carried by Landlord.

**9.5 Waiver of Subrogation.** Tenant and Landlord each waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage provided that this waiver of subrogation shall not in any manner absolve Tenant of its obligations to make repairs pursuant to Article 8.2 or its obligation to indemnify Landlord pursuant to Article 9.6. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

**9.6 Hold Harmless.** Tenant shall indemnify, defend and hold Landlord harmless from any and all claims arising from Tenant's negligent acts or omissions and shall further indemnify, defend and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease or arising from any negligence of Tenant or any of its agents, contractors, invitees or employees and from any and all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Property from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, excepting where said damage arises out of negligent acts or omissions of Landlord.

**9.7 Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or from damage to the goods, wares, merchandise or other property of Tenant, nor, unless through its willful misconduct or negligent acts or omissions, shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents, contractors and invitees, whether such damage or injury is caused by illness, including Covid-19 or results from fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Property or upon other portions of the building of which the Property are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Landlord or Tenant.

**10. Damage or Destruction.** Partial damage is defined as not greater than twenty-five percent (25%) of the total rentable square feet of improved building area within the Property.

**10.1 Partial Damage - Insured.** Subject to the provisions of Article 7.1, if the Property are partially damaged and such damage was caused by a casualty covered under an insurance policy required to be maintained pursuant to Article 9.3, Landlord shall, at Landlord's expense, repair such damage as soon as reasonably possible, and this Lease shall continue in full force and effect. Notwithstanding the foregoing, Landlord shall have no obligation to restore the Property if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoration, then Landlord may elect to terminate this Lease, effective as of the date of such casualty, and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

**10.2 Damage - Uninsured.** In the event the Property may be damaged or destroyed by a casualty which is not covered by property insurance carried by Landlord, Landlord shall restore same, provided that if the damage or destruction is to an extent greater than ten percent (10%) of the then replacement cost of improvements on the Property (exclusive of Tenant's trade fixtures and equipment) then Landlord may elect not to restore and to terminate this Lease effective as of the date of the casualty. Landlord must give Tenant written notice of its election not to restore within sixty (60) days from the date Landlord received notice of such damage and, if not given, Landlord shall be deemed to have elected to restore and in such event shall repair any damage as soon as reasonably possible. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such ten (10) day period, this Lease shall be canceled and terminated as of the date of the occurrence of such damage.

**10.3 Total Destruction.** Total destruction is defined as greater than twenty-five percent (25%) of the total rentable square feet of improved building area within the Property. If at any time during the term hereof the Property are totally destroyed from any cause whether or not covered by the insurance required to be maintained by the insuring party pursuant to Article 9.3 (including total destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction, unless Landlord elects to repair per Paragraph 10.1.

**10.4 Damage Near End of Term.** If the Property are partially destroyed or damaged during the last twelve (12) months of the term of this Lease, Landlord may, at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within sixty (60) days after Landlord receives notice of occurrence of such damage.

## **10.5 Abatement of Rent.**

(a) If the Property are partially destroyed or damaged and Landlord or Tenant repairs or restores them pursuant to the provisions of this Article 10, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's reasonable use of the Property is substantially impaired. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Landlord shall be obligated to repair or restore the Property under the provisions of this Article 10 and shall not commence such repair or restoration within ninety (90) days after such obligations shall accrue, Tenant may, at Tenant's option, cancel and terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice. Any abatement in rent shall be computed as provided in Article 10.5(a).

## **11. Real Property Taxes.**

**11.1 Payment of Taxes.** Landlord shall pay all real property taxes applicable to the Property as described in Exhibit A during the term of this Lease including reasonable costs for attorneys or tax experts secured by Landlord in seeking reduction of the taxes assessed on the Property. Such payments shall not be reimbursed by Tenant. .

**11.2 Definition of "Real Property Taxes".** As used herein, the term "real property tax" shall include any form of assessment (including the SODO BIA assessment), license fee, tax on rent, levy, penalty, or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Property or in the real property of which the Property are a part, as against Landlord's right to rent or other income therefrom, or as against Landlord's business of leasing the Property.

## **11.3 Personal Property Taxes.**

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied upon leasehold improvements, fixtures, furnishings, equipment and all other personal property of Tenant contained in the Property or elsewhere. Tenant shall cause said leasehold improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) business days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

**12. Utilities.** Tenant shall pay for all water, gas, heat, light, power, telephone, internet and other utilities and services supplied to the Property, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay its pro-rata share of all such charges.

**13. Assignment and Subletting.**

**13.1 Landlord's Consent Required.** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which Landlord shall not unreasonably withhold, condition or delay. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without consent shall be void and shall constitute a breach of this Lease. No option to extend, if any, may be assigned by Tenant and no subtenant shall have any right to exercise any such option.

**13.2 No Release of Tenant.** Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the term of this Lease. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting, shall not be deemed consent to any subsequent assignment or subletting.

**13.3 Assignment Fee.** In the event that Landlord shall consent to a sublease or assignment under Article 13.1, Tenant shall pay to Landlord reasonable fees not to exceed Five Hundred Dollars (\$500) incurred in connection with giving such consent.

**13.4 Subtenant Rent and Assignee Consideration.** All rent received by Tenant from its subtenants in excess of the rent payable to Landlord under this lease shall be paid to Landlord; any sums payable by an assignee to Tenant in consideration of assignment of this lease shall be paid to Landlord.

**13.5 Assignment by Landlord.** Landlord shall be permitted freely to assign all of its rights and obligations hereunder, and upon such assignment of its obligations, Landlord shall no longer be liable under this Lease. Tenant hereby agrees to attorn to any assignee of Landlord's interest hereunder, whether such assignment is voluntary or by operation of law.

**13.6 Reasonable Consent.** In aid to Landlord's determination whether to consent to any assignment, transfer or subletting but without limiting reasons for which such consent may be withheld, Tenant, at Landlord's request, shall submit in writing to Landlord: (1) the name of the proposed subtenant, assignee or transferees; (2) the nature of the proposed subtenant's business to be carried on in the Property; (3) the terms and provisions of the proposed sublease, assignment or transfer, and (4) current financial statements of the subtenant or assignee and such other reasonable financial information as Landlord may request concerning the proposed



transaction and the proposed subtenant, assignee or transferee. Without limiting the authority of the Landlord to withhold reasonably its consent, Landlord may require any assignee or subtenant to assume all of the obligations of Tenant with respect to this Lease, but such assumption shall not release Tenant.

#### **14. Defaults; Remedies.**

**14.1 Defaults.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The vacation or abandonment of the Property by Tenant for a period of thirty (30) days or more.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days.

(c) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general assignment, or general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Property or Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

**14.2 Remedies in Default.** In the event of any such default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event Landlord shall be entitled to recover from

Tenant all damages incurred by Landlord by reason of Tenant's default, including but not limited to: (i) the cost of recovering possession of the Property; and the unpaid rent that had been earned at the time of termination of this Lease; and (v) any other amount, and court costs necessary to compensate Landlord for all detriment proximately caused by Tenant's default as determined by the court having jurisdiction thereof.

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Property. In such event, Landlord shall be entitled to all of Landlord's rights and remedies under this Lease including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property are located.

(d) Any rent or other charge that is not paid when due shall bear interest from the date due until paid at the rate of twelve (12%) per annum or the maximum rate permitted by law, whichever is lower.

**14.3 Default by Landlord.** Unless a specific time period is set forth herein, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Property, where name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performances within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**14.4 Cure by Landlord.** Landlord, at any time after Tenant commits a default, may cure the default at Tenant's cost. If Landlord at any time by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord at the time the sum is paid shall be due from Tenant to Landlord, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant.

**15. Condemnation.** If the Property or any portion thereof are taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (all of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession; whichever occurs first. If more than twenty-five percent (25%) of the floor area of the Property, or more than twenty-five percent (25%) of the Property not covered by buildings, is taken by condemnation, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes possession by

notice in writing of such election within twenty (20) days after Landlord shall have notified Tenant of the taking, or, in the absence of such notice, then within twenty (20) days after the condemning authority shall have taken possession.

If this Lease is not terminated by either Landlord or Tenant, then it shall remain in full force and effect as to the portion of the Property remaining, provided the rental shall be reduced in proportion to the floor area of the Property taken as it bears to the total floor area of the Property. In the event this Lease is not so terminated, then Landlord agrees, at Landlord's sole costs, as soon as reasonably possible, to restore the Property to a complete unit of like quality and character as existed prior to the condemnation. All awards for the taking of any part of the Property or any payment made under the threat of the exercise of power of eminent domain shall be the property of Landlord, whether made as compensation for diminution of value of the leasehold or for the taking of the fee or as severance damages; provided, however, that Tenant shall be entitled to any separately made award for loss of or damage to Tenant's trade fixtures and removable personal property and for moving expenses.

## **16. General Provisions.**

### **16.1 Estoppel Certificate.**

(a) Tenant shall, within ten (10) business days of Landlord's written request, execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent, security deposit, and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed, and (iii) such other representations or information with respect to Tenant of the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property.

(b) Tenant's failure to deliver such statement within such time period shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are not uncured defaults in Landlord's performance, and (iii) not more than one (1) month's rent has been paid in advance.

(c) If Landlord desires to finance or refinance the Property, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three (3) years' financial statements of Tenant. Upon receipt of a confidentiality agreement from lender, all such financial statements shall be delivered to lender or Landlord on behalf of lender, whoever so designated by lender. Tenant shall execute any estoppel certificate,

subordination agreement, and/or attornment agreement submitted to Tenant by Landlord for purposes of said financing; provided however, that such agreement(s) explicitly provides that Tenant shall not be disturbed in Tenant's quiet use and enjoyment of the Property as long as Tenant is not in default under the terms of this Lease.

**16.2 Landlord's Interest.** The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title, vendee's interest under a real estate contract, or a tenant's interest in a ground lease of the Property. In the event of any transfer of such title or interest, Landlord herein named (and in case of any subsequent transfers, the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject to aforesaid, be binding upon Landlord's successors and assigns, only during their respective periods of ownership.

**16.3 Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**16.4 Interest on Past Due Obligations.** Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at twelve percent (12%) per annum from the due date or the maximum rate allowed by law, whichever is lower. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

**16.5 Time of Essence.** Time is of the essence.

**16.6 Captions.** Article and Paragraph captions are not a part hereof.

**16.7 Incorporation of Prior Agreement; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

**16.8 Waivers.** No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

**16.9 Recording.** Tenant does not intend to record this Lease. Landlord acknowledges that this lease will be public knowledge and may be discussed in open public meetings. Landlord acknowledges that Tenant is subject to the Washington State Public Records Act, 42.56 RCW. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

**16.10 Holding Over.** If Tenant remains in possession of the Property or any part thereof after the expiration of the term hereof without the express consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of 150% of the last monthly rental plus all other charges payable hereunder, and upon the terms hereof applicable to month to month tenancy.

**16.11 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive, but shall wherever possible, be cumulative with all other remedies at law or in equity.

**16.12 Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

Covenant of Quiet Use and Enjoyment: Tenant shall not be disturbed in Tenant's quiet use and enjoyment of the Property

**16.13 Binding Effect; Choice of Law; Proration.** Subject to any provisions hereof restricting assignment or subletting by Tenant and subject to the provision of Article 13.2, this Lease shall bind the parties, their representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Property are located. All prorations shall be on the basis of a thirty (30) day month.

**16.14 Subordination.**

(a) This Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any hypothecation for security now or hereafter placed upon the real property of which the Property are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Property shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to the terms of this Lease. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease, or the date of recording thereof.

(b) Tenant agrees to execute and deliver any documents required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to do so.

**16.15 Attorneys' Fees.** If either party named herein brings an action to enforce the terms hereof or declare rights hereunder the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court.

**16.16 Landlord's Access.** After giving Tenant prior, reasonable notice, Landlord and Landlord's agents shall have the right to enter the Property at reasonable times for the purpose of inspecting the same, showing the same to prospective tenants, purchasers or lenders, and making such alterations, repairs, improvements or additions to the Property or to the building of which they are a part as Landlord may deem necessary or desirable. Landlord may at any time place on or about the Property any ordinary "For Sale" signs, and Landlord may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Property any ordinary or "For Lease" signs all without rebate or rent or liability to Tenant.

**16.17 Signs.** Tenant shall not place any sign upon the Property without Landlord's prior written consent. All signs installed by Tenant shall be removed upon termination of this Lease with the sign location restored to its former state.

**16.18 Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

**16.19 Signing Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon said company in accordance with its organizing documents.

**16.20 Landlord's Liability.** If Landlord is a joint venture or limited partnership or LLC, the liability of the partners of Landlord pursuant to this Lease shall be limited to assets of the partnership, joint venture or limited liability company, as the case may be, and Tenant, its successors and assigns, hereby waive all rights to proceed against any of the partners, or the officers, shareholders, or directors of any corporate partner of Landlord, except to the extent of their interest in the partnership.

**16.21 Financing.** Tenant shall not execute any document purporting to affect the Property or any other property of which the Property are a part, including, without limitation;

any financing statement, without prior written consent of Landlord, which may be withheld or conditioned in Landlord's sole discretion.

**16.22 Inability to Perform.** This Lease and the obligations of the Tenant hereunder shall not be effected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, force majeure, weather and acts of God, or any other cause beyond the reasonable control of Landlord, and Landlord shall not be liable for any such delay.

**17. Completion Bond.** Intentionally omitted.

**18. Notices.** Wherever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either via reputable overnight courier (e.g. FedEx) or sent by United States certified mail, postage prepaid, addressed to the address set forth herein below:

To Landlord:       Spear Investments LLC  
                          c/o Brad Spear  
                          P.O. Box 15714  
                          Seattle, WA 98115  
                          Phone: 206-526-8517

To Tenant:         City of Seattle  
                          Attn: Masmela Nonila  
                          P.O. Box 94689, SMT-52-60  
                          Seattle, WA 98124-4689  
                          nonila.masmela@seattle.gov  
                          206-255-5409

**19. Hazardous Materials.**

**19.1 Definition of Hazardous Materials.** For purposes of this Lease, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States.

**19.2. Definition of Environmental Law.** The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

**19.3. Use of Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, spilled, leaked, otherwise released into the environment or disposed of on, under, from or about the Property (which for purposes of this Article 19 shall include, but is not limited to, subsurface soil and ground water) by Tenant, its agents, employees, contractors or invitees.. Tenant may use or otherwise handle on the Property only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Article 6.1. Tenant may store such Hazardous Substances on the Property only in quantities necessary to satisfy Tenant's ordinary operations. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Property. On the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Property. Without limiting any other rights or remedies of Landlord under this Lease, Tenant shall pay the cost of any cleanup work performed on, under or about the Property, the Building and the Project as required by this Lease or any applicable laws in connection with the removal, disposal, storage, transportation, neutralization or other treatment of such Hazardous Materials brought upon, stored, used, generated, spilled, leaked, otherwise released into the environment or disposed of on, under, from or about the Property by Tenant, its agents, employees contractors or invitees.

**19.4 Incident Reporting Requirements.** Tenant shall promptly notify Landlord of any release of Hazardous Materials, and shall promptly provide Landlord with true, correct, complete and legible copies of all items relating to Hazardous Materials on or about the Property that may be filed or prepared by or on behalf of, or delivered to or served upon, Tenant.

**19.5 Indemnification.** To the fullest extent permitted by law, including any applicable anti-deficiency statutes, Tenant hereby agrees to indemnify, hold harmless, protect and defend Landlord from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other reasonable professional or consultant's expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Property, by Tenant, its agents, employees, contractors, licensees or invitees. This indemnity shall survive the termination or expiration of this Lease. Landlord shall indemnify Tenant and hold Tenant harmless from any cost, liability, or expense imposed upon Tenant under any local, state or federal law, ordinance, statute, rule or regulation or judicial or administrative order because of or arising out of any



contamination of the Property or any contamination of the groundwater or surrounding lands because of or arising out of contamination of the Property that was not caused by the actions of Tenant, its agents, employees, contractors, licensees or invitees. This indemnity shall survive the termination or expiration of this Lease.

**19.6. Testing.** Tenant shall not perform any environmental testing on the Property without the prior written consent of Landlord, which will not unreasonably be withheld.

## **20. MISCELLANEOUS**

**20.1 Termination.** The City may terminate this agreement for cause or convenience upon thirty (30) days written notice to Landlord.

### **20.2 Suspension and Debarment**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by The City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to The City and The State of Washington, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

### **20.3. Byrd Anti-Lobbying**

31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**20.4 Access to Records** Landlord agrees to provide the City of Seattle, the FEMA Administrator, or any of their authorized representatives access to any books, documents, papers, and records of the Landlord which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcripts. Landlord agrees to permit any of the foregoing parties to reproduce such records.

**20.5 Procurement of recovered materials.**

Landlord must comply with section 6002 of the Solid Waste Disposal Act, including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_.

"Landlord": SPEAR INVESTMENTS, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_.

"Tenant": THE CITY OF SEATTLE

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

ss.

COUNTY OF \_\_\_\_\_

This is to certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_ duly commissioned and qualified, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official sea, the day and year first above mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
residing at\_\_\_\_\_.  
My commission expires:\_\_\_\_\_.

STATE OF WASHINGTON

ss.

COUNTY OF \_\_\_\_\_

This is to certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_ duly commissioned and qualified, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he/she signed and sealed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official sea, the day and year first above mentioned.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at\_\_\_\_\_.  
My commission expires:\_\_\_\_\_.

**EXHIBIT A  
LEGAL DESCRIPTION**

Lots 1- 3 and 7-12, Block 265, Seattle Tide Lands;

Together with all that portion of vacated Maynard Avenue South adjoining said lots 1,2 and 3 which would attach thereto by operation of law;

Together with the North 10 feet of vacated South Bradford Street, adjoining said lots 1 and 12 which would attach thereto by operation of law as vacated by ordinance 114714 recorded November 21, 1989 under recording number 8911211566;

Together with the west half of vacated alley adjoining said lots 7,8, and 9;

And together with all of vacated alley adjoining said lots 1,2,3,10,11 and 12 as vacated by ordinance number 103164 recorded March 27, 1974 under recording number 7403270378;

Except that portion of Lots 8,9 and 10 Block 265 Conveyed to the City of Seattle by deeds recorded March 19, 1974 under recording number 7403190464 and 7403190465, for 6<sup>th</sup> Avenue South;

ALSO

Lot 1, Block 3 Phinney's Second Addition to the City of Seattle, as per plat recorded in Volume 2 of Plats, Page 8, in King County, Washington;

EXCEPT that portion thereof lying within the plat of Seattle Tide Lands;

Together with all that portion of vacated Maynard Avenue adjoining which would attach thereto by operation of law;

And together with the North 10 feet of vacated South Bradford Street adjoining which would attach thereto by operation of law, and lying between the west margin of Maynard Avenue South and West of a line measured 20 feet east of the west margin line of said Maynard Avenue South as vacated by ordinance No. 114714 recorded November 21, 1989 under recording number 8911211566.

**EXHIBIT B**  
**RULES & REGULATIONS**

1. Any directory provided by Landlord for the building will be for the display of the name and location of Tenants, and Landlord reserves the right to exclude any other names.
2. Tenant shall provide Landlord with a key to the Property for emergency use.
3. Landlord reserves the right to exclude or expel from the common areas any person who, in the judgment of Landlord, is intoxicated, under the influence of drugs or who shall in any manner violate any of the rules and regulations.
4. Tenant shall not do or permit to be done within the Property anything which would unreasonably annoy or interfere with the rights of other tenants of the building.
5. Tenant shall not permit its employees or invitees to loiter in or about the common areas, or to obstruct any of the parking, truck maneuvering or other common areas, or to place, empty or throw any rubbish, litter, trash or material of any nature upon any common area.
6. No storage of materials, equipment or property of any kind is permitted outside the Property and any such property may be removed by Landlord at Tenant's risk and expense.
7. Tenant shall not make or permit any use of the Property which may be dangerous to life, limb or property or any noise, odor or vibrations to emit from the Property which are objectionable to Landlord or other occupants of the Building; or to create, maintain or permit a nuisance or any violation of any regulation of any governmental agency thereon.
8. Tenant shall not commit or permit to be committed any waste, damage or injury to the Property, the building or parking, loading and other common areas adjoining and shall promptly repair the same at its expense.
9. Tenant understands that any equipment required for maintenance of the Property is Tenant's responsibility and that Landlord has no equipment available for Tenant's use therefore, e.g., ladders or lifts for relamping, etc.
10. Tenant shall use the Property and shall operating its equipment on the Property in a safe and prudent manner, and any damage or cracks occurring in the floor of the Property shall be promptly repaired by Tenant at its expense.
11. Tenant shall not at any time display a "For Rent" sign upon the Property.
12. Intentionally omitted.

13. Tenant agrees to cause its employees to park only in such areas as may be designated by Landlord from time to time for employee parking.
14. Tenant shall not waste electricity or water and agrees to cooperate fully with Landlord to assure the most effective and economical use of utilities service as may be provided to the building by Landlord.
15. Tenant shall keep Landlord advised of the current telephone numbers of Tenant's employees who may be contacted in an emergency, i.e., fire, break-in, vandalism, etc. If Landlord shall deem it necessary to respond to such emergency in Tenant's behalf, Tenant shall pay all costs incurred for services ordered by Landlord to secure or otherwise protect the Property and the contents thereof, including a premium charge for any time spent by Landlord's employees in responding to such emergency.
16. Tenant shall not permit the Property to be used for residential purposes.