



Date: May 19, 2022

To: Weber County Board of Commissioners

From: Scott Mendoza  
Community Development Department

Agenda Date: May 31, 2022

Subject: **Ratification of a lease agreement by and between Weber County and Land of Og, L.L.C., which facilitates Weber County's lease of part of Suite #285 within the Weber Center.**

Attachments: A – Suite #285 Lease Agreement

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**Summary:**

The Weber County Attorney's Office is in need of additional space and will be expanding into Suite #290 (Unit C-3) in the Weber Center. This expansion will provide more office and meeting space and will allow the Juvenile Court Division (currently occupying Suite #280) to join the rest of the Attorney's Office and its investigations office. The Chamber of Commerce, who currently occupies Suite #290, will move across the building to Suite #280.

Due to the expansion of the Attorney's Office (into the existing Chamber of Commerce area) and because the Chamber will be relocating to Suite #280, the investigations office recently moved to Suite #295 (Unit C-2). Suite #295 (previously the Innovation Meeting Room) has, for several years, provided badly needed meeting space and is being replaced by leasing space in Suite #285, which is owned by Land of Og, L.C.C., of Salt Lake City.

According to the lease agreement, the rental term is for a period of three years and the base monthly rent is \$2,425.50 per month. The lease includes an escalation clause which allows for an increase in the monthly rent. After the end of the first year the rent will increase to \$2,498.27 (3%) per month and after the end of the second year the rent will increase to \$2,573.21 (3%) per month. The lease also requires a security deposit in the amount of \$3,000.00.

Land of Og, L.C.C., will pay for costs associated with providing heat, water, electricity, common area maintenance, real property taxes, building property taxes, and common area liability insurance. See Attachment A for the Suite #285 lease agreement and additional details.

LEASE  
by and between

**LAND OF OG, L.L.C.,**  
a Utah limited liability company,  
as Landlord  
and

**WEBER COUNTY, UTAH,**  
a political subdivision of the State of Utah,  
as Tenant

**WEBER CENTER OFFICE COMPLEX**  
**2380 WASHINGTON BLVD., SUITE 285**  
**OGDEN, UTAH 84403**



**WEBER CENTER OFFICE COMPLEX – OGDEN, UTAH  
TABLE OF CONTENTS**

ARTICLE I. BASIC LEASE PROVISIONS; ENUMERATION OF EXHIBITS .....	1
SECTION 1.01. BASIC LEASE PROVISIONS .....	1
SECTION 1.02. SIGNIFICANCE OF A BASIC LEASE PROVISION .....	4
SECTION 1.03. ENUMERATION OF EXHIBITS .....	4
ARTICLE II. GRANT AND LEASED PREMISES .....	4
SECTION 2.01. LEASED PREMISES .....	4
SECTION 2.02. REVISION OF DEVELOPMENT PLAN .....	4
ARTICLE III. BASE MONTHLY RENT, OPERATING EXPENSES AND ADDITIONAL RENT .....	4
SECTION 3.01. BASE MONTHLY RENT .....	4
SECTION 3.02. ESCALATIONS IN BASE MONTHLY RENT .....	4
SECTION 3.03. OPERATING EXPENSES .....	5
SECTION 3.04. ....	6
SECTION 3.05. TAXES .....	6
SECTION 3.06. PAYMENTS .....	6
SECTION 3.07. ADDITIONAL RENT .....	6
ARTICLE IV. RENTAL TERM, COMMENCEMENT DATE & PRELIMINARY TERM .....	6
SECTION 4.01. RENTAL TERM .....	6
SECTION 4.02. DEFINITION OF LEASE YEAR .....	7
SECTION 4.03. RENTAL TERM COMMENCEMENT DATE AND TERMINATION DATE .....	7
SECTION 4.04. PRELIMINARY TERM .....	7
SECTION 4.05. END OF RENTAL TERM .....	7
ARTICLE V. CONSTRUCTION OF LEASED PREMISES .....	7
SECTION 5.01. DELIVERY OF LEASED PREMISES BY LANDLORD .....	7
SECTION 5.02. CHANGES AND ADDITIONS BY LANDLORD .....	7
SECTION 5.03. LANDLORD'S RIGHT TO TERMINATE FOR REMODELING .....	7
SECTION 5.04. LANDLORD'S RIGHT TO RELOCATE FOR REMODELING .....	7
ARTICLE VI. TENANT'S WORK .....	8
SECTION 6.01. CONSTRUCTION OF LEASED PREMISES BY TENANT .....	8
SECTION 6.02. PROJECT CLOSE-OUT .....	8
SECTION 6.03. CONSTRUCTION LIEN .....	9
SECTION 6.04. CONSTRUCTION CRITERIA .....	10
ARTICLE VII. PERMITTED USE .....	10
SECTION 7.01. PERMITTED USE OF LEASED PREMISES .....	10
SECTION 7.02. HAZARDOUS SUBSTANCES .....	10
ARTICLE VIII. OPERATION AND MAINTENANCE OF COMMON AREAS .....	11
SECTION 8.01. CONSTRUCTION AND CONTROL OF COMMON AREAS .....	11
SECTION 8.02. LICENSE .....	11
ARTICLE IX. ALTERATIONS, SIGNS, LOCKS & KEYS .....	11
SECTION 9.01. ALTERATIONS .....	11
SECTION 9.02. REMOVAL BY TENANT .....	12
SECTION 9.03. SIGNS .....	12
SECTION 9.04. REMOVAL OF TENANT SIGNS .....	12
SECTION 9.05. COMPUTERIZED ELECTRONIC SIGNS .....	12
SECTION 9.06. LOCKS AND KEYS .....	12
ARTICLE X. MAINTENANCE AND REPAIRS; ALTERATIONS; ACCESS .....	13
SECTION 10.01. LANDLORD'S OBLIGATION FOR MAINTENANCE .....	13
SECTION 10.02. TENANT'S OBLIGATIONS FOR MAINTENANCE .....	13
SECTION 10.03. SURRENDER OF LEASED PREMISES AND RIGHTS UPON TERMINATION .....	13
ARTICLE XI. INSURANCE AND INDEMNITY .....	13
SECTION 11.01. TENANT'S LIABILITY INSURANCE AND INDEMNITY .....	13
SECTION 11.02. FIRE AND CASUALTY INSURANCE .....	14
SECTION 11.03. WAIVER OF SUBROGATION .....	14
SECTION 11.04. INDEMNIFICATION .....	14
SECTION 11.05. ALTERATION OR REPLACEMENT OF TENANT INSURANCE .....	15
SECTION 11.06. SELF-INSURANCE .....	15
ARTICLE XII. UTILITY CHARGES .....	15
SECTION 12.01. OBLIGATIONS OF LANDLORD .....	15
SECTION 12.02. OBLIGATIONS OF TENANT .....	15
SECTION 12.03. ....	16
SECTION 12.04. LIMITATIONS ON LANDLORD'S LIABILITY .....	16
ARTICLE XIII. ESTOPPEL OR SUBORDINATION, NON-DISTURBANCE AND ATTORNEMENT .....	16
SECTION 13.01. ESTOPPEL OR SMDA .....	16



SECTION 13.02. ATTORNMEN	16
SECTION 13.03. SUBORDINATION	16
SECTION 13.04. MORTGAGEE SUBORDINATION	16
SECTION 13.05. REMEDIES	17
ARTICLE XIV. ASSIGNMENT	17
SECTION 14.01. CONSENT REQUIRED	17
SECTION 14.02. OPTION TO TERMINATE	17
SECTION 14.03. CONDITIONS OF CONSENT	17
SECTION 14.04. STANDARDS OF REASONABLENESS IN WITHHOLDING CONSENT	17
SECTION 14.05. CONTINUING LIABILITY OF TENANT	18
SECTION 14.06. DOCUMENTATION OF ASSIGNMENT	18
SECTION 14.07. VOIDABLE ASSIGNMENT	18
ARTICLE XV. WASTE OR NUISANCE	18
SECTION 15.01. WASTE OR NUISANCE	18
ARTICLE XVI. NOTICES	18
SECTION 16.01. NOTICES	18
ARTICLE XVII. DESTRUCTION OF LEASED PREMISES	19
SECTION 17.01. DESTRUCTION	19
ARTICLE XVIII. CONDEMNATION	19
SECTION 18.01. CONDEMNATION	19
ARTICLE XIX. DEFAULT OF TENANT	20
SECTION 19.01. RIGHT TO RE-ENTER	20
SECTION 19.02. DEFAULT – RIGHT TO RE-LET	20
SECTION 19.03. LEGAL EXPENSES	20
ARTICLE XX. BANKRUPTCY, INSOLVENCY OR RECEIVERSHIP	20
SECTION 20.01. ACT OF INSOLVENCY, GUARDIANSHIP, ETC	20
SECTION 20.02. BANKRUPTCY	21
ARTICLE XXI. ACCESS BY LANDLORD	21
SECTION 21.01. LANDLORD ACCESS	21
ARTICLE XXII. TENANT'S PROPERTY AND LANDLORD'S LIEN	21
SECTION 22.01. TAXES ON LEASEHOLD	21
SECTION 22.02. LOSS AND DAMAGE	21
SECTION 22.03. NOTICE BY TENANT	21
SECTION 22.04. LANDLORD'S LIEN	21
SECTION 22.05. LANDLORD'S SUBORDINATION	22
ARTICLE XXIII. HOLDING OVER	22
SECTION 23.01. HOLDING OVER	22
SECTION 23.02. SUCCESSORS	22
ARTICLE XXIV. RULES AND REGULATIONS	22
SECTION 24.01. RULES AND REGULATIONS	22
ARTICLE XXV. QUIET ENJOYMENT	22
SECTION 25.01. QUIET ENJOYMENT	22
ARTICLE XXVI. SECURITY DEPOSIT	22
SECTION 26.01. SECURITY DEPOSIT	22
SECTION 26.02. TRANSFER OF LANDLORD'S INTEREST IN THE SECURITY DEPOSIT	23
ARTICLE XXVII. MISCELLANEOUS	23
SECTION 27.01. WAIVER	23
SECTION 27.02. ENTIRE LEASE AGREEMENT	23
SECTION 27.03. INTERPRETATION, USE OF PRONOUNS	23
SECTION 27.04. FORCE MAJEURE	23
SECTION 27.05. CAPTIONS AND SECTION NUMBERS	24
SECTION 27.06. BROKER'S COMMISSION	24
SECTION 27.07. RECORDING	24
SECTION 27.08. CONSENT NOT UNREASONABLY WITHHELD	24
SECTION 27.09. FURNISHING OF FINANCIAL STATEMENTS	24
SECTION 27.10. TIME OF ESSENCE	24
SECTION 27.11. ACCORD AND SATISFACTION	24
SECTION 27.12. NO OPTION	24
SECTION 27.13. ANTI-DISCRIMINATION	24
SECTION 27.14. SEVERABILITY	24
SECTION 27.15. SURVIVAL OF OBLIGATIONS	25
SECTION 27.16. WARRANTY OF AUTHORITY	25
SECTION 27.17. TENANT'S LIABILITY	25
SECTION 27.18. LANDLORD'S LIABILITY	25



SECTION 27.19. COUNTERCLAIM AND JURY TRIAL..... 25

SECTION 27.20. TRANSFER OF LANDLORD'S INTEREST IN THE LEASED PREMISES..... 25

SECTION 27.21. TENANT SELECTION BY LANDLORD..... 25

SECTION 27.22. DISCLOSURE OF PARTIES..... 25

SECTION 27.23. CONFIDENTIALITY..... 25

SECTION 27.24. TENANT REPRESENTATIONS AND WARRANTIES..... 25

SECTION 27.25. EXECUTIVE ORDER CERTIFICATION..... 26

SECTION 27.26. ADA COMPLIANCE AND CERTIFICATION FOR TENANT'S WORK..... 26

ARTICLE XXVIII. ADDITIONAL PROVISIONS..... 27

SECTION 28.01. OPTION TO RENEW..... 27

SECTION 28.02. COUNTERPART EXECUTION AND ELECTRONIC SIGNATURES..... 27





**LEASE AGREEMENT**  
("Lease")

**ARTICLE I. BASIC LEASE PROVISIONS; ENUMERATION OF EXHIBITS**

**SECTION 1.01. BASIC LEASE PROVISIONS.**

- (A) **EFFECTIVE DATE:** April 7, 2022 ("Effective Date").
- (B) **LANDLORD:** LAND OF OG, L.L.C., a Utah limited liability company ("Landlord", sometimes, individually, a "Party" or, together with Tenant as defined in Section 1.01(D), collectively "Parties").
- (C) **ADDRESS OF LANDLORD FOR NOTICES (Section 16.01):**  
  
Land of Og, L.L.C.  
c/o Woodbury Corporation  
Attn: Lease Administration  
Ref: 2420 – Municipal Building Authority, Suite 285  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 84109
- With a copy to:  
  
Land of Og, L.L.C.  
c/o Woodbury Corporation  
Attn: Legal Department  
Ref: 2420 – Municipal Building Authority, Suite 285  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 84109
- (D) **TENANT:** WEBER COUNTY, UTAH, a political subdivision of the State of Utah ("Tenant", sometimes, individually, a "Party" or, together with Landlord as defined in Section 1.01(B), collectively "Parties").
- (E) **ADDRESS OF TENANT FOR NOTICES (Section 16.01):**  
  
Weber County, Utah  
Attn: County Commission Chair  
2380 Washington Blvd., Suite 360  
Ogden, Utah 84401  
Telephone: (801) 399-8406  
E-mail: jharvey@webercountyutah.gov
- (F) **PERMITTED USE (Section 7.01):** General office use ("Permitted Use"), and for no other use without the prior written consent of Landlord.
- (G) **TENANT'S TRADE NAME:** Weber County.
- (H) **BUILDING (Section 2.01):** A building located at 2380 Washington Blvd. ("Building"), consisting of approximately 35,951 square feet of gross rentable area, in the Weber Center Office Complex, situated in the City of Ogden, County of Weber, State of Utah ("Development"), as substantially depicted on Exhibit "A".
- (I) **LEASED PREMISES (Section 2.01):** 2380 Washington Blvd., Suite 285, Ogden, Utah 84401 ("Leased Premises"), with approximately 1,386 square feet of gross rentable area, as substantially depicted on Exhibit "A-1".
- (J) **DELIVERY OF POSSESSION (Section 5.01):** The Leased Premises shall be delivered to Tenant within thirty (30) days of the Effective Date of this Lease ("Delivery of Possession"), as certified by a Notice of Delivery of Possession. Preliminary Term (as defined in Section 4.04) begins on Delivery of Possession.
- (K) **RENTAL TERM, COMMENCEMENT AND EXPIRATION DATE (Sections 4.01 and 4.03):** The term of this Lease shall commence on the earlier to occur of (a) one hundred twenty (120) days after Delivery of Possession, or (b) the date Tenant opens for business at the Leased Premises ("Rental Term Commencement Date"), and shall be for a period of three (3) full Lease Years (as defined in Section 4.02) ending on the date that is three (3) years following either the Rental Term Commencement Date, when the Rental Term Commencement Date is the first day of a calendar month, or the first day of the first full calendar month after the Rental Term Commencement Date, when the Rental Term Commencement Date is any day other than the first day of a calendar month ("Rental Term"), as certified by a Notice of Rental Term Commencement Date.



(L) **BASE MONTHLY RENT (Section 3.01):** Commencing on the Rental Term Commencement Date, Tenant shall pay monthly rent in the amount of Two Thousand Four Hundred Twenty-Five and 50/100 Dollars (\$2,425.50) per month ("Base Monthly Rent").

(M) **ESCALATIONS IN BASE MONTHLY RENT (Section 3.01):**

Escalation Date

Base Monthly Rent

Commencing the 1st day of the 13th month after the Rental Term Commencement Date

\$2,498.27

Commencing the 1st day of the 25th Month after the Rental Term Commencement Date

\$2,573.21

(N) **LANDLORD'S SHARE OF OPERATING EXPENSES (Section 3.03):** Landlord shall be responsible for paying for all Operating Expenses (as defined in Section 3.03), including but not limited to: janitorial for the Common Areas (as defined in Section 8.01), utilities, Common Area Maintenance, taxes and the Building casualty insurance. Landlord shall pay janitorial services only for Common Area halls and bathrooms.

(O) Intentionally Omitted.

(P) **RESPONSIBILITY FOR UTILITIES AND SERVICES:** Subject to the provisions of Section 3.03, this Lease provides that the utilities and services shall be paid by the Party shown below:

Heat:	Landlord	Real Property Taxes:	Landlord
Water:	Landlord	Building Property Taxes:	Landlord
Electricity:	Landlord	Liability Ins. – Common Area:	Landlord
Common Area Maintenance:	Landlord	Liability Ins. – Leased Premises:	Tenant
Personal Property Taxes:	Tenant	Personal Property Insurance:	Tenant
Telephone and Data:	Tenant	Janitorial – Leased Premises:	Tenant

Landlord shall arrange for utility services for the Leased Premises except that telephone and data services shall be contracted for directly by Tenant. Landlord may separately sub-meter or monitor utilities to the extent Landlord may determine.

(Q) **EXCESS HOUR UTILITY CHARGES AND HOURS OF OPERATION (Section 12.03):** Tenant shall have access to the Leased Premises twenty-four (24) hours a day, seven (7) days per week. Standard operating hours for the Building shall be 7:00 a.m. to 6:30 p.m. Monday through Friday, and 8:00 a.m. to 12:00 Noon on Saturday, excluding holidays ("Standard Operating Hours"). Landlord shall not be required to provide Building system maintenance, parking sweeping or snow removal services except during Standard Operating Hours.

(R) **PREPAID RENT:** Two Thousand Four Hundred Twenty-Five and 50/100 Dollars (\$2,425.50), paid by Tenant upon Tenant's execution of this Lease to be applied to the first installment of Base Monthly Rent due hereunder.

(S) **SECURITY DEPOSIT (Section 26.01):** Three Thousand and 00/100 Dollars (\$3,000.00) ("Security Deposit"), to be paid by Tenant upon Tenant's execution of this Lease.

(T) **TENANT'S WORK (Section 6.01):** Tenant shall finish the Leased Premises in accordance with plans and specifications approved by Landlord. Prior to commencement of construction, Tenant shall submit an electronic copy (in PDF format) of all plans to Landlord for review and approval as set forth in Section 6.01.

(U) **OPTION TO RENEW (Section 28.01):** Tenant shall have one (1) additional consecutive two (2) year option to renew and extend the Rental Term ("Option") as provided in Section 28.01. Base Monthly Rent for the Option period shall be as follows:

Option Period

Base Monthly Rent

Commencing the 1st day of the 37th month after the Rental Term Commencement Date

\$2,650.41

Commencing the 1st day of the 49th month after the Rental Term Commencement Date

\$2,729.92



(V) **PURCHASE AND/OR SALE:** In the event Landlord and/or Tenant successfully negotiate a purchase and/or sale of the Building and/or Leased Premises, this Lease shall become null and void and be of no further effect upon closing of such purchase and/or sale.

(W) **PARKING (Section 2.01):** Tenant shall have the right to the non-exclusive use of all parking spaces located in the parking areas owned by Landlord, which Landlord agrees to maintain a parking ratio as required by code.

*[Remainder of Page Intentionally Left Blank]*





**SECTION 1.02. SIGNIFICANCE OF A BASIC LEASE PROVISION.**

The foregoing provisions of Section 1.01 summarize for convenience only certain fundamental terms of this Lease delineated more fully in the articles and sections referenced therein. In the event of a conflict between the provisions of Section 1.01 and the balance of this Lease, the latter shall control.

**SECTION 1.03. ENUMERATION OF EXHIBITS.**

The exhibits enumerated in this Section 1.03 and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease. In the event of a conflict between the body of this Lease and the exhibits, the body of this Lease shall control.

EXHIBIT "A"	-	DEVELOPMENT PLAN
EXHIBIT "A-1"	-	LEASE PLAN
EXHIBIT "B"	-	LEGAL DESCRIPTION
EXHIBIT "C"	-	SELF-INSURANCE REQUIREMENTS

**ARTICLE II. GRANT AND LEASED PREMISES**

**SECTION 2.01. LEASED PREMISES.**

In consideration for the rent to be paid and covenants to be performed by Tenant, Landlord hereby leases to Tenant, and Tenant leases from Landlord, for the Rental Term and upon the terms and conditions herein set forth, the Leased Premises described in Section 1.01(I), located in an office building Development referred to in Section 1.01(H), as substantially depicted on Exhibit "A". The legal description for the property on which the Building is located is attached hereto as Exhibit "B". Gross rentable area measurements herein specified are from the exterior of the perimeter walls of the Building to the center of the interior walls.

The exterior walls and roof of the Leased Premises and the areas beneath the Leased Premises are not demised hereunder and the use thereof, together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, and wires leading through the Leased Premises in locations which do not materially and adversely interfere with Tenant's use thereof and which serve other parts of the Building or buildings, are hereby reserved to Landlord. Landlord reserves (a) such access rights through the Leased Premises as may be reasonably necessary to enable access by Landlord to the balance of the Building and reserved areas and elements as set forth above; and (b) the right to install or maintain meters on the Leased Premises to monitor use of utilities. In exercising such rights, Landlord shall use reasonable efforts so as to not commit waste upon the Leased Premises and as far as practicable shall not materially and adversely interfere with Tenant's use of the Leased Premises and shall minimize annoyance, interference or damage to Tenant and the Leased Premises when making modifications, additions or repairs.

Subject to the provisions of Article VIII, Tenant and its employees, contractors, customers, agents and invitees have the right to the non-exclusive use, in common with existing tenants of such unreserved automobile parking spaces, driveways, footways, and other facilities designated for common use within the Building, except that with respect to non-exclusive areas, Tenant shall cause its employees to park their cars only in areas specifically designated from time to time by Landlord for that purpose and shall actively police employees to keep them from parking in "visitor" or other restricted parking areas.

**SECTION 2.02. REVISION OF DEVELOPMENT PLAN.**

It is expressly agreed that the depiction of the Leased Premises, the Building and the Common Areas (as defined in Section 8.01) on Exhibit "A" and Exhibit "A-1" does not constitute a representation, covenant, or warranty of any kind by Landlord, and Landlord reserves the right to change the size, location, type and number of buildings within the Development, and the location, type, design and dimensions of the Common Areas.

**ARTICLE III. BASE MONTHLY RENT, OPERATING EXPENSES AND ADDITIONAL RENT**

**SECTION 3.01. BASE MONTHLY RENT.**

Tenant agrees to pay to Landlord Base Monthly Rent in the amounts set forth in Section 1.01(L) and Section 1.01(M) at such place as Landlord may designate, without prior demand therefor, without offset or deduction and in advance on or before the first day of each calendar month during the Rental Term, including any Rental Term extension or renewal thereof, commencing on the Rental Term Commencement Date. In the event the Rental Term Commencement Date occurs on a day other than the first day of a calendar month, then Base Monthly Rent to be paid on the Rental Term Commencement Date shall include both Base Monthly Rent for the first full calendar month occurring after the Rental Term Commencement Date, plus Base Monthly Rent for the initial fractional calendar month pro-rated on a per-diem basis (based upon a thirty (30) day month).

**SECTION 3.02. ESCALATIONS IN BASE MONTHLY RENT.**

As set forth in Section 1.01(M).



**SECTION 3.03. OPERATING EXPENSES.**

- (a) "Operating Expense(s)" shall mean all reasonable costs and expenses incurred by Landlord in connection with the ownership, operation, management and maintenance of the Building and Development and related Improvements (as defined in Section 5.02) located thereon, including, but not limited to, all reasonable expenses incurred by Landlord as a result of Landlord's compliance with any and all of its obligations under this Lease (or under similar leases with other tenants). In explanation of the foregoing, and not in limitation thereof, Operating Expenses shall include: utilities, repair and maintenance of the Common Areas and Common Facilities (as defined in Section 8.01) including HVAC (excluding HVAC equipment specifically serving Tenant's servers and/or other specialty equipment), electrical, plumbing, sprinkler and other Building system maintenance (including roof and structural repair and maintenance), all real and personal property taxes and assessments (whether general or special, known or unknown, foreseen or unforeseen) and any tax or assessment levied or charged in lieu thereof, whether assessed against Landlord and/or Tenant and whether collected from Landlord and/or Tenant; snow removal, trash removal, Common Area utilities, cost of equipment or devices used to conserve or monitor energy consumption, supplies, insurance, license, permit and inspection fees, Building management fees, cost of services of independent contractors, cost of compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with day-to-day operation, maintenance, repair and replacement of the Building, its equipment and the adjacent Common Areas (including, but not limited to gardening, landscaping, security, parking (including paving repairs, parking lot striping, seal coating, crack sealing, overlaying and replacement), elevator, painting, plumbing, electrical, mechanical, carpentry, window washing, performing services not uniformly available to or performed for substantially all of the Building tenants; and rental expense or a reasonable allowance for depreciation of personal property used in the maintenance, operation and repair of the Building.
- (b) The foregoing notwithstanding, Operating Expenses shall not include:
- (i) Costs borne directly by Tenant such as janitorial, liability insurance of Tenant and personal casualty insurance;
  - (ii) Cost of decorating, redecorating, or special cleaning or other services not provided on a regular basis to tenants of the Building, unless such decorations or special cleaning are typical and customary of community office buildings in the market;
  - (iii) Wages, salaries, fees, and fringe benefits paid to administrative or executive personnel or officers or partners of Landlord unless employed to perform ordinary and reasonable services at competitive rates as independent contractors;
  - (iv) Any charge for depreciation of the Building or Building equipment (except Improvements made to effect savings as provided above) and any interest or other financing charge; and except that new or replacement of maintenance equipment, if any, purchased may be depreciated over its useful life and such depreciation charged as an Operating Expense;
  - (v) Any charge for Landlord's net income taxes, excess profit taxes, or similar taxes on Landlord's business excluding any rent tax or any tax measured by Landlord's gross receipts from the Building, which shall be deemed an Operating Expense;
  - (vi) All costs relating to activities for the solicitation and execution of leases of space in the Building, including, but not limited to, commissions, tenant improvements, legal fees and marketing expenses;
  - (vii) All costs for which Tenant or any other tenant in the Building directly reimburses Landlord;
  - (viii) The cost of any repair made by Landlord because of the total or partial destruction of the Building or the condemnation of a portion of the Building;
  - (ix) The cost of any items for which Landlord is reimbursed by insurance, warranties, guarantees or otherwise compensated by parties other than tenants of the Building;
  - (x) Any Operating Expense representing an amount paid to a related corporation, entity, or person which is in excess of the amount, which would be paid on a competitive basis for similar services done by unrelated parties of equal qualification;
  - (xi) The cost of alterations of space in the Building leased to other tenants;



- (xii) The cost of overtime or other expense to Landlord in curing its defaults or performing work expressly provided in this Lease to be borne at Landlord's expense;
- (xiii) Inheritance taxes;
- (xiv) Gift taxes;
- (xv) Transfer taxes;
- (xvi) Special assessments levied against, other than real estate assessments, and payable hereunder, while includable in Operating Expenses, shall be chargeable in installments if Landlord is permitted to do so;
- (xvii) Structural or foundation repairs required to maintain the structural integrity of the Building, but not normal exterior maintenance such as painting, drivit replacement or repair etc.; and
- (xviii) Tenant's disposal, dishwasher and any other Tenant owned fixtures.

(c) Changes in gross rentable area occurring during any monthly period shall be effective on the first day of the next succeeding monthly period.

**SECTION 3.04.**

Intentionally Omitted.

**SECTION 3.05. TAXES.**

(a) Landlord shall pay all real property taxes and assessments which are levied against, or which apply with respect to the Leased Premises.

(b) Tenant shall pay, prior to delinquency, all taxes, assessments, charges, and fees which during the Rental Term, or any Rental Term extension or renewal thereof, may be imposed, assessed, or levied by any governmental or public authority against or upon Tenant's use of the Leased Premises or any inventory, personal property, fixtures or equipment kept or installed, or permitted to be located therein by Tenant.

**SECTION 3.06. PAYMENTS.**

All payments of Base Monthly Rent, Additional Rent and other payments to be made to Landlord shall be made on a timely basis and shall be payable to Landlord or as Landlord may otherwise designate. All such payments shall be mailed or delivered to Landlord's principal office set forth in Section 1.01(C), or at such other place as Landlord may designate from time to time in writing. If mailed, all payments shall be mailed in sufficient time and with adequate postage thereon to be received in Landlord's account by no later than the due date for such payment. If Tenant fails to pay any Base Monthly Rent, Additional Rent or any other amounts or charges within ten (10) days after the due date, Tenant shall pay interest from the due date of such past due amounts to the date of payment, both before and after judgment at a rate equal to the greater of fifteen percent (15%) per annum or two percent (2%) over the prime rate or base rate charged by Citibank of New York at the due date of such payment; provided however, that in any case the maximum amount or rate of interest to be charged shall not exceed the maximum non-usurious rate in accordance with applicable law. In addition, Tenant shall pay a late fee equal to four percent (4%) of such past due amount to compensate Landlord for extra administrative, collection, processing, accounting and other costs incurred through Tenant's nonpayment.

**SECTION 3.07. ADDITIONAL RENT.**

Tenant shall pay as "Additional Rent" any and all sums of money or charges required to be paid by Tenant under this Lease whether or not the same be expressly designated as Additional Rent. If such amounts or charges are not paid at the time provided for in this Lease, they shall nevertheless, if not paid when due, be collectible as Additional Rent with the next installment of Base Monthly Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any interest, late fee or other remedy of Landlord.

**ARTICLE IV. RENTAL TERM, COMMENCEMENT DATE & PRELIMINARY TERM**

**SECTION 4.01. RENTAL TERM.**

The initial term of this Lease shall be for the period defined as the Rental Term in Section 1.01(K), plus the partial calendar month, if any, occurring after the Rental Term Commencement Date if the Rental Term Commencement Date occurs other than on the first day of a calendar month.





**SECTION 4.02. DEFINITION OF LEASE YEAR.**

The "Lease Year" shall include twelve (12) full calendar months of the Rental Term; except that the first Lease Year shall include such twelve (12) full calendar months plus the period from the commencement of the Preliminary Term to and including the first day of the first full calendar month after the Rental Term Commencement Date.

**SECTION 4.03. RENTAL TERM COMMENCEMENT DATE AND TERMINATION DATE.**

The Rental Term of this Lease and Tenant's obligation to pay Base Monthly Rent and Additional Rent hereunder shall commence on the Rental Term Commencement Date as set forth in Section 1.01(K). Each of the Parties hereto agree, upon demand of the other, to execute a Rental Term Commencement Date Notice, expressing the commencement and termination dates of the Rental Term as soon as the commencement and termination dates have been determined.

**SECTION 4.04. PRELIMINARY TERM.**

The period between the date Tenant enters upon the Leased Premises and the Rental Term Commencement Date shall be designated as the "Preliminary Term" during which no Base Monthly Rent shall accrue; however, other covenants and obligations of Tenant shall be in full force and effect. Delivery of Possession of the Leased Premises to Tenant, as provided in Section 1.01(J), shall be considered "entry" by Tenant and commencement of the Preliminary Term.

**SECTION 4.05. END OF RENTAL TERM.**

This Lease, and the tenancy hereby created, shall terminate at the end of the Rental Term, or any Rental Term extension or renewal thereof, without the necessity of any Notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives Notice to vacate the Leased Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Leased Premises from Tenant holding over to the same extent as if statutory Notice has been given.

**ARTICLE V. CONSTRUCTION OF LEASED PREMISES**

**SECTION 5.01. DELIVERY OF LEASED PREMISES BY LANDLORD.**

Landlord has constructed and/or remodeled the Development in which the Leased Premises is located. Tenant is leasing the Leased Premises in "as is" condition. It is agreed that by taking possession of the Leased Premises as a tenant, Tenant formally accepts the same and acknowledges that the Leased Premises is in the condition called for hereunder.

**SECTION 5.02. CHANGES AND ADDITIONS BY LANDLORD.**

Landlord hereby reserves the right at any time, and from time to time, to make alterations or additions to, and to build additional stories on the Building in which the Leased Premises is contained and to build any adjoining building, and/or to modify the existing parking or other Common Areas and Common Facilities to accommodate additional buildings ("Improvements"). Landlord also reserves the right to construct other buildings or improvements in the Development from time to time, on condition that if the Development is expanded so as to include any additional buildings, Landlord agrees to create or maintain a parking ratio adequate to meet local laws and ordinances, including the right to add land to the Development or to erect parking structures thereon.

**SECTION 5.03. LANDLORD'S RIGHT TO TERMINATE FOR REMODELING.**

In Landlord's sole discretion, if it becomes necessary to terminate this Lease in order to reasonably perform Improvements, Landlord may terminate this Lease upon one (1) year's prior written Notice. In such case, Tenant shall have the right to remove its trade fixtures (but no Building Improvements and/or fixtures) on or before the termination date of this Lease and Landlord shall pay to Tenant as liquidated damages for such termination, a sum equal to the unamortized portion of Tenant's improvements in the Leased Premises, which were paid for by Tenant, if any, as certified to Landlord in accordance with Section 6.01 hereof, assuming that such amortization is on a straight line basis extending over the firm Rental Term and at an interest rate equal to the lower of ten percent (10%) per annum or the rate in fact applicable to Tenant's existing financing balance at the time of such improvements. Landlord may elect to offset any sums payable by Landlord to Tenant against any sums payable by Tenant to Landlord.

**SECTION 5.04. LANDLORD'S RIGHT TO RELOCATE FOR REMODELING.**

If Landlord elects to perform Improvements, Landlord shall have the right, in Landlord's sole discretion, at any time, upon giving Tenant not less than thirty (30) days' Notice in writing, to provide and furnish Tenant with space elsewhere in the Building or Development of approximately the same size as the Leased Premises and to place Tenant in such space ("Relocation"). Should Tenant not agree to the Relocation by the end of such thirty (30) day period, Landlord, in such event, shall have the right to forthwith cancel and terminate this Lease. If Relocation occurs, this Lease and each and all of its terms, covenants and conditions shall remain in full force and effect and be deemed applicable to such new space, and such new space shall thereafter be deemed to be the Leased Premises.



**ARTICLE VI. TENANT'S WORK**

**SECTION 6.01. CONSTRUCTION OF LEASED PREMISES BY TENANT.**

Pursuant to Tenant's construction obligations prior to the Rental Term Commencement Date, Tenant agrees, at Tenant's sole cost and expense, to commence construction of all work of whatsoever nature in accordance with Tenant's plans and specifications, subject to Landlord's prior written approval ("**Tenant's Work**"), no later than sixty (60) days after Delivery of Possession. Tenant is required to apply for, and diligently pursue, all permits required for Tenant's Work, if applicable, within fifteen (15) days of the Effective Date of this Lease. Empty conduit extending to the Leased Premises for telephone and data lines, from central locations in the building, shall be provided by Landlord. All terminations, crossovers, and distribution wiring from panels to the various equipment and receptacles shall be provided by Tenant at Tenant's sole cost and expense. Tenant agrees to furnish Landlord, within the time periods designated by Landlord, and prior to Delivery of Possession, with a complete and detailed set of plans and specifications drawn by a licensed architect (or by some other qualified person acceptable to Landlord) setting forth and describing Tenant's Work in such detail as Landlord may require and in compliance with the initial permit drawings and the final construction documents approved by Landlord. If such plans and specifications are not so furnished by Tenant within the required time periods designated by Landlord, then Landlord shall have the on-going right to terminate this Lease, in Landlord's sole discretion and in addition to other remedies Landlord may enjoy, at any time thereafter while such plans and specifications have not been so furnished. In the event Tenant requests Landlord to prepare any drawings and/or construction documents, Tenant shall enter into a professional services agreement prior to Landlord's preparing any drawings and/or construction documents. Tenant shall remit one (1) electronic copy (in PDF format) of any and all plans and specifications prepared by Tenant, or Tenant's architect, to Landlord at the following email address:

**drawings@woodburycorp.com**

In order for such plans and specifications to be deemed received by Landlord for Landlord's approval, as set forth in this Section 6.01, all transmittals must include the following information: **2420 – Municipal Building Authority, Space 17.**

No material deviation from the final set of plans and specifications, once submitted to and approved by Landlord, shall be made by Tenant without Landlord's prior written consent. Landlord shall have the right to require and approve insurance or bonds related to Tenant's contractor's performance of Tenant's Work. In due course, after completion of Tenant's Work, Tenant shall certify to Landlord the itemized cost of Tenant improvements located in the Leased Premises. Any design costs incurred by Landlord, including space planning, preliminary and final design, engineering costs or construction costs related to any work not contemplated by Landlord but either requested by Tenant during construction and/or required in order to maintain the Development's design standards, utilities, building systems and/or life/safety issues ("**Landlord's Reimbursable Construction Costs**"), shall be part of Tenant's Work and shall be either applied to any additional allowance (if any) or shall be due and payable separately by Tenant. To the extent Landlord is required to perform any Tenant's Work related to Landlord's Reimbursable Construction Costs, Tenant shall pay Landlord for such work within thirty (30) days of invoice by Landlord. If Tenant fails to pay such invoice when due, Tenant shall pay interest and a late fee in accordance with Section 3.06.

In the event Tenant elects to remodel the Leased Premises at any time after the Rental Term Commencement Date, Tenant shall comply with all of the same terms and requirements set forth in this Article VI prior to commencing work in the Leased Premises.

**SECTION 6.02. PROJECT CLOSE-OUT.**

Where Tenant's Work is performed in accordance with Section 6.01, the following procedures shall apply:

- (a) Preconstruction. Prior to the commencement of construction, Tenant and Tenant's contractor shall participate in a preconstruction meeting and provide all documentation requested by Landlord.
- (b) Field Inspection. On completion of construction, Landlord and Tenant shall conduct an inspection of the improvements to identify whether there are any incomplete items or other deficiencies. A punch list of such deficiencies shall be prepared. Tenant shall make all corrections no later than fifteen (15) days thereafter.

(c) Required Project Closeout Information. Tenant shall provide an electronic copy (in PDF format) of items (i) through (iv) below to Landlord at the following email address:

**leaseadmin@woodburycorp.com**

In order for such plans and specifications to be deemed received by Landlord, as set forth in Section 6.01, for Landlord's approval, all transmittals must include the following information: **2420 – Municipal Building Authority, Space 17.**





(i) As-built drawings in AutoCAD [.dwg format] and PDF format depicting changes to the construction documents that occurred during construction where Tenant's Work affects building systems and/or utilities, organized according to the original construction documents. If the as-built drawings are not available in AutoCAD [.dwg format], then please provide the approved permit set in AutoCAD [.dwg format] and a PDF of the as-built changes.

(ii) A list of all subcontractors and major material and equipment suppliers with contracts greater than Five Thousand Dollars (\$5,000.00). The list shall include the actual final contract value of the contractor's and each subcontractors' work. In addition, a copy of the contractor's final application for payment with a cost breakdown of all categories of work shall be provided to Landlord.

(iii) Copies of final unconditional lien waivers from Tenant's general contractor, each subcontractor and any material supplier who provided materials, labor and/or services during the construction of Tenant's Work, and any person who has filed a preliminary lien notice with the State's registry. Tenant shall include a copy of the State registry of preliminary lien notices demonstrating that all rights to claim have been removed. In the event of a dispute, Tenant shall provide to Landlord reasonable evidence that any lien rights have been bonded over and Tenant is contesting the disputed items in good faith and by appropriate proceedings, or upon evidence of expiration of statute of limitation for filing mechanics liens.

(iv) A copy of the Certificate of Occupancy issued to Tenant for the Leased Premises, if applicable.

### **SECTION 6.03. CONSTRUCTION LIEN.**

(a) Tenant may not cause, suffer or permit, and shall have no authority to file any liens for labor or materials on the interest of either Landlord or the lessor under any ground lease in the Leased Premises or the Building or Development. Notwithstanding anything in this Lease, the interest of Landlord shall not be subject to any liens for improvements made by Tenant. All other persons contracting with Tenant for the destruction or removal of any facilities or any other improvements or for the erection, installation, alteration or repair of any facilities or other improvements on or about the Leased Premises, and all materialmen, contractors, subcontractors, mechanics and laborers are charged with notice to Tenant and to Tenant's interest in the Leased Premises to secure payment of any bill for work done or materials furnished at the request or instruction of Tenant. Nothing in this Lease to the contrary shall be construed as constituting a consent, request or requirement by Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to the Leased Premises or to any buildings or improvements thereon, or to any part thereof. Notwithstanding anything in this Lease to the contrary, or in any other agreement signed by Landlord, neither this Lease nor any other agreement by Landlord shall be construed as evidencing, indicating, or causing an appearance that any erection, construction, alteration or repair to be done, or caused to be done, by Tenant was in fact for the immediate use and benefit of Landlord. Neither any requirement in this Lease for Tenant to perform any construction work in the Leased Premises nor Landlord's participation in the plan review and approval process should be deemed to make Tenant an agent of Landlord for any purpose, including without limitation, in carrying out the construction work required by this Lease. Any such construction work shall be done exclusively for the benefit of Tenant, is not performed for or on behalf of Landlord, and Landlord receives no benefit from such work. As of Delivery of Possession of the Leased Premises, Tenant shall be required to make improvements to the Leased Premises for Tenant's Permitted Use.

(b) Where progress or conditional waivers apply and/or Landlord or Tenant is paying Tenant's contractors, subcontractors or materialmen in progress payments, Tenant shall not permit any of Tenant's contractors, subcontractors or materialmen to continue any work on the Leased Premises or deliver any materials to the Leased Premises unless and until they have first executed waivers, stipulations and other instruments as Landlord may require in Landlord's sole discretion. In states or commonwealths where a waiver of or stipulation against such liens may be filed in court or of public record, Tenant shall not permit its contractors, subcontractors or materialmen to commence any work on, or deliver any materials to, the Leased Premises unless and until Landlord is in receipt of written waivers of, or stipulations against, mechanics' liens properly executed and filed in court or of public record in accordance with the laws of the state or commonwealth where the Building or Development is located.

(c) Tenant shall notify Landlord in writing within five (5) days of Tenant receiving notice of any lien filed. Tenant may contest the lien in good faith, but even if Tenant contests the lien, within ten (10) days after the lien is filed, Tenant shall have the lien released of record by payment, bond, court order, or otherwise. If Tenant fails to release of record any such lien within the above period, Landlord, in Landlord's sole discretion, may elect to pay the claim or post a bond.



Tenant shall indemnify Landlord against any loss or expenses incurred as a result of the assertion of any lien prohibited by this Section 6.03. Any payments, costs and expenses, including without limitation attorneys' fees and expenses incurred by Landlord, and an administrative fee equal to Three Thousand Dollars (\$3,000.00) to reimburse Landlord for any administrative expenses in connection with such lien, shall be paid by Tenant, as Additional Rent, within thirty (30) days of receipt of invoice from Landlord, together with interest at the default rate from the dates such amounts are incurred. Tenant agrees that the above sum is a reasonable fee as liquidated damages for Tenant's failure to release of record any such lien as required by this Lease.

#### **SECTION 6.04. CONSTRUCTION CRITERIA.**

Upon Landlord's approval of Tenant's plans, Tenant shall coordinate Tenant's Work within the Leased Premises with all work being performed by Tenant's licensed contractor. Landlord shall have the option to perform Tenant's Work. Tenant's Work shall not commence until Landlord's approval of Tenant's plans. Tenant's Work shall not interfere with the operation of other tenants of the Development or interfere with or delay the completion of other work in the Development. Tenant shall comply with and shall cause its contractors and subcontractors to comply with, all reasonable rules and regulations of the Development, including without limitation construction procedures and regulations set forth by the local governmental code or by Landlord, at their sole and absolute discretion, and by the criteria set forth in this Article VI. Landlord may require Tenant, or Tenant's contractor, to furnish payment and performance bonds or any other security satisfactory to Landlord for the prompt and faithful performance of Tenant's Work, assuring completion of Tenant's Work and conditioned that Landlord shall be held harmless from payment of any claim either by way of damages or liens on account of bills for labor or material in connection with Tenant's Work.

### **ARTICLE VII. PERMITTED USE**

#### **SECTION 7.01. PERMITTED USE OF LEASED PREMISES.**

Tenant shall use and occupy the Leased Premises during the continuance of this Lease solely for the Permitted Use set forth in Section 1.01(F) and shall not use, permit or suffer the use of the Leased Premises for any other business or purpose without the prior written consent of Landlord. Tenant shall promptly comply with all present or future laws, ordinances, lawful orders and regulations affecting the Leased Premises and the cleanliness, safety, occupancy and use of the Leased Premises. Tenant shall not make any use of the Leased Premises which shall cause cancellation or an increase in the cost of any insurance policy covering the Leased Premises. Tenant shall not keep or use on the Leased Premises any article, item, or thing which is prohibited by the standard form of fire insurance policy. Tenant shall not commit any waste upon the Leased Premises and shall not conduct or allow any business, activity, or thing on the Leased Premises which is an annoyance or causes damage to Landlord, to other subtenants, occupants, or users of the Improvements, or to occupants of the vicinity. Tenant shall comply with and abide by all laws, ordinances, and regulations of all municipal, county, state, and federal authorities which are now in force, or which may hereafter become effective with respect to use and occupancy of the Leased Premises. Landlord represents, to the best of its knowledge and understanding, without duty of inquiry, that upon Delivery of Possession, the Building shall comply with all currently applicable laws, ordinances and regulations of municipal, county, state and federal authorities.

#### **SECTION 7.02. HAZARDOUS SUBSTANCES.**

Tenant shall not use, produce, store, release, dispose or handle in or about the Leased Premises or transfer to or from the Leased Premises (or permit any other party to do such acts) any Hazardous Substance (as defined herein) except in compliance with all applicable Environmental Laws (as defined herein). Tenant shall not construct or use any improvements, fixtures or equipment or engage in any act on or about the Leased Premises that would require the procurement of any license or permit pursuant to any Environmental Laws. Tenant shall immediately notify Landlord of (i) the existence of any Hazardous Substance on or about the Leased Premises that may be in violation of any Environmental Laws (regardless of whether Tenant is responsible for the existence of such Hazardous Substance), (ii) any proceeding or investigation by any governmental authority regarding the presence of any Hazardous Substance on the Leased Premises or the migration thereof to or from any other property, (iii) all claims made or threatened by any third party against Tenant relating to any loss or injury resulting from any Hazardous Substance, or (iv) Tenant's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Leased Premises. "Environmental Law(s)" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation, the federal Comprehensive Environmental Response, Compensation, and Liability Act. "Hazardous Substance(s)" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. If it is determined that any Hazardous Substance exists on the Leased Premises resulting from any act of Tenant or its employees, agents, contractors, licensees, subtenants or customers, then Tenant shall immediately take necessary action to cause the removal of such substance and shall remove such within ten (10) days after discovery. Notwithstanding the above, if the Hazardous Substance is of a nature that cannot be reasonably removed within ten (10) days Tenant shall not be in default if Tenant has commenced to cause such removal and proceeds diligently thereafter to complete removal, except that in all cases, any Hazardous Substance must be removed within sixty (60) days after discovery thereof. Furthermore, notwithstanding the above, if in the good faith judgment



of Landlord, the existence of such Hazardous Substance creates an emergency or is of a nature which may result in immediate physical danger to persons at the Development or the Building, Landlord may enter upon the Leased Premises and remove such Hazardous Substances and charge the cost thereof to Tenant as Additional Rent.

#### **ARTICLE VIII. OPERATION AND MAINTENANCE OF COMMON AREAS**

##### **SECTION 8.01. CONSTRUCTION AND CONTROL OF COMMON AREAS.**

All parking areas, driveways, entrances and exits thereto, and other facilities furnished by Landlord in or near the Building or Development, including, if any, employee parking areas, truck ways, loading docks, mail rooms or mail pickup areas, pedestrian sidewalks and hallways, landscaped areas, retaining walls, stairways, restrooms and other areas and Improvements provided by Landlord for the general use in common with all tenants, their officers, agents, employees and customers ("Common Area(s)"), shall at all times be subject to the exclusive control and management of Landlord, which Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas and Common Facilities. Landlord shall have the right to improve, construct, maintain and operate lighting and drainage facilities on or in all such areas and Improvements; to police the same, from time to time to change the area, level, location and arrangement of parking areas and other facilities hereinabove referred to; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to close temporarily all or any portion of such areas or facilities to such extent as may, in Landlord's sole discretion, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to assign reserved parking spaces for exclusive use of certain tenants or for customer parking, to discourage non-employee and non-customer parking; and to do and perform such other acts in and to such areas and Improvements as, in the exercise of good business judgment, Landlord shall determine to be advisable with a view toward maintaining of appropriate convenience uses, amenities, and for permitted uses by tenants, their officers, agents, employees and customers. Landlord shall operate and maintain the Common Areas and Common Facilities in such a manner as it, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation, security and maintenance of the Common Areas and Common Facilities. The Building and/or Development signs, traffic control signs and other signs determined by Landlord to be in the best interest of the Development shall be considered part of the Common Areas and Common Facilities.

For purposes of this Article VIII, "Common Facilities" shall mean all areas, space, equipment and special services available for the common or joint use and/or benefit of any of the occupants of the Building or Development or their employees, agents, servants, customers and other invitees, including without limitation, parking areas, access roads, driveways, retaining walls, landscaped areas, truck serviceways or tunnels, loading docks, pedestrian lanes, courts, stairs, ramps and sidewalks, comfort stations, washrooms, restrooms, janitorial rooms, transformer vaults, electrical rooms, sprinkler riser rooms, common equipment storage rooms, informational booths, canopies, utility systems, energy management systems, roof drains, sumps and gutters, walls and fences, and elevators and air-walkways, if any.

##### **SECTION 8.02. LICENSE.**

All Common Areas and Common Facilities not within the Leased Premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of such areas be diminished, Landlord shall not be subject to any liabilities nor shall Tenant be entitled to any compensation or diminution or abatement of Base Monthly Rent and/or Additional Rent, nor shall such diminution of such areas be deemed constructive or actual eviction, so long as such revocations or diminutions are deemed by Landlord to serve the best interests of the Building and/or Development. The term of such revocable license shall be coterminous with this Lease and shall not be revoked or terminated during the Rental Term of this Lease.

#### **ARTICLE IX. ALTERATIONS, SIGNS, LOCKS & KEYS**

##### **SECTION 9.01. ALTERATIONS.**

Tenant shall not make or cause to be made any alterations or additions to the Leased Premises or any part thereof without the prior written consent of Landlord, in Landlord's sole discretion. Any additions to, or alterations of the Leased Premises, except movable furniture, equipment and trade fixtures, shall become a part of the realty and belong to Landlord upon the expiration of the Rental Term, or any Rental Term extension or renewal thereof, or other termination or surrender of the Leased Premises to Landlord. Tenant shall promptly pay all contractors and materialmen so as to minimize the possibility of a lien attaching to the Leased Premises, and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after written request by Landlord. Landlord reserves the right to enter the Leased Premises to post, and keep posted, notices of non-responsibility for any such liens.





**SECTION 9.02. REMOVAL BY TENANT.**

In the event of any Landlord-approved remodeling by Tenant, Landlord reserves title to all removed materials, building components, plumbing and HVAC equipment, except that Tenant shall remove from the Leased Premises those items which Landlord chooses not to salvage. All new alterations, decorations, additions and improvements made by Tenant beyond costs thereof paid by Landlord, if any, shall be deemed to belong to Tenant, except for any permanent fixture attached to the Leased Premises. However, none of such items may be removed from the Leased Premises and shall become the property of Landlord upon the expiration or prior termination of the Rental Term, or any Rental Term extension or renewal thereof, or other termination or surrender of the Leased Premises to Landlord. Tenant shall not remove any of such alterations, decorations, additions, improvements, and trade fixtures installed by Tenant. If Tenant is not delinquent in its payment of Base Monthly Rent, Operating Expense payments and Additional Rent, Landlord may allow Tenant to remove any of such alterations, decorations, additions, improvements, and trade fixtures installed by Tenant.

**SECTION 9.03. SIGNS.**

Landlord shall provide suite and building directory signage for the Leased Premises. Tenant shall not place, or cause to be placed or maintained, on any exterior door, wall or window of the Leased Premises, or elsewhere in the Building, any sign, awning, marquee, decoration, lettering, attachment, canopy, advertising matter or other thing of any kind, and shall not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises without Landlord's prior written approval, in Landlord's sole and absolute discretion. Tenant shall maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved in good condition and repair at all times. Tenant agrees to construct and install Tenant's signage on the Leased Premises within thirty (30) days of Landlord's approval of Tenant's signage. Tenant shall be responsible for all costs associated with the fabrication, installation and maintenance of all signage and all signage shall be in accordance with all applicable governing municipal requirements. In the event Tenant fails to construct and install Tenant's signage within thirty (30) days of Landlord's approval of Tenant's signage, Tenant shall pay to Landlord a penalty of Fifty Dollars (\$50.00) per day for each day Tenant fails to install signage on the Leased Premises. Such penalty shall be paid by Tenant within ten (10) days of receipt of invoice from Landlord. If Tenant fails to pay such invoice when due, Tenant shall pay interest and a late fee in accordance with Section 3.06. Landlord may, at Tenant's cost, and without liability to Tenant, enter the Leased Premises and remove any item erected in violation of this Section 9.03. Landlord has established rules and regulations governing the size, type and design of all signs, decorations, etc., which are specifically set forth in accordance with the final construction documents approved by Landlord.

**SECTION 9.04. REMOVAL OF TENANT SIGNS.**

At the end of the Rental Term, or any Rental Term extension or renewal thereof, or in the event Landlord or Tenant terminates this Lease, or lack of occupancy by Tenant, Tenant shall immediately, at Tenant's sole cost and expense, remove all signage on or within the Leased Premises and repair any and all damage from the removal of any Tenant signage prior to vacating the Leased Premises. Tenant shall patch and repair, in a manner acceptable to Landlord, all holes and penetrations and restore all finishes to a "like-new" condition as determined by Landlord's architect in Landlord's sole and absolute discretion. In the event Tenant fails to remove its signage within ten (10) days of the expiration, vacation or earlier termination of this Lease, Tenant shall pay to Landlord a penalty of Fifty Dollars (\$50.00) per day for each day Tenant fails to remove its signage from the Leased Premises. Such penalty shall be paid by Tenant within ten (10) days of receipt of invoice from Landlord. If Tenant fails to pay such invoice when due, Tenant shall pay interest and a late fee in accordance with Section 3.06.

**SECTION 9.05. COMPUTERIZED ELECTRONIC SIGNS.**

Subject to the approval of the city and any other governmental agency or body having jurisdiction thereover, Landlord may revise, reconstruct or replace any computerized electronic identification sign for the Building and/or Development (the "ID Sign"), if any, containing an electronic message panel that permits the pre-programmed display of trade name, product and service identification, advertising, messages and announcements ("Messages") on a periodic and rotational basis. The ID Sign may display Messages in such time increments as Landlord shall elect from time to time in its sole discretion. The use and operation of the ID Sign shall remain under the exclusive control of Landlord and shall further be subject to all applicable governmental ordinances, regulations and requirements, including, without limitation, any restrictions deemed appropriate by the zoning administrator for the city.

**SECTION 9.06. LOCKS AND KEYS.**

Landlord shall have the right, but not the obligation, to install a card key system for access to the Building and parking area and shall issue appropriate card keys to Tenant and Tenant's authorized employees. Landlord shall initially provide keys or key cards for entry doors to the Leased Premises. From time to time, Tenant may change locks or install other locks on doors, but if Tenant does, Tenant must provide Landlord with duplicate keys or key cards, if any, within twenty-four (24) hours after such change or installation. Tenant shall, upon termination of this Lease, immediately deliver to Landlord all the keys and/or key cards to the Building and the Leased Premises including any interior offices, toilet rooms, combinations to built-in safes, etc. which shall have been furnished to or by Tenant or are in the possession of Tenant.



**ARTICLE X. MAINTENANCE AND REPAIRS; ALTERATIONS, ACCESS**

**SECTION 10.01. LANDLORD'S OBLIGATION FOR MAINTENANCE.**

Subject to the exception and limitations set forth in Section 10.02(d) herein below, Landlord shall maintain and repair: (1) the areas outside the Leased Premises including hallways, stairways, elevators, public restrooms, if any, general landscaping, Landlord owned parking areas, driveways and walkways; (2) the Building structure including the roof, exterior walls and foundation; and (3) central plumbing, electrical, heating, and air conditioning systems. However, if the need for such repairs or maintenance results from any careless, wrongful or negligent act or omission of Tenant, Tenant shall pay the entire cost of any such repair or maintenance including a reasonable charge to cover Landlord's supervisory overhead. Landlord shall not be obligated to repair any damage or defect until receipt of written Notice from Tenant of the need of such repair and Landlord shall have a reasonable time after receipt of such Notice in which to make such repairs. Tenant shall give immediate Notice to Landlord in case of fire or accidents in the Leased Premises or in the Building of which the Leased Premises is a part or of defects therein or in any fixtures or equipment provided by Landlord.

**SECTION 10.02. TENANT'S OBLIGATIONS FOR MAINTENANCE.**

(a) Tenant shall provide its own janitorial service and keep and maintain the Leased Premises, including the interior wall surfaces and windows, floors, floor coverings and ceilings, in a clean, sanitary and safe condition in accordance with applicable laws of the State where the Leased Premises is located and in accordance with all directions, rules and regulations of the health officer, fire marshal, insurance underwriter or rating bureau designated by Landlord, building inspector, or other proper officials of the governmental agencies having jurisdiction, at the sole cost and expense of Tenant, and Tenant shall comply with all requirements of law, ordinance and otherwise, affecting the Leased Premises.

(b) Tenant shall pay, when due, all claims for labor or material furnished for work under Sections 9.01, 9.02 and 10.02(a) hereof, to or for Tenant, at or for use in the Leased Premises, and shall bond such work to prevent assertion of claims against Landlord unless Landlord waives such requirement in writing.

(c) Tenant agrees to be responsible for all furnishings, fixtures and equipment (including the repair and maintenance) and/or any damages caused by any malfunctioning fixtures and equipment located upon the Leased Premises from time to time and shall replace carpeting within the Leased Premises if same shall be damaged by tearing, burning, or stains resulting from spilling anything on such carpet, reasonable wear and tear excepted. Tenant further agrees to use chair mats or floor protectors wherever it uses chairs with wheels or casters on carpeted areas.

(d) Tenant shall be responsible for the maintenance, repair and replacement of any HVAC mini split systems for server rooms and/or any other specialty HVAC equipment serving any lab or lab equipment.

**SECTION 10.03. SURRENDER OF LEASED PREMISES AND RIGHTS UPON TERMINATION.**

(a) This Lease, and the tenancy hereby created, shall cease and terminate at the end of the Rental Term hereof, or any Rental Term extension or renewal thereof, without the necessity of any Notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives Notice to vacate the Leased Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting summary recovery of possession of the Leased Premises from Tenant holding over to the same extent as if statutory Notice has been given.

(b) Upon termination of this Lease at any time and for any reason whatsoever, Tenant shall surrender and deliver up the Leased Premises, including the items constituting Tenant's Work, to Landlord in the same condition as when the Leased Premises was delivered to Tenant or as altered as provided in Section 9.01, ordinary wear and tear excepted. Upon request of Landlord, Tenant shall promptly remove all personal property from the Leased Premises and repair any damage caused by such removal. Obligations under this Lease relating to events occurring or circumstances existing prior to the date of termination shall survive the expiration or other termination of the Rental Term of this Lease. Liabilities accruing after the date of termination are defined in Section 13.05, Section 19.01 and Section 19.02.

**ARTICLE XI. INSURANCE AND INDEMNITY**

**SECTION 11.01. TENANT'S LIABILITY INSURANCE AND INDEMNITY.**

Tenant shall, during the entire Preliminary Term, Rental Term, and any Rental Term extension or renewal thereof, keep in full force and effect a policy of commercial general liability insurance with respect to the Leased Premises, with a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence. The policy shall have a form #CG 20 11 or #CG 20 26 endorsement, or its equivalent, which names Tenant as Insured and Landlord, property manager (i.e., Woodbury Corporation) and any other





persons, firms or corporations designated by Landlord as named “Additional Insured(s)” and shall contain a clause that the insurer shall not cancel or change the insurance without first giving Landlord ten (10) days prior written Notice. Such insurance shall include an endorsement permitting Landlord and property manager to recover damage suffered due to act or omission of Tenant, notwithstanding being named as an Additional Insured party in such policies. The insurance shall be with an insurance company approved by Landlord and a copy of the paid-up policy evidencing such insurance or a certificate of insurer certifying to the issuance of such policy, and providing copies of all endorsements, shall be delivered to Landlord prior to Delivery of Possession and at least thirty (30) days prior to any policy renewal and/or modification thereof. If Tenant fails to provide such insurance, Landlord may do so and charge the same to Tenant. Tenant’s liability insurance shall contain primary and non-contributory language that confirms Tenant’s liability insurance is primary for the Leased Premises. Landlord’s insurance shall not contribute to liability losses within the Leased Premises.

**SECTION 11.02. FIRE AND CASUALTY INSURANCE.**

(a) Subject to the provisions of this Section 11.02, Landlord shall secure, pay for, and at all times during the Rental Term, and any Rental Term extension or renewal thereof, maintain fire and casualty extended coverage insurance providing coverage upon the Building Improvements in an amount equal to the full insurable replacement value thereof (as determined by Landlord). Such insurance shall include coverage for twelve (12) months Base Monthly Rent and Operating Expenses as well as such additional endorsements as may be required by Landlord’s lender or Landlord. All insurance required hereunder shall be written by reputable, responsible companies licensed in the State of Utah. Tenant shall have the right, at its request at any reasonable time, to be furnished with copies of the insurance policies then in force pursuant to this Section 11.02, together with evidence that the premiums therefor have been paid.

(b) Tenant agrees to maintain, at its own expense, such fire and casualty insurance coverage as Tenant may desire or require in respect to Tenant’s personal property, equipment, furniture, fixtures or inventory and Landlord shall have no obligation in respect to such insurance or losses. All property kept or stored on the Leased Premises by Tenant or with Tenant’s permission shall be so done at Tenant’s sole risk and Tenant shall indemnify Landlord against and hold it harmless from any claims arising out of loss or damage to the same including, without limitation, any subrogation claims by Tenant’s insurers. In addition, Tenant shall keep in force workmen’s compensation or similar insurance to the extent required by law.

(c) Tenant shall not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or cause cancellation thereof or increase the insurance risk or increase the insurance premiums in effect just prior to the Rental Term Commencement Date of this Lease. Tenant agrees to pay as Additional Rent the total amount of any increase in the insurance premium of Landlord over that in effect prior to the Rental Term Commencement Date of this Lease resulting from Tenant’s use of the Leased Premises. If Tenant installs any electrical or other equipment which overloads the lines in the Leased Premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of Landlord’s insurance.

(d) Tenant shall be responsible for all glass breakage in or about the Leased Premises, unless caused by Landlord, its employees or agents, and agrees to immediately replace all glass broken or damaged during the Rental Term, and any Rental Term extension or renewal thereof, with glass of the same quality as that broken or damaged. Landlord may replace, at Tenant’s expense, any broken or damaged glass if not replaced by Tenant within five (5) days after such damage.

**SECTION 11.03. WAIVER OF SUBROGATION.**

Each Party hereto does hereby remise, release and discharge the other Party hereto and any officer, agent, employee or representative of such Party, of and from any liability whatsoever hereafter arising from any insurable loss, damage or injury caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is carried or required to be carried by the injured Party pursuant to the terms of this Lease; provided however, if either Party fails to maintain such insurance, such release and discharge is full and without limitation. In addition, Landlord and Tenant mutually agree with respect to any loss generally covered under the classification (SCO) special form property insurance or its equivalent or by any peril actually covered under the property insurance maintained by such Party, the one suffering said loss releases, on behalf of itself and its insurance companies, the other of and from any and all claims with respect to such loss; and they shall have no right of subrogation against the other on account thereof. Such insurance coverages maintained or required to be maintained shall be deemed to include any deductible or self-insured retention in effect or permitted pursuant to this Lease. The foregoing provisions shall govern over any conflicting provision in this Lease.

**SECTION 11.04. INDEMNIFICATION.**

Subject to the terms and conditions set forth in Section 11.03, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises or from the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part, provided Tenant’s indemnity obligation arises only to the extent the



claim, action, damages, liability, expense, or other loss is caused by or results from any act or omission of Tenant, its agents, contractors, employees, servants, sublessees, concessionaires or business invitees, and not to the extent caused by the negligence of Landlord, and only to the extent not covered by Landlord's casualty or liability insurance required by this Article XI. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by either Party in defending itself or enforcing the covenants and agreements of this Lease.

**SECTION 11.05. ALTERATION OR REPLACEMENT OF TENANT INSURANCE.**

Certificates of replacement policies will be provided at least ten (10) days after the expiration of any policy. Tenant shall have the right to self-insure against any and all of the risks referred to in this Lease pursuant to the terms of Section 11.06. Whenever Tenant elects to self-insure pursuant to this Article 11, Tenant shall, for all purposes of this Lease, be deemed to be carrying the insurance required to be carried by Tenant under this Lease.

**SECTION 11.06. SELF-INSURANCE.**

Notwithstanding anything to the contrary contained in Article 11 of this Lease, at any time during the Rental Term of this Lease, Tenant shall have the right, at its option, to elect to self-insure for any and/or all of the insurance required to be maintained by Tenant under this Lease provided Tenant complies with the self-insurance requirement set forth in Exhibit "C" attached hereto.

**ARTICLE XII. UTILITY CHARGES**

**SECTION 12.01. OBLIGATIONS OF LANDLORD.**

Unless otherwise agreed in writing by the Parties, during the Rental Term of this Lease Landlord shall cause to be furnished to the Leased Premises during Standard Operating Hours as set forth in Section 1.01(Q), the following utilities and services, the cost and expense of which shall be included in Operating Expenses and paid for by Landlord:

- (a) Electricity, water, gas and sewer service.
- (b) Telephone connection to the Building demarcation, but not including telephone connections from the Building to the Leased Premises, which shall be Tenant's sole responsibility along with telephone stations and equipment (it being expressly understood and agreed that Tenant shall be responsible for the ordering and installation of telephone lines and equipment which pertain to the Leased Premises).
- (c) Heat and air-conditioning to such extent and to such levels as, in Landlord's judgment, is reasonably required for the comfortable use and occupancy of the Leased Premises subject however to any limitations imposed by any government agency. The Parties agree and understand that the above heat and air-conditioning shall be provided during Standard Operating Hours.
- (d) Snow removal and parking area sweeping services for parking areas owned by Landlord.
- (e) Elevator service.
- (f) Building systems maintenance services.

**SECTION 12.02. OBLIGATIONS OF TENANT.**

Tenant shall arrange for and shall pay the entire cost and expense of all telephone and data installation and services, equipment and monthly use charges, electric and fluorescent light bulbs, and all other materials and services not expressly required to be provided and paid for pursuant to the provisions of Section 12.01. Tenant covenants to use good faith efforts to reasonably conserve utilities by turning off lights and equipment when not in use and taking such other reasonable actions in accordance with sound standards for energy conservation. Additional limitations of Tenant are as follows:

- (a) Tenant shall not, without the written consent of Landlord, which consent shall not be unreasonably withheld, use any apparatus or device on the Leased Premises using current in excess of 208 volts which shall in any way or to any extent increase the amount of electricity or water usually furnished or supplied for use on the Leased Premises for the Permitted Use designated in Section 1.01(F), nor connect with electrical current, except through existing electrical outlets in the Leased Premises, or water pipes, any apparatus or device, for the purposes of using electric current or water;

- (b) If Tenant shall require water or electric current in excess of that usually furnished or supplied for use of the Leased Premises, or for purposes other than those designated in Section 1.01(F), Tenant shall first procure the written consent of Landlord for the use thereof, which consent Landlord may refuse and/or Landlord may cause a water meter or electric current meter to be



installed in the Leased Premises, so as to measure the amount of water and/or electric current consumed for any such use. The cost of such meters and of installation maintenance, and repair thereof shall be paid for by Tenant and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such water and electric current consumed as shown by such meters, at the rates charged for such service by the city in which the Building is located or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the water and electric current so consumed; and

(c) If and where heat generating devices are used in the Leased Premises which affect the temperature otherwise maintained by the air conditioning system, Landlord reserves the right to install additional or supplementary air conditioning units for the Leased Premises, and the entire cost of installing, operating, maintaining and repairing the same shall be paid by Tenant to Landlord promptly after demand by Landlord.

**SECTION 12.03.**  
Intentionally Omitted.

**SECTION 12.04. LIMITATIONS ON LANDLORD'S LIABILITY.**

Landlord shall not be liable for, and Tenant shall not be entitled to terminate this Lease or to effectuate any abatement or reduction of Base Monthly Rent by reason of Landlord's failure to provide or furnish any of the foregoing utilities or services if such failure was reasonably beyond the control of Landlord. In no event shall Landlord be liable for loss or injury to persons or property, however, arising or occurring in connection with or attributable to any failure to furnish such utilities or services even if within the control of Landlord.

**ARTICLE XIII. ESTOPPEL OR SUBORDINATION, NON-DISTURBANCE AND ATTORNNMENT**

**SECTION 13.01. ESTOPPEL OR SNDA.**

Tenant agrees, within ten (10) days after request therefor by Landlord, to execute a Landlord or Landlord's lender recordable form of Estoppel (as defined herein) and/or a recordable form of Subordination, Non-Disturbance and Attornment Agreement ("SNDA") and deliver to Landlord a statement in writing, certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, stating the modifications;
- (b) the Rental Term Commencement Date;
- (c) that rent is paid currently without any off-set or defense thereto;
- (d) the amount of rent, if any, paid in advance; and
- (e) that there are no uncured defaults by Landlord or stating those claimed by Tenant (collectively "Estoppel").

Tenant's failure to execute and deliver such Estoppel and/or SNDA within the ten (10) day period shall be an event of default which is subject to the remedies set forth in Section 13.05 herein and further deemed to make conclusive and binding upon Tenant the statements contained therein as true and correct without exception. Unless Tenant shall have notified Landlord in writing within the ten (10) day period of any qualifications Tenant may have to the aforesaid statements, then anyone participating with Landlord in the sale or mortgage shall have the right to rely on the accuracy of such statement.

**SECTION 13.02. ATTORNNMENT.**

In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Leased Premises, or in the event Landlord conveys in a sale all of its rights and duties in and to this Lease and the Leased Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

**SECTION 13.03. SUBORDINATION.**

Tenant agrees that this Lease shall be subordinate to any first mortgages or deeds of trust that may hereafter be placed upon the Leased Premises and to any and all advances to be made thereunder, and to the interest thereon, and any Rental Term renewals, replacements and extensions thereof, provided the mortgagees or trustees named in such mortgages or deeds of trust shall agree to recognize this Lease in the event of foreclosure if Tenant is not in default.

**SECTION 13.04. MORTGAGEE SUBORDINATION.**

Tenant hereby agrees that this Lease shall, if at any time requested by Landlord or any lender in respect to Landlord's financing of the Development or the Building in which the Leased Premises is located or any portion hereof, be made superior to any mortgage or deed of trust that may have preceded this Lease.





**SECTION 13.05. REMEDIES.**

Failure of Tenant to execute and deliver any of the above instruments, within ten (10) days after written request to do so by Landlord, shall constitute a breach of this Lease which entitles Landlord, at its option, to cancel this Lease and terminate Tenant's interest therein.

**ARTICLE XIV. ASSIGNMENT**

**SECTION 14.01. CONSENT REQUIRED.**

Tenant shall not assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises, or any part thereof, nor mortgage nor encumber this Lease or any part of the Leased Premises, nor enter into licenses or concession agreements or in other manner permit the occupation of or sharing of possession of any part of the Leased Premises, or any assignment of this Lease or any estate or interest therein (all of the foregoing being hereafter referred to as an "Assignment") without first obtaining the prior written consent of Landlord. The consent of Landlord shall not relieve Tenant from continuing liability for all obligations under this Lease. Any Assignment by operation of law or if Tenant is a corporation, unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of fifty percent (50%) shall be deemed an Assignment within the meaning of this Article XIV. An Assignment consummated in violation of the provisions of this Article XIV shall be null and void and of no force or effect. Tenant shall provide to Landlord written Notice of any Assignment in accordance with this Section 14.01 within thirty (30) days of such Assignment.

**SECTION 14.02. OPTION TO TERMINATE.**

In the event Tenant desires to enter into an Assignment, Tenant shall serve written Notice upon Landlord; and Landlord shall have sixty (60) days after written Notice to elect whether to approve such Assignment, reject such Assignment or terminate this Lease. Should Landlord elect to terminate, Landlord shall so notify Tenant in writing and Tenant shall have fifteen (15) days either to rescind the request, or this Lease shall be deemed terminated effective at the end of the calendar month when Landlord so elects to terminate. Tenant's Notice shall be accompanied by a copy of a bona fide offer from a potential "Assignee" specifying the terms of any offer from such Assignee.

**SECTION 14.03. CONDITIONS OF CONSENT.**

(a) Should consent be granted, Tenant shall cause the Assignee to execute an Assignment agreement to be bound by all the terms, covenants and conditions contained in this Lease as though Assignee had originally executed this Lease as Tenant.

(b) Tenant shall pay to Landlord any and all consideration received by Tenant for such Assignment to the extent such consideration exceeds the remaining book value of Tenant's leasehold improvements paid for by Tenant, whether paid in lump sum or in rent exceeding Base Monthly Rent required under this Lease.

(c) At no time, when Tenant is in default in the performance of any covenant of this Lease, or in payment of Base Monthly Rent or any other matured sums payable hereunder, shall any Assignment be approved or permitted, nor shall the Notice provision of Section 14.02 limit the right to declare default and pursue other remedies provided for in this Lease or under the laws of the State of Utah.

**SECTION 14.04. STANDARDS OF REASONABLENESS IN WITHHOLDING CONSENT.**

In determining whether to grant consent, Landlord may consider any statutory or common law tests including, but not limited to, the following tests, each of which if applicable in Landlord's sole discretion, shall be deemed a reasonable ground for rejection:

(a) Any Assignment disapproved by Landlord's lender;

(b) Any Assignment resulting in a change of Permitted Use from that specified in Section 1.01(F);

(c) Any Assignment to an Assignee who lacks good reputation, successful business experience in Tenant's type of business and substantial means and financial capacity adequate to conduct such a business;

(d) Any Assignment which would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease, financing agreement or other agreement relating to the Building;

(e) Any Assignee or subtenant would be paying less Base Monthly Rent that is quoted by Landlord at the time of such Assignment or subleasing for comparable space in the Building for a comparable rental term, calculated using a present value analysis.



However, any Assignment to a parent corporation, or to a successor corporation acquiring substantially all the assets of Tenant and intending to operate Tenant's business under the same trade name, shall be deemed reasonable.

Consent by Landlord to one (1) or more Assignments shall not constitute a waiver or consent to any subsequent Assignment nor exhaust Landlord's rights under this Article XIV; nor shall acceptance of Base Monthly Rent, Operating Expense payments, Additional Rent or any other payment from Assignee be deemed a waiver or consent by Landlord or an acceptance of such Assignment. Any Assignment without such Landlord's consent shall be void and of no force and effect and shall confer no estate or benefit on anyone, nor shall Landlord be required to terminate this Lease in order to invalidate such Assignment.

**SECTION 14.05. CONTINUING LIABILITY OF TENANT.**

Neither the consent of Landlord, nor any otherwise permitted Assignment or subletting, shall relieve Tenant from continuing liability under this Lease, including liability for Base Monthly Rent and Additional Rent as provided in this Lease, for which Tenant shall remain obligated.

**SECTION 14.06. DOCUMENTATION OF ASSIGNMENT.**

Whether the documentation of any such Assignment shall be prepared by Tenant or by Landlord or its attorneys, all costs and reasonable attorneys' fees related to considering such Assignment shall be paid by Tenant, which fees payable to Landlord shall in no case be less than One Thousand Five Hundred Dollars (\$1,500.00) per Assignment considered, payable by Tenant upon demand as Additional Rent.

**SECTION 14.07. VOIDABLE ASSIGNMENT.**

Any assignment, subletting, occupancy or use without the prior written consent of Landlord shall be voidable in Landlord's sole and absolute discretion and shall constitute a default under this Lease. Tenant specifically understands and agrees that at any time Tenant is in default under the provisions of this Article XIV, Tenant shall have no right to assign or sublet Tenant's interest in this Lease and Landlord shall have no obligation to give approval or disapproval under this Article XIV should Tenant attempt an assignment or subletting while in default.

**ARTICLE XV. WASTE OR NUISANCE**

**SECTION 15.01. WASTE OR NUISANCE.**

Tenant shall not commit or suffer to be committed any waste upon the Leased Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant and/or occupant in the Building in which the Leased Premises may be located, or elsewhere within the Development or the Common Areas or Common Facilities.

**ARTICLE XVI. NOTICES**

**SECTION 16.01. NOTICES.**

Except as provided in Section 19.01, any notice, demand, request or other instrument which may be or is required to be given under this Lease ("Notice(s)") shall be personally delivered or mailed by United States certified mail, return receipt requested, postage prepaid, or via a nationally recognized overnight courier or expedited mail service, and shall be addressed (a) if to Landlord at the address set forth in Section 1.01(C), or at such other address as Landlord may designate by written Notice and (b) if to Tenant at the address set forth in Section 1.01(E) or at such other address as Tenant shall designate by written Notice. Notice shall be deemed effective upon delivery unless delivery is refused, unclaimed or cannot be made, in which case Notice shall be effective upon mailing. From time to time, a Party may specify any other address in the United States of America upon twenty (20) days' advance Notice thereof, given as provided herein, to the other Party hereto. Notices sent by facsimile transmission, electronic mail or any other method not specifically provided herein shall not satisfy the requirements of this Section 16.01. In order for Notices to be deemed received by Landlord, Tenant must include the details as outlined in Section 1.01(C), Section 6.01 and Section 6.02. No Party may have more than three (3) addresses for Notices at any time and Notices received by any one (1) address for a Party shall be deemed received by all addresses.

Notwithstanding the foregoing, any Notices Landlord is required or authorized to deliver to Tenant in order to advise Tenant of alleged violations of Tenant's covenants relating to advertising, signs, parking of automobiles, hours of operation, failure of Tenant to properly maintain or repair the Leased Premises, all as provided in, but not limited to, Articles VII, IX and X and Section 6.01 and Section 15.01, must be in writing but may be served upon Tenant by delivering a copy of such Notice to Tenant as above specified and delivering a copy of such Notice to one (1) of Tenant's managing employees at the Leased Premises.





**ARTICLE XVII. DESTRUCTION OF LEASED PREMISES**

**SECTION 17.01. DESTRUCTION.**

(a) If the Leased Premises is partially or totally destroyed by fire or other casualty insurable under standard fire insurance policies with extended coverage endorsement so as to become partially or totally untenable, the same shall be repaired or rebuilt as speedily as practical under the circumstances at the expense of Landlord, unless Landlord elects not to repair or rebuild as provided in subsection (b) of this Section 17.01. During the period required for restoration, a just and proportionate part of Base Monthly Rent, Additional Rent and other charges payable by Tenant hereunder shall be abated until the Leased Premises is repaired or rebuilt.

(b) If the Leased Premises is (i) rendered totally untenable by reason of an occurrence described in subsection 17.01(a), or (ii) damaged or destroyed as a result of a risk which is not insured under Landlord's fire insurance policies, or (iii) at least twenty percent (20%) damaged or destroyed during the last year of the Rental Term, or (iv) if the Building is damaged in whole or in part (whether or not the Leased Premises is damaged), to such an extent that Tenant cannot practically use the Leased Premises for its intended purpose, then and in any such events Landlord may at its option terminate this Lease by Notice in writing to Tenant within sixty (60) days after the date of such occurrence. Unless Landlord gives such Notice, this Lease shall remain in full force and effect and Landlord shall repair such damage at its expense as expeditiously as possible under the circumstances.

(c) If Landlord should elect or be obligated, pursuant to subsection 17.01(a), to repair or rebuild because of any damage or destruction, Landlord's obligation shall be limited to the original Building and any other work or Improvements which may have been originally performed or installed at Landlord's expense. If the cost of performing Landlord's obligation exceeds the actual proceeds of insurance paid or payable to Landlord on account of such casualty, Landlord may terminate this Lease unless Tenant, within fifteen (15) days after demand therefor, deposits with Landlord a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose. Tenant shall replace all work and improvements not originally installed or performed by Landlord at its expense.

(d) Except as stated in this Article XVII, Landlord shall not be liable for any loss or damage sustained by Tenant by reason of casualties mentioned hereinabove or any other accidental casualty.

**ARTICLE XVIII. CONDEMNATION**

**SECTION 18.01. CONDEMNATION.**

As used in this Section 18.01, the term "Condemnation Proceeding(s)" means any action or proceeding in which any interest in the Leased Premises or the Building is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or right of condemnation or by purchase or otherwise in lieu thereof. If the whole of the Leased Premises is taken through Condemnation Proceedings, this Lease shall automatically terminate as of the date possession is taken by the condemning authority. If in excess of twenty-five percent (25%) of the Leased Premises is taken, either Party hereto shall have the option to terminate this Lease by giving the other written Notice of such election at any time within thirty (30) days after the date of taking. If less than twenty-five percent (25%) of the space is taken and Landlord determines, in Landlord's sole discretion, that a reasonable amount of reconstruction thereof shall not result in the Leased Premises or the Building becoming a practical improvement reasonably suitable for use for the purpose for which it is designed, then Landlord may elect to terminate this Lease by giving thirty (30) days written Notice as provided hereinabove. In all other cases, or if neither Party exercises its option to terminate, this Lease shall remain in effect and the Base Monthly Rent and Additional Rent payable hereunder from and after the date of taking shall be proportionately reduced in proportion to the ratio of: (i) the area contained in the Leased Premises which is capable of occupancy after the taking; to (ii) the total area contained in the Leased Premises which was capable of occupancy prior to the taking. In the event of any termination or rental reduction provided for in this Section 18.01, there shall be a prororation of the Base Monthly Rent and Additional Rent payable under this Lease and Landlord shall refund any excess theretofore paid by Tenant. Whether or not this Lease is terminated as a consequence of Condemnation Proceedings, all damages or compensation awarded for a partial or total taking, including any sums compensating Tenant for diminution in the value of or deprivation of its leasehold estate, shall be the sole and exclusive property of Landlord, except that Tenant shall be entitled to any awards intended to compensate Tenant for expenses of locating and moving Tenant's operations to a new space.



**ARTICLE XIX. DEFAULT OF TENANT**

**SECTION 19.01. RIGHT TO RE-ENTER.**

In the event of any failure of Tenant to pay any Base Monthly Rent, Additional Rent and other charges due hereunder within ten (10) days after written Notice of such default shall have been mailed to Tenant, or any failure by Tenant to perform any other of the terms, conditions or covenants required of Tenant by this Lease within thirty (30) days after written Notice of such default shall have been mailed to Tenant by registered mail to Tenant's address as listed in Section 1.01(E) or to such address as Tenant has specified in writing, or if Tenant shall abandon the Leased Premises, or permit this Lease to be taken under any writ of execution, then Landlord, besides other rights or remedies it may have, shall have the right to declare this Lease terminated and the Rental Term ended and shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, without evidence of Notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Tenant hereby waives all compensation for the forfeiture of the Rental Term or its loss of possession of the Leased Premises in the event of the forfeiture of this Lease as provided for above. Any Notice that Landlord may desire or is required to give Tenant with reference to the foregoing provision may, in lieu of mailing, at the option of Landlord, be conspicuously posted for ten (10) consecutive days at the main entrance to or in front of the Leased Premises, and such Notice shall constitute a good, sufficient, and lawful Notice for the purpose of declaring a forfeiture of this Lease and for terminating all of the rights of Tenant hereunder.

**SECTION 19.02. DEFAULT -- RIGHT TO RELET.**

Should Landlord elect to re-enter, as provided herein, or should it take possession pursuant to legal proceedings or pursuant to any Notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises and may re-let the Leased Premises, or any part thereof, for such term or terms (which may be for a term extending beyond the Rental Term of this Lease) and at such rent or rental income and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each re-letting, all rental income received by Landlord from such re-letting shall be applied, first, to the payment of any indebtedness other than rents due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage fees and attorneys' fees and costs of such alterations and repairs; third, to the payment of rents due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rental income received from such re-letting during any month is less than those payable during that month by Tenant hereunder, Tenant shall pay any such deficiency immediately to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written Notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, reasonable attorneys' fees, and including the worth at the time of such termination of the excess, if any, of the amount of rents and other charges equivalent to rents reserved in this Lease for the remainder of the stated Rental Term over the then reasonable rental value of the Leased Premises for the remainder of the Rental Term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

**SECTION 19.03. LEGAL EXPENSES.**

In case of default by either Party in the performance and obligations under this Lease, the non-prevailing Party shall pay all costs incurred in enforcing this Lease, or any right arising out of the breach thereof, whether by suit or otherwise, including reasonable attorneys' fees.

**ARTICLE XX. BANKRUPTCY, INSOLVENCY OR RECEIVERSHIP**

**SECTION 20.01. ACT OF INSOLVENCY, GUARDIANSHIP, ETC.**

The following shall constitute a default of this Lease by Tenant for which Landlord, at Landlord's option, may immediately terminate this Lease.

- (a) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant;
- (b) A general assignment by Tenant of its assets for the benefit of creditors;
- (c) Any action taken or suffered by or against Tenant under any federal or state insolvency or bankruptcy act; and
- (d) The appointment of a guardian, conservator, trustee, or other similar officer to take charge of all or any substantial part of Tenant's property.



Neither this Lease, nor any interest therein nor any estate thereby created shall pass to any trustee, guardian, receiver or assignee for the benefit of creditors or otherwise by operation of law.

**SECTION 20.02. BANKRUPTCY.**

If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of the United States Code relating to Bankruptcy ("Bankruptcy Code"), then Tenant as a debtor-in-possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days upon request by Landlord to the "Bankruptcy Court", to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Bankruptcy Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (a) it cures or provides adequate assurance that the trustees shall promptly cure any default hereunder, (b) compensates or provides adequate assurance that Tenant shall promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults, and (c) provides adequate assurance of performance during the fully stated Rental Term hereof of all the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this Lease, as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, (2) that the assumption of this Lease shall not breach any provision hereunder, and (3) that business operated shall comply with the Permitted Use covenants set forth in Section 1.01(F) and Section 7.01. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required, unless Tenant shall have paid and be current in all payments of Operating Expenses, utilities or other charges therefor. Tenant shall pay all of Landlord's costs incurred as a result of Tenant's insolvency and/or bankruptcy proceedings including, but not limited to, reasonable attorneys' fees incurred as a result of Landlord's participation in and/or monitoring of Tenant's insolvency proceeding.

**ARTICLE XXI. ACCESS BY LANDLORD**

**SECTION 21.01. LANDLORD ACCESS.**

Landlord or Landlord's agent shall have the right to enter the Leased Premises at all reasonable times to examine the same, or to show the Leased Premises to prospective purchasers or lessees of the Building, or to make all reasonable repairs, alterations, Improvements or additions as Landlord may deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Leased Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part, and the rents reserved shall in no wise abate while such repairs, alterations, Improvements, or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. During the ninety (90) days prior to the expiration of the Rental Term, or any Rental Term extension or renewal thereof, Landlord may exhibit the Leased Premises to prospective tenants and place upon the Leased Premises the usual notices "To Let" or "For Rent" which notices Tenant shall permit to remain thereon without molestation.

**ARTICLE XXII. TENANT'S PROPERTY AND LANDLORD'S LIEN**

**SECTION 22.01. TAXES ON LEASEHOLD.**

Tenant shall be responsible for and shall pay before delinquency all municipal, county and state taxes assessed during the Rental Term of this Lease against any leasehold interest, improvements, trade fixtures or personal property of any kind, owned by or placed in, upon or about the Leased Premises by Tenant, and taxes, levies or fees assessed on the basis of Tenant's occupancy thereof, including, but not limited to, taxes measured by Base Monthly Rent and Additional Rent due from Tenant hereunder.

**SECTION 22.02. LOSS AND DAMAGE.**

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining spaces or any part of the spaces adjacent to or connected with the Leased Premises hereby or any part of the Building of which the Leased Premises is a part, or for any loss or damage resulting to Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or for any damage or loss of property within the Leased Premises from any cause whatsoever.

**SECTION 22.03. NOTICE BY TENANT.**

Tenant shall give immediate telephone, electronic mail, and/or express delivery Notice to Landlord and Landlord's property manager in case of fire, casualty or accidents in the Leased Premises or in the Building of which the Leased Premises is a part or of defects therein or in any fixtures or equipment, and Tenant shall promptly thereafter confirm such Notice in writing.

**SECTION 22.04. LANDLORD'S LIEN.**

Tenant hereby grants to Landlord a lien and security interest upon all goods, wares, merchandise, inventory, furniture, fixtures, equipment, improvements and other personal property of Tenant, together with all proceeds of the foregoing to secure full and faithful performance of all of the terms of this Lease. The provisions of this Section 22.04 shall constitute a security agreement under the Uniform Commercial Code.





Tenant agrees that Landlord may file and/or record, at any time, a Uniform Commercial Code financing statement or any other document necessary so that the security interest provided herein shall be perfected. In addition to all the rights and remedies available to Landlord under this Lease and under the law, Landlord shall be entitled to all rights and remedies afforded a secured party under the Uniform Commercial Code. The security interest herein granted is in addition to any statutory lien for Base Monthly Rent. Additionally, Tenant is advised that Utah Code Section 38-3-1 and following grants Landlord (Lessor) a lien in regard to unpaid rent.

**SECTION 22.05. LANDLORD'S SUBORDINATION.**

Provided that Tenant is not in default hereunder, Landlord agrees to subordinate its lien on Tenant's personal property, equipment and trade fixtures to that of any bona-fide third party lender providing financing which directly benefits Tenant's operations in the Leased Premises ("Subordination"). However, Landlord shall refuse and shall otherwise not be required to enter into a Subordination and Landlord shall be entitled to refuse to enter into a Subordination if loans are not directly related to Tenant's operation at the Leased Premises. In the event Tenant requests a Subordination from Landlord, Landlord shall provide Landlord's form of Subordination agreement within thirty (30) days of written request by Tenant. All costs and reasonable attorneys' fees related to considering such Subordination shall be paid by Tenant, which fees payable to Landlord shall in no case be less than One Thousand Five Hundred Dollars (\$1,500.00) per Subordination request and shall be payable by Tenant upon demand as Additional Rent.

**ARTICLE XXIII. HOLDING OVER**

**SECTION 23.01. HOLDING OVER.**

Any holding over after the expiration of the Rental Term, or any Rental Term extension thereof, without Landlord's approval, shall be construed to be a tenancy-at-will and all provisions of this Lease shall be and remain in effect except that Base Monthly Rent shall be equivalent to two hundred percent (200%) of Base Monthly Rent (including any adjustments as provided herein) payable for the last full calendar month of the Rental Term, including any Rental Term extension or renewal thereof, or tenancy on a month-to-month basis.

**SECTION 23.02. SUCCESSORS.**

All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of such Parties; and if there shall be more than one (1) tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any Assignee of Tenant unless the Assignment to such Assignee has been approved by Landlord in writing as provided in Section 14.01 hereof.

**ARTICLE XXIV. RULES AND REGULATIONS**

**SECTION 24.01. RULES AND REGULATIONS.**

Tenant agrees to comply with and observe all rules and regulations as established by Landlord and which are now, or which may be hereafter, prescribed by Landlord from time to time, provided, in Landlord's sole and absolute discretion, and posted in or about the Leased Premises or otherwise brought to the Notice of Tenant, both with regard to the Development as a whole and to the Leased Premises, including Common Areas and Common Facilities. Tenant's failure to keep and observe such rules and regulations shall constitute a breach of the terms of this Lease in the manner as if such rules and regulations were contained herein as covenants.

**ARTICLE XXV. QUIET ENJOYMENT**

**SECTION 25.01. QUIET ENJOYMENT.**

Upon payment by Tenant of Base Monthly Rent, Operating Expenses and Additional Rent herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Rental Term, and any Rental Term extension or renewal thereof, without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and actions resulting from future eminent domain proceedings and casualty losses.

**ARTICLE XXVI. SECURITY DEPOSIT**

**SECTION 26.01. SECURITY DEPOSIT.**

A Security Deposit in the amount set forth in Section 1.01(S) is due and payable upon Tenant signing this Lease. The Security Deposit shall be retained as security for the faithful performance of all the covenants, conditions and agreements of this Lease, but in no event shall Landlord be obliged to apply the same upon rents or other charges in arrears or upon damages for Tenant's failure to perform such covenants,



conditions and agreements; Landlord may so apply the Security Deposit, at its option; and Landlord's right to the possession of the Leased Premises for non-payment of all rents or for other reasons, shall not in any event be affected by reason of the fact that Landlord holds the Security Deposit. Such sum, if not applied toward the payment of all rents in arrears or toward the payment of damages suffered by Landlord by reason of Tenant's breach of the covenants, conditions and agreements of this Lease, is to be returned to Tenant without interest when this Lease is terminated or expired, according to these terms, and in no event is the Security Deposit to be returned until Tenant has vacated the Leased Premises and delivered possession to Landlord.

In the event that Landlord repossesses the Leased Premises because of Tenant's default or because of Tenant's failure to carry out the covenants, conditions and agreements of this Lease, Landlord may apply the Security Deposit toward damages as may be suffered or shall accrue thereafter by reason of Tenant's default or breach. In the event of bankruptcy or other debtor-creditor proceedings against Tenant as set forth in Article XX, the Security Deposit shall be deemed to be applied first to the payment of Base Monthly Rent, Operating Expenses, Additional Rent and other charges due to Landlord for the earliest possible periods prior to the filing of such proceedings. Landlord shall not be obliged to keep the Security Deposit as a separate fund but may mix the same with its own funds.

**SECTION 26.02. TRANSFER OF LANDLORD'S INTEREST IN THE SECURITY DEPOSIT.**

Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Leased Premises and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section 26.02 shall also apply to any subsequent transfers of Landlord's interest in the Leased Premises.

**ARTICLE XXVII. MISCELLANEOUS**

**SECTION 27.01. WAIVER.**

One (1) or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition and the consent or approval to or of any subsequent or similar act by Tenant. The subsequent acceptance of Base Monthly Rent, Operating Expense payments and Additional Rent hereunder by Landlord 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 rents so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rents. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing signed by Landlord.

**SECTION 27.02. ENTIRE LEASE AGREEMENT.**

This Lease and the exhibits and riders, if any attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Leased Premises, and there are no covenants, promises, agreements, conditions, representations or understandings, either oral or written, between them other than are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each Party.

**SECTION 27.03. INTERPRETATION, USE OF PRONOUNS.**

Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the Parties herein, shall be deemed to create any relationship between the Parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neutral genders.

The laws of the state where the Building is situated shall govern the validity, performance and enforcement of this Lease. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

The Parties agree that any deletion of language from this Lease prior to mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption or implication, including without limitation, any implication that the Parties intended thereby to state the converse or opposite of the deleted language. It is the intention of the Parties hereto that, if any provision of this Lease is capable of two (2) constructions, one (1) of which would render the provision void and one (1) of which would render the provision valid, then the provision shall have the meaning which renders it valid.

**SECTION 27.04. FORCE MAJEURE.**

In the event that either Party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the Party delayed in performing work or doing acts required under the





terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 27.04 shall not operate to excuse Tenant from prompt payment of Base Monthly Rent, Operating Expenses, Additional Rent or any other payments required by the terms of this Lease.

**SECTION 27.05. CAPTIONS AND SECTION NUMBERS.**

The captions, section numbers, article numbers and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

**SECTION 27.06. BROKER'S COMMISSION.**

Each of the Parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, except as listed below, and each of the Parties agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim (including, without limitation, the cost of reasonable attorneys' fees in connection therewith) except as follows: Landlord has commission obligation to Woodbury Corporation. This Section 27.06 in no way creates any third-party beneficiary rights in any party, nor does it create any liability on the part of Tenant to pay any or all of the commission due Tenant's broker or Landlord's broker.

**SECTION 27.07. RECORDING.**

Tenant shall not record this Lease without the written consent of Landlord; however, upon the request of either Party hereto, the other Party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of recordation. Such memorandum or short form of this Lease shall describe the Parties, the Leased Premises, the Rental Term, and any Rental Term extension or renewal thereof, any special provisions, and shall incorporate this Lease by reference.

**SECTION 27.08. CONSENT NOT UNREASONABLY WITHHELD.**

Landlord agrees that whenever under this Lease a provision is made for Tenant to secure the written consent of Landlord, such written consent shall not be unreasonably withheld, except as provided in Article XIV.

**SECTION 27.09. FURNISHING OF FINANCIAL STATEMENTS.**

Upon Landlord's written request, Tenant shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition.

**SECTION 27.10. TIME OF ESSENCE.**

Time is of the essence in the performance of all covenants and conditions in this Lease for which time is a factor.

**SECTION 27.11. ACCORD AND SATISFACTION.**

No payment by Tenant or receipt by Landlord of a lesser amount than the amount owing hereunder shall be deemed to be other than on account of the earliest stipulated amount receivable from Tenant, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or receivable or pursue any other remedy available under this Lease or the law of the state wherein the Leased Premises is located.

**SECTION 27.12. NO OPTION.**

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises. This Lease becomes effective as a lease only upon full execution and delivery thereof by Landlord and Tenant.

**SECTION 27.13. ANTI-DISCRIMINATION.**

Tenant herein covenants by and for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the leasing, subleasing, assigning, use, occupancy, tenure or enjoyment of the Leased Premises, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, or subtenants in the Leased Premises.

**SECTION 27.14. SEVERABILITY.**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.



**SECTION 27.15. SURVIVAL OF OBLIGATIONS.**

The provisions of this Lease, with respect to any obligation of Tenant to pay any sum owing in order to perform any act after the expiration or early termination of this Lease, shall survive the expiration or early termination of this Lease.

**SECTION 27.16. WARRANTY OF AUTHORITY.**

The person(s) executing this Lease on behalf of Tenant hereby covenant(s) and warrant(s) as of the Effective Date that (a) Tenant is a duly constituted entity, qualified to do business in the state where the Leased Premises is located, and (b) Tenant has paid all applicable franchise fees and taxes, and (c) Tenant shall file when due all future forms, reports, fees, and other documents necessary to comply with applicable laws. If Tenant is a corporation, Tenant shall furnish Landlord with such evidence as Landlord reasonably requires to evidence the binding effect on Tenant of the execution of this Lease.

**SECTION 27.17. TENANT'S LIABILITY.**

In the event there is more than one (1) Tenant hereunder, the liability of each shall be joint and several.

**SECTION 27.18. LANDLORD'S LIABILITY.**

Landlord's liability hereunder shall be limited solely to Landlord's interest in the Building.

**SECTION 27.19. COUNTERCLAIM AND JURY TRIAL.**

In the event that Landlord commences any summary proceedings or action for non-payment of Base Monthly Rent, Operating Expenses, Additional Rent or other charges provided for in this Lease, Tenant shall not interpose any non-compulsory counterclaim of any nature or description in any such proceeding or action. Tenant and Landlord both waive a trial by jury of any or all issues arising in any action or proceeding between the Parties hereto or their successors, under or relating to this Lease, or any of its provisions. Notwithstanding the foregoing, this provision shall not prohibit Tenant from bringing any claim it may have against Landlord in a separate and distinct proceeding.

**SECTION 27.20. TRANSFER OF LANDLORD'S INTEREST IN THE LEASED PREMISES.**

In the event of any transfer or transfers of Landlord's interest in the Leased Premises, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer, provided the transferee assumes such obligations and liabilities.

**SECTION 27.21. TENANT SELECTION BY LANDLORD.**

Landlord reserves the absolute right to effect such other tenancies in the Building as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Building. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the Rental Term of this Lease, occupy any space in the Building.

**SECTION 27.22. DISCLOSURE OF PARTIES.**

Landlord is a limited liability company, one (1) or more managers of which is a licensed real estate broker or agent.

**SECTION 27.23. CONFIDENTIALITY.**

Tenant and Landlord shall maintain the confidentiality of the financial terms of this Lease and the transaction described herein at all times and shall not disclose any of the terms hereof to any party other than those parties participating with Landlord (including but not limited to Landlord's lenders, property managers and accountants) or Tenant in this transaction, unless such disclosure is required by law or is made in the normal course of Tenant's operations as a governmental entity.

**SECTION 27.24. TENANT REPRESENTATIONS AND WARRANTIES.**

- (a) Tenant represents and warrants to Landlord that as of the date of execution of this Lease:
  - (i) Tenant warrants that all information and documentation provided to Landlord in conjunction with negotiations relative to this Lease (e.g. lease application, financials, credit reports or references) which are incorporated herein by reference, are true and correct and Tenant has not made any material misrepresentations or omissions relative to such;
  - (ii) If Tenant is an entity other than a natural born person, Tenant is a duly formed, validly existing organization and in good standing under the laws of the state of its organization and is lawfully authorized to conduct business in such state;
  - (iii) Tenant has full power and authority to conduct its business as presently conducted and to enter into this Lease and the terms, provisions, covenants and obligations of Tenant as set forth in this Lease are legally binding on and enforceable against Tenant; and



- (iv) The execution, delivery and performance of this Lease do not and shall not (i) violate or conflict with the organizational documents of Tenant, (ii) violate or conflict with any judgment, decree or order of any court applicable to or affecting Tenant, (iii) breach the provisions of, or constitute a default under, any contract, agreement, instrument or obligation to which Tenant is a party or by which Tenant is bound, or (iv) violate or conflict with any law or governmental regulation or permit applicable to Tenant.
- (b) Throughout the Rental Term, Tenant shall promptly notify Landlord of any material changes to any of the foregoing warranties and/or upon discovery of any material omission or errors in any of the documentation or information provided before or after this Lease has been executed.
- (c) Upon Landlord's request, Tenant shall provide to Landlord true and complete copies of organizational documents; certificates of good standing; and other documentation evidencing the authority of parties acting on behalf of Tenant.

**SECTION 27.25. EXECUTIVE ORDER CERTIFICATION.**

For purposes of compliance with Executive Order 13224 and related regulations, Landlord and Tenant each represent and warrant that:

- (a) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction ("SDN") pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("OFAC");
- (b) it is not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and
- (c) it is not in violation of Presidential Executive order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto.

Landlord agrees to defend, indemnify, and hold harmless Tenant from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification. Should Landlord, during the Rental Term of this Lease, be designated an SDN, Tenant may, at its sole option, terminate this Lease.

Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification. Should Tenant, during the Rental Term of this Lease, be designated an SDN, Landlord may, at its sole option, terminate this Lease.

**SECTION 27.26. ADA COMPLIANCE AND CERTIFICATION FOR TENANT'S WORK.**

Tenant acknowledges that the Leased Premises may constitute a place of public accommodation or a commercial facility under Title III of the Americans with Disabilities Act ("the ADA") and that the ADA is applicable to both a Landlord and a Tenant of a place of public accommodation or commercial facility. Tenant further acknowledges that under the ADA, any alteration to the Leased Premises must comply with accessibility standards set forth in the rules promulgated by the Department of Justice at 28 C.F.R. 36.101 et. seq. Notwithstanding anything in this Lease to the contrary, in the event Tenant makes any alteration to the Leased Premises which would require compliance with Title III of the ADA and the accessibility standards promulgated by the Department of Justice, Tenant agrees to design and build such alterations so as to comply with the ADA and the accessibility standards. Any repairs, alterations or other improvements required by governmental authority to be performed in the Leased Premises which result from the particular type of use of the Leased Premises by Tenant or alterations made to the Leased Premises by Tenant, shall be performed by Tenant at its expense. Landlord's obligation to comply with applicable laws is subject to the provisions of Section 3.03 of the Lease, which permit Landlord to pass through to tenants of the Development on an amortized basis the cost of complying with certain governmental requirements.

Additionally, Tenant shall have furnished evidence satisfactory to Landlord that the Tenant's alterations and improvements, when constructed, will comply in all respects with the Americans with Disabilities Act of 1990, as amended, all state and local laws and ordinances relating to disabled access and all rules, regulations and orders issued pursuant thereto, including, without limitation, a report on the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (and Landlord acknowledges that the execution by a licensed Architect of an Architects Certificate shall be satisfactory evidence thereof). Tenant shall indemnify and defend Landlord from all claims, cost, expenses, liability or damages that may arise or be imposed on Landlord, Tenant or the Leased Premises under the ADA relations relating to alterations or improvements made by Tenant. This Section 27.26 shall survive the expiration or termination of this Lease.





ARTICLE XXVIII. ADDITIONAL PROVISIONS

**SECTION 28.01. OPTION TO RENEW.**

Provided Tenant is not, and has not been, in default beyond any applicable cure period under any of the terms and conditions contained herein, Tenant shall have one (1) additional consecutive two (2) year Option (as defined in Section 1.01(U)) to renew and extend the Rental Term as provided herein. The Option shall only be exercised by Tenant delivering written Notice thereof to Landlord not less than one hundred eighty (180) days prior to the expiration of the initial Rental Term ("Option Notice"). Base Monthly Rent for the Option period shall be as set forth in Section 1.01(U). The Parties acknowledge that the Option set forth in this Section 28.01 is strictly personal to Tenant and may not be assigned by Tenant, either separately or in connection with an Assignment (as defined in Section 14.01) of this Lease. Upon any Assignment of this Lease or any sublease of all or part of the Leased Premises, the Option set forth in this Section 28.01 shall automatically terminate.

**SECTION 28.02. COUNTERPART EXECUTION AND ELECTRONIC SIGNATURES.**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one (1) agreement. The production of any executed counterpart of this Lease shall be sufficient for all purposes without producing or accounting for any other counterpart. Copies of this Lease, and fax signatures thereon, shall have the same force, effect and legal status as an original.

The Parties to this Lease expressly agree that they may, but are not obligated to, conduct this transaction electronically, including by scan, email, fax, or other electronic means, pursuant to the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq. and the applicable Uniform Electronic Transactions Act, as amended or substituted. The Parties understand and acknowledge their mutual agreement to execute the instant Lease instrument electronically does not constitute agreement to conduct any other transaction electronically. The person signing this Lease by electronic means represents and warrants that he or she is the person represented through the electronic medium, and that he or she has full power and authority to electronically sign this Lease.

*[Signature Page(s) to Follow]*



IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease as of the day and year first above written.

**SIGNATURES:**

LANDLORD:

LAND OF OG, L.L.C., a Utah limited liability company

By:   
O. Randall Woodbury, Its Manager


Dated: 4-7-2022

By:   
W. Richards Woodbury, Its Manager

Dated: 4-7-2022

TENANT:

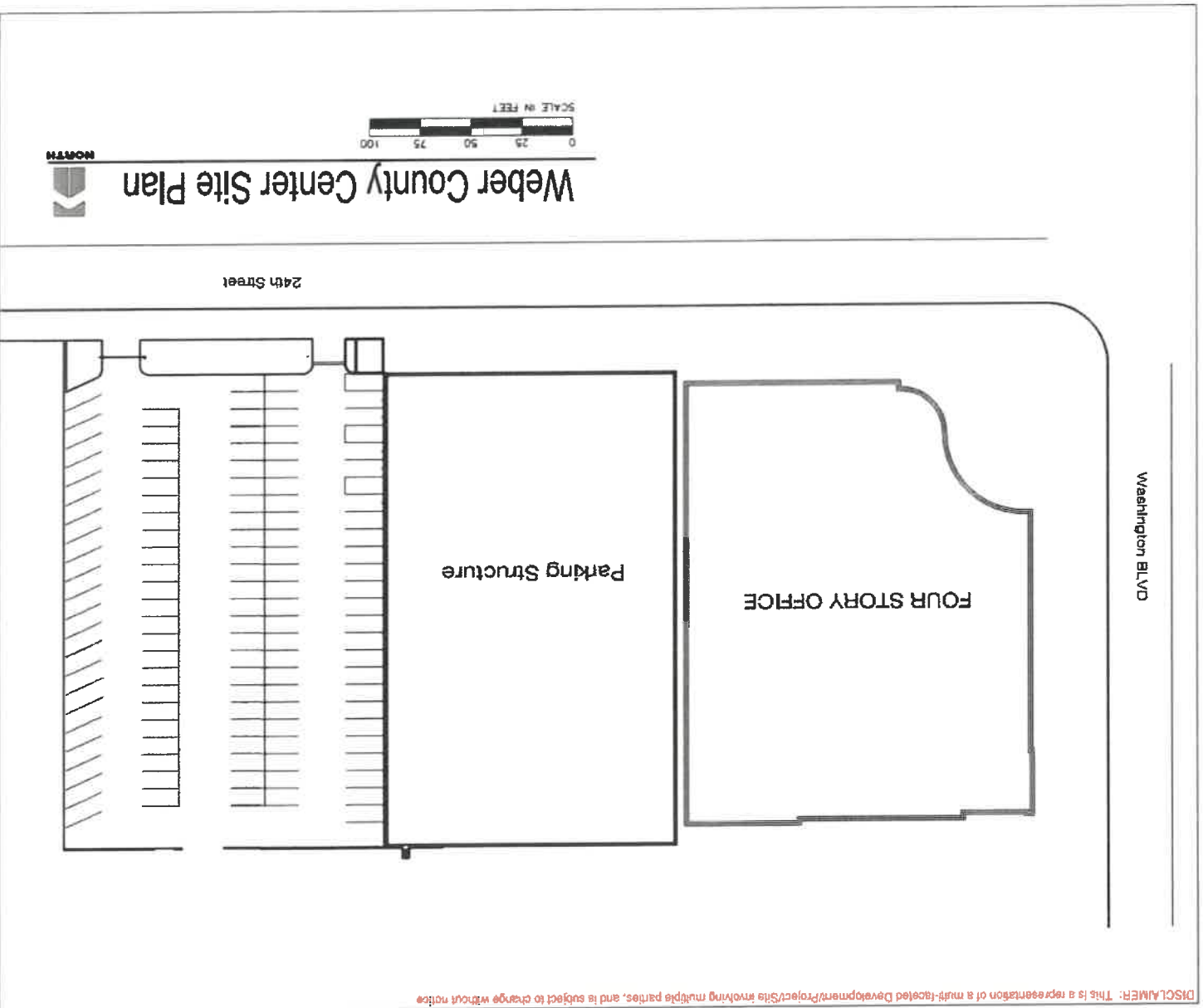
WEBER COUNTY, UTAH, a political subdivision of the State of Utah

By:   
Name: Scott K. Jenkins  
Title: Commissioner, Chair

Dated: April 5, 2022



EXHIBIT "A"  
DEVELOPMENT PLAN



**SITE**

DATE  
10/26/21  
DRAWN BY  
JOHN

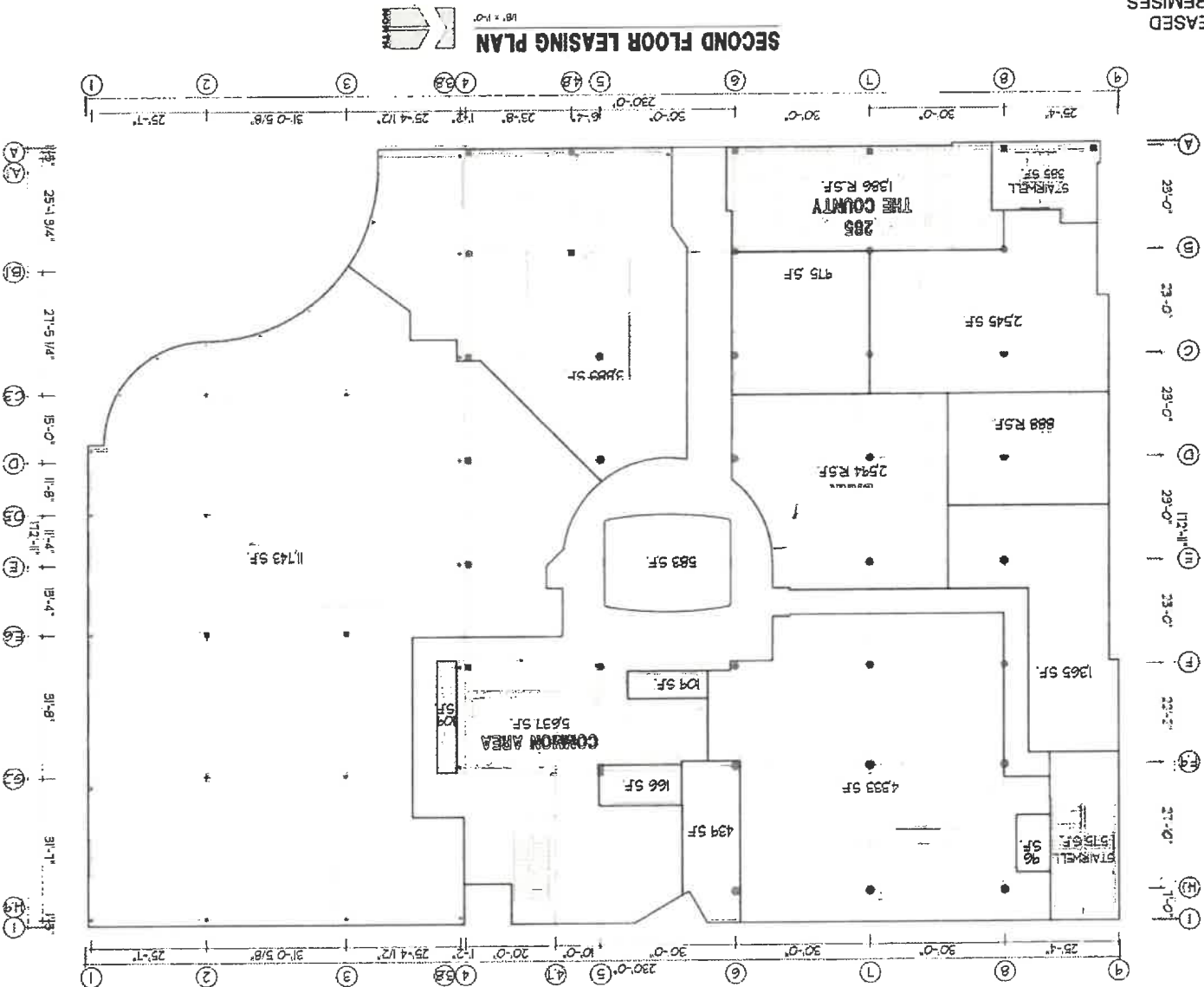
WEBER COUNTY CENTER  
SITE PLAN  
2380 WASHINGTON BOULEVARD  
OGDEN, UTAH





EXHIBIT "A-1"  
LEASE PLAN

LEASED PREMISES



LEASE

1575 SF

WEBER COUNTY CENTER  
LEASE PLAN - SECOND FLOOR  
OOBEN, UTAH

WOODBURY CORPORATION

1346 S. PROSPERITY AND ASSOCIATES, ARCHITECTS  
SALT LAKE CITY, UTAH 84119  
(801) 463-7700

30



EXHIBIT "B"

LEGAL DESCRIPTION

Real Property located in Weber County, Utah and more particularly described as follows:

Units No. A-2,A-4,B-1 and C-1 as contained within the THE WEBER CENTER, a Utah Condominium Project, as the same is identified in the Record of Survey Map recorded in Weber County, Utah, as Entry No. 1461167, in Book 43, at Page 99, and in the Declaration of Covenants, Conditions and Restrictions and Bylaws of THE WEBER CENTER, a Utah Condominium Project, recorded in Weber County, Utah, on March 20, 1997, as Entry No. 1461168, in Book 1853, at Page 161.

Together with: (a) The undivided ownership interest is said Condominium Project's Common Areas and Facilities which is appurtenant to said Unit; (b) The exclusive right to use and enjoy each of the Limited Common Areas which is appurtenant to said Unit; (c) The non-exclusive right to use and enjoy the Common Areas and Facilities included in said Condominium Project in accordance with the aforesaid Declaration and Survey Map (as said Declaration and Map may hereafter be amended or supplemented) and the Utah Condominium Ownership Act.

TAX ID: 01-085-0002, 01-085-0004, 01-085-0005, 01-085-0008



EXHIBIT "C"

SELF INSURANCE REQUIREMENTS

Upon providing Landlord notice of its intent to do so, and for so long as Tenant is Weber County, a political subdivision of the State of Utah, Tenant shall have the right to self-insure Tenant's obligations in Article XI in accordance with the following terms and conditions:

1.1 "Self-insure" shall mean that Tenant is itself acting to satisfy the insurance required under the provisions in Article XI of this Lease and Tenant shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

1.2 The waiver of subrogation provisions of Article XI of the Lease shall apply to the self-insurance provided to satisfy the requirements of Article XI and shall not limit any indemnification obligations set forth in Article XI of the Lease.

1.3 Tenant's right to self-insure and to continue to self-insure is conditioned upon and subject to:

1.3.1 Tenant now and hereafter participating as a member of a fully funded indemnity pool with limits of liability of at least Five Million Dollars (\$5,000,000.00);

1.3.2 No events occurring that make it apparent that Tenant's ability to pay has been diminished below the required level (such as the bankruptcy of Tenant); and

1.3.3 Tenant, or the indemnity pool to which it belongs, maintaining appropriate loss reserves for the amount of its self-insurance obligations under this Lease and otherwise which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded.

1.4 In the event Tenant fails to fulfill the requirements of Section 1.3.1 through 1.3.3 above, then Tenant shall lose the right to self-insure, after thirty (30) days' written notice, and shall be required to provide Tenant insurance specified in Article XI of this Lease; provided, however that Tenant's self-insurance shall continue in full force and effect until Tenant insurance specified in Article XI of the Lease is issued by a qualifying insurance company.

1.5 In the event that Tenant elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been required under this Lease and available from the insurance company, Tenant shall:

1.5.1 Undertake the defense of any such claim, including a defense of Landlord, without any financial contribution from Landlord, that would have been performed by the insurance company but for such election by Tenant to self-insure, and

1.5.2 Pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Tenant to self-insure.

1.6 In the event that Tenant elects to self-insure, Tenant shall provide Landlord with a declaration of self-insurance in form reasonably acceptable to Landlord, specifying the extent of self-insurance coverage, all relevant information regarding how Landlord shall submit claims hereunder and containing a waiver of subrogation claims.

