

## ESTOPPEL CERTIFICATE

**Tenant's Trade Name: KeHE Distributors, LLC**

This ESTOPPEL CERTIFICATE ("Certificate") is made as of the date set forth below, by **KeHE Distributors, LLC**, a **Delaware limited liability company** ("Tenant"), based upon the following facts and understandings of Tenant:

### RECITALS

- A. HIGH STREET BUILDINGS LLC, a Delaware limited liability company ("Landlord"), has entered into one or more agreements pursuant to which SKB-HS Owner, LLC, a Delaware limited liability company, RI East County HS Owner, LLC, a Delaware limited liability company, RI Glenwood Lofts HS Owner, LLC, a Delaware limited liability company, and RI Glenwood Place HS Owner, LLC, a Delaware limited liability company (collectively, "Owner") has the right to acquire the ground leasehold interest in the land and the improvements commonly known as 5310-5450 High Street, Phoenix Arizona (the "Property").
- B. Tenant currently leases "Suite **400**," with approximately **6,722** leasable square feet (the "Premises") within the Property and is the owner of the tenant's interest in that lease dated **April 28, 2017**, which has been amended by instrument(s) dated **June 26, 2020 – First Amendment to Lease, September 27, 2021 – Second Amendment to Lease** and which was originally executed by **City North Associates, LLC**, as landlord, and by **KeHE Distributors, LLC**, as tenant (the lease and the referenced amendment(s) thereto are collectively referred to herein as the "Lease".) Attached hereto as Exhibit A is a true, complete, and accurate copy of the Lease.
- C. Owner, as borrower, has applied to Wells Fargo Bank, N.A. (together with its successors and assigns, "Lender") for a loan ("Loan"), which will be secured by, among other things, a mortgage, deed of trust, trust indenture or deed to secure debt encumbering the Property ("Mortgage").
- D. Tenant acknowledges and agrees that Landlord will rely on this Certificate for assurances relating to Owner's purchase of the Property, and Lender will rely on this Certificate for assurances in making the Loan to Owner.

THEREFORE, based on the foregoing understandings Tenant certifies to Landlord, and Lender as follows:

- 1. ESTOPPEL. Tenant certifies to Landlord, and Lender, as of the date hereof, that:
  - 1.1 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no modifications or additions to the Lease, written or oral, other than those, if any, which are referenced above in Recital B. There are no other promises, agreements, understandings or commitments between Landlord and Tenant relating to the Property, and Tenant has not given Landlord any notice of termination under the Lease.
  - 1.2 **No Default.** To Tenant's knowledge: (a) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease either by Tenant or Landlord; and (b) Tenant has no existing claims, defenses, or offsets against rental due or to become due under the Lease.
  - 1.3 **Entire Agreement.** The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights of any kind whatsoever with respect to the Property, other than as set forth in the Lease.

- 1.4 No Sublet. There has not been and is presently no subletting of the Property, or any part thereof, or assignment by Tenant of the Lease, or any rights therein, to any party.
- 1.5 Minimum Rent. The current **monthly** minimum base rent under the Lease is **\$20,446.08**, subject to any escalation, percentage rent and/or common area maintenance charges provided in the Lease, and such rent is current as of the date hereof.
- 1.6 CAM Charges. The base year for CAM is **2021**. The current monthly payment payable under the Lease on account of CAM payable under the Lease is **\$0.00**, and has been paid through **N/A**. All CAM expenses have been reconciled to Tenant's complete satisfaction for calendar year 2021 and all prior periods of the Lease term, and **\$936.07** is due and owing to the Tenant on account of CAM expenses or any right to audit CAM expenses for such periods.
- 1.7 Rental Payment Commencement Date. The rent stated in Section 1.5 above will begin or began on **June 12, 2022 (abated first three (3) months of the term)**.
- 1.8 Rentable Area. The rentable area of the leased Premises is **6,722** square feet.
- 1.9 Commencement Date. The term of the Lease commenced June 30, 2017. The New Space Relocation Term Commenced on **March 12, 2022**.
- 1.10 Expiration Date. The term of the Lease will expire on **June 30, 2027** (unless sooner terminated in accordance with the Lease). Tenant has no right or option to terminate the Lease in whole or in part prior to the expiration of the term, except to the extent expressly set forth in the Lease.
- 1.11 Options to Renew or Extend. Tenant has no option to renew or extend the lease term, except as follows: **one (1) sixty (60) month option**.
- 1.12 No Commission. To Tenant's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.
- 1.13 No Deposits or Prepaid Rent. No deposits, including security deposits, or prepayments of rent have been made in connection with the Lease, except as follows: **Security Deposit of \$22,546.71**. None of the rent has been paid more than one (1) month in advance.
- 1.14 No Purchase Option or Preferential Right to Purchase. Tenant does not have any option or preferential right to purchase all or any part of the Property.
- 1.15 Possession. Tenant is in full and complete possession of the Property and has accepted the Property, including any tenant improvements. At this time, Landlord has the following work to complete: **blinds to be replaced**. The Property is in compliance with the Lease. There is currently a credit in the amount of **\$27,691.25** due to Tenant from Landlord under the Lease. **Base Rent of \$20,446.08/month is abated for the first three (3) months, ending as of June 12, 2022.**
- 1.16 Open and Operating. Tenant is open for business and in operation on the Property which may be at reduced occupancy and usage due to employee remote work protocols.
- 1.17 Authority. The undersigned representative of Tenant is duly authorized and fully qualified to execute this instrument on behalf of Tenant thereby binding Tenant.
- 1.18 Compliance with Environmental Laws. In connection with its use and occupancy of the Premises, to Tenant's knowledge, Tenant has complied with all environmental laws relating

to or governing the use, production, treatment, release or storage of hazardous or toxic substances that pose a substantial risk of imminent danger to public health or safety or to the environment.

- 1.19 Financial Condition; Bankruptcy. There are no voluntary actions or, to Tenant's knowledge, involuntary actions pending against Tenant under the bankruptcy laws of the United States or any state thereof. Tenant is solvent, is able to pay its debts as they mature, knows of no facts that would prevent Tenant from performing its obligations under the Lease, intends to perform such obligations, and has not informed Landlord otherwise.
2. **SUCCESSORS AND ASSIGNS.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto.

[Signature Page to Follow]

IN WITNESS WHEREOF, Tenant has executed this instrument as of 5/26/2022, 2022.

TENANT:

**KeHE Distributors, LLC,**  
a **Delaware limited liability company**

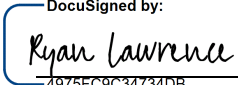
By:  \_\_\_\_\_  
Name: Ryan Lawrence  
Title: VP Sales

Exhibit A

LEASE AND AMENDMENTS (IF ANY)

[Attached]

**OFFICE LEASE AGREEMENT**

**by and between**

**KeHE Distributors, LLC  
("Tenant")**

**and**

**City North Associates, LLC  
("Landlord")**

**April 28 2017**

4/28/17  
#191

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## BASIC LEASE TERMS

The following list is a summary of certain basic terms of this Lease. In case of a conflict between any provision of this Lease and the information contained in this summary, the applicable provision of this Lease shall control. Terms set forth in the left-hand column, below, and used in this Lease shall, unless otherwise defined in the Lease, have the meaning given opposite each such term in the right-hand column, below.

**LANDLORD:** City North Associates, LLC

**ADDRESS OF LANDLORD:** c/o ScanlanKemperBard Companies  
810 NW Marshall Street, Suite 300  
Portland, OR 97209  
Attn: Asset Manager/City North  
Facsimile: (503) 220-2648  
Email: \_\_\_\_\_

**TENANT:** KeHE Distributors, LLC

**TENANT'S NAICS CODE:** \_\_\_\_\_

**DOING BUSINESS AS:** \_\_\_\_\_

**ADDRESS OF TENANT:** 1245 E. Diehl Road, Suite 200  
Naperville, IL 60563  
Attn: General Counsel  
Facsimile: \_\_\_\_\_  
Email: Justin.mallott@kehe.com

**PROPERTY MANAGER:** SKB PM I, LLC

**ADDRESS OF PROPERTY MANAGER:** 5415 East High Street, Suite 240  
Phoenix, AZ 85054  
Attn: General Manager  
Fax: (480) 319-8700

**CITY, COUNTY AND STATE:** City of Phoenix, County of Maricopa, State of Arizona, respectively

**BUILDING:** 5415 E. High Street, Phoenix, Arizona

**PREMISES:** Approximately 3,577 rentable square feet of space known as Suite 240 of the Building, as identified on the description and/or floor plans attached as Exhibit B.

**LEASE TERM:** Forty (40) full calendar months plus any first partial calendar month.

**EFFECTIVE DATE:** The date on which this Lease has been executed and delivered by both Landlord and Tenant.

**COMMENCEMENT DATE:** June 1, 2017, or as otherwise set forth in Section 1.3.1.

**EXPIRATION DATE:** September 30, 2020, or as otherwise set forth in Section 1.3.1.

**BASE RENT:** The following Base Rent:

Months	Base Rent Per Month	Annual Rate/RSF
1-4	\$0.00*	\$0.00
5-12	\$9,836.75**	\$33.00
13-24	\$10,060.31	\$33.75
25-36	\$10,283.88	\$34.50
37-40	\$10,507.44	\$35.25

\*Excess Office Operating Expenses are payable during any portion of this period that falls after the Base Year.

\*\*Any first partial month is charged a prorated portion of this amount.

**BASE YEAR:** 2017

**APPROXIMATE  
RENTABLE SQUARE  
FOOTAGE:** 3,577

**INITIAL  
PROPORTIONATE SHARE  
OF EXCESS OFFICE  
OPERATING EXPENSES:**

1.08% of the office portion of the Project, subject to adjustment pursuant to this Lease.

**PERMITTED USE:** General office use and related uses.

**SECURITY DEPOSIT:** \$10,507.44

**PARKING:** Total spaces: Up to fourteen (14), at rates and allocated as follows: two (2) covered, reserved spaces at the initial rate of

\$80.00 per space per month, plus applicable sales and transaction privilege taxes; and twelve (12) covered, unreserved spaces at the initial rate of \$60.00 per space per month, plus applicable sales and transaction privilege taxes. The rates for parking will initially be the rates set forth above but may be increased by Landlord from time to time. The charges for parking spaces shall be waived during Months 1 – 4. Reserved spaces are reserved only during Business Hours on weekdays. Initially Tenant will use two (2) covered, reserved spaces, and six (6) covered, unreserved spaces, with the option to use an additional six (6) covered, unreserved spaces.

**BROKERS:** None

**GUARANTOR:** None

## EXHIBITS

Exhibit A	The Project
Exhibit B	Premises Description
Exhibit C	Work Letter
Exhibit D	Rules and Regulations
Exhibit E	Acceptance Letter
Exhibit E-1	Memorandum of Commencement Letter
Exhibit F	Recorded Use Restrictions
Exhibit G	Standards for Utilities and Services
Exhibit H	Landlord's Furniture

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease" or this "Agreement") is made and entered into as of the Effective Date identified in the Basic Lease Terms by and between the Tenant and Landlord also identified in the Basic Lease Terms.

### **1. Demise and Premises.**

1.1 Demise. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and subject to the conditions set forth in this Lease, the Premises described in Section 1.2, SUBJECT, HOWEVER, to any and all existing liens and encumbrances of record (the "Existing Encumbrances"), and the terms of this Lease. The Building is located in the mixed use project (the "Project") which includes and is situated on land located in Phoenix, Arizona (the "Land"). The Project is shown on Exhibit A. The Project is a mixed use development that includes office, retail and residential components.

1.2 Premises and Associated Rights. The premises leased to Tenant consists of the interior space in the Building having the square footage and location generally identified in the Basic Lease Terms preceding this Lease, as more particularly identified on the description and/or floor plans attached as Exhibit B (the "Premises"), excluding, however, the roof and exterior walls, if any, of such space. The Premises also include the appurtenant right to use, in common with others, the public portions of the Project, including public hallways and lobbies, elevators, parking facilities to the extent allocated to Tenant in the Basic Lease Terms, restrooms, sidewalks, ramps, landscape areas, and driveways. The Premises shall be improved by Landlord with the leasehold improvements described in and in accordance with the provisions of the Work Letter attached as Exhibit C.

1.3 Commencement and Expiration Dates. The term of this Lease shall be for the period of months designated in the Basic Lease Terms and shall have the Commencement Date and Expiration Date also designated in the Basic Lease Terms (the "Term").

1.3.1 Conforming Commencement Date. If the Premises are not delivered by the Commencement Date set forth in the Basic Lease Terms for any reason other than Tenant Delay (as defined below), Tenant shall not be obligated to pay Rent or perform any other obligation of Tenant under this Lease, until possession of the Premises is tendered to Tenant and the Commencement Date shall occur only at the time that the Premises are delivered in accordance with the terms and conditions set forth herein; provided, in the event delivery of possession is delayed by Tenant's failure to timely deliver any space plans, or approvals required herein, any change order requested by Tenant that is not caused by Landlord or Landlord's contractors, or Tenant's unreasonable interference with Landlord's ability to perform the leasehold improvements ("Tenant Delay"), then the Premises shall be deemed to have been delivered (and the Commencement Date shall occur) on the earlier of the actual date of delivery or the date delivery would have occurred absent the number of days of such delay attributable to Tenant and the Term shall then be for such number of full calendar months (plus any partial first month). If for any reason possession of the Premises is not delivered within ninety (90) days of scheduled Commencement Date set forth in the Basic Lease Terms, Landlord or Tenant may terminate this Lease by written notice given after such ninety (90) day period but prior to

delivery of possession; provided, Tenant's right of termination shall not arise until such one ninety (90) day period expires, as the same shall automatically be extended by (a) the number of days of delays attributable to Tenant Delay (including but not limited to delays related to changes in plans requested by Tenant whether or not approved by Landlord, delays caused by Tenant installing any "Alterations," delays caused by other early entry or early occupancy by Tenant, and/or other delays attributable to Tenant), plus (b) the number of days of delays caused by events of Force Majeure. Any such termination shall be without liability of Landlord. Any such termination by Tenant shall be Tenant's sole remedy for delay in delivery of possession. Tenant shall, upon Landlord's request, execute an Acceptance Letter in the form of Exhibit E. Except for Punchlist Items specified pursuant to the Work Letter, Tenant shall be deemed to have accepted the Premises in their then condition, as is. The existence of Punchlist Items shall not postpone the Commencement Date.

### 1.3.2 Early Expiration.

(a) Grant of Right. Tenant shall have the right to cause the Term of this Lease to expire as of the final day of the 28th full calendar month of the initial Term (the "Early Expiration Date"), by giving an Early Expiration Notice as set out below.

(b) Notice and Payment. In order to effectively exercise this early expiration right, Tenant shall notify Landlord in writing (the "Early Expiration Notice") of its exercise of this right no later than 180 days prior to the Early Expiration Date and shall pay Landlord at the time the Early Expiration Notice is given an amount equal to (i) the unamortized portion of the costs of Landlord related to this Lease which are the brokerage commission and the actual cost of Landlord's Work plus (ii) an early termination fee in the amount of \$20,567.76 (representing two months of Base Rent). Such payment shall be due, in full, when the Early Expiration Notice is delivered to Landlord, and such payment shall be a condition to the effectiveness of such Early Expiration Notice. In calculating such amortization, (A) all costs of Landlord shall be deemed incurred and paid on the Commencement Date, (B) interest shall accrue at 6% per annum, and (C) the costs and interest shall be amortized over the Term for which Base Rent is payable. Upon the giving of the Early Expiration Notice and the payment of this amount, the Expiration Date of this Lease shall be and become the Early Expiration Date.

(c) Rights Personal. The rights of Tenant under this Section are personal to the original Tenant named herein and may not be exercised by any sublessee or assignee. Tenant's rights under this Section shall be effective only if (i) Tenant has not sublet any portion of the Premises, and if Tenant is then actually occupying all of the Premises, and (ii) there is not an Event of Default under this Lease at the time of the Early Expiration Notice, nor has any event occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder, either at the time of the delivery of the Early Expiration Notice or as of the Early Expiration Date.

(d) Additional Documents. Upon request following the giving of an effective Early Expiration Notice, both parties shall execute an amendment to this Lease setting forth the Early Expiration Date, provided, the failure of the parties to execute any such amendment shall not affect their respective rights hereunder. At any time within



ten days of written request, Tenant shall execute and deliver a statement indicating whether or not an Early Expiration Notice has been given and such matters with respect to any Early Expiration Notice which has been given as Landlord may request.

2. Rent. Tenant shall pay rent consisting of (i) Base Rent, and (ii) all other sums that become payable by Tenant under this Lease, whether to Landlord directly, or to a third party for the benefit of Landlord and the Premises ("Additional Rent"). Base Rent and Additional Rent are referred to herein as "Rent." All Rent shall be paid in advance on the first day of each month unless otherwise provided herein. Notwithstanding any other provision hereof, Tenant shall pay to Landlord, with all Rent, any rent, transaction, privilege, excise or other tax now or hereafter imposed on any Rent due under this Lease or on any Rent received by Landlord under this Lease. All Rent shall be paid in lawful money of the United States to Landlord at the address or at such place as Landlord shall designate by written notice to Tenant from time to time. Tenant shall pay all Rent promptly when due without notice or demand therefor and without any abatement, deduction or offset, for any reason whatsoever, except as may be expressly provided in this Lease. If the Tenant's obligation to pay Base Rent does not commence on the first day of a calendar month, or does not expire on the last day of the calendar month, the Base Rent payable by Tenant on the first fractional month, or the last fractional month, as the case may be, shall be prorated for said month based on a thirty (30) day month. Base Rent for the first full calendar month of the Term for which Base Rent is payable shall be paid upon execution of this Lease, and Base Rent for any partial month at the beginning of the Term shall be due on the Commencement Date. Tenant acknowledges that Tenant's late payment of Rent due Landlord will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impractical to ascertain. Therefore, if Landlord does not receive any Rent due from Tenant within five (5) business days of when due, Tenant shall pay to Landlord an additional sum equal to five percent (5%) of the overdue amount, which late charge shall be due and payable on demand. The payment of late charges and the payment of interest are distinct and separate from one another in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for the additional administrative expenses incurred by Landlord in handling and processing delinquent payments. By their execution of this Lease, Landlord and Tenant confirm that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment, that the late charge is in addition to any and all remedies available to Landlord and that the assessment and/or collection of the late charge shall not be deemed a waiver by Landlord of such failure or to any other default under this Lease. Additionally, all such delinquent Rent, plus any late charge, shall bear interest at the rate of nine percent (9%) per annum (the "Default Rate"), from the date due until paid. If any payment of Rent is returned for insufficient funds, Landlord may require Tenant to pay all future payments by cashier's check.

2.1 Base Rent. Subject to adjustment as provided in Section 2.1.1, the monthly Base Rent shall be the amount specified in the Basic Lease Terms preceding this Lease (the "Base Rent").

2.1.1 Rentable Square Footage Adjustment. The Base Rent specified in the Basic Lease Terms preceding this Lease has been calculated based on the approximate rentable square feet contained within the Premises, as specified in the Basic Lease Terms. Landlord may,

from time to time, recalculate the rentable square feet contained within the Premises or the Building and/or Project (including, without limitation, in connection with any expansion, contraction or reconfiguration of either) and, upon completion thereof, Landlord shall adjust the Base Rent hereunder, based upon the actual rentable square footage of the Premises and the monthly rent per square foot represented by the Base Rent and approximate square footage set forth in the Basic Lease Terms, and shall notify Tenant in writing of any such adjustment stating therein the effective date of such adjustment. The rentable square footage of the Premises and the Building and/or Project will be determined based on the measurement standards then in use for the Project.

3. Additional Rent. Tenant, throughout the Term, shall be obligated to pay its Proportionate Share (as that term is defined in Section 4) of all Operating Expenses (as that term is defined in Section 3.1) actually incurred by Landlord and allocated to the office portion of the Project ("Office Operating Expenses") in excess of those incurred and allocated in the Base Year. Tenant's Proportionate Share of Excess Office Operating Expenses shall be Additional Rent.

3.1 Operating Expenses. The term "Operating Expenses" shall mean all reasonable expenses paid or incurred by Landlord or on Landlord's behalf as determined by Landlord to be necessary or appropriate for the operation, maintenance and repair of the Project, including the common areas thereof, and the curbs, sidewalks and plazas adjoining the same, including without limitation:

3.1.1 Salaries, wages, medical, insurance, union and general welfare benefits, pension payments, payroll taxes, worker's compensation insurance, uniforms and related expenses and benefits of employees of Landlord engaged in the repair, operation, maintenance, management, engineering and security of the Project;

3.1.2 All expenses incurred for gas, steam, electricity, heat, ventilation, air-conditioning, water, elevator service and other services or utilities furnished to the Project, together with any taxes thereon;

3.1.3 All maintenance costs relating to public and service areas of the Building and/or Project, including, but not limited to sidewalks, landscaping, parking, service areas, mechanical rooms, loading areas, and exteriors;

3.1.4 The cost of all insurance premiums and charges including but not limited to rent loss insurance, casualty, liability, fire with extended coverage endorsement, flood and fidelity insurance, and such other insurance with regard to the Project and the maintenance and/or operation thereof as Landlord may reasonably elect to maintain;

3.1.5 The cost of all supplies, including without limitation, cleaning supplies, light bulbs, tubes and ballasts, materials and equipment, including the cost of supplies and equipment for the on-site management office, and all taxes on the foregoing;

3.1.6 The cost or rental of hand tools and other moveable equipment used in the repair, maintenance or operation of the Project;

3.1.7 The cost of all charges for window and other cleaning, janitorial and security services;

3.1.8 Charges of independent contractors performing repairs or services to the Project not otherwise provided to a specific tenant;

3.1.9 Repairs, replacement and general maintenance made by Landlord including the cost to repair and restore casualty losses to the extent not covered by insurance proceeds received by Landlord;

3.1.10 All taxes and assessments and governmental charges, whether federal, state, county, or municipal, and whether by taxing districts or authorities presently taxing the Project, or by others, whether subsequently created or otherwise, whether foreseen or unforeseen, and any other taxes and assessments attributable to the Project, whether or not directly paid by Landlord, including local improvement district assessments, traffic or signalization improvement assessments, gross receipt taxes, business license taxes and fees for permits for the Project, and any other tax or charge, including income taxes and sales taxes, levied wholly or partly in lieu thereof and any increase in any tax, including income taxes and any imposition of any taxes such as a sales tax, if increased or imposed due to a reduction in property taxes, excepting only inheritance or estate taxes and state or federal income taxes computed on the basis of the net income of the owners of the Project (herein "Taxes"). Pursuant to Arizona Revised Statutes, on the Commencement Date the Project may not be subject to a property tax assessment. Landlord makes no representations or warranties that a property tax assessment or excise tax will not be assessed against the Land during the Term; should such taxes be assessed during the Term, "Taxes" shall include the same. "Taxes" also include (a) any tax for use and occupancy of a government property improvement, and (b) any tax on improvements or other rights pursuant to A.R.S. 42-19003;

3.1.11 Alterations and improvements made by reason of the laws and requirements of any public authorities or the requirements of insurance companies or the holders of any encumbrances against the Project;

3.1.12 Management fees paid to a third party, or, if no managing agent is employed by Landlord, a management fee which is not in excess of the then-prevailing rates for management fees of other first-class buildings devoted to similar uses in the City;

3.1.13 The costs of any capital improvements, replacements or repairs and/or of any machinery or equipment amortized over the useful life of the same as reasonably estimated by Landlord in accordance with generally accepted accounting principles;

3.1.14 Legal, accounting and other professional fees incurred in connection with operation, maintenance and management of the Project;

3.1.15 All other charges properly allocable to the operation, repair and maintenance of the Project in accordance with generally accepted accounting principles;

3.1.16 The cost of air monitoring in order to detect and monitor the level of any hazardous materials; and

3.1.17 Any and all assessments and other amounts paid to any declarant, owner's association or other entity pursuant to recorded covenants applicable to the Project.

3.2 Operating Expense Exclusions. Notwithstanding anything contained in the foregoing Section 3.1 the following expenses shall be excluded from Operating Expenses:

3.2.1 Depreciation or amortization on the initial construction of the Project;

3.2.2 Debt service (including without limitation, interest, principal and any impound payments) required to be made on any mortgage or deed of trust recorded with respect to the Project;

3.2.3 The cost of leasehold improvements made for any tenants of the Project;

3.2.4 Leasing commissions, costs and disbursements and other expenses (including advertising) incurred in connection with leasing, renovating, or improving space for tenants or other occupants of the Project;

3.2.5 Repairs, replacements, supplies, alterations, janitorial services, and general maintenance paid for by insurance proceeds or by Tenant or other third parties; or

3.2.6 Specific costs incurred for the account of, or separately billed to and paid by specific tenants of the Project.

3.3 Excess Office Operating Expenses. The term "Excess Office Operating Expenses" means, for any Operating Year (defined at Section 4.1), the amount by which the total Office Operating Expenses for such Operating Year exceed the total Office Operating Expenses for the Base Year identified in the Basic Lease Terms preceding this Lease. The provisions for payment of Tenant's Proportionate Share of Excess Office Operating Expenses are intended to pass on to Tenant, and reimburse Landlord for, all costs and expenses of the nature described in Section 3.1 incurred in connection with ownership and operating of the Project to the extent such costs and expenses exceed in amount the same costs and expenses for the Base Year. In determining the amount of Office Operating Expenses for the Base Year and any subsequent Operating Year, if less than 95% of the rentable office area in the Project shall have been occupied by tenants at any time during such year, Office Operating Expenses shall be deemed to be increased to an amount equal to the Office Operating Expenses that would be expected to be incurred had such occupancy been 95%.

3.4 Direct Tenant Obligations.

3.4.1 Business Taxes. Tenant shall be directly liable for, and shall pay as and when due throughout the Term, all license and excise fees and occupation taxes covering the business conducted on the Premises. If any governmental authority or unit under any present or future law effective at any time during the Term shall in any manner levy a tax on rents payable under this Lease or rents accruing from use of the Premises, or a tax in any form against Landlord because of, or measured by, income derived from the leasing or rental thereof, such tax shall be paid by Tenant, either directly or through Landlord, and Tenant's failure to do so shall constitute an Event of Default. Tenant shall not, however, be liable to pay any net income tax

imposed on Landlord unless, and then only to the extent that, the net income tax is a substitute for real estate taxes.

**3.4.2 Taxes on Tenant's Property.** Tenant shall be liable for and shall pay before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against the Premises, Landlord or Landlord's property, or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures, then Landlord shall have the right to pay the taxes based upon such increased assessments, regardless of the validity thereof, but only under proper protest if requested by Tenant in writing. If Landlord shall so pay such taxes, then Tenant shall, upon demand, repay to Landlord the taxes so levied and paid by Landlord, or the proportion of such taxes resulting from such increase in the assessment. In any such event, Tenant shall have the right, at Tenant's sole cost and expense, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest, any amount so recovered to belong to Tenant.

**3.4.3 Alterations.** If the Alterations in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the real property taxes and assessments levied against Landlord or the Premises by reason of such excess assessed valuation shall be deemed to be property taxes and assessments levied against personal property of Tenant and shall be governed by the provisions of Section 3.4.2, above. If the records of the County assessor are available and sufficiently detailed to serve as a basis for determining whether said Alterations are assessed at a higher valuation than Landlord's "building standard", such records shall be binding on both Landlord and Tenant. If the records of the County assessor are not available or sufficiently detailed to serve as a basis for making said determination, the actual costs of construction shall be used.

#### **4. Payment of Additional Rent.**

**4.1 Operating Year.** As used in this Section 4 the term "Operating Year" shall mean each calendar year of the Lease Term specified in Section 1.3 and if this Lease begins or ends on any date other than the first day of the calendar year, the calculations, costs and payment referred to herein shall be prorated on a daily basis.

#### **4.2 Tenant's Proportionate Share.**

**4.2.1 Defined.** Landlord shall allocate each Operating Expense between the office, retail and residential portions of the Project in such manner as Landlord may reasonably determine from time to time in its discretion. Tenant's Proportionate Share of Excess Office Operating Expenses shall equal the rentable square feet contained within the Premises divided by the total rentable office square feet from time to time contained within the Project. As of the date of this Lease Tenant's Proportionate Share is the percentage stated in the Basic Lease Terms preceding this Lease, which was determined in accordance with the Building Owners and

Managers Association International Standard Method for Measuring Floor Area in Office Buildings ("BOMA"). Landlord may, from time to time, recalculate the rentable square feet contained within the Premises, and/or the Project or office portion thereof (including, without limitation, in connection with any expansion, contraction or reconfiguration of either) in accordance with BOMA and, upon completion thereof, Landlord shall adjust Tenant's Proportionate Share and shall notify Tenant in writing of any such adjustment stating therein the effective date of such adjustment.

4.2.2 Allocations. Unless Landlord otherwise elects, Tenant shall pay each Office Operating Expense in accordance with Tenant's Proportionate Share. Landlord shall have the right to make allocations ("Allocations") to Tenant of any one or more Operating Expenses on any different basis (including use of estimates) that Landlord may determine from time to time in its discretion. For example, if Landlord deems it reasonable to do so, Landlord shall have the right to elect at any time and from time to time (a) to make Allocations of certain Operating Expense items among less than all lessees (for example, but not as a limitation, only among lessees of a single building or other part of the Project) and/or other than based upon the respective square footages of the lessees (for example, but not as a limitation, based upon usage or benefit), (b) to make different Allocations for different Operating Expenses, and/or (c) to alter an Allocation or the method of determining an Allocation from time to time.

4.3 Written Statement of Estimated Excess Office Operating Expenses. As Landlord prepares written estimates of future Office Operating Expenses, Landlord may provide Tenant with a copy of such estimates, but Tenant acknowledges that such estimates are preliminary only, are only for Tenant's information, and cannot be relied upon by Tenant. At least ten (10) days prior to the commencement of each Operating Year during the Term of this Lease, Landlord shall furnish Tenant with a written statement setting forth Landlord's estimate of Tenant's Proportionate Share of the estimated Excess Office Operating Expenses for the next Operating Year. Failure of Landlord to deliver the statement of estimated Excess Office Operating Expenses shall not relieve Tenant of its obligation to pay Tenant's Proportionate Share of Excess Office Operating Expenses. Tenant shall each month pay to Landlord as Additional Rent commencing on January 1 of each Operating Year an amount equal to one-twelfth of the amount of Tenant's Proportionate Share of estimated Excess Office Operating Expenses for that year as shown in Landlord's written statement.

4.4 Final Written Statement. Within ninety (90) days after the close of each Operating Year during the Term, or as soon thereafter as available, Landlord shall deliver to Tenant a written statement (the "Operating Expenses Statement") setting forth Tenant's actual Proportionate Share of the Excess Office Operating Expenses for the preceding Operating Year. If Tenant's Proportionate Share of the actual Excess Office Operating Expenses is in excess of the amount actually paid by Tenant for the prior year, Tenant shall pay the amount of such excess to Landlord as Additional Rent within thirty (30) days following the date of such statement. If Tenant's Proportionate Share of actual Excess Office Operating Expenses is less than the amount of Tenant's actual payments for estimated Excess Office Operating Expenses, then Landlord shall apply the overpayment to Tenant's next Rent payment(s), as and when due. In no event shall Landlord be liable for damages to Tenant based upon any incorrect or disputed Excess Office Operating Expense or Allocation nor shall Tenant have any right to terminate this Lease by reason of any incorrect or disputed Excess Office Operating Expense or Allocation.

The sole remedy of Tenant regarding any Excess Office Operating Expense or Allocation dispute shall be refund of any charge which exceeds the amount allowed by this Lease. Tenant may review Landlord's books and records regarding Office Operating Expenses for a year if Tenant requests such review by written notice given within thirty (30) days of receipt of the Operating Expenses Statement for such year. Such books and records shall be kept strictly confidential; Tenant may review the same and may cause the same to be reviewed by a CPA engaged by Tenant (who shall first agree in writing to maintain the confidentiality of the books and records) but Tenant shall not otherwise disclose the contents of Landlord's books and records. Any dispute regarding an Excess Office Operating Expense must be commenced by written notice specifying the disputed item given within sixty (60) days of receipt of the first Operating Expenses Statement which includes the disputed amount; otherwise such dispute is waived by Tenant. Any such dispute shall be determined, at the election of Landlord, by an independent CPA or property manager at the expense of Tenant.

4.5 Payment Following Lease Expiration. If an Operating Year ends after the expiration or termination of this Lease, Tenant shall pay the Additional Rent in respect thereof payable under this Section within ten (10) days of Tenant's receipt of the Operating Expenses Statement for such Operating Year. If Tenant's Proportionate Share of Excess Office Operating Expenses for any final partial Operating Year is less than the amount of Tenant's actual payments for estimated Excess Office Operating Expenses for said partial Operating Year, and Tenant owes no other amounts to Landlord at the time, then Landlord shall remit a check to Tenant in the amount of said overage within thirty (30) days after issuing the Operating Expenses Statement.

4.6 Limitation. Notwithstanding the above, Excess Office Operating Expenses shall not include Controllable Expenses in excess of the following limitations: (x) for 2017, all Controllable Expenses shall be included in calculating Excess Office Operating Expenses, and (y) for each year after 2017, Controllable Expenses shall not be included in Excess Office Operating Expenses to the extent the total of Controllable Expenses actually experienced for such year exceeds 105% of the total of all Controllable Expenses included in Excess Office Operating Expenses for the previous year. "Controllable Expenses" are those Operating Expenses the amount of which is within the reasonable control of Landlord; without limiting this definition, Controllable Expenses do not include utilities, Taxes and insurance premiums.

## 5. Use.

### 5.1 General.

5.1.1 Tenant shall use and occupy the Premises continuously during the Term of this Lease for uses specified in the Basic Lease Terms preceding this Lease and for no other use or purpose whatsoever.

5.1.2 If any governmental license or permit, other than a Certificate of Occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure, maintain and comply with the terms and conditions of each such license or permit. Tenant shall, at Tenant's expense, comply with all laws and requirements of public authorities relating to Tenant's use and occupancy of the

Premises and shall observe the reasonable Rules and Regulations as may be adopted pursuant to Section 5.4 hereof of which Landlord notifies Tenant from time to time for the safety and general order of the Premises and the Building.

5.1.3 Tenant shall observe and comply with all legal requirements which apply to the Premises or the use or occupancy thereof by Tenant, including but not limited to the obligation to alter, maintain, repair, improve or restore the Premises, and all parts thereof structural and otherwise, in compliance and conformity with all legal requirements. Landlord warrants to Tenant as of the Effective Date (and not as a continuing warranty or covenant) that (a) to Landlord's actual knowledge the Premises does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect as of the Commencement Date, as well as any Federal, state, or local laws and regulations including but not limited to the Americans With Disabilities Act, or any similar state laws (collectively, "Building and Access Laws"), and (b) the mechanical, plumbing, electrical, or other equipment serving the Premises are in proper working order. Landlord shall be responsible for improvements required to make the Premises compliant with any applicable Building and Access Laws in effect with respect to the Premises as of the Commencement Date. As used herein, the term "Landlord's actual knowledge" means the present, conscious knowledge of Charles Ferguson, without personal liability. Notwithstanding the foregoing, Tenant acknowledges that Tenant shall be required to make improvements to the Premises as necessary to comply with Building and Access Laws to the extent necessitated by Tenant's specific improvement, alteration and use of the Premises, and all costs associated with such compliance shall be borne exclusively by Tenant, and Landlord reserves the right to perform any such alteration to the Premises (or other portion of the Building necessary for compliance with legal requirements if such work is required due to any act, omission, use or other matter attributable to Tenant), and Tenant shall reimburse Landlord for all costs of such work within ten (10) days of written request.

#### 5.1.4 Sustainability.

(a) Sustainability Plan. Landlord reserves the right to adopt and to modify, from time to time, a plan and/or programs and rules to reduce energy consumption and/or carbon emissions, to obtain and maintain one or more sustainability certifications, to promote indoor air quality, and/or to operate the Building in a sustainable or more sustainable manner; provided any Sustainability Plan (as defined below) shall not unreasonably interfere with Tenant's use and enjoyment of the Premises or require Tenant to incur any additional expenses, including but not limited additional Operating Expenses. Such plans, programs and rules as are in effect from time to time are collectively referred to as the "Sustainability Plan."

(b) Compliance. Tenant agrees to comply with, and to cause its employees, agents, contractors and invitees to comply with, the Sustainability Plan. Tenant agrees and acknowledges that such compliance will include compliance with all components of the Sustainability Plan, including but not limited to those related to energy conservation and recycling, the manner in which Tenant does any maintenance, repair, alteration, restoration, improvement or removal work in the Premises, and the types of materials used in any such work. Tenant agrees to comply with all legal requirements related to energy conservation and/or sustainability including those related to indoor air quality and carbon emissions.



(c) Reporting. Tenant shall provide such information as is required by the Sustainability Plan including but not limited to information requested by Landlord for governmental reporting or to obtain or maintain any certifications desired by Landlord.

## 5.2 Negative Covenants as to Use.

5.2.1 Generally. Tenant shall not, without the prior written consent of Landlord, use any apparatus, machinery or device in or about the Premises that will cause any substantial noise, vibration, fumes or electronic interference. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy the Premises, or permit anything to be done in the Premises, in any manner that: (a) violates the Certificate of Occupancy for the Premises or for the Building, the provisions of zoning laws or ordinances, or use permits, applicable to the Building, any provision of any ground lease or master lease, recorded covenants, conditions or restrictions, or any provision of any declaration, bylaw, or other condominium or other document related to the Project; (b) causes injury to the Premises or the Building or any equipment, facilities or systems therein; (c) constitutes a violation of the laws or requirements of any public authorities or the requirements of insurance bodies, or the requirements of any restrictive covenants of record; (d) involves gambling in any form, or the use of lottery, gaming or arcade devices, (e) involves the sale, rental or viewing of pornographic, obscene or "adult materials," or involves adult entertainment of any kind, (f) otherwise impairs the character, reputation or appearance of the Building as a first-class office building; (g) impairs the proper and economic maintenance, operation and repair of the Building and/or its equipment, facilities or systems; or (h) annoys or inconveniences other tenants or occupants of the Building; (i) violates any covenant, condition, restriction, agreement, encumbrance or other matter now or hereafter recorded regarding the Project; or (j) violates any provision in any other present or future lease of space at the Project including exclusive use or prohibited use provisions. Without limiting the foregoing, Tenant is subject to and shall comply with the recorded use restrictions that are reproduced on Exhibit F.

### 5.2.2 Ground Lease.

(a) The Project is encumbered by that certain Arizona State Land Department Commercial Lease No. 03-52415 dated July 7, 1993 by and between the State of Arizona, as Trustee, acting through the State Land Commissioner, as lessor ("Ground Lessor"), and Northeast Phoenix Partners, an Arizona general partnership, as lessee, and all assignments, amendments, subleases, extensions, modifications, replacements and renewals thereof ("Ground Lease"). Notwithstanding anything to the contrary set forth in this Lease, if the Ground Lease is terminated prior to the expiration of the Term, then, so long as Tenant complies with the terms and conditions of this Lease and shall attorn directly to Ground Lessor, Ground Lessor shall attorn to Tenant in accordance with the terms of this Lease, except Ground Lessor shall not assume any affirmative obligations of Landlord with respect to this Lease or the Premises (e.g., to construct improvements, to maintain and/or repair the Premises, or to maintain and/or repair Common Areas). In consideration of Ground Lessor not assuming any such affirmative obligations, Tenant shall have the right (but not the obligation) alone or in conjunction with similarly situated tenants under other leases, to perform any affirmative obligations of Landlord under this Lease and to set off the amounts expended by Tenant in performing such affirmative obligations against the Rent payable under this Lease; provided, however, that unless Ground

Lessor has otherwise agreed, in no event shall such set-off reduce the Rent payable under this Lease below fifty percent (50%) of the amounts otherwise payable. Ground Lessor may agree to allow a greater set-off to Tenant if Ground Lessor believes such a set-off is in the best interests of the trust. Tenant's rights with respect to such affirmative obligations shall be limited to such a set-off right or, if expressly permitted otherwise by the terms of this Lease, to terminate this Lease. In no event shall Tenant have any right to recover damages against Ground Lessor for Ground Lessor's failing to perform any affirmative obligation under this Lease. The provisions of this subparagraph (a) are applicable only as between Tenant and Ground Lessor and shall not be applicable as between Landlord and Tenant.

(b) Tenant, on behalf of itself, its successor and assigns and any transferees acquiring any interest in the Premises by or through Tenant, hereby releases, waives and discharges the Ground Lessor from all present and future claims, demands, suits, legal and administrative proceedings and from all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including, without limitation, court costs and attorneys' fees arising out of or in any way connected with the ownership of the Project by the Ground Lessor (including, without limitation, ownership of the Project or any portion in thereof for the purposes of any Environmental Laws), any condition of environmental contamination on, under or around the Project, or the existence of Hazardous Substances in any state on, under or around the Project, except for Hazardous Substances placed upon the Project by the Ground Lessor. Any one acquiring any interest in the Premises by or through Tenant, by accepting such interest in the Premises, and in consideration of the Ground Lessor entering into the Ground Lease and thereby allowing such interest to be created, hereby irrevocably agrees to the waiver and release provisions set forth in this subparagraph (b) and acknowledges that its interest in the Premises are subject thereto.

(c) Following the Commencement Date, Landlord and Tenant shall execute and deliver a Memorandum of Commencement Date in the form of Exhibit E-1 specifying the Commencement Date and the Expiration Date.

(d) Tenant for itself, any transferees, and anyone claiming by, through and under Tenant or any transferee, hereby waives, to the fullest extent permitted by applicable Law, the right to contest, protest, oppose or object to the formation by the City of Phoenix of an improvement district or other special taxing district in accordance with the provisions of the Ground Lease.

(e) Tenant shall not pay to Landlord, and Landlord shall not accept from Tenant, directly or indirectly, more than twelve (12) months of prepaid Rent under this Lease without the prior written consent of the Ground Lessor.

(f) Tenant acknowledges and agrees that Ground Lessor has excepted from and reserved out of the real property upon which the Project is or shall be situate all oils, gases, geothermal resources, coal, ores, minerals, fertilizer and fossils of every kind which may be in or upon such real property. In addition, any pottery or other archaeological artifacts found on or in the real property upon which the Project is or shall be situate discovered during the course of any survey, excavation or construction are the sole and exclusive property of Ground Lessor and shall not be removed without the prior written approval of the Ground Lessor.

threatened any action in connection with the presence of any Hazardous Substance on, or release of any Hazardous Substance from, the Premises, Building or Project. Notwithstanding any provisions to the contrary in this Lease, Tenant shall indemnify and hold free and harmless the Landlord and each of Landlord's direct or indirect members, representatives, affiliates, employees, attorneys and agents for, from, against and regarding any claims, losses, expenses or damages, suits or procedures arising from or attributable to action, refusal, negligence or failure on the part of the Tenant to comply with Environmental Laws. If Tenant shall fail promptly to discharge its obligations under this Section, Landlord may, at its election, but without the obligation to do so, cause such investigation to be made or remedial action to be taken and/or take any and all other actions that Landlord may deem necessary or advisable to protect its interests or to avoid or minimize its liability for the existence of Hazardous Substances on the Premises, the Building or the Project, or for a release thereof from the Premises, the Building or Project. All amounts expended by Landlord under this Section shall be payable by Tenant to Landlord upon demand.

5.3.4 Tenant, Landlord, and Hazardous Substances. Landlord shall be responsible for any claims, penalties, fines, costs liabilities, cleanup or losses resulting from the presence of Hazardous Substances on or about the Building or Project (i) prior to the Commencement Date or (ii) which is caused by any party other than Tenant or Tenant's employees, contractors, agents, or invitees. Tenant shall not be responsible for any claims, penalties, fines, costs liabilities, cleanup or losses which Tenant can demonstrate arise as a result of the presence of Hazardous Substances on or about the Premises prior to the Commencement Date or were caused by any party other than Tenant or Tenant's employees, contractors, agents, or invitees.

5.3.5 Definition of Hazardous Substance(s). The term "Hazardous Substance" shall mean:

- (a) "Hazardous substances", as defined by 40 CFR Part 302;
- (b) "Extremely hazardous substance", as defined by 40 CFR Part 355;
- (c) "Toxic chemicals", as defined by 40 CFR Part 372;
- (d) "Hazardous substance" or "hazardous waste" as defined by 29 CFR § 1910.120;
- (e) "Hazardous Waste" as defined by applicable administrative rules;
- (f) Petroleum, including crude oil and any fraction thereof;
- (g) Any material that contains more than 1% of asbestos; and
- (h) Any other chemical, substance, material, controlled substance, object, condition, waste, living organism or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation,

petroleum and petroleum products, asbestos, asbestos containing materials, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any environmental law based upon, directly or indirectly, such properties or effects.

(i) “Hazardous Materials” or “Contaminants”, as such terms are defined under any Environmental Law, and shall be deemed to include any material that, owing to its properties, presents a real and potential danger to the environment or to the health of the users of the Premises or the Project.

5.3.6 Definition of Environmental Laws. The term “Environmental Laws” shall mean any and all federal, or municipal legislative and regulatory provisions of an environmental nature, including, in all cases, any judgments, orders, notices, notices of infraction or non-compliance, decrees, codes, rules, directives, policies, guidelines and guides, authorizations, authorization certificates, approvals, permissions and permits issued by any competent authorities, the whole as they may have been amended from time to time.

5.3.7 Survival. Tenant’s covenants set forth in this Section 5.3 shall survive the termination or expiration of the Lease or any transfer by Tenant, by assignment or otherwise, of any or all right, title, or interest of Tenant in the Premises.

5.4 Rules and Regulations. Tenant and its employees and agents shall faithfully observe and comply with, and Tenant shall cause its invitees and licensees to observe and comply with, the rules and regulations attached as Exhibit D and with such changes therein as Landlord may from time to time make and of which Landlord has notified Tenant (the “Rules and Regulations”). Landlord shall not be liable to Tenant for violation of the Rules and Regulations by any other tenant or such other tenant’s employees, agents, invitees or licensees.

## 5.5 Parking.

5.5.1 Generally. In addition to any reserved parking rights set forth elsewhere in this Lease, Tenant and its employees and invitees may use any allocated number of spaces set forth herein but only in the portions of the unreserved parking facilities of the Project designated by Landlord from time to time, on a nonexclusive basis. Tenant hereby expressly acknowledges and agrees that the parking facilities may include surface parking adjacent to the Project if Landlord, in Landlord’s sole and absolute discretion, elects to construct such surface parking at any time during the Term. All parking shall be upon and subject to the terms of this Lease and of such reasonable rules and regulations as are now in place or are subsequently issued by Landlord. Landlord shall not be liable to Tenant nor shall this Lease be affected if such parking privileges are impaired by reason of any moratorium, initiative, referendum, statute, regulation, or other governmental decrees or action which could in any manner prevent or limit the parking rights of Tenant hereunder.

5.5.2 Charges. After the initial Term, Landlord has the right to revise parking rates from time to time. Unless Landlord otherwise elects, Tenant shall pay all monthly charges for its employee parking and Landlord will not be required to bill employees individually.

Tenant understands a separate parking contract may be required for employees parking in the Project and that such a contract may include restrictions related to parking.

5.5.3 Restrictions. Tenant and Tenant's employees shall park their cars only in those portions of the parking area(s) designated by Landlord for tenant and employee parking and shall use such areas only for parking cars. Tenant shall furnish Landlord with a list containing the description and automobile license numbers (and state of issuance) of the cars of Tenant and its employees within fifteen (15) days of any request by Landlord, and shall thereafter advise Landlord of any changes, additions or deletions to such list. Landlord reserves the right to (a) impose parking fees (by validation, metering, or other methods), (b) take measures to discourage unauthorized parking, (c) assign specific spaces for specific uses or users, (d) reserve spaces for itself, its valet program (if any), oversize vehicles, small cars, handicapped individuals, and other tenants, customers of tenants or other parties (and Tenant and its employees and visitors shall not park in any such assigned or reserved spaces), (e) restrict or prohibit full size vans and other large vehicles, (f) limit employee parking or restrict it to one or more specific locations, and (g) impose a sticker, tag or other vehicle identification system or other requirements for use of the parking areas. Overnight parking or parking by Tenant's employees not remaining at the Project is prohibited. In case of any violation of these provisions or any applicable Laws, Landlord may: (i) refuse to permit the violator to park, and remove the vehicle owned or driven by the violator from the Project without liability whatsoever, at such violator's risk and expense, and/or (ii) charge Tenant such reasonable rates as Landlord may from time to time establish for such violations, presently \$50.00 per day for each vehicle that is parked in violation of this provision. These provisions shall be in addition to any other remedies available to Landlord under this Lease or otherwise. Tenant shall be responsible for ensuring compliance with these provisions and Landlord's parking rules, as they may be amended, by tenant's employees, agents, invitees, contractors, subcontractors and suppliers.

5.5.4 Valet. Tenant shall not operate any form of valet parking system. Landlord may operate one or more valet systems from time to time. If Landlord does so, Landlord will have exclusive control of pick up, drop off and parking locations and will retain all proceeds.

## 6. Condition of Premises, Maintenance and Repair.

6.1 Tenant's Acceptance. By taking possession of the Premises on the Commencement Date, Tenant shall be deemed to have accepted the Premises AS IS, subject to any express warranties of Landlord herein.

6.2 Tenant's Maintenance and Repair Obligations. Tenant, at its expense, shall be responsible for maintaining and repairing the Premises, the fixtures and improvements in the Premises (except structural elements), and Tenant's Property (defined at Section 9.2), and the lighting, plumbing, mechanical, and electrical systems and networks within and exclusively serving the Premises. However, notwithstanding any provision of this Lease, if the Premises includes one or more server rooms served by separate HVAC equipment, then Tenant shall maintain, repair and replace all HVAC equipment serving Tenant's server room(s). Tenant, at its expense, shall promptly replace all scratched, damaged or broken doors and glass in and about the Premises and shall be responsible for all repairs, maintenance and replacement of millwork,

cabinets, wall and floor coverings in the Premises. Tenant shall be responsible for all repairs and alterations, interior and exterior, structural and non-structural, ordinary and extraordinary, in and to the Premises and the Building and the facilities and systems thereof, the need for which arises out of the performance or existence of Alterations (defined at Section 7.1); the installation, use or operation of Tenant's Property in the Premises; the moving of Tenant's Property in or out of the Building; laws or regulations now or hereafter in effect which require changes to the Premises and any changes elsewhere at the Land or Building if due to the use of the Premises by Tenant or any legal requirement applicable to Tenant; or the act, omission, misuse or neglect of Tenant or any of its subtenants or its or their employees, agents, contractors or invitees. Tenant shall promptly report to Landlord any damage or injury occurring on or to the Premises or the Building.

6.3 Manner. Tenant shall promptly make, at Tenant's expense, all repairs in or to the Premises and the Building for which Tenant is responsible. Such work shall be performed only by contractors approved by Landlord. Any such repairs in or to the Building and the facilities and systems thereof for which Tenant is responsible may, at Landlord's election be performed by Landlord at Tenant's expense, and Landlord may, at its option before commencing any such work or at any time thereafter, require Tenant to furnish to Landlord such security, bond or surety in a form and amount as Landlord shall reasonably deem necessary to assure the payment for such work by Tenant.

6.4 Janitorial Services. Landlord shall provide routine janitorial services to the Building and the Premises of a standard that is substantially equivalent to the services provided in similar buildings in the City, and in accordance with the Standards for Utilities and Services attached as Exhibit G. Such services shall be provided at Landlord's cost and expense, but such cost and expense shall be an Operating Expense.

6.5 Landlord's Maintenance and Repair Obligations. Landlord shall maintain, and cause to be made all structural repairs to, the roof, walls and foundations of the Building as and when needed in or about the Premises, and the lighting, plumbing, and electrical systems serving the Premises, as and when needed and, subject to the exclusions and limits therein, the cost thereof shall be an item of Operating Expenses as defined in (and limited by) Section 3.1 hereof, except for those repairs for which Tenant is responsible pursuant to any of the provisions of this Lease.

6.6 Waiver. Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption of or injury to Tenant's business arising from Landlord's making any repairs or changes that Landlord is required or permitted by this Lease or required by law to make in or to any portion of the Building or the Premises, or in or to the fixtures, equipment or appurtenances of the Building or the Premises. Landlord shall have no liability to Tenant nor shall Tenant's covenants and obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any act or failure to act of any security personnel or mechanism used in the Building, or by reason of any lack of security in the Building. To the fullest extent permitted by applicable law, Tenant hereby waives any and all rights under any law in existence during the Term that is inconsistent with the provisions of this Section 6.6 including,

without limitation, any right arising under any law purporting to authorize a tenant to make repairs at the expense of a landlord or to terminate a lease.

6.7 End of Term. Upon termination of this Lease for any reason whatsoever Tenant will peacefully surrender to Landlord the entire Premises, together, subject to the provisions of Section 7.5, with all improvements, changes, alterations and replacements thereto, in good order, condition and repair, but in any event with all windows, walls, floors, and carpets cleaned, all equipment in good working order, ordinary wear and tear excepted. Upon such termination, Tenant shall have the right to remove Tenant's Property, as provided at Section 9.2.

## 7. Alterations.

7.1 Landlord's Consent. Tenant shall make no alterations, additions, or improvements in or to the Premises (herein, "Alterations") without Landlord's prior written consent, to be granted or withheld pursuant to Sections 7.2 and 7.3 below, and, if such consent is granted, then only contractors or mechanics that are approved by Landlord shall effect such Alterations.

7.2 Procedure for Approval. If Tenant wishes to make any Alterations to the Premises that either (a) are of a structural nature, or (b) involve a cost greater than \$10,000.00, or (c) involve the roof, foundation, exterior walls or interior load-bearing walls of the Building (collectively, "Major Work"), Tenant shall submit to Landlord, for Landlord's written approval, a written description of the Major Work that Tenant proposes to perform together with detailed plans and specifications for such Major Work. If Tenant wishes to make any alterations, additions, or improvements to the Premises that do not constitute Major Work, Tenant shall submit to Landlord, for Landlord's written approval, a written description of such work. Reference herein to "structural work" or "work of a structural nature" shall have the meaning that such terms normally connote in the construction industry. By way of example, alteration of interior non-load bearing walls and partitions, alteration of ceilings, installation of wall coverings, painting, installation of rugs, and similar work shall not be deemed to constitute structural work; alteration to any exterior wall, load bearing wall, roof, plumbing system, heating, ventilation, and air conditioning system or similar work shall be deemed to be of a structural nature.

7.3 Standard for Approval. Landlord's approval of proposed work shall not be unreasonably withheld, conditioned or delayed if such work (a) does not adversely affect, in Landlord's judgment, the appearance of the Premises and/or Building or the value of the Premises and/or Building, (b) does not adversely affect, in Landlord's judgment, Landlord's ability to re-lease the Premises, (c) does not affect the structural integrity of the Building or its systems, (d) conforms to the requirements of all building codes and any other applicable laws and regulations, and (e) can be performed and completed without disrupting the business or operation of the Building or of any other tenant of the Building. Tenant's failure to obtain Landlord's prior written consent to any proposed work shall constitute an Event of Default hereunder.

7.4 Compliance with Laws. All work done by Tenant shall be performed in full compliance with all laws, rules, orders and ordinances. Without limiting the generality of the

foregoing: (a) Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause the Alterations work to be performed in compliance with all such permits and certificates, applicable laws and requirements of public authorities and with all applicable requirements of insurance, and (b) Tenant shall be responsible for assuring that the Premises complies with any and all requirements of the Americans with Disabilities Act and any other Federal, State or local governmental agency requirements relating to Tenant's specific use of the Premises or Tenant's business operation. Landlord's approval or consent to any proposed work shall not be deemed a waiver of, or an opinion respecting, the compliance of the proposed work with the requirements of this Section 7.4.

**7.5 Title to Alterations.** All Alterations upon the Premises, including (without limiting the generality of the foregoing) all wall covering, built-in cabinet work, paneling, and the like shall, unless Landlord elects otherwise in writing, become the property of Landlord, and shall remain upon and be surrendered with the Premises as a part thereof at expiration or earlier termination of this Lease, except that Landlord may, by written notice to Tenant, require Tenant, at Tenant's cost, (a) to remove any or all Alterations at the expiration or other termination of this Lease, and (b) to repair all damage resulting from such removal; provided Tenant shall not be required to remove any Alterations unless: (i) Landlord has informed Tenant at the time of Landlord's consent that Landlord will require removal of such Alterations at the end of the Term, or (ii) Landlord's consent to the applicable Alterations was required but was not sought by Tenant or granted by Landlord. If Tenant fails to perform the foregoing, Tenant shall pay to Landlord all costs arising from Landlord's performance of the same, which shall be due and payable upon Landlord's demand. Notwithstanding any other provision hereof, Tenant and not Landlord shall have the obligation to insure, repair, maintain, replace and restore all Alterations. Landlord's Work set forth in Exhibit B shall not be considered an Alteration and shall not be required to be removed by Tenant upon expiration or other termination of this Lease

**7.6 Schedule/Manner of Work.** All of Tenant's contractors, suppliers, workmen, and mechanics for any Alterations shall comply with such rules and conditions as Landlord may reasonably impose from time to time, which rules and conditions shall be enforced by Tenant at the discretion of Landlord. At any time any contractor, supplier, workman, or mechanic performing construction of any Alterations performs any work that may or does impair the quality, integrity, or performance of any portion of the Building, Tenant shall cause such contractor, supplier, workman, or mechanic to leave the Building and remove all his tools, equipment, and materials immediately upon written notice delivered to Tenant and Tenant shall reimburse Landlord for any repairs or corrections of any portion of the building caused by or resulting from the work of any contractor, supplier, workman, or mechanic performing any Alterations work. The quality of all Alterations to or involving structural, electrical, mechanical, life/safety, energy management, or plumbing systems in the Premises shall be at least equal to the quality of such systems as on the Commencement Date. In the event of any labor disturbance caused by persons employed by Tenant or Tenant's contractor, Tenant shall immediately take all actions necessary to eliminate such disturbance in connection with the construction of the Alterations.

**7.7 Debris.** Tenant will cause construction of any Alterations to be accomplished in a neat, clean, and workmanlike manner. Tenant shall not permit any trash, rubbish, or debris to



accumulate in the Premises or the Building, and Tenant shall remove or cause to be removed all such trash, rubbish, and debris from the Premises and the Building on a timely basis. Tenant shall be responsible for any additional costs incurred by Landlord for cleaning the Building or any portion thereof, and for removing any trash, rubbish, or debris therefrom to the extent caused by Tenant's construction of the Alterations.

7.8 Right of Entry/Inspection. At all times during the period of construction of any portion of any Alterations, Landlord and Landlord's architects and engineers shall have the right to enter upon the Premises to inspect the work of construction and the progress thereof. Tenant shall not close any work affecting any portion of the life safety, heating, ventilation, and air conditioning, plumbing, or electrical systems in the Premises or building until the same has been inspected and approved by Landlord's engineers. No inspection or approval by Landlord's engineers of any such work shall constitute an endorsement thereof or any representation as to the adequacy thereof for any purpose or the conformance thereof with any governmental ordinances, codes, or regulations, and Tenant shall be fully responsible and liable therefor.

7.9 Insurance. In addition to the insurance requirements set forth in Section 8, during the period of construction of any Alterations, Tenant or Tenant's general contractor shall maintain worker's compensation, builder's all-risk and public liability insurance, and such other insurance as Landlord may reasonably require in amounts satisfactory to Landlord. All policies shall have such coverage limits, and be underwritten by such companies, as Landlord shall approve, and shall name Landlord and Landlord's property managers as an additional insured thereunder. Before the commencement of construction of any Alterations, Tenant and Tenant's general contractor must deliver certificates of all such insurance policies and such insurance policies must be approved by Landlord.

7.10 Non-Responsibility of Landlord; Indemnification. Tenant hereby acknowledges that Landlord shall have no responsibility whatsoever for the construction of any Alterations or for any defects therein except to the extent performed by Landlord or Landlord's contractors or agents. Tenant shall notify Landlord in writing no less than ten (10) days before the commencement of construction of any Alterations in order to afford Landlord an opportunity to post and record appropriate notices of non-responsibility. Tenant, at its expense, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations work, or any other work, labor, services or materials done for or supplied to Tenant, or any other person claiming through or under Tenant, in or about the Premises or Building. Except to the extent attributable to work performed by Landlord or Landlord's contractors or agents, Tenant shall defend, indemnify and save harmless Landlord and any mortgagee for, from, against and regarding any and all mechanics, materialmen's and other liens and encumbrances filed in connection with, and any other claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, cost and expense (including attorneys fees) arising or incurred by or against Landlord and arising in connection with, the Alterations work, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, in or about the Premises, Land or Building. Tenant, at its expense, shall procure the satisfaction, cancellation or discharge of record of all such liens and encumbrances of record within fifteen (15) days after the filing thereof or Tenant may, within such fifteen (15) day period furnish to Landlord, a bond pursuant to A.R.S. §33-1004 (or any successor statute) and satisfactory to Landlord; provided, Tenant may contest, in good faith and at its own expense, any

notice of violation, or lien, provided Tenant posts for the protection of Landlord security in an amount and form acceptable to Landlord. Such indemnification obligation shall extend to all reasonable costs, attorneys' fees, and liabilities incurred in connection with the defense of any such claim (including appeals and petitions for review) or any action or proceeding brought thereon.

## 8. Liability and Insurance.

8.1 Action by Tenant. Tenant shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises that would subject Landlord to any liability or responsibility for personal injury, death or property damage, or that would increase insurance rates in respect of the Building or Project or the property therein over the rates that would otherwise then be in effect or that would result in insurance companies of good standing refusing to insure the Building or the property therein in amounts satisfactory to Landlord, or that would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance in respect of the Project, Building or the property therein. If, by reason of any failure of Tenant to comply with the provisions of Section 5 or this Section 8.1, the premiums on Landlord's insurance on the Building and/or property therein shall be higher than they otherwise would be, Tenant shall reimburse Landlord, on demand, for that part of such premiums attributable to such failure on the part of Tenant.

8.2 Waiver of Subrogation. Each party hereby releases the other party and its agents and employees in respect of any claim that the releasing party might otherwise have against the other party or its agents or employees for, and waives any right of subrogation in respect of, loss, damage or other casualty to tangible property owned by the releasing party occurring during the term of this Lease to the extent of insurance proceeds received by the releasing party from insurance required to be carried hereunder (or which would have been received had such party complied with such requirements) or, if greater, the proceeds actually received from all insurance maintained by the releasing party. Tenant and Landlord shall secure an appropriate clause in, or an endorsement upon, each insurance policy obtained by it and covering or applicable to the Premises or the personal property, fixtures and equipment located therein, pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to make the waiver set forth in this Section 8.2, without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim shall extend to Landlord and its agents and employees.

8.3 Commercial General Liability Insurance. Tenant, at its expense, shall procure and maintain at all times during the Term and at any time prior to the Term that Tenant is given possession of the Premises, commercial general liability insurance in respect of the Premises and the conduct or operation of business therein, on an occurrence basis, with Landlord, Landlord's Operating Manager and Landlord's managing agent, if any, and any mortgagee whose name and address shall previously have been furnished to Tenant, as additional insureds; Landlord may specify other required additional insureds, such as one or more owners associations or the agents of the same. The limit of such insurance shall not be less than \$3,000,000 on a combined single limit basis. All such insurance shall insure the performance by Tenant of the indemnity obligations of Tenant under this Lease for covered claims.

8.4 Tenant's Property Insurance. Tenant shall also at its own expense maintain, during the Term, and at any time prior to the Term that Tenant is given possession of the Premises, insurance covering all of its personal property including its furniture, fixtures, trade fixtures, equipment, and inventory, and all Alterations and other betterments, in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof and insuring against fire and all risk perils coverage as provided by a standard all risk coverage endorsement (commonly known as "causes of loss – special form") or equivalent. The plate glass is the responsibility of the Tenant in the event of breakage from any cause.

8.5 Insurance Policies. All insurance policies required to be carried by Tenant hereunder shall name Landlord and Landlord's property managers as additional insured and shall be with companies reasonably satisfactory to Landlord, and certificates of insurance evidencing the policies required shall be delivered to Landlord by Tenant prior to Tenant commencing occupancy and thereafter within thirty (30) days prior to each renewal thereof. Such evidence of insurance shall be from a company holding a "Best's Rating" of at least A: Class IX, shall indicate that the insurance policy is in full force and effect, and that the policy bears an endorsement that the same not be canceled or amended unless thirty (30) days prior written notice by U.S. Certified Mail of the proposed cancellation or amendment has been given to Landlord, its property managers, and any mortgagee of which Landlord has given Tenant notice. All such evidence of insurance and each such policy of insurance required to be maintained by Tenant hereunder shall expressly evidence insurance coverage as required by the Lease. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry, and shall not have a "deductible" in excess of a commercially reasonable amount.

8.6 Increase in Coverage. Landlord may from time to time require that the amount of general liability insurance to be maintained by Tenant under Section 8.3 be increased to an amount determined by Landlord to be necessary to adequately protect Landlord's interest and consistent with similar real property projects in the area where the Building is located. Upon receipt by Tenant of a notice from Landlord stating the increased amount of insurance, Tenant shall thereafter carry the insurance as set forth in such notice. In no event shall the amount of general liability insurance to be carried by Tenant be less than the amount specified in Section 8.3. Required general liability limits may be composed of primary and umbrella/excess liability policies.

## 9. Landlord's Property, Tenant's Property.

9.1 Landlord's Property. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises, whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, shall be deemed the property of Landlord and shall not be removed by Tenant, except as provided in Section 7.5. Any carpeting or other personal property in the Premises on the Commencement Date shall be and remain Landlord's property and shall not be removed by Tenant; provided, that at Landlord's written request, Tenant shall, at its sole expense upon termination of the Lease and in accordance with, and subject to the provisions of, Section 7.5, remove those items specified by Landlord, including any or all fixtures, equipment, improvements, appurtenances and other personal property brought to the Premises by Tenant, that are deemed herein the property of Landlord, and immediately make all repairs and

restorations related to such removal as Landlord specifies. Notwithstanding the foregoing, Tenant may, during the Term of this Lease, use the items of existing furniture currently in the Premises (as listed on Exhibit H attached hereto, "Landlord's Furniture") for no additional charge.

9.2 Tenant's Property. All unattached business and trade fixtures, machinery and equipment, communications equipment and office equipment that are installed in the Premises by or for the account of Tenant without expense to Landlord and that can be removed without structural damage to the Building and all furniture, furnishings (excluding window coverings) and other articles of movable personal property owned by Tenant and located in the Premises (together, the "Tenant's Property") shall be and remain the property of Tenant and may be removed by Tenant at any time during the Term of this Lease; provided, that if any of Tenant's Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from the installation and/or removal thereof. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant shall not be deemed to have been installed by or for the account of Tenant without expense to Landlord, shall not be considered Tenant's Property, and shall be deemed to be the property of Landlord.

9.3 Removal. At or before the Expiration Date of this Lease, or any earlier termination of this Lease, Tenant, at its expense, shall remove from the Premises all of Tenant's Property (except such items thereof as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord), and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property. If Tenant fails to remove, by the earliest of the date of expiration or termination of this Lease or of Tenant's right of possession (the "Removal Date") all items required to be removed by this Lease (including all of Tenant's Property, cabling, and Alterations to be removed), or to accomplish by the Removal Date all restoration required by this Lease, then Landlord shall have, in addition to all other rights, the right to collect as additional damages rent at the rate of all holdover rent described in Section 10 below from the Removal Date until all such obligations are performed. Collection of these additional damages is not a waiver of any Event of Default or of any other remedy, is not a waiver of any other damages, and does not extend the Lease Term nor grant Tenant any possessory right following the Removal Date.

9.4 Abandonment. In addition to Landlord's rights at Section 18.2.1, any items of Tenant's Property that shall remain in the Premises after the Expiration Date of this Lease, or fifteen (15) days after notice to Tenant in the event of any earlier termination of this Lease, at the option of Landlord, may, at Landlord's election, be deemed to have been abandoned, and in such case such items may be retained by Landlord, and Landlord may deal with Tenant's Property in such manner as Landlord shall determine, at Tenant's expense.

9.5 Omitted.

10. Holding Over. If Tenant holds over after the Expiration Date or earlier termination of the Term without the express written consent of Landlord, Tenant shall become a tenant at sufferance only, at a rental rate equal to one hundred fifty percent (150%) of the Base Rent in effect upon the date of such expiration or termination (prorated on the basis of a thirty-day month and actual days elapsed), and otherwise subject to the terms, covenants, and conditions herein

specified, so far as applicable. At the written election of Landlord made at any time during such tenancy at sufferance, the term of this Lease shall be extended from the date of such notice until the 30<sup>th</sup> day thereafter, on all the terms and conditions set forth herein (other than any rights of extension, renewal, purchase or expansion in favor of Tenant) at the rental rate specified in this Section 10, and shall continue for successive 30-day terms unless terminated by either party prior to commencement of the next successive 30-day term. Acceptance by Landlord of rental after such expiration or earlier termination shall not result in a renewal or extension of this Lease. The foregoing provisions of this Section 10 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. Tenant shall pay to Landlord all losses, and indemnify Landlord for all claims (including those made by any succeeding lessee), arising from any holdover by Tenant.

11. Electric Energy.

11.1 High Voltage Equipment. Tenant shall not, without the prior written consent of Landlord, use any equipment, machine, apparatus or device within the Premises that individually uses electricity in excess of 110 volts.

11.2 Cost of Increasing Capacity. Tenant shall not, without Landlord's prior written consent (which Landlord may give or withhold in its sole discretion) install or use equipment, machinery or other apparatus in the Premises that have electrical requirements that exceed the electrical load capacity of the Premises existing on the Commencement Date. Should Landlord consent to installation or use of any such equipment, machine or apparatus, the additional equipment required to increase the electrical capacity of the Premises to accommodate such installation and usage shall be provided by Landlord at Tenant's expense. Tenant shall, prior to purchase and installation thereof, pay to Landlord the cost to purchase, install, service and maintain such additional equipment. The cost of the electric energy used on the Premises in excess of the original design load for the Premises as determined by Landlord and its engineers and consultants shall be an Operating Expense allocable in full to Tenant.

11.3 Light Fixtures. Landlord shall attend to any replacement of electric light bulbs, tubes and ballasts in the Premises throughout the Term of this Lease. Landlord may adopt a system of relamping and reballasting periodically on a group basis in accordance with generally accepted management practice. The expenses associated with relamping and reballasting shall be an item of Operating Expenses.

12. Climate Control.

(a) HVAC service is provided to the Premises during Business Hours of Business Days. As used herein, and unless otherwise stated in the Rules and Regulations "Business Hours" shall mean generally customary daytime business hours, but not before 8:00 a.m. or after 6:00 p.m. on weekdays and not before 8:00 a.m. or after 12:00 p.m. on Saturdays, and "Business Days" shall mean all days except Sundays, and days observed by the Federal or the State government as legal holidays. If Tenant shall require heat or air-conditioning service at any other time, Landlord shall arrange such service subject to such terms and conditions including such additional hourly charges as Landlord may from time to time prescribe; if such service is not a continuation of service furnished during Business Hours, a

three-hour minimum charge will apply. Notwithstanding any provision of this Lease, if the Premises includes one or more server rooms served by separate HVAC equipment, then Tenant shall pay upon request all costs of electricity for HVAC equipment serving its server room(s) in an amount determined by Landlord (either by an engineering estimate or metering).

(b) Landlord is in no way liable, and Tenant shall have no right to damages, rent abatement, lease termination, or other remedy against Landlord, for interruption of HVAC service, the inadequacy of HVAC service or any failure of HVAC service. However, if an HVAC interruption caused by Landlord renders the Premises unusable for a period of two or more consecutive business days, then Base Rent and Operating Expense payments shall be abated while the Premises are unusable, as Tenant's sole remedy.

(c) Operating Expenses shall include (i) the cost of utilities used in providing condenser water, and (ii) a payment of \$0.75 per square foot per year for the maintenance, repair and replacement of Landlord's equipment and plants that supply condenser water or otherwise are used in providing HVAC for the Project ("WSHP System Operating Costs"). WSHP System Operating Costs are payable monthly on the same basis as Operating Expenses; Tenant's Proportionate Share may be specifically allocated by separate metering of usage, or be charged based on Tenant's Proportionate Share.

### 13. Signs, Displays, Auctions, and Sales.

13.1 General. Landlord shall provide Building standard suite and lobby directory signage. Tenant shall not place or suffer to be placed on the exterior walls or windows of the Premises or upon the roof or any exterior door or wall or on the exterior or interior of any window thereof any sign, awning, canopy, marquee, advertising matter, decoration, picture, letter or other thing of any kind without the prior written consent of Landlord. All signage must comply with all legal requirements and all signage rules and requirements applicable to the Project. If Tenant shall install any sign without Landlord's consent and/or in violation of the foregoing, Landlord shall have the right and authority without liability to Tenant to enter upon the Premises, remove and store the subject sign and repair at Tenant's cost all damage caused by the removal of the sign.

13.2 Tenant's Interior Signs. Tenant shall have the right, at its sole cost and expense, to erect and maintain within the interior of the Premises all signs and advertising matter customary or appropriate in the conduct of Tenant's business; provided, however, that Tenant shall upon demand of Landlord immediately remove any sign, advertisement, decoration, lettering or notice which Tenant has placed or permitted to be placed in, upon or about the Premises and that Landlord reasonably deems objectionable or offensive, and if Tenant fails or refuses to so do, Landlord may enter upon the Premises and remove the same at Tenant's cost and expense. In this connection, Tenant acknowledges that the Premises are a part of an integrated business environment, and that control of all signs by Landlord is essential to the maintenance of uniformity, propriety and the aesthetic values in or pertaining to the Building.

13.3 Displays. Tenant may not display or sell merchandise or allow carts or other similar devices within the control of Tenant to be stored or to remain outside the defined demising walls and permanent doorways of the Premises. Tenant shall not install any exterior

lighting, amplifiers, or similar devices or use in or about the Premises such items as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts, nor make, or allow to be made, any odor or excessive noise in or around the Premises. No advertisement or sound of advertising shall be permitted to be heard outside of the Premises.

13.4 Auctions. Tenant shall not conduct or permit to be conducted any sale by auction upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding. No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises without prior written consent of Landlord, which consent may be conditioned as Landlord deems appropriate.

14. Access and Control of Premises.

14.1 Access to Premises. Landlord shall have access to the Premises upon no less than twenty four hours' notice (except in an emergency) to: (a) inspect the Premises; (b) exhibit the Premises to prospective purchasers, lenders or tenants; (c) determine whether Tenant is complying with its obligations hereunder; (d) supply any service to be provided by Landlord to Tenant hereunder; (e) post notices of non-responsibility; (f) make repairs required of Landlord hereunder or repairs to any adjoining space or utility services or make repairs, alterations or improvements to any other portion of the Building, or (g) exercise any of its rights hereunder including, without limitation, its cure rights under Section 17.1. Landlord shall exercise its rights pursuant to this Section 14.1 in a commercially reasonable and prompt manner. Landlord may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, and during the course of work being performed keep and store upon the Premises all necessary material, supplies, and equipment, provided that Landlord shall not unreasonably interfere with Tenant's use and enjoyment of the Premises. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, if any. No additional locks shall be placed by Tenant upon any doors in the Premises and if more than two keys for any lock are desired, such additional keys shall be paid for by Tenant. All keys shall be duplicated only by Landlord, and under no circumstance shall Tenant cause any key to be duplicated. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency or in re-taking possession in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstance be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, and any damages caused on account thereof shall be paid by Tenant.

14.2 Waiver in Connection with Landlord's Entry. Except with respect to Excluded Claims (as defined in Section 17.2), Tenant hereby waives any claim against Landlord for damages for any injury to, inconvenience to, or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by entry on the Premises regardless of negligence or intentional misconduct of Landlord.

14.3 Building Changes. Landlord reserves the right, at any time, without incurring any liability by Tenant therefor, and without affecting or reducing any of Tenant's covenants and obligations hereunder, to make such changes, alterations and improvements in or to the Project and the fixtures and equipment thereof, as well as in or to the doors, halls, passages, elevators, escalators and stairways thereof, and other public parts and common areas of the Project, Building and Land, as Landlord shall reasonably deem necessary or desirable, including the temporary or permanent closure or inoperability; provided the same shall not unreasonably interfere with Tenant's use and enjoyment of the Premises. Landlord reserves the right, and Tenant shall permit Landlord, to install, erect, use and maintain pipes, ducts and conduits in and through the Premises, so long as the installation and maintenance thereof do not unreasonably interfere with Tenant's use and enjoyment of the Premises. The condemnation of any or all of the Common Areas shall not constitute a default by Landlord nor allow Tenant to terminate this Lease or reduce rents. Landlord reserves the right to change the Common Areas, to add to or subtract from the Common Areas, to close Common Areas from time to time, to remove and/or exclude from the Common Areas individuals other than bona fide invitees of tenants, to add property or improvements to the Project including to the Common Areas (including buildings, kiosks, carts or other improvements), to sell or remove property or improvements from the Project, and to modify or redevelop all or any part of the Project, including exterior building surfaces. No such action shall constitute a default by Landlord nor allow Tenant to terminate this Lease or reduce rents; provided the same shall not unreasonably interfere with Tenant's use and enjoyment of the Premises. The Project, as so modified from time to time, is the "Project" hereunder. Landlord may, from time to time, hold, or permit others to hold, private events in the atrium of the Building or other Common Areas and/or adjoining streets. Tenant shall not interfere with such private events, and shall not attend them without invitation. In connection with such events, Tenant agrees that Landlord may temporarily close or prohibit access to the Building by tenants and their agents, employees, contractors, invitees and licensees after business hours, including, but not limited to, temporarily closing or prohibiting access to the Building, the Premises, the Common Areas, entrances, doors, corridors, elevators and other facilities in the Building.

15. Damage or Destruction.

15.1 Rights and Obligations.

15.1.1 Obligation to Rebuild. If rentable area of the Building, or any portion thereof, is damaged, destroyed, or rendered untenable due to fire or other casualty (which is not due to the fault or negligence of Tenant or its agents, employees, or invitees and is not due to any default by Tenant), and if

(a) the damage or destruction does not exceed twenty-five percent (25%) of the insurable value of the Building,

(b) the Building is capable of being repaired, reconstructed or restored within a period of ninety (90) days from commencement of such work, and



(c) Landlord will receive insurance proceeds sufficient to cover the cost of such repairs, reconstruction or restoration and will have the absolute right to conduct the repairs, reconstruction and restoration,

then Landlord shall be obligated to restore the Building to a condition reasonably comparable to its condition prior to such casualty. In such event, this Lease shall remain in full force and effect, Rent shall be adjusted pursuant to Section 15.2, Landlord will commence restoring that portion of the Building so damaged as soon as commercially practicable, and will diligently complete the restoration.

15.1.2 Right to Terminate. In the case of a casualty loss not described in Section 15.1.1, then within sixty (60) days after such casualty, Tenant shall have the right to terminate this Lease, and Landlord shall have the right to elect either to terminate this Lease or to restore the Building. Landlord shall make its election by written notice to Tenant within such sixty (60) day period of time. If Landlord elects to terminate this Lease, the termination shall be effective thirty (30) days after receipt of the notice by Tenant. If Landlord does not elect to terminate this Lease, then Rent shall be abated in accordance with Section 15.2 and Landlord shall restore the Building in accordance with the requirements of Section 15.1.1.

15.1.3 Tenant's Property. If Landlord undertakes to repair the Building after an event of casualty, such restoration shall not include replacement of furniture, equipment or other items designated as Tenant's Property herein.

15.1.4 Late Term Casualty. Regardless of Sections 15.1.1 and 15.1.2, if the casualty loss occurs within the last two (2) years of the Term, then, regardless of the extent of the damage, Section 15.1.2 shall establish the rights and obligations of Landlord and Tenant.

15.2 Rent Abatement. If all or part of the Premises shall be damaged or destroyed or rendered untenantable as a result of fire or other casualty, not caused by Tenant, its agents, employees or invitees, the Base Rent shall be abated or reduced based on the number of square feet of space rendered untenantable and Additional Rent provided herein shall be abated or reduced, as the case may be, in the proportion that the untenantable area of the Premises bears to the total area of the Premises, for the period from the date of the damage or destruction to the date the damage to the Premises shall be substantially repaired, or the date on which Tenant again uses the untenantable portion, whichever first occurs.

15.3 Interference with Tenant's Business. Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any casualty or the repair or restoration of any portion of the Premises or of the Building pursuant to this Section 15. The provisions of this Lease, including this Section 15, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or any other portion of the Building, and any applicable State, federal or local law or ordinance with respect to any rights or obligations concerning damage or destruction, whether now or hereafter in effect, shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or any other portion of the Building. Notwithstanding the foregoing, Landlord agrees to

use commercially reasonable efforts to not interfere with Tenant's use and enjoyment of the Premises.

15.4 Insurance on Tenant's Property. Landlord will not carry insurance of any kind on Tenant's Property, and Landlord shall not be obligated to repair any damage to or replace any improvements paid for by Tenant, or any of Tenant's Property. If Landlord elects to restore the Premises as provided in this Section 15, Tenant shall use all proceeds from the insurance it carries on Tenant's Property to restore Tenant's Property on the Premises.

15.5 Omitted.

16. Eminent Domain.

16.1 Total Condemnation. If the whole of the Building or the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose, (including a sale under threat of condemnation) this Lease shall terminate as of the date of vesting of title on such taking (herein called the "Date of Taking"), and the Base Rent and Additional Rent shall be prorated and adjusted as of the Date of Taking.

16.2 Partial Condemnation. If a part of the Building or the Land shall be so taken, this Lease shall be unaffected by such taking, except that:

16.2.1 Landlord's Option to Terminate. Landlord may, at its option, terminate this Lease by giving Tenant notice to that effect within ninety (90) days after the Date of Taking; and

16.2.2 Tenant's Option to Terminate. If twenty percent (20%) or more of the Premises shall be so taken and the remaining area of the Premises shall not be reasonably sufficient for Tenant to continue feasible operation of its business, Tenant may terminate this Lease by giving Landlord notice to that effect within ninety (90) days after the Date of Taking.

16.3 Effect of Termination or Continuation. This Lease shall terminate on the date that such notice from the Landlord or Tenant to the other shall be given, and the Base Rent and Additional Rent shall be prorated and adjusted as of such termination date. Upon a partial taking this Lease shall continue in force as to the remaining part of the Premises, and the Base Rent and Additional Rent shall be adjusted according to the rentable area remaining.

16.4 Award. Landlord shall be entitled to receive the entire award or payment in connection with any taking without deduction therefrom for any estate vested in Tenant by this Lease and Tenant shall receive no part of such award. Tenant shall have no claim against Landlord or the condemning authority for the unexpired portion of the Lease term. Nothing contained in this Section 16.4 shall be deemed to prevent Tenant from making a claim in any condemnation proceeding for the value of any fixtures or furnishings installed by Tenant at its sole expense and which are included in the taking.

16.5 Temporary Taking. A temporary taking (or transfer in lieu thereof) of any portion of the Premises by any authorized authority shall not cause a termination of this Lease, but Tenant shall be entitled to a rent reduction or abatement during the period its possession is

interfered with because of any such taking of the Premises. Such rent reduction or abatement shall equal the lesser of the Rent that would have been payable by Tenant during the period of such temporary taking or an amount equal to the award paid by the condemning authority for such taking. If the taking is for a period of longer than one year, or for an indefinite period that extends beyond one year, either Landlord or Tenant may elect to terminate this Lease by giving written notice to the other given within thirty (30) days after the event giving rise to the right of termination. No temporary taking of the Land or of any portion of the Building not including the Premises shall give Tenant the right to any rent abatement, reduction, or lease termination.

16.6 Sole Rights. The rights of Tenant arising from a condemnation are limited to those set forth in this Section and Tenant waives any other rights now or hereafter available under applicable law.

17. Landlord's Self-Help Rights; Liability and Indemnification.

17.1 Landlord's Right to Cure. If Tenant fails to pay or perform any of its obligations under this Lease, Landlord may, without waiving or releasing Tenant from its obligations hereunder, but shall not be required to, pay or perform such obligations on Tenant's behalf upon ten (10) days notice to Tenant (except where, in Landlord's opinion, an emergency exists, in which event no notice shall be required), and Tenant shall reimburse or pay promptly to Landlord the reasonable cost thereof as Additional Rent. "Reasonable cost," as used in this Section 17, means Landlord's actual out-of-pocket costs to effect such cure plus five percent (5%) to cover overhead, administrative and collection charges. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from Landlord's exercise of its rights under this Section 17.1.

17.2 Tenant's Indemnity. Except for claims of bodily injury or damage to third party property to the extent due to the negligence of Landlord ("Excluded Claims"), Landlord shall not be liable for injury to any person, or for the loss of or damage to any property (including property of Tenant) occurring in or about the Premises from any cause whatsoever. Except for Excluded Claims, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause whatsoever. Tenant hereby indemnifies and holds Landlord harmless, and shall defend Landlord, for, from, against and regarding any and all claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses (including attorneys' fees) arising, claimed, charged or incurred against or by Landlord and arising from or in connection with: (a) except for Excluded Claims, Tenant's use or occupancy of, or any activity, work or other thing done, permitted or suffered by Tenant on or about, the Premises, whether before, after or during the Term, (b) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease beyond any applicable notice and grace or cure period, or (c) any act or omission of Tenant, or any officer, contractor, agent, employee, guest, licensee, or invitee of Tenant. Such indemnification obligation shall extend to all costs, attorneys' fees, and liabilities incurred in connection with the defense of any such claim (including appeals and petitions for review) or any action or proceeding brought thereon.

17.3 Limit on Landlord's Liability. Except for Excluded Claims, Landlord and its agents shall not be liable for any loss or damage to persons or property resulting from fire,

explosion, falling plaster or other material, steam, gas, electricity, or from bursting, overflowing, or leaking of water, water or rain which may leak from or into any part of the Premises or from pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, from dampness, from electrical wiring, circuitry, power surges, overloads, spiking or interruption of any kind, from air conditioning equipment, or from gas or odors, sprinkler leakage, or from any other cause whatsoever. Landlord and its agents shall not be liable for interference with the light, air, or other incorporeal hereditaments or for any latent defect in or on the Premises or the Building. Tenant shall give prompt notice to Landlord in case of casualty or accidents on or about the Premises. Landlord or its agents shall not be liable for any damage to property entrusted to employees of the Building or its management. Landlord shall not be liable, regardless of cause (including negligence or breach) for the loss of or damage to any property, income or business, nor in any event for consequential damages.

# 18. Defaults and Remedies.

18.1 Events of Default. In addition to events described elsewhere in this Lease as constituting a "default" or an "Event of Default," the occurrence of any one or more of the following events shall constitute an Event of Default hereunder by Tenant:

(a) Omitted;

(b) Tenant's failure to make any payment of Rent hereunder as and when due, where such failure shall continue for a period of five (5) days after Tenant's receipt of written notice thereof; provided that, unless otherwise required by applicable law, no such notice shall be required more frequently than once in any consecutive 12-month period and, where no notice is required, an Event of Default shall arise automatically upon the due date for the Payment of Rent;

(c) Tenant's failure to observe or perform any of the covenants or provisions of Section 5, or Tenant's failure at any time to carry and provide proof of insurance, with the coverage and in the amounts, required to be carried by this Lease;

(d) Tenant's failure to observe or perform any of the other covenants or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless this Lease elsewhere provides that such failure alone constitutes an Event of Default hereunder upon its occurrence). If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then upon Tenant's written request within such thirty (30) day period, an Event of Default shall not be deemed to occur if Tenant shall commence such cure within said thirty (30) day period and shall thereafter diligently prosecute such cure to completion, but in no event shall such default extend beyond ninety (90) days. Once notice of default has been given, no additional notice shall be required in order for Landlord to exercise remedies under Section 18.2 by reason of a recurrence or continuation of such default; or

(e) If (i) Tenant or any Guarantor named in the Basic Lease Terms preceding this Lease shall make any general assignment for the benefit of creditors; (ii) a petition

to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy shall be filed by or against Tenant or any such Guarantor (unless the same is dismissed within thirty (30) days); (iii) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) substantially all of Tenant's assets located at the Premises, or of Tenant's interest in this Lease, is attached, executed upon, or otherwise judicially seized, where such seizure is not discharged within thirty (30) days.

The notices of defaults to be given under this Section may be the same as any notice required under State law, and this Lease shall not be construed to require Landlord to give two separate notices to Tenant before proceeding with any remedies.

18.2 Remedies. Upon the occurrence of an Event of Default, Landlord may exercise any one or more of the remedies set forth in this Section 18, or any other remedy available under applicable law or contained in this Lease.

18.2.1 Re-Entry. To the greatest extent allowed by applicable law, Landlord or Landlord's agents and employees may immediately or at any time thereafter re-enter the Premises, or any part thereof, peaceably but using such reasonable force as may be required, and without judicial process, or by any suitable action or proceeding at law, and may repossess the Premises, and may remove any persons, fixtures or chattels therefrom, to the end that Landlord may have, hold and enjoy the Premises. In the event of any such retaking of possession of Premises by Landlord, Tenant shall remove all personal property located thereon and upon failure to do so upon demand of Landlord, Landlord may in addition to any other remedies allowed by law, remove and store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of Tenant. If Tenant shall fail to pay all sums due hereunder together with the cost of storing any such property within sixty (60) days after it has been stored, Landlord may sell any or all of such property at public or private sale and shall apply the proceeds of such sale first, to the cost of such sale; second, to the payment of the charges and expenses for reentry, removal and storage; third, to the payment of any other sums of money that may be due from Tenant to Landlord under the terms of this Lease; and the balance, if any, to Tenant. Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing or selling the property of Tenant as herein provided, and will indemnify, defend and save Landlord harmless from loss, costs or damages to Tenant occasioned thereby, and no such re-entry shall be considered or construed to be a forcible entry. RE-ENTRY OR TAKING POSSESSION OF SAID PREMISES BY LANDLORD SHALL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO TENANT.

18.2.2 Continue the Lease. Landlord may elect to continue this Lease in effect, whether or not Tenant shall have abandoned or Landlord shall have re-entered the Premises. Without limiting the generality of the foregoing, Landlord shall have the right to continue the Lease in effect after Tenant's default. If Landlord continues this Lease in effect, Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to

recover the Rent as the same may become due hereunder and to recover damages from Tenant in accordance with the provisions of this Section 18.

18.2.3 Terminate Lease. Landlord may terminate Tenant's right to possession and use of the Premises and/or terminate this Lease and Tenant shall immediately surrender possession of the Premises to Landlord and shall pay Landlord damages as provided at this Section 18.

18.2.4 Monetary Damages and Recovery. Tenant shall have full liability for payment of all damages directly or indirectly suffered by Landlord which are proximately caused by any Event of Default under this Lease, whether or not such Event of Default is declared by Landlord, and such elements of damage and recovery by Landlord from Tenant shall specifically include, but not be limited to:

(a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination of the Lease or possession; plus

(b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination of the Lease or possession until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

(d) the worth at the time of award of any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, all legal expenses and other related costs incurred by Landlord following Tenant's default; the unamortized portion of any rent abatement, tenant improvement costs and leasing commission paid or incurred by Landlord related to the then current Term of this Lease which is attributable to the unexpired portion of this Lease (amortized evenly over the then current Term with 8% interest); all costs incurred by Landlord in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting; all other costs incurred by Landlord in reletting the Premises, including, without limitation, any brokerage commissions, legal fees and the value of Landlord's time; and interest, late charges and administrative fees, as herein provided.

The "worth at the time of award" referred to in Paragraphs (a), (b), and (d) above will additionally include interest at the Default Rate. The "worth at the time of award" referred to in Paragraph (c) will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco in effect at the time of award, plus one percent (1%).

"Rent" shall be calculated for each month by adding (i) the monthly Base Rent and (ii) one twelfth ( $1/12^{\text{th}}$ ) of the Additional Rent payable by Tenant hereunder during the twelve (12) consecutive month period prior to the month in which Tenant's default occurred (or one twelfth [ $1/12^{\text{th}}$ ] of the annualized amount of Additional Rent payable by Tenant for the period between

the Commencement Date and the last day of the calendar month prior to the month in which Tenant's default occurred, if such default occurs during the first twelve (12) calendar months of the Term).

Landlord shall use commercially reasonable efforts to mitigate Landlord's damages. Landlord shall not be obligated to relet the Premises to a particular tenant, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting; and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise affect any such liability. Landlord at its option may make such physical changes to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability. If there is other unleased space in the Building, Landlord shall have no obligation to attempt to relet the Premises prior to leasing such other space in the Building.

18.2.5 Form of Action for Damages. To the extent permitted under State law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. If the Lease or possession is terminated and the Premises are subsequently relet, no portion of the rents from such new Lease that is in excess of the contracted rent hereunder shall be treated as an offset to monies owed by defaulting Tenant. All unpaid Rent after its due date shall bear interest from the date due at the Default Rate in addition to any late charges and administration costs related to such delinquency, whether or not a default is declared.

18.2.6 Deposit. Landlord may apply any deposit held pursuant to Section 21.2, or pursuant to or in connection with any guarantee of Tenant's obligations under this Lease, in payment of any sums due from Tenant hereunder.

18.3 Cumulative Remedies. The remedies provided for in this Lease are cumulative and in addition to any other remedy available to Landlord at law or in equity. In the event of a breach by Tenant, of any of its obligations under this Lease, Landlord shall also have the right to obtain an injunction and any other appropriate equitable relief.

18.4 Termination. Even though Tenant has breached this Lease, Tenant's contractual obligations under this Lease shall continue in effect for so long as Landlord does not terminate the same (and even though Landlord may have terminated Tenant's estate and right to possession) by written notice to Tenant, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's rights to possession unless written notice of termination is given by Landlord to Tenant.

18.5 No Redemption. Tenant waives any and all rights of redemption granted under any present and future laws in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

## 19. Transfers By Tenant.

### 19.1 General.

19.1.1 Assignment and Subletting. Tenant shall not assign this Lease or any interest therein, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant, or hypothecate, mortgage, encumber or otherwise transfer or dispose of Tenant's interest in the Premises, either voluntarily or involuntarily, without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned, or delayed. Consent to one such assignment or sublease shall not imply any future consent, and all subsequent assignments and subleases shall be made only upon obtaining prior written consent of Landlord. Notwithstanding that Landlord has consented to an assignment or subletting hereunder, any assignment or sublease hereof shall cause an automatic termination of any renewal options, expansion options, purchase options or rights of first refusal.

19.1.2 Obligations of Assignees. Assignees or subtenants shall become directly liable to Landlord for all obligations of Tenant hereunder, but Tenant shall remain liable for the performance of all obligations owed to Landlord under this Lease. The instrument by which any assignment or subletting consented to by Landlord is accomplished shall expressly provide that the assignee or subtenant will perform and observe all the agreements, covenants, conditions and provisions to be performed and observed by Tenant under this Lease and that Landlord will have the right to enforce such agreements, covenants and conditions directly against such assignee or subtenant.

19.1.3 Procedure for Consent. It shall be the responsibility of Tenant to provide Landlord, in a manner acceptable to Landlord, with such information as Landlord reasonably determines is necessary for Landlord to grant or withhold its consent. If Tenant desires to request approval to assign, hypothecate or otherwise transfer this Lease or sublet the Premises, then at least thirty (30) days prior to the date when Tenant desires the assignment or sublease to be effective (the "Assignment Date"), Tenant shall give Landlord a notice (the "Assignment Notice"), which shall set forth the name, address and business of the proposed assignees or subtenant, current and signed financial statements, credit information as required by Landlord, the Assignment Date, any ownership or commercial relationship between Tenant and the proposed assignee or subtenant, and the consideration and all other material terms and conditions of the proposed assignment or sublease, all in such detail as Landlord shall reasonably require. If Landlord requests additional detail, the Assignment Notice shall not be deemed to have been received until Landlord receives such additional detail, and Landlord may withhold action on the request to any assignment or sublease until such information is provided. Landlord may, following receipt of all such information, withhold or grant its consent under this Section 19 in its discretion; any consent may be granted subject to conditions including but not limited to execution of a Consent and Assumption Agreement in form prepared by Landlord. Tenant agrees to pay to Landlord at the time consent is requested, \$1,000.00 to be applied to all attorneys fees and other expenses incurred by Landlord related to a request for consent regardless of whether such consent is granted and regardless of whether the transfer is consummated. In considering an Assignment Notice, Landlord may, among other things, consider financial capability, business reputation, business experience, existing and future space requirements of other tenants, existing and future space requirements of the proposed assignee or subtenant, the



intended use, the anticipated demand for services by the assignee or subtenant, and the assignee's or subtenant's anticipated contribution to the prestige of the building.

19.1.4 Sublease Income. If Tenant shall sublet all or any portion of the Premises, then one-half of the rent paid by the subtenant for the portion of the Premises being sublet that exceeds one hundred percent (100%) of the Base Rent and Additional Rent provided by this Lease for such portion of the Premises being sublet shall be due, owing and payable from Tenant to Landlord when paid or owing by the subtenant under the sublease. For the purpose of this Section 19, the rent for each square foot of floor space in the Premises shall be deemed equal.

19.2 Listing Premises. Tenant shall not list the Premises for lease through a broker, or advertise or publicize in any way the availability of the Premises, without prior written notice to and the written approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

19.3 Corporate Changes. If Tenant is a corporation, partnership or limited liability company, then any transfer of this Lease by merger, consolidation, liquidation, change in the ownership or power to vote the majority of the issued and outstanding stock, or of the partnership or membership interest, of Tenant shall constitute an assignment for the purposes of this Section 19. An assignment prohibited within the meaning of this Section 19 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise, or creation of new stock or interests, by which ownership or control of an aggregate of more than fifty percent (50%) of Tenant's stock or voting interests shall be vested in a party or parties who are non-stockholders, partners or members, as applicable, as of the date hereof.

19.3.1 Affiliate Transactions. Notwithstanding the other provisions of this Section 19, Landlord will not withhold its prior written consent to a sublease to an entity which controls, is controlled by, or is under common control with KeHE Distributors, LLC (an "Affiliate") or to an assignment to an Affiliate Assignee (as defined below) if the following requirements are met:

- (a) Such prior written consent is properly requested.
- (b) Tenant supplies such information regarding the proposed transfer and proposed transferee as Landlord may request.
- (c) No Event of Default exists during the time period from the date consent is requested through the date consent is granted.
- (d) Tenant demonstrates that the proposed transferee is capable of performing its obligations under this Lease and with respect to the Premises.
- (e) Tenant and the transferee execute and deliver an agreement prepared by Landlord which will include, among others, provisions confirming the continuing obligations of Tenant and confirming that the transferee will be bound by all provisions of this Lease.

(f) The transferee provides insurance and proof of insurance as required hereunder.

An Affiliate Assignee is (a) an Affiliate, (b) an entity acquiring all of the stock or assets of KeHE Distributors, LLC, and/or (c) an entity which is the survivor of a merger with KeHE Distributors, LLC. As used in this Section 19.3.1, "KeHE Distributors, LLC" means such entity as it is owned and exists at execution of this Lease.

19.4 Unapproved Transfers. Any attempted transfer in violation of the requirements of this Section 19 shall be void and, at the option of Landlord, shall constitute an Event of Default.

19.5 Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions, and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

## 20. Subordination; Attornment; Quiet Enjoyment.

20.1 Subordination, Nondisturbance. This Lease, and all rights of Tenant hereunder, are and shall be, upon the election of the holder thereof, subject and subordinate to all mortgages, trust deeds and other financing and security instruments ("Mortgages"), that may now or hereafter affect the Premises, and to all renewals, modifications, replacements and extensions of any such Mortgages. This Section shall be self-operative, and no further instrument of subordination shall be required to effect a subordination hereunder; provided, however, that in confirmation of such subordination Tenant shall promptly execute, acknowledge or deliver any instrument that Landlord or any such mortgagee may reasonably request to evidence such subordination. If Tenant fails to execute, acknowledge or deliver any such instruments within ten (10) business days after a request therefor, Landlord may declare an Event of Default hereunder.

20.2 Attornment. If the interest of Landlord under this Lease is transferred, whether through possession, foreclosure or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights (herein called "Successor Landlord"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's Landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such request for attornment, Tenant's rights hereunder shall continue in full force and effect as a direct Lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as set forth in this Lease so long as Tenant is not in default.

20.3 Quiet Enjoyment. So long as Tenant pays all Rents and complies with all of the terms and conditions of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises. This covenant shall, subject to the provisions of this Lease, be binding upon the subsequent successors in interest of Landlord's interest in this Lease including those to whom Tenant is subordinate and/or to whom Tenant agreed to attorn pursuant to Sections 20.1 and 20.2.

20.4 Estoppel Certificates. Within ten (10) business days following any written request that Landlord may make from time to time, Tenant shall execute and deliver to Landlord and/or any prospective mortgagee or purchaser designated by Landlord, a statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, and stating the date and nature of such modifications); (c) the date to which the rental and other sums payable under this Lease have been paid; (d) that to Tenant's knowledge there are no current defaults under this Lease by Landlord except as specified in such statement; and (e) such other matters as may be reasonably requested. Landlord and Tenant intend that any statement delivered by Tenant pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser, or prospective purchaser of the Premises or any interest therein. Tenant's failure to deliver such statement or otherwise to object to the form provided by Landlord for such statement within such time (x) shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in the Landlord's performance, and (iii) that no more than one month's rental has been paid in advance, and (y) at Landlord's election, shall constitute an Event of Default hereunder. If Landlord desires to finance or refinance the Premises, or any part thereof, Tenant shall, within ten business (10) days following Landlord's request therefor, deliver to any lender designated by Landlord such financial information of Tenant as shall be required by such lender; provided such lender agrees to execute a confidentiality agreement reasonably acceptable to Tenant with respect to such financial information, and that no such confidentiality restrictions will be required for Landlord to share this Lease or the terms hereof with such lender. All such information shall be received in confidence and shall be used only for the purpose herein set forth.

20.5 Mortgagee Protection. If there occurs any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure, but in no event more than an additional thirty (30) days.

## 21. Security.

21.1 Financial Statements. Subject to a mutually agreeable confidentiality agreement, substantially similar to the agreement entered by Landlord and Tenant around the time of execution of this Lease, Tenant shall furnish to Landlord upon request, but no more than once per calendar year, the financial statements of Tenant and of any Guarantor for the preceding fiscal year (consisting of a balance sheet and a profit and loss statement) each prepared by a certified public accountant in accordance with generally accepted accounting principles (or other method approved by Landlord) consistently applied. Landlord shall treat such financial statements in accordance with Section 29.17.

21.2 Deposit. Contemporaneously with Tenant's execution and delivery of this Lease, Tenant shall deposit with Landlord the amount specified in the Basic Lease Terms preceding this Lease, such amount to be held by Landlord during the Lease Term as security for Tenant's performance of its obligations hereunder. If Tenant fails to make any payment when due under

this Lease, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of such obligation or default, or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage that Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall, within ten (10) days after written demand therefor from Landlord, deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount stated in this Section 21.2, and Tenant's failure to do so shall constitute an Event of Default under this Lease. If Tenant performs all of Tenant's obligations hereunder, Landlord shall return said deposit (or so much thereof as has not theretofore been applied by Landlord as permitted under this Section 21.2) within sixty (60) days following the date of expiration of the Lease Term or the date on which Tenant has vacated the Premises. Landlord shall not be required to keep said security deposit separate from its general funds, and Tenant shall not be entitled to interest on said deposit. Landlord shall be entitled to deliver the funds constituting the deposit hereunder to any purchaser of Landlord's interest in the Premises, whether by sale, foreclosure, deed in lieu of foreclosure, or otherwise, and upon such delivery, Landlord shall be discharged from any further liability with respect to said deposit. Tenant hereby waives the provisions of any law, now or hereafter in effect, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in this Section above and/or those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant. Tenant hereby grants Landlord a security interest in the deposit.

22. Governing Law/Waiver of Jury Trial/Interpretation. The laws of the state in which the Building is located shall govern the validity, construction, performance and enforcement of this Lease. Should either party institute legal action to enforce any obligation contained herein, it is agreed that the venue of such suit or action shall be in the County where the Building is located. Tenant expressly consents to Landlord designating the venue of any such suit or action in Maricopa County, Arizona, and EACH PARTY WAIVES THE RIGHT TO A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING UNDER THIS LEASE. All provisions of this Lease have been negotiated by both parties at arm's length and neither party shall be deemed the scrivener of this Lease. In addition, if either party has made a scrivener's error with regard to division, multiplication, addition, or subtraction of any numbers or arithmetic calculation in this Lease, this Lease shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof.

23. No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not constitute a merger of the Landlord's and Tenant's estate, and shall, at the option of Landlord, operate either as an assignment to Landlord of any or all subleases or subtenancies or as a termination thereof.

## 24. Disputes.

24.1 Attorneys' and Collection Fees. If either party should bring an action or suit for possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against Tenant hereunder, or in the event of any other arbitration or litigation between the parties with respect to this Lease, then all costs and expenses, including collection agency fees and reasonable attorneys' fees incurred by the prevailing party in such arbitration or litigation, including on any arbitration or court proceeding, appeal, petition for review therefrom or in any proceeding before a U.S. Bankruptcy Court, shall be paid by the other party, such amount to be set by the court before which the matter is heard, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action (or, if earlier, upon the applicable Event of Default) and shall be enforceable whether or not the action is prosecuted to judgment.

24.2 Arbitration of Disputes. At Landlord's option, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement, its interpretation, application, or the rights, duties or liabilities hereunder of either party, or any breach or alleged breach hereof, shall, upon the written request of Landlord, be submitted to, and settled by, binding arbitration in the city where the Premises is located or elsewhere as agreed by the parties, pursuant to the rules then in effect of any private arbitration service actively engaged in providing dispute resolution services as Landlord may designate. Any award rendered in an arbitration initiated under this Section 24 shall be final, binding and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be paid as provided in Section 24.1.

25. Project Planning. After the initial twenty-eight (28) months of the Term, and upon at least one hundred and twenty (120) days' notice to Tenant in writing, Landlord shall have the right to relocate Tenant to other space in the Project comparable to the prior Premises in size, quality and improvements, at Landlord's cost and expense (including any costs of improving the new space to render it materially consistent with the quality and improvements of the prior Premises, the actual additional expenses incurred by Tenant for wiring, and cabling, and moving furniture), and all other terms herein shall remain the same including the Base Rent amounts. Landlord's notice shall identify the relocation space, the date of the relocation, and any improvements Landlord will make to the relocation space. If the relocation space, as it will be improved by Landlord, is not comparable to the prior Premises in size, quality and improvements, then Tenant may terminate this Lease, as of the relocation date, by written notice given to Landlord within twenty (20) days of Landlord's relocation notice. If this Lease is not so terminated, then Tenant shall be relocated on the date set forth in Landlord's notice and this Lease shall remain in full force and effect on its same terms except that the relocation space shall be the "Premises" for all purposes hereunder. Landlord may exercise this right to relocate Tenant only once during the Term, including any renewal terms. Landlord shall minimize any disruption to Tenant's business during any such relocation, which shall be done on a weekend.

26. Tenant's Liability and Performance. Except as may be otherwise specifically provided in this Lease, all covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If more than one person or entity executes this Lease as Tenant, (a) each of

them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally. The act or notice from, or notice or refund to, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

27. Definition of Landlord; Limitation of Liability. The term "Landlord," as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the lessor's interest under this Lease. In the event of any transfer, assignment, or other conveyance or transfers of such interest, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment, or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. Without further agreement, the transferee of such interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease. Tenant and all successors and assigns acknowledge that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

(a) The sole and exclusive remedy shall be a claim against the Landlord, with any judgment against Landlord being satisfied only out of its interest in the Building. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.**

(b) No member or manager of Landlord and no agent or employee shall be sued, named as a party in any suit or action, served with process or subjected to any judgment, and any such judgment taken against any member, manager, agent or employee may be vacated and set aside at any time nunc pro tunc.

(c) No writ of execution will ever be levied against the assets of any such member, manager, agent or employee.

This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder, or is delayed in doing so, if such inability or delay is caused by reason of strike, labor trouble, inclement weather, war, riot, acts of God or any other cause beyond the reasonable control of Landlord (these are events of

“Force Majeure”). Landlord shall be excused from performing any obligation hereunder while such obligation cannot reasonably be performed due to an event of Force Majeure.

Tenant acknowledges that many uses and events at the Project are governed by recorded documents, legal requirements, one or more ground leases, and one or more owners associations or other third parties. Notwithstanding any other provision hereof, Landlord shall have no liability and shall not be in default, and Tenant shall have no right to terminate this Lease, based upon any act, omission or failure of any such third party, and Landlord is not obligated to perform any act if Landlord does not have the right to do so. Tenant understands and acknowledges that the Premises is part of a multi-use Building and Project, incorporating office, residential, retail and restaurant components, the existence of which may result in odors, noises and other issues commonly associated with such uses. Tenant agrees that Landlord will not be in default of this Lease nor will Tenant have any right or claim against Landlord resulting therefrom.

To the extent that portions of the Project are, now or in the future, owned or ground leased by persons or entities other than Landlord, then, notwithstanding anything to the contrary contained in this Lease, (i) Landlord’s obligations imposed under this Lease do not apply to such portions of the Project, (ii) Landlord shall not be in default of its obligations under this Lease and Tenant shall not have any rights or remedies under this Lease with respect to activities or occurrences on such portions of the Project, (iii) any rights reserved by Landlord under this Lease with respect to the control and operation of such other portions of the Project shall also be reserved for and on behalf of such owners or ground lessees, and (iv) any provisions of this Lease indemnifying Landlord or limiting the liability of Landlord shall also run to such other owners or ground lessees to the extent that such indemnity or limitation of liability is required under any reciprocal operating agreement, operating agreement, ground lease, master lease, or other agreement now or hereafter in effect.

28. Waiver. Landlord’s waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of 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 Rent so accepted, regardless of Landlord’s knowledge of such preceding breach at the time of such acceptance of such Rent. The consent or approval of Landlord to or of any act by Tenant requiring Landlord’s consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts by the acting party. Acceptance of one or more rental or other payments after the dates when the same first became due or after the applicable grace period shall not prevent Landlord, with respect to subsequent payments, (a) from insisting upon prompt payment of all amounts due hereunder, (b) from insisting upon payment of the late fees provided for herein, or (c) from declaring an Event of Default hereunder. Without limiting the generality of the foregoing, no payment by Tenant or receipt by Landlord of a lesser amount than the full Rent then due shall be deemed to be other than on account of the earliest stipulated Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check, or payment

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 pursue any other remedy provided for in this Lease or available at law or in equity. Acceptance of Rent from another company or entity does not constitute consent to a purported sublease or assignment.

29. Miscellaneous Provisions.

29.1 Successors or Assigns. Except as otherwise provided herein, all the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors, subtenants, concessionaires, assigns and marital communities, if any, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

29.2 Authority of Parties. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation, and this Lease is binding upon said corporation. Any person executing this instrument, its exhibits, addenda, extensions, or renewals, or represents any material fact relevant hereto in writing, warrants and represents that he/she is duly authorized to so act.

29.3 Interest on Past Due Obligations. Any amount due from Tenant to Landlord hereunder which is not paid when due shall bear interest at the Default Rate from the date due until paid, but the payment of such interest shall not excuse or cure any default by Tenant, and interest shall be compensation for the loss of use of the past due funds, and shall be in addition to late or delinquent charges which are reimbursements for administrative costs associated with collecting and processing such past due amounts. An administrative charge of \$25.00 will be assessed for any check from Tenant which is returned for any reason.

29.4 Broker's Commission. The brokers who negotiated this Lease, if any, are identified in the Basic Lease Terms preceding this Lease. Landlord shall be solely responsible for the payment of brokerage commissions to said brokers, and Tenant shall have no responsibility therefor. If Tenant has dealt with any other person or real estate broker with respect to leasing or renting space in the Building, Tenant shall be solely responsible for the payment of any fee due said person or firm and Tenant shall indemnify and hold Landlord harmless against any liability in respect thereto, including attorney's fees and costs.

29.5 Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

29.6 Examination of Lease; Delivery. Submission of this document for examination and signature by Tenant is not an offer to lease and does not create a reservation or option to lease. Landlord may negotiate with, and lease the Premises to, other third parties and may cease negotiation with Tenant at any time. No claim for reliance, estoppel, contract, breach of good



faith, or other claim can be made based upon the circulation and negotiation of this Lease. This document will become effective and binding only upon full execution and delivery by both Tenant and Landlord. This Lease and all later documents, such as amendments, (a) may be executed by electronic signature, (b) may be executed and delivered in counterpart, and (c) may be delivered electronically or by facsimile (provided, if requested by Landlord, Tenant shall deliver a manually executed original of any of the foregoing to Landlord). Electronic records, electronic signatures, and facsimile signatures may be used in connection with the execution of this Lease and such later documents, and the same shall be legal and binding and have the same full force and effect as if a paper original of this Lease or such document had been signed using a handwritten signature. Landlord and Tenant (i) intend to be bound by electronic signatures and by documents sent or delivered by facsimile, electronic mail, or other electronic means, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Lease or any later documents based on the foregoing forms of signature or delivery. The foregoing does not prohibit the use of handwritten signatures or physical delivery.

29.7 Time. Except as otherwise specifically provided herein, time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.8 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

29.9 Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such terms, 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.

29.10 Recording. Tenant shall not record this Lease or any memorandum hereof. However, upon the request of Landlord, both parties shall execute a memorandum or "short form" of this Lease for the purposes of recordation in a form customarily used for such purposes. Said memorandum or short form of this Lease shall describe the parties, the Premises and the Lease Term and shall incorporate this Lease by reference.

29.11 Notices. All notices that either party shall be required or may desire to deliver hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, or by facsimile transmission or electronically, and shall be deemed received upon the earlier of the date of receipt or refusal thereof. Notices shall be delivered to Tenant at the address provided in the Basic Lease Terms and to Landlord at both the address for Landlord and the address for Landlord's property manager, if any, each set forth in the Basic Lease Terms preceding this Lease. In addition, a copy of any notice to Landlord shall be delivered to the following address:

Schwabe, Williamson & Wyatt, P.C.  
Pacwest Center  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204  
Facsimile: (503) 796-2900  
Attn: John Guinasso  
Email: jguinasso@schwabe.com

Landlord may change its address for notice by giving written notice to Tenant in the manner set forth above, which notice shall only be effective upon receipt or refusal. Notice to Tenant hereunder may be given by Landlord's attorney.

29.12 Entire Agreement. This Lease, including the Table of Contents and Basic Lease Terms that precede this Lease, and the Exhibits listed in such Basic Lease Terms and attached hereto, all of which are incorporated herein by this reference to them, together with any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Lease and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

29.13 Survival of Obligations. The covenants, duties, and obligations of Tenant contained herein that by their nature do not depend upon Tenant's possession of the Premises (including, without limitation, obligations arising under Section 17.2) shall survive the expiration or earlier termination of this Lease and such expiration or termination shall not excuse Tenant from the full performance thereof.

29.14 Representations and Warranties. Landlord has made no representations or warranties except as contained herein. No agent or broker of Landlord has authority to make nor has made any promise, warranty or representation to Tenant. Any offering materials or advertisements are specifically disclaimed and are superseded by this Lease; Tenant has not relied upon any of the same. Except only for Landlord's covenants stated in this Lease, the Premises is leased "AS IS." Tenant hereby represents and warrants that financial statements and other information furnished by Tenant to Landlord are true, accurate and complete, and such representation and warranty shall survive the execution and termination of this Lease and is material consideration relied upon by Landlord in executing this Lease. Any false, misleading or inaccurate statement made by Tenant therein shall constitute a material breach and an Event of Default hereunder.

29.15 USA Patriot Act Compliance. Tenant represents to Landlord that Tenant is not (and is not engaged in this transaction on behalf of) a person or entity with which Landlord is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security ("Anti-Terrorism Laws"). "Anti-Terrorism Laws", as referenced above, shall specifically include, but shall not be limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (aka, the USA Patriot Act); Executive Order 13224; the Bank Secrecy Act, 31 U.S.C.

Section 5311 et. seq.; the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq.; the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq.; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control ("OFAC"), as well as laws related to the prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

29.16 Consents. The grant of any consent or approval required from Landlord under this Lease shall be proved only by proof of a written document signed and delivered by Landlord expressly setting forth such consent or approval. Unless otherwise specified herein, any such consent or approval may be withheld in Landlord's sole discretion. Landlord has the right to withhold any consent or approval for which an additional third party consent is required; issuance of such third party consent does not require Landlord to issue its consent or approval, nor is Landlord required to accept any third party consent that is not acceptable to Landlord, in its sole discretion. Notwithstanding any other provision of this Lease, the sole and exclusive remedy of Tenant for any alleged or actual improper withholding, delaying or conditioning of any consent or approval by Landlord shall be the right to specifically enforce any right of Tenant to require issuance of such consent or approval on conditions not prohibited by this Lease; in no event shall Tenant have the right to terminate this Lease, to collect monetary damages, or to pursue any other remedy for any actual or alleged improper withholding, delaying or conditioning of any consent or approval, regardless of whether this Lease requires that such consent or approval not be unreasonably withheld, conditioned or delayed.

29.17 Confidentiality. Neither party shall disclose to any third party the terms or provisions of this Lease, nor any communications or information sent to the other party under or pursuant to this Lease, except only as may be required by law.

29.18 Security. Landlord has no duty to provide security for any portion of the Building. To the extent Landlord elects to provide any security, Landlord is not warranting the effectiveness of any security personnel, services, procedures or equipment and Tenant shall not rely on any such personnel, services, procedures or equipment. So long as Landlord hires a reputable security company to provide security to the building, Landlord shall not be liable for failure of any such security personnel, services, procedures or equipment to prevent or control, or to apprehend anyone suspected of, personal injury or property damage in, on or around the Building; provided nothing herein shall be construed as a release or waiver of any claims against any third party, agent or contractor of Landlord providing such security services to the Building.

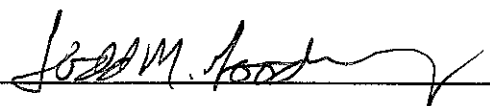
29.19 Counterparts. This Lease may be executed and delivered in counterparts.

29.20 Joint and Several Liability. If more than one person, corporation or other entity is named as Tenant in this Lease and executes the same as such, then and in such event, the word "Tenant" wherever used in this Lease is intended to refer to all such persons, corporations or other entities, and the liability of such persons, corporations or other entities for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several. If Tenant shall be a partnership or limited liability company, the liability of each and every partner or member thereof for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several, and no withdrawing partner or member shall be relieved of any liability hereunder as the result of any such withdrawal.

IN WITNESS WHEREOF, the parties have executed this Lease on the Effective Date.

**LANDLORD:**

City North Associates, LLC,  
a Delaware limited liability company

By: 

Name: Todd M. Gooding

Title: Authorized Representative

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

By: 

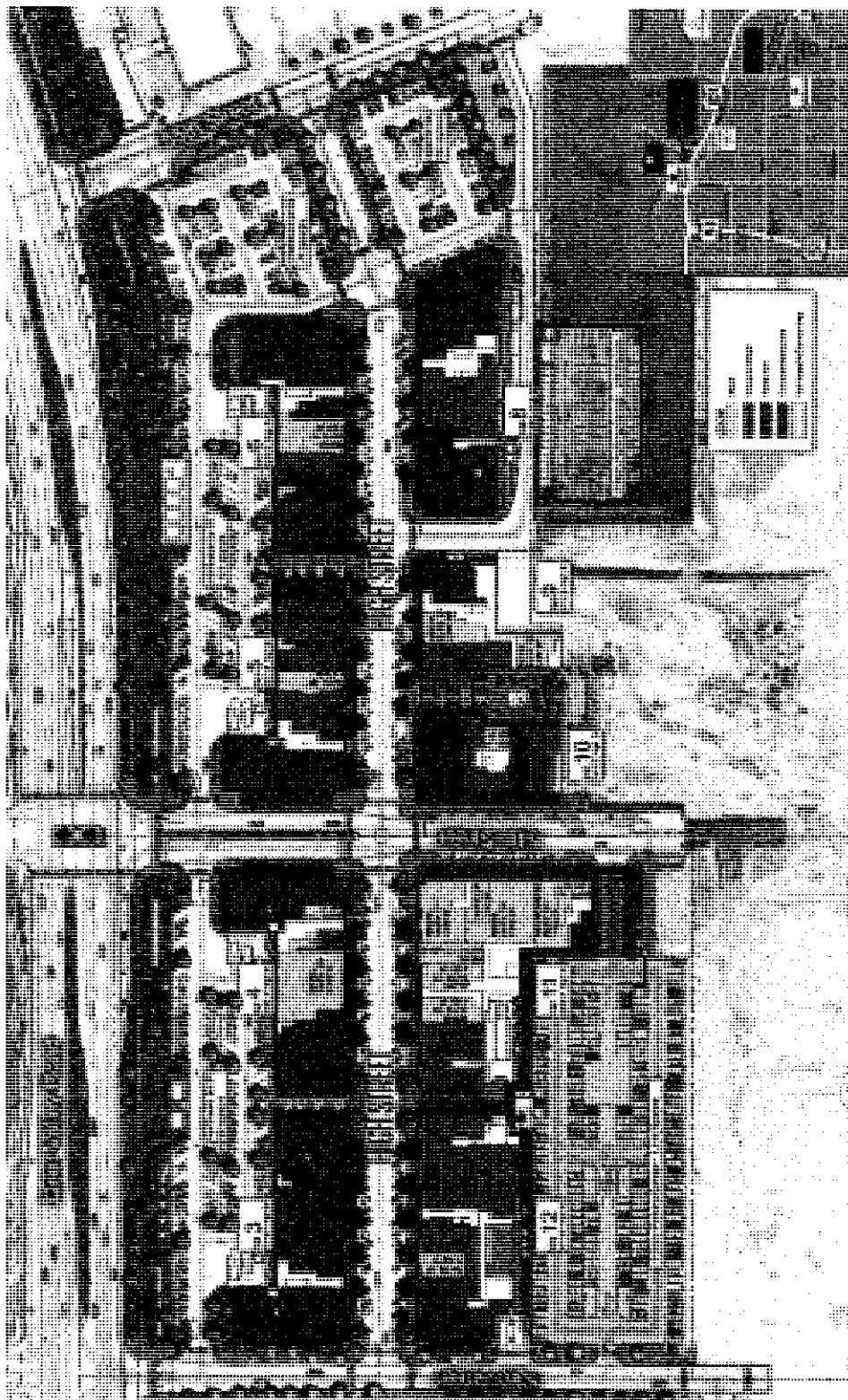
Name: TIM ROONEY

Title: SENIOR VICE PRESIDENT

27 DB

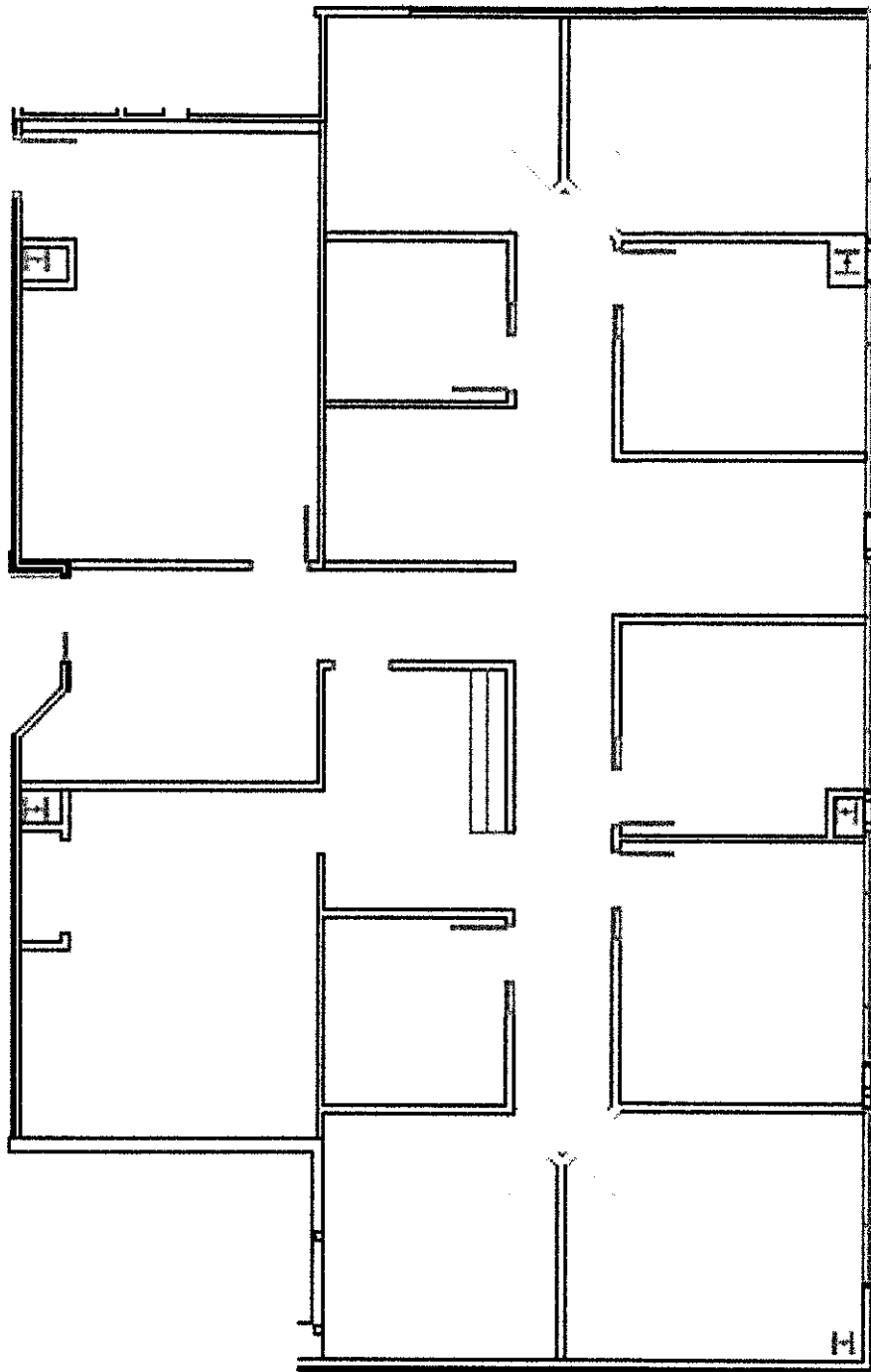
## EXHIBIT A

### The Project



## EXHIBIT B

### Premises Description



## **EXHIBIT C**

### **Work Letter**

#### **1. Landlord's Work.**

1.1 Plans. Landlord shall improve the Premises, at Landlord's expense, as follows, and as shown on Schedule 1 attached hereto: remove two office walls and create space for additional cubicles, and provide new carpet and paint throughout the Premises. The completion of such work is herein referred to as "Landlord's Work."

1.2 Construction. Landlord's Work will cause some disruption and inconvenience; Tenant shall not make any claim based on the same.

1.3 Changes in Plans. Tenant may request reasonable changes to Landlord's Work; provided, however, that if Landlord approves the request, Tenant shall pay any additional cost required to implement such change, including, without limitation, architecture fees, increase in construction costs and other charges payable hereunder caused by delay, and Tenant shall pay Landlord for said costs within fifteen (15) days after written notice from Landlord.

1.4 Inspection and Punchlist. Prior to the date which Landlord anticipates to be the date of substantial completion, Landlord shall deliver to Tenant written notice of the expected date of such substantial completion. Prior to the date of substantial completion, if Tenant desires, representatives of Landlord and Tenant shall make a joint inspection of the Premises to create an agreed upon list of items yet to be substantially completed. The items included in such list are herein referred to as "Punchlist Items." Certain of the Punchlist Items may be completed by Landlord prior to substantial completion and Landlord shall complete the remaining Punchlist Items with due diligence. If the parties are unable to agree whether any particular item is to be included as a Punchlist Item or whether the same has been satisfactorily completed, then the decision of Landlord's architect shall be binding. Landlord shall continue to have complete access to the Premises for the purpose of taking any and all steps related to any then remaining Punchlist Items. The obligation of Landlord to perform Punchlist items work shall be to perform the same to an industry standard level, not to perfection. Except for the obligation to perform Punchlist Items, Landlord shall have no other or further obligation with respect to construction of Landlord's Work.

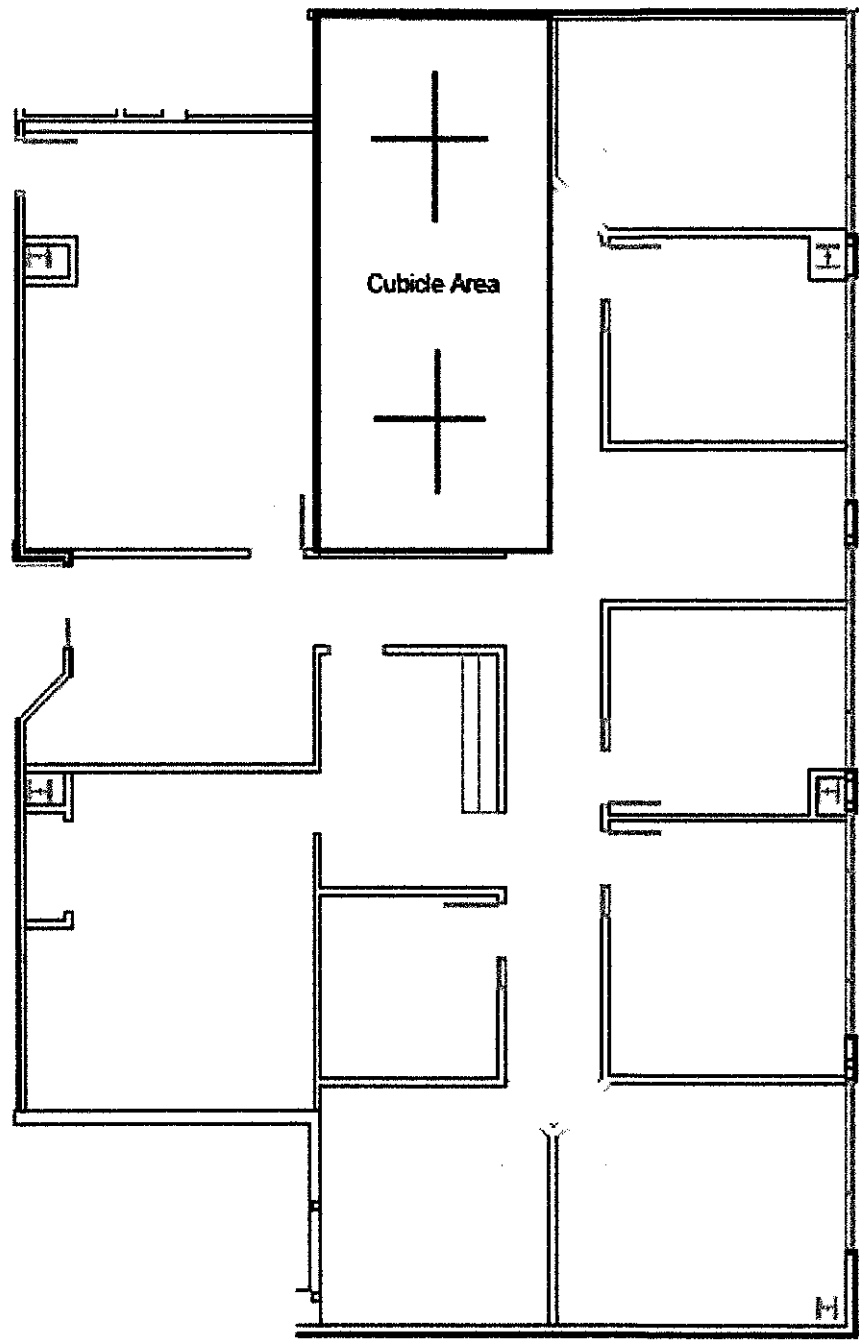
2. Delays. Landlord is not liable to Tenant and shall not be in default if Landlord's Work is substantially completed later than the scheduled Commencement Date in the Lease; but if this occurs, the Commencement Date shall be the date of substantial completion and the term of the Lease shall be the number of full calendar months set forth in the Lease, plus any partial first month.

3. Early Access. Tenant will have access to the Premises during the 14 day period prior to the Commencement Date to install its furniture, fixtures and equipment; Landlord shall notify Tenant of the commencement of such early access period when Landlord has reasonable certainty of the date of completion of Landlord's Work. Prior to such access, Tenant shall deliver evidence of insurance as required by this Lease. All provisions of this Lease shall apply

during such period of early access except the obligation to pay Base Rent and Excess Office Operating Expenses. Tenant's activities shall be conducted so as not to interfere with or delay Landlord's Work. No delay in Tenant completing its installation work will delay the Commencement Date.



SCHEDULE 1



## SCHEDULE 2

### Building Standards

#### The Offices at High Street

BLDGSTD - 2014

#### Building Standard Specifications - Architect/Contractor

*The following items are referred to as building standard and are at tenant's expense within the Tenant Improvement Allowance ("TIA") unless noted otherwise. Landlord review of working drawings, plans, change orders, and submittals is required.*

Item

Product Description

#### WALL CONSTRUCTION

Wall Bracing	Wall bracing is to be alternating 4' on center – Landlord's Construction Project Manager ("CPM") to approve bracing prior to ceiling installation.
Demising and Corridor Partitions (minimum framing of)	3 5/8", 20 GA metal studs at 24" O.C. with one layer 5/8" gypsum wall board on tenant side. Partitions to extend from floor to underside of deck above (deck height varies). Demising partition to have R-11 sound attention batts and caulking at floor on tenant side. Partition to have Building Standard finishes on tenant side of a demising or corridor partition.
Interior Partitions (minimum framing of)	3-5/8", 20 GA metal studs at 24" O.C. with one layer 5/8" gypsum wall board both sides; all to have R-11 sound attention batts. Partition to extend from floor through and above the suspended acoustical ceiling (finished ceiling at 9'-0") per plan. Interior partitions to have Level 5 finish. All other finishes must be approved by CPM.  Note: No spliced studs are allowed. Fiberglass insulation material is not allowable as sound attenuation material in building return air plenum ceilings.  Partial Height Partitioning (Pony Wall) are allowable but not considered Building Standard Design and/or Detail. If specified, the Pony Wall shall be installed 42" A.F.F. with a 2" steel tube wall brace as required or per plan. Cap with stain grade walnut ledge to match entry.
Partition Finish Level	Level 5 Finish: All joints and interior angles shall have tape embedded in joint compound and shall be immediately wiped with a joint knife leaving a thin coating of joint compound over all joints and interior angles. Two separate coats of joint compound shall be applied over all flat joints and one separate coat of joint compound shall be applied over interior angles. Fastener heads and accessories shall be covered with three separate coats of joint compound. A thin skim coat of joint compound trowel applied, or a material manufactured especially for this purpose and applied in accordance with manufacturer's recommendations, applied to the entire surface. The surface shall be smooth and free of tool marks and ridges.

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**The Offices at High Street**  
**Building Standard Specifications - Architect/Contractor**

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**Interior Glass/Sidelight**

Interior glass (i.e. office sidelights, conf. room vision glass, etc) are allowable but not considered a Building Standard and/or Detail.

**DOORS & FRAMES**

**Doorways**

Drill and anchor both sides of all doorways with ¼" x 1 ¼" redhead WS wedge anchors.

**Main Office Entry**

Single Herculite, clear tempered glass tenant entry doors 3'-0" W x 8'-0" H x ½" (Schlage C-123 keyway lock at bottom of door) with 1'-6" W x 8'-0" H fixed sidelight to match.

An operable 1'-6" W x 8'-0" H sidelight to match entry door is available but not considered Building Standard Design and/or Detail.

Forms & Surfaces DT1214-US32D interior and exterior handle. 1 ¼" dia. X 17" long, satin stainless steel finish.

One (1) 8' H Wood veneer clad panel

Recessed entry vestibule with gypsum hard lld and 45 degree return opposite of the veneer clad panel. Tenant signage to be provided by landlord.

Double Herculite tenant entry doors are allowed when possible but not considered a Building Standard detail. 2 ea. 8' H Veneer clad panels required when installed.

**Secondary/Back Door in  
Common Area Corridor**

Manufacturer: Marshfield Door System; Species: Walnut; Cut: Plain-Sliced; Door finish: Unfinished, prepped for stain applied in field; Stain (field applied): Interior of door (tenant side) to be stained to match Marshfield Door System finish Clear 0-95. Exterior of door (multitenant corridor side) to be stained to match existing corridor door and wood finish in existing corridors in the same Offices at High Street building which the current project is occurring.

**Interior Doors and Frames**

3'-0" W x 8'-0" H x 1-3/4", Hardwood solid core, pre-finished door. Manufacturer: Marshfield Door System. Species: Walnut.Cut: Plain-Sliced. Door Finish: Clear 0-95. Frame: Western Integrated. Frame Finish: Aluminum.

**Wood Passage Door Hardware  
for Interior Doors**

Schlage lever passage set ND10S, RHO626, Lever Design "Rhodes", 1 ½ pair of butts, three silencers, and one door stop (floor stop when possible).

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## The Offices at High Street

### Building Standard Specifications - Architect/Contractor

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Tenant Secondary Entry/ Non-Building Standard Interior Door Lockset Hardware	Schlage lever lockset ND53PD, Lever Design "Rhodes", RHO626 (or approved equivalent), SC 6 pin keyway, 1 1/2 pair of butts, three silencers, and one door stop (floor stop when possible). Lever lockset for interior doors are not considered a Building Standard and/or Detail.
Panic Hardware	Von Duprin series 99 when applicable.
Sidelights	One (1) 1'-6" W x 8' H, 3/8" tempered clear glass sidelight in integral frame with door allowed at each interior room. Frame to match door frame.

#### **KEYING**

Suite Keying	Tenant Suite keying must be coordinated with and approved by CPM.
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#### **CEILING/LIGHTING**

Suspended Acoustical Ceiling	Armstrong "Dune" 2' x 2' x 5/8" lay-in acoustical white tile with tegular edge and white suprafine 9/16" grid. Finished ceiling height at 9'-0". Scribe cut at demising partitions.
Hard Lid/Open Ceiling	Interior suite hard lid gypsum board elements, alternate ceiling height(s) and open ceiling(s) are allowable but are not considered Building Standard Design and/or Detail.
Light Fixtures	Building standard fixtures are to be 2-lamp high efficiency indirect/direct recessed troffer fixtures equal to Lithonia 2RT5 28T5 with (2) 28W/T5 lamps (4100 degrees K) and programmed start ballasts. Lamps are to be minimum 80CRI and 90 lumens/watt. Battery packs are to be provided in tenant improvements as required by code for interior and exterior egress paths. If emergency life safety generator system is available, battery units are not required. 6" recessed down-lights with (1) 32W/TRT lamp (4100 degree K) fluorescent must be used in reception area to match building standard fixtures.  LED or incandescent down-lights, track lighting or specialty lighting of any kind may be allowed but are not considered Building Standard Design and/or Detail. All fixtures must comply with latest adopted edition International Energy Conservation Code (IECC).
Lighting Controls	All lighting controls are to comply with the latest adopted edition of the International Energy Conservation Code (IECC). All motion sensors are to be dual technology (ultrasonic & PIR). All coverplates to be white.  Note: Per City of Phoenix interpretation, automatic daylight controls are not required by 2012 IECC code in existing building spaces although daylight zones and separate controls are still a requirement per 2012 IECC Section C405.2.2.3

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**The Offices at High Street**  
**Building Standard Specifications - Architect/Contractor**

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Exit Lights LED Edge lit with green letters.

**ELECTRICAL/DATA**

Electrical Outlet	Duplex wall receptacles are to be 20A, 120V with white coverplate and devices. Provide GFCI receptacle in all restrooms and within 6' of all sinks. X-ray floor slab where "Poke-Thru" type flush floor devices are required.
Electrical Conduit/Cabling	All conduit to be EMT complete with steel set screw connections and minimum 3/4".  The use of MC cable is ONLY allowed from J-box to wall outlet and J-box to light fixture.  All building wiring shall be copper (THHN-2 minimum #12ga.).
Electrical Requirements	Refer to Lease Documents/Work Letter and/or Building Mechanical /Electrical/Plumbing Engineer specifications. Typical electrical suite/space/occupant load is based on the total connected (general purpose receptacles/equipment/lighting/mechanical) electrical load per NEC/City of Phoenix Regulations and distribution systems sized accordingly. Lighting systems shall conform to IECC requirements. Refer to lease document language for further clarification.  Electric panels to be installed in common area equipment room. Access is controlled by Building Management.
Tele/Data Conduit	Provide minimum 2" empty conduit from tenant suite to building main TTB.
Telephone/Data Outlet	Telephone/data outlet specification to have rough-in box (tenant's vendor should provide appropriate white cover plates) conduit with single pull string above plenum. Tenant to coordinate with their communications equipment vendor for requirements and inclusion into the construction plans. All cable must be plenum rated and have independent support on J-hooks.  Data cabling by tenant and is not considered to be Building Standard and/or Detail.
Power Pole(s)	Ceiling J-box for power pole requirements may be considered but are not Building Standard detail. Refer to Lease Documents/Work Letter and/or building Mechanical/Electrical/Plumbing Engineer.
Telephone Mounting Board	4' x 8' CDX fire-treated plywood mounting board with 110 volt dedicated duplex outlet with #8 band wire. Plywood painted to match adjacent wall (stamped rating to be taped over before painting for exposure).

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**The Offices at High Street**  
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	Tenants less than 5,000 square feet will be 4' X 4' CDX plywood mounting board.
Panel-boards	Provide separate tenant 120/208V-3ph branch circuit panel-boards and feeder circuits in each suite. All panels are to be bolt-on type (load center type not permitted).
Fire Alarm	For fire alarm system tenant requirements, contact RED HAWK Fire & Security at 480-344-6343 for fire alarm requirements.
Safety Switch	All safety switches are to be Heavy Duty type, Voltage and Amp ratings as required.
Security	Cabling and conduit for security systems are responsibility of tenant and is not considered to be Building Standard Design and/or Detail.

**TENANT FINISHES**

Tenant Carpet	30-ounce cut pile or 28-ounce level loop. Direct glue installation. Allowance - \$20/yd incl. installation.
Vinyl Composition Tile	Armstrong Cottage Tan #51830 - 12" x 12" x 1/8" gauge or approved equivalent.
Wall Base	Roppe, 4" high straight rubber base at carpet and 4" coved rubber base at VCT, continuous rolled goods. Preformed outside covers.
Paint	Pittsburgh brand, Speedhide eggshell finish, one primer and one coat of paint; eggshell paint on smooth finish.
Turn-over Stock	Unopened factory cartons and cans to be turned over to Building Management. Items should be labeled with Tenant and Full Legend Designation.

**MILLWORK**

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**The Offices at High Street**  
**Building Standard Specifications - Architect/Contractor**

**BLDGSTD - 2014**

**Break Area Millwork**

Six (6) lineal feet of plastic laminate clad cabinetry with melamine interiors is provided. Base cabinets to be 2'-0" deep and 2'-10" high at sinks with attached toekick, and up to 3'-0" high at other areas, doors with single row of drawers above, and one interior adjustable shelf. Countertops to be Living Stone standard solid surface material (or equivalent) with eased edge detail. One single-bowl ADA-compliant undermount stainless steel sink with ADA-compliant gooseneck faucet with lever-style handles is provided. (Countertop to be flush with edge of sink wall.) Wall cabinets to be 2'-6" high x 1'-0" deep, doors only, with two interior adjustable shelves.

Waterlines to refrigerator(s), coffee maker(s), and waterline to/drain hookup from dishwasher is provided upon request.

**Appliances**

All appliances including but not limited to dishwashers, garbage disposals, refrigerators, icemakers, coffee makers, microwaves, and RO systems allowed to be purchased and/or installed by the General Contractor, but are not considered a Building Standard and/or detail.

**Plastic Laminate**

Formica or equivalent brand, standard plastic laminate, matte finish. Upgraded or "Premium" laminate finishes, colors, and textures are allowable but not considered a Building Standard and/or detail.

**CORRIDOR FINISHES**

**Carpet**

**CORR-CPT-1**

Manufacturer: Masland

Color: Shimmer 7855-58504 Hammered Nickel

**CORR-CPT-2**

Manufacturer: Masland

Color: Torque 7854-58405 / T452-45205 Carbon

**CORR-CPT-3**

Manufacturer: Masland

Color: Emblem 7475-74505 Carbon

**Paint**

Manufacturer: Pittsburgh Paint

Color: Whiskers 513-4

Finish: Speedhide Eggshell

**HVAC**

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## **The Offices at High Street**

### **Building Standard Specifications - Architect/Contractor**

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Water Source Heat Pumps	<p>Climatemaster "TY Series" or approved equal. Units shall be 5 tons or less. Provide separate thermostat controlled zones consistent with good engineering practice. Interior and exterior zones shall be separated. Each 3.5 ton unit shall cool approximately 800 square feet. Typical HVAC suite/ space/occupant load (mechanical) is based on 1 person per 150 square feet of usable square foot. Heat pumps should be located above acoustical ceilings.</p> <p>Condenser water runouts to each heat pump shall be at least 1 1/4" or larger. Hose kits to be sized to minimize pressure drop. Provide 1 1/2" for 5 ton units. Provide minimum 1 1/4" hose kit for 3.5 ton or 3 ton units. Provide 1" hose kit for 2.5 tons or smaller.</p> <p>Hose kits to be provided with full port ball valves and petes plugs on supply and return and integral y-strainer on supply. An automatic flow control valve should be provided to limit flow to the unit. A 2-position motorized valve shall shut off water to unit when compressor is "Off."</p>
Diffusers	<p>Standard 2'x2' white diffuser by Titus, Price, Nailor or Kreuger should be provided. No perforated supply</p>
Ductwork	<p>All ductwork fabricated as per latest international mechanical code requirements and SMACNA manual. All hangers for sheet metal ductwork shall be installed as per latest international mechanical code requirements and SMACNA manual.</p> <p>Ductwork shall be constructed of new hot-dipped galvanized sheet metal ASTM A-120 for each side. Turning vanes shall be installed in all mitered elbows. Tape all cross-joints in sheet metal duct with hardcast.</p> <p>Take-off fittings shall be conical spin-in with quadrant damper. A 2" standoff should be provided to allow for insulation. A nylon bushing should be provided at shaft and damper connection.</p>
Flexible Ductwork	<p>Flexible fibrous glass duct shall be factory fabricated assembly, UL 181 listed, composed of class 1 air duct material complying with NFPA 90A and 90B. Flexible duct wrapped with flexible glass fiber insulation, R-6 minimum, CPE liner permanently coated to helix wire. Enclosed by reinforced metalized film vapor barrier, rated for min. 5000 fpm and min. 10" pos (4-10 id). Attachment shall be with worm drive clamps. Length shall not exceed 6'-0".</p> <p>Manufacturers: Thermaflex type M-KE, Flexmaster 4m, Casco hp-25m.</p>
Exhaust fans	<p>Acceptable manufacturers are Greenheck and Cook</p>

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**The Offices at High Street**  
**Building Standard Specifications - Architect/Contractor**

**BLDGSTD - 2014**

**Duct Insulation**

Duct liner: Line the first 10' of supply and return rectangular duct after connection to heat pump unit internally with semi-rigid glass fiber insulation, 1 1/2 pcf density, R-5 minimum, with exposed internal surface of a thick, black, fire retardant coating to bind fibers tightly and provide a smooth airflow surface. Liner to be rated for 6000 fpm air velocity. NRC min to be .85.

Manufactures: Johns Manville "Linacoustic RC", CertainTeed "Tough Guard R", or Owens Corning "Quiet R".

Duct wrap: Provide duct wrap with vapor barrier on all round and rectangular where not lined. Duct wrap shall be glass fiber blanket insulation, R-5 minimum, with factory applied reinforced flame retardant foil vapor barrier. Wrap all flexible connections at mechanical units.

Provide 3/4 pcf density (type 75) on low-pressure duct. In sound sensitive rooms provide 1.5 pcf density (type 150) or provide liner as appropriate. Manufactures: Johns Manville "Microlite xg", CertainTeed "Soft touch", or Owens Corning "Soft R".

**System testing and Balancing**

The testing agency shall be one which specializes in the balancing and testing of heating, ventilation and air conditioning systems to balance, adjust and test equipment and air distributing and exhausting systems, and piping systems as herein specified. All work shall be done under direct supervision of a registered professional heating and ventilating engineer or AABC or NEBB certified company.

Approved companies: Arizona Air Balance, Technical Air Balance, or Precision Air

**Controls**

Temperature sensors and control components to be by Alerton Envision EMS system. Contact CPM and not Climatec Building Technologies.

**IT Closet Transfer Fan**

"IT" rooms are cooled with a thermal-fuser from a neighboring heat pump with approximate 400 CFM. The thermal-fuser closes if the heat pump unit is in heating.

**Supplemental HVAC**

Supplemental HVAC (split systems, additional heat pumps, etc.) for planned telephone/data/computer/conference rooms/ training rooms, etc. are not considered Building Standard Design and/or Detail but are available.

**MISCELLANEOUS**

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**The Offices at High Street**  
**Building Standard Specifications - Architect/Contractor**

**BLDGSTD - 2014**

Custom Items	Items such as built-in or custom desks and reception desks, kitchen/storage room cabinets (millwork) and sinks other than provided as Building Standard in the Millwork section, shelving, additional fluorescent/non standard florescent fixtures or non-florescent (incandescent) lighting, etc. are not considered Building Standard Design and/or Detail.
Appliances	Kitchen, break and conference room appliances are not considered a Building Standard and/or Detail.
Other/Miscellaneous	Special HVAC, MEP, hazardous materials, suite cardkey access, open ceiling treatment, curved interior walls or other Non-Building Standard office building or governmental regulated applications are not considered Building Standard Design and/or Detail.
Flooring	Stone and "stained" concrete flooring and raised flooring are not considered a Building Standard Design and/or Detail.
Floor Penetrations	Floor coring and floor x-ray procedures (PTS) are not considered Building Standard Design and/or Detail.
Window Coverings	Mini-blinds to match existing within existing building. Contractor to verify before purchasing. Color is one of two colors: Hunter Douglas CE60 mini-blinds, Color 085 Brushed Aluminum OR Color 974 Pearl. Building Standard Mini-blinds to be on exterior facing windows only.  Blinds on interior doors and/or sidelights are not considered Building Standard Design and/or Detail.
Fire Extinguisher Cabinet	Potter-Roemer or Larsen white semi-recessed, vertical duo door style w/ clear acrylic glazing and vertical lettering with fire extinguisher UL 3A:10-B:C 5# ABC.
Sprinklers	Semi-recessed sprinkler head (Reliable brand only) with chrome escutcheon, centered in tile. Necessary sprinkler drops to meet City codes.
<u>NON BUILDING STANDARDS</u> (identification of)	The construction and space planning documents will identify any items that are not considered Building Standard Design and/or Detail. The Tenant Improvement General Contractor should then have their subcontractor isolate related costs so the General Contractor can highlight the Non Building Standard items in the proposal. The object is to share with the tenant their additional requests and its costs.

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## **EXHIBIT D**

### **Rules and Regulations**

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building without the prior written consent of the Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person chosen by Landlord.
2. If Landlord objects in writing to any curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises without Landlord's specific approval in writing. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises.
3. Tenant shall not obstruct any sidewalk, halls, passages, exits, entrances, elevators, escalators, or stairways of the Building. The halls, passages, exits, entrances, shopping malls, elevators, escalators and stairways are not open to the general public. Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.
4. The directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom.
5. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord, and except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be employed by Tenant or permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any of Tenant's property by the janitor or any other employee or any other persons.
6. Landlord will furnish Tenant, free of charge, two keys to each door lock in the Premises. Landlord may make a reasonable charge for any additional keys. Tenant shall not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

7. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions in their installation.

8. Any freight elevator shall be available for use by all tenants in the Building, subject to such reasonable scheduling as Landlord in its discretion shall deem appropriate. No equipment, materials, furniture, packages, supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord.

9. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought in to the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to any tenants in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the building must be acceptable to Landlord. Tenant agrees to place a plywood covering over any lobby, hallway, elevator and office flooring and carpeting during any time where it is constructing in the Premises or moving furniture into or out of the Building. Pads shall be used in such a manner to protect walls and ceilings in said lobbies, hallways, elevators and offices during said construction or moving periods. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building including common areas, hallways, elevators and doors by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

10. Tenant shall not use or keep in the Premises any kerosene, gasoline or flammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds, dogs, cats or animals of any kind.

11. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord.

12. Tenant shall not waste electricity, water or air-conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice, and shall refrain from attempting to adjust controls. Tenant shall keep corridor doors closed, and shall close window coverings at the end of each business day.

13. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.

14. Landlord reserves the right to exclude from the Building between the hours of 6 P.M. and 7 A.M. the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any persons. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

15. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the building or by Landlord for noncompliance with this rule.

16. Tenant shall not obtain for use on the Premises ice, drinking water, food, beverage, towel or other similar services or accept barbering or bootblacking service upon the Premises, except at such hours and under such regulations as may be fixed by Landlord.

17. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused it.

18. Tenant shall not sell, or permit any sales of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises or the common area. Tenant shall not make any room-to-room solicitation of business from other tenants in the Building nor shall Tenant solicit in any part of the common areas. Tenant shall not use the Premises for any business or activity other than that specifically provided for in Tenant's Lease.

19. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

20. Tenant shall not mark, drive nails, screws or drill in to the partitions, woodwork or plaster or in any way deface the Premises or any part thereof. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule. Tenant shall pay for any and all damages to the Building, walls, doors, glass, carpeting or otherwise which may be caused by Tenant's use of the Building, moving equipment, supplies or furniture into or out of the Building whether caused by Tenant or its employees, agents, contractors or invitees to the Premises.

21. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord.
22. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building or in the common areas and parking lot are prohibited, and each tenant shall cooperate to prevent same.
23. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.
24. Tenant shall store all its trash and garbage within its Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord.
25. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging or for manufacturing of any kind, nor shall the Premises be used for any improper, immoral or objectionable purpose. No cooking shall be done or permitted by any tenant on the Premises, except that use by Tenant of Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.
26. Tenant shall not use in any space or in the public halls of the building any hand truck except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind in to the Building.
27. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
28. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
29. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed. Tenant agrees that the cost to repair any damage to the Building and Premises, as a result of theft, robbery and pilferage, shall be borne by the Tenant.
30. The requirements of Tenant will be attended to only upon appropriate application to the office of the Building by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regulated duties unless under special instructions from Landlord, and no employee of Landlord will admit any persons (Tenant or otherwise) to any office without specific instruction from Landlord.

31. The following parking rules apply:

31.1 Tenant shall not park its vehicles in any parking areas designated by Landlord as areas for parking by other tenants of, or by visitors to, the Building. To the extent Tenant is accorded parking rights by its Lease, Tenant shall not thereby be authorized to leave vehicles in the Building parking areas overnight nor to park any vehicles in the Building parking areas other than automobiles, motorcycles, motor drive or non-motor drive bicycles or four-wheeled trucks. Said vehicles improperly parked shall be subject to a fine of \$50.00 per day per violating vehicle, and shall be subject to towing at the vehicle owner's expense.

31.2 Tenant will not park or permit parking in any areas designated by Landlord for parking by visitors to the Project or for the exclusive use of Tenant or other occupants of the Project. Only passenger vehicles may be parked in the parking areas.

31.3 Parking stickers or any other device or form of identification supplied by Landlord as a condition of use of the parking facilities shall remain the property of Landlord. Such parking identification device must be displayed as requested and may not be mutilated or obstructed in any manner. Such devices are not transferable and any device in the possession of an unauthorized holder will be void. Landlord may charge a fee for parking stickers, cards or other parking control devices supplied by Landlord.

31.4 No overnight or extended term parking or storage of vehicles is permitted.

31.5 Parking is prohibited (a) in areas not striped for parking; (b) in aisles; (c) where "No Parking" signs are posted; (d) on ramps; (e) in cross-hatched areas (if any); (f) in loading areas; and (g) in such other areas as may be designated by Landlord from time to time.

31.6 All responsibility for damage, loss or theft to vehicles and the contents thereof is assumed by the person parking their vehicle.

31.7 Tenant and/or each user of the parking area may be required to sign a parking agreement, as a condition to parking, which agreement may provide for the manner of payment of any parking charges and other matters not inconsistent with this Lease and these Building rules.

31.8 Landlord reserves the right to refuse parking identification devices and parking rights to Tenant or any other person who fails to comply with the Building rules applicable to the parking areas. Any violation of such rules shall subject the vehicle to removal, at such person's expense.

31.9 A third party may own, operate or control the parking areas, and such party may enforce these Building rules relating to parking. Tenant will obey any additional rules and regulations governing parking which may be imposed by the parking operator or any other person controlling the parking areas serving the Project.

32. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from

thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

33. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Building.

34. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

35. Tenant shall be responsible for the observance of all of the foregoing rules of Tenant's employees, agents, clients, customers, invitees and guests.



**EXHIBIT E**

**Acceptance Letter**

[date]

City North Associates, LLC  
c/o ScanlanKemperBard Companies  
810 NW Marshall Street, Suite 300  
Portland, Oregon 97209

RE: Lease Dated: \_\_\_\_\_  
Landlord: City North Associates, LLC  
Tenant: \_\_\_\_\_  
Premises: \_\_\_\_\_

Ladies and Gentlemen:

The undersigned, Tenant under the above-described Lease, hereby confirms, as of the date hereof, the following:

1. That it is in full and complete possession of the Premises, such possession having been delivered by Landlord and having been accepted by the undersigned.
2. That the improvements and space required to be furnished by the terms of the Lease have been completed in all respects to the satisfaction of the undersigned and are open for the use of, the undersigned, its employees and invitees.
3. That all duties of an inducement nature required of Landlord in said Lease have been fulfilled.
4. That said Lease is in full force and effect; that there are no existing defaults on the part of the Landlord under the terms thereof.
5. That said Lease has not been amended, modified, supplemented or superseded except as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. That no rents have been prepaid except as provided by said Lease.

7. The rents provided in said Lease commenced to accrue, and that the Commencement Date occurred, on \_\_\_\_\_, \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_  
(Tenant)

By: \_\_\_\_\_  
(Title)

## EXHIBIT E-1

### Memorandum of Commencement Date

THIS MEMORANDUM OF COMMENCEMENT DATE is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by CITY NORTH ASSOCIATES, LLC, a Delaware limited liability company ("Landlord") and KeHE Distributors, LLC, a Delaware limited liability company ("Tenant").

### RECITALS

A. Landlord and Tenant have previously executed that certain Lease Agreement dated \_\_\_\_\_, 2017 (the "Lease"), pursuant to which Tenant has leased from Landlord certain premises in the CityNorth development, more particularly described therein.

B. Pursuant to the provisions of the Lease, Landlord and Tenant have agreed to execute this Memorandum of Commencement Date to specify the Commencement Date and the Expiration Date of the Term.

NOW, THEREFORE, in consideration of the foregoing recitals, the execution and delivery of the Lease and other good and valuable considerations, the receipt, sufficiency and validity which is hereby acknowledged, Landlord and Tenant agree as follows:

1. **Commencement Date.** The Commencement Date is \_\_\_\_\_, and the Expiration Date is \_\_\_\_\_.
2. **Extension Terms.** Tenant has, in accordance with the provisions of the Lease, \_\_\_\_\_ (\_\_\_\_) options to extend the Term for \_\_\_\_\_ (\_\_\_\_) years on each such option, or if Tenant has no such options, insert "None."
3. **Address.** The street address of the Premises is: \_\_\_\_\_  
\_\_\_\_\_.
4. **Notice.** Tenant's address for notices is: \_\_\_\_\_  
\_\_\_\_\_.
5. **Definitions.** Capitalized terms used in this Memorandum of Commencement Date without definition shall have the meanings assigned to such terms in the Lease, unless the context requires otherwise.
6. **Full Force and Effect.** Except as specifically modified by this Memorandum of Commencement Date, the Lease remains in full force and effect.
7. **Governing Law.** This Memorandum of Commencement Date shall be governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be signed by their respective representatives designated below.

**LANDLORD:**

City North Associates, LLC,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: Authorized Representative

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

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

## **EXHIBIT F**

### **Recorded Use Restrictions**

#### **Section 5.1 of 2008 Covenants**

##### **5.1 Uses.**

5.1.1 Permitted Uses. No part of CityNorth shall be used for other than multi-family residential purposes or commercial purposes, including retail, office, Restaurant, and hotel purposes, except that Declarant may designate an area to be used to house a museum collection and for educational, charitable and other eleemosynary purposes related thereto.

5.1.2 Certain Prohibitions. No use shall be permitted in CityNorth which is inconsistent with the operation of a high quality mixed use commercial and residential development. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(a) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building, except that this shall not prohibit (i) a paging system within a Building, (ii) a stereo or sound system within a Building, (iii) properly maintained and screened and regularly serviced garbage receptacles at locations approved by Declarant; or (iv) outdoor music of a volume and kind, and limited to hours, reasonable and appropriate for CityNorth as approved by Declarant.

(b) Any operation primarily used as a storage or warehouse operation or for industrial purposes, including any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation, provided that this shall not be deemed to prohibit a brew pub or micro brewery;

(c) Any "second hand" store, "surplus" store or "flea market", provided that this shall not be deemed to prohibit a bona fide antique store;

(d) Any mobile home park, trailer court, labor camp, junkyard or stockyard, except that this shall not prohibit the temporary use of construction trailers during periods of construction or reconstruction;

(e) Any dumping, disposing, incineration or reduction of garbage, provided that this shall not prohibit garbage compactors or receptacles which otherwise comply with the requirements of this Declaration;

(f) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(g) Any laundry, dry cleaning plant or laundromat, provided, however, that this limitation shall not prohibit: (i) drop off, receiving and pickup locations for dry cleaning and laundry services so long as the laundry and dry cleaning are not performed within the Property; (ii) laundry facilities within hotels (but only where those facilities serve the on-site

needs of the hotel and its guests); (iii) customary residential washing machines and clothes dryers within residential units; or (iv) customary laundry rooms within residential buildings or apartment complexes for use only by residents or occupants thereof;

(h) Any automobile, truck, trailer, boat or recreational vehicles sales, leasing or display operation;

(i) Any automotive body shop, maintenance or repair facility or car wash, provided, however, that this limitation shall not prohibit retail sales and installation of tires as an incidental part of the sales of a retail store otherwise permitted under this Declaration;

(j) Any skating rink, pool or billiard hall, provided that this shall not prohibit pool or billiard tables incidental to a use which is otherwise permitted hereunder;

(k) Any amusement or video arcade or dance hall, provided that this shall not prohibit such amenities as an incidental part of any use which is permitted hereunder;

(l) Any veterinarian, animal boarding, breeding or raising facility or store which sells or provides services for animals;

(m) Any mortuary or funeral home;

(n) Any adult book or adult video store or any other establishment selling or exhibiting explicit sexual materials or drug-related paraphernalia;

(o) Any church, daycare center, school or other training or educational facility, including but not limited to beauty schools, barber colleges, reading rooms (except that this shall not prohibit reading rooms or reading areas to accommodate retail customers within any book store permitted hereunder), places of instruction or other operations catering primarily to students or trainees (except that this shall not prohibit educational programs at a museum or the use of hotel facilities for conventions, seminars or similar activities);

(p) taxidermy stores or operations; or

(q) sales of caskets other than as an incidental part of the operation of a retail store otherwise permitted under this Declaration.

5.1.3 Hazardous Materials. No Owner shall keep, stock, use or permit the use or sale of Hazardous Materials in, on or from its Tract, except (a) inventory held for sale to the public by a retail business which is packaged and labeled in conformity with all Environmental Laws and constitutes an incidental part of such retail business; and (b) substances customarily and incidentally used, in compliance with applicable Environmental Laws, for household purposes (in the case of residential use) or in the normal course of retail, office, Restaurant or hotel operations (in the case of commercial uses); and (c) substances which are commonly used in connection with the maintenance of real property and are used in accordance with all applicable Environmental Laws. Each Owner shall indemnify, protect, defend and hold harmless the other Owners for, from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response,

arising out of any Hazardous Material located, used or discharged on or from its Tract in violation of this Section.

5.1.4 Outside Sales. No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease or stored within the Common Area; provided, however, that the foregoing prohibition shall not be applicable to: (a) the storage of shopping carts in areas designated or approved by Declarant; (b) public telephones or newspaper, ice and soft drink vending machines in areas designated or approved by Declarant; (c) temporary promotions authorized by Declarant; or (d) the Outside Sales Areas. The use of Outside Sales Areas shall be subject to such restrictions and requirements as Declarant may impose from time to time. Without limiting the foregoing, the use of the Outside Sales Areas shall, unless otherwise approved by Declarant, be subject to the following restrictions: (1) all sales shall be conducted in a manner that is consistent with the operation of a first-class retail center; (2) sales shall be limited to not more than four occasions per calendar year for a cumulative total of not more than twelve days; (3) all booths, stands, displays and other facilities used in connection with such sales shall be removed immediately upon completion of such sales activities; (4) use of the Outside Sales Area shall not interfere with the free movement of vehicular or pedestrian traffic within CityNorth; and (5) each Occupant shall comply with all applicable legal requirements in utilizing its respective Outside Sales Area.

5.1.5 Exclusive Rights. Declarant shall have the unilateral power to grant Exclusive Rights from time to time which are binding on all existing or future Occupants of CityNorth subject to the conditions that Exclusive Rights shall: (a) be for the benefit of a retail or commercial operator (including without limitation a Restaurant) in CityNorth; (b) be limited to a specific, narrowly defined category of products or services which constitute the primary retail business of such retailer or commercial operator and terminate when that business is no longer conducted; and (c) not prohibit any Occupant from continuing or expanding any category of products or services which it is selling or providing at the time it receives notice that the Exclusive Right has been granted. For purposes of this paragraph, the term "Exclusive Right" shall mean an agreement to prohibit all Occupants (or all but specifically exempted Occupants), other than the Occupant to which the Exclusive Right is granted, from selling or providing specified products or services at CityNorth. Actual notice of any Exclusive Right may be given by the granting Owner or by the grantee of the Exclusive Right. In addition, notice shall be deemed to have been given if and when Declarant records an instrument referring to this Declaration by date and recording number setting forth the material terms of the Exclusive Right and identifying the grantee thereof. Declarant may also give notice of the expiration or termination of any Exclusive Right in the same manner.

5.1.6 Right to Tradenames. Except with consent of Declarant, the name "CityNorth" shall not be used to identify any Owner or Occupant or any business or trade conducted at CityNorth.

5.1.7 Reserved Parking. No parking spaces in the Common Area may be reserved, unless designated as "Reserved Parking Spaces" on the Site Plan or otherwise approved by Declarant. It is contemplated that any condominium with a residential component will have reserved parking facilities that will be approved by Declarant as part of its approval of the

condominium. Valet parking shall be permitted only with the approval of and in areas designated by Declarant. Each Owner shall use reasonable efforts to cause the employees of the Occupants of its Tract to park their vehicles within employee parking areas designated by Declarant from time to time.

### **Section 7.2 of 2000 Covenants**

7.2 Prohibited Land Uses. The following uses shall not be permitted anywhere within the Covered Property:

(a) Any residential use except for (i) multi-family developments (e.g. apartments, townhomes, time-shares, etc.), provided that each such multi-family development must have a single Owner and must either (1) contain a minimum of fifty (50) dwelling units, or (2) be part of a development of at least forty five thousand (45,000) square feet of building floor area of which the multi-family development comprises no more than forty percent (40%); (ii) condominium developments which have an association which would be the Member of the Association for the applicable development and which would be responsible for complying with this Commercial Core Declaration and paying all Assessments for such development; (iii) hotel and resort uses; and (iv) congregate care/nursing home uses. Trailer courts, recreational vehicle courts, camping, jails, and detention facilities are not permitted within the Covered Property.

(b) Any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Covered Property.

(c) Any manufacturing, refining, or other industrial use except as incidental to an otherwise permitted use, or except as specifically permitted in any Tract Declaration, or any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion.

(d) Any adult pornographic bookstore, adult pornographic novelty store, or store selling, renting, or exhibiting pornographic materials, provided, however, that the foregoing shall not prohibit a full line bookstore, video store, clothing store, or the like, which sells or rents pornographic materials as an incidental part of its business; pornographic adult theater; adult lodging rented for less than twenty-four hours; or any restaurant, bar, or adult entertainment establishment permitting the display of pornographic acts, nude or semi-nude hosts, hostesses, servers, dancers or entertainers or a so-called "strip-tease establishment".

(e) Any so-called "head shop", "pawn shop", "piercing parlor" or "tattoo parlor" or the like.

(f) Junk yards and motor vehicle dismantling operations.



(g) Dumping, disposal, incinerating, reduction, or handling of garbage, sewage, dead animals, refuse, or silage, except for the use of standard commercial dumpsters.

(h) The outdoor housing of animals.

## **EXHIBIT G**

### **Standards for Utilities and Services**

1. The following Standards for Utilities and Services are in effect. Landlord reserves the right to adopt nondiscriminatory modifications and additions hereto.

a. If the Premises is located above the first floor, Landlord shall provide non-attended automatic elevator facilities during Business Hours on Business Days, and have one elevator available at all other times.

b. Tenant agrees to cooperate fully at all times with Landlord, and to abide by all regulations and requirements which Landlord may prescribe for the proper function and protection of said air conditioning system. Tenant agrees not to connect any apparatus, device, conduit or pipe to the Building chilled and/or hot water and/or condenser water air conditioning supply lines. Tenant further agrees that neither Tenant nor its servants, employees, agents, visitors, licensees or contractors shall at any time enter mechanical installations or facilities of the Building or adjust, tamper with, touch or otherwise in any manner affect said installations or facilities.

c. Landlord shall furnish to the Premises, during the usual Business Hours on Business Days, electric current as required by the Building standard office lighting and fractional horsepower office business machines in the amount of approximately two and one-half (2.5) watts per square foot. Tenant agrees, should its electrical installation or electrical consumption be in excess of the aforesaid quantity or extend beyond Business Hours, to reimburse Landlord monthly for the measured consumption at the terms, classifications and rates charged to similar consumers by said public utility serving the neighborhood in which the Building is located. If a separate meter is not installed at Tenant's cost, such excess cost will be established by an estimate agreed upon by Landlord and Tenant, and if the parties fail to agree, as established by an independent licensed engineer. Tenant agrees not to use any apparatus or device in, or upon, or about the Premises which may in any way increase the amount of such services usually furnished or supplied to said Premises, and Tenant further agrees not to connect any apparatus or device with wires, conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services without written consent of Landlord. At all times Tenant's use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation.

d. Water will be available in public areas for drinking and lavatory purposes only, but if Tenant requires, uses or consumes water for any purposes in addition to ordinary drinking and lavatory purposes of which fact Tenant constitutes Landlord to be the sole judge, Landlord may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expenses, in default of which Landlord may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant. Tenant agrees to pay for water consumed, as shown on said meter, as and when bills are rendered, and on default in making such payment, Landlord may pay such

charges and collect the same from Tenant. Any such costs or expenses incurred, or payments made by Landlord for any of the reasons or purposes hereinabove stated shall be deemed to be additional rent payable by Tenant and collectible by Landlord as such.

e. Provide janitor service to the Premises, provided the same are used exclusively as offices, and are kept reasonably in order by Tenant, and if to be kept clean by Tenant, no one other than persons approved by Landlord shall be permitted to enter the Premises for such purposes. If the Premises are not used exclusively as offices, they shall be kept clean and in order by Tenant, at Tenant's expense and to the satisfaction of Landlord, and by persons approved by Landlord. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish, to the extent that the same exceeds the refuse and rubbish usually attendant upon the use of the Premises as offices.

f. If the temperature otherwise maintained in any portion of the Premises by the HVAC systems of the Building is affected as a result of (i) any lights, machines or equipment used by Tenant in the Premises, or (ii) the occupancy of the Premises by more than one person per 150 square feet of usable area, then Landlord shall have the right to install any machinery or equipment reasonably necessary to restore the temperature to that which would have been maintained but for such lights, machines, equipment or occupancy, including, without limitation, modifications to the Building standard air conditioning equipment. The cost of any such equipment and modifications, including the cost of acquisition and installation and any additional cost of operation and maintenance of the same, shall be paid by Tenant to Landlord as additional rent upon demand.

g. If Tenant's usage of electricity, water or any other utility service exceeds the use of such utility as Landlord reasonably determines to be typical, normal and customary for the Building, Landlord may determine the amount of such excess use by any reasonable means (including the installation at Tenant's expense of one or more separate meters, submeters or other measuring devices) and Tenant shall be obligated to pay the cost of such excess usage as additional rent. In addition, Landlord may impose a reasonable charge for the use of any janitorial services above Building standard that may be required because of any unusual tenant improvements or Alterations in the Premises, the carelessness of Tenant or the nature of Tenant's business (including hours of operation beyond Business Hours).

2. Landlord reserves the right to stop service of the elevator, plumbing, ventilation, air conditioning and electric systems, when necessary, by reason of accident or emergency or for repairs, alterations or improvements, in the judgment of Landlord desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed, and shall further have no responsibility or liability for failure to supply elevator facilities, plumbing, ventilating, air conditioning or electric service, when prevented from so doing by strike or accident or by any cause beyond Landlord's reasonable control, or by laws, rules, orders, ordinances, directions, regulations or requirements of any federal, state, county or municipal authority or failure of gas, oil, or other suitable fuel supply or inability by exercise of reasonable diligence to obtain gas, oil or other suitable fuel.

3. Tenant shall obtain, at its sole cost and expense, any services required for its use and occupancy of the Premises other than those described in the Lease as being provided by Landlord. Tenant shall pay, as and when due, all charges for all such facilities and services.

4. Tenant acknowledges and agrees that the number and type of telecommunication lines to the Premises, and all other telephone, telecommunication and other communication equipment serving the Premises, including those, if any, contemplated to be installed prior to delivery of possession as specifically provided in this Lease, are fully adequate for the intended uses and purposes of Tenant. In the event Tenant later wishes additional telecommunication lines or equipment, no such additional lines or equipment shall be installed without first securing the prior written consent of Landlord. Landlord shall not be required to incur any expense regarding additional lines or equipment, nor shall Landlord be required to allow additional service providers to access the Building; if Landlord allows access by an additional provider, Landlord may impose conditions in connection with such access, including but not limited to execution of additional agreements by Tenant and any such provider in form prepared by Landlord. Landlord shall have the right to determine whether there is sufficient space in the Building for the placement of additional lines or equipment. Tenant agrees to compensate Landlord for the reasonable amount determined by Landlord for space used by additional lines or equipment and for any costs that may be incurred by Landlord, including a reasonable charge for installation, inspection and oversight. The refusal of Landlord to allow additional lines or equipment shall not be deemed a default hereunder by Landlord nor be grounds for any termination, claim or offset by Tenant. Landlord does not represent or warrant the suitability of the present or planned telecommunication lines or equipment for the use or activities of the Tenant. The provisions of this paragraph are solely for the benefit of Landlord and Tenant, and are not for the benefit of any third party (specifically, without limitation, these provisions are not for the benefit of any telephone or telecommunications provider). In no event shall Landlord be liable for, nor have any obligation to restore or repair, any damage from any cause whatsoever to any telecommunications equipment or cabling installed by or at the request of Tenant.

5. Landlord shall not be liable to Tenant for any claims, losses or costs (including but not limited to loss or injury to person or property, or loss of business or income), nor shall Tenant have any right to abatement or diminution of rent nor any right to terminate this Lease, in the event of any failure to provide or any interruption or disruption of services or utilities from any cause whatsoever including any actual or alleged negligence or failure of Landlord.

## **EXHIBIT H**

### **Landlord's Furniture**

- Reception desk
- Two (2) black cushion reception area seats
- One (1) small glass reception area table
- Five (5) black desks
- Ten (10) desk chairs
- Thirteen (13) desk side chairs
- Six (6) round gold seats
- Two (2) square gold seats
- One (1) 4-drawer black lateral file cabinet
- One (1) 4-drawer black metal lateral file cabinet
- One (1) 2-drawer black metal lateral file cabinet
- One (1) 2-shelf black credenza
- One (1) refrigerator
- Conference room furniture, including tables and chairs

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE is executed effective 6/26, 2020 by and between High Street Buildings, LLC, a Delaware limited liability company ("Landlord"), and KeHE Distributors, LLC, a Delaware limited liability company ("Tenant").

### RECITALS

A. Landlord and Tenant are parties to that certain Lease dated April 28, 2017 (the "Lease"). Pursuant to the Lease, Tenant is leasing Premises located at 5415 East High Street, Suite 240, in Phoenix, Arizona. Such Premises consist of approximately 3,577 rentable square feet. The defined, capitalized terms used in the Lease shall have the same meanings when used herein.

B. Landlord and Tenant desire to amend the Lease as set forth in this Amendment.

NOW, THEREFORE, it is agreed as follows.

1. Lease Term. The Lease Term is hereby extended for the twelve (12) month period commencing November 1, 2020 and expiring October 31, 2021 (the "Extension Period"), on the terms and conditions set forth in the Lease, as modified by this Amendment.

2. Base Rent. Base Rent during the Extension Period will be \$10,731.00 (\$36.00 per rentable square foot per year).

3. Legal Matters.

3.1 Delivery and Notices. This Amendment and all later documents, such as amendments, (a) may be executed by electronic signature, (b) may be executed and delivered in counterpart, and (c) may be delivered electronically (provided, if requested by Landlord, Tenant shall deliver a manually executed original of any of the foregoing to Landlord). Electronic records and electronic signatures may be used in connection with the execution of this Amendment and such later documents, and the same shall be legal and binding and have the same full force and effect as if a paper original of this Amendment or such document had been signed using a handwritten signature. Landlord and Tenant (i) intend to be bound by electronic signatures and by documents and notices sent or delivered by electronic mail or other electronic means, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Amendment or any later documents or notices based on the foregoing forms of signature or delivery. The foregoing does not prohibit the use of handwritten signatures or physical delivery. Notices under the Lease may be given as provided in the Lease or electronically as follows.

To Tenant: Email: [legal@kehe.com](mailto:legal@kehe.com)

To Landlord: Email: [cferguson@skbcos.com](mailto:cferguson@skbcos.com)

3.2 Images. Tenant shall not use or license the use of (a) the name of the Building or the Project, or (b) any actual, digital, augmented or virtual image of all or any part of

6/26/20  
#231

the interior or exterior of the Building or the Project for any purpose; Landlord reserves the exclusive right to all such usage and to all revenue associated with the same.

3.3 Condition of Premises. Tenant acknowledges that Tenant is currently in possession of the Premises and Tenant hereby accepts the Premises, the Building, and the Project (including the suitability of the Premises for the use permitted under the Lease) in "AS IS, WHERE IS" condition; provided, however, the foregoing acceptance shall not negate or alter Landlord's ongoing obligation to maintain, repair and replace the Premises and the Project in accordance with the terms and conditions of the Lease as extended hereby.

4. Acknowledgment. Tenant acknowledges and agrees that, to Tenant's knowledge, Landlord and all predecessor lessors have fully and timely performed each and all of their obligations under the Lease.

5. Effect of Amendment. Submission of this Amendment for review does not constitute an offer by Landlord to Tenant. This document may not be relied upon, nor may any claim for reliance or estoppel be made based upon this document, unless and until this document is fully executed and delivered by each party.

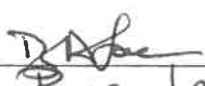
6. Representations. Tenant hereby represents and warrants to Landlord that (a) this Amendment constitutes the binding obligation of Tenant and is enforceable against the Tenant in accordance with its terms, (b) Tenant has not made any assignment, sublease, transfer, conveyance or other disposition of its interest in the Lease or in the Premises (including assignments for security purposes), (c) no consent of any third party is necessary for Tenant to execute, deliver and perform this Amendment, and (d) Tenant has engaged no broker regarding this Amendment. The person executing this Amendment on behalf of Tenant warrants his or her authority to do so.

7. Status of Lease. Except as expressly amended hereby, the Lease remains in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first above written.

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

By:   
Name: Ryan Lawrence  
Its: VP, Sales


**LANDLORD:**

High Street Buildings, LLC,  
a Delaware limited liability company

By: High Street AZ, LLC,  
a Delaware limited liability company  
Its: Manager

By: SKB-High Street II, LLC,  
an Oregon limited liability company  
Its: Manager

By: ScanlanKemperBard Companies, LLC,  
an Oregon limited liability company  
Its: Operating Manager

By:   
Name: Todd M. Gooding  
Its: President

CJ DB



## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is executed effective September 27, 2021 by and between High Street Buildings, LLC, a Delaware limited liability company ("Landlord"), and KeHE Distributors, LLC, a Delaware limited liability company ("Tenant").

### RECITALS

A. Landlord and Tenant are parties to that certain Lease dated April 28, 2017 (the "Original Lease") as amended by First Amendment dated June 26, 2020 (the "Lease"). Pursuant to the Lease, Tenant is leasing Premises located at 5415 East High Street, Suite 240, in Phoenix, Arizona. Such Premises consist of approximately 3,577 rentable square feet. The defined, capitalized terms used in the Lease shall have the same meanings when used herein.

B. Landlord and Tenant desire to amend the Lease as set forth in this Amendment.

NOW, THEREFORE, it is agreed as follows.

#### 1. Relocation.

1.1 New Space. On the terms set forth herein, Tenant shall relocate to Suite 400 (the "New Space"). The parties agree that the New Space contains 6,722 rentable square feet.

1.2 Landlord's Work. Landlord shall improve the New Space by performing Landlord's Work in accordance with Exhibit A.

1.3 Relocation. Landlord shall deliver possession of the New Space to Tenant on the date of substantial completion (as defined in Exhibit A) of Landlord's Work, estimated to be November 1, 2021 ("Estimated Completion Date"). Tenant shall relocate to the New Space and surrender the original Premises in the condition required by the Lease for surrendered space within ten (10) days following delivery of possession of the New Space to Tenant; Tenant shall continue to pay all Base Rent, Operating Expenses and other amounts during this period.

1.4 Relocation Date. Upon Tenant relocating to the New Space, the New Space shall be and become the "Premises" for all purposes under the Lease. The actual date that Tenant relocates is the "Relocation Date". Upon the Relocation Date, the terms and provisions of the Lease shall continue in full force and effect and shall be applicable to the New Space as the "Premises" except as set forth herein. If the Relocation Date occurs after the first day following the presently scheduled expiration date of the Lease, the Term of the Lease will be extended on its existing terms until the day prior to the Relocation Date.

#### 2. Continuation of Lease Provisions.

2.1 Relocation Term. Effective on the Relocation Date or, if earlier, on the tenth (10<sup>th</sup>) day following the date on which Landlord could have substantially completed Landlord's Work absent Tenant Delays (as defined in Exhibit A), the Term of the Lease will be the period from the Relocation Date to the final day of the sixty-third (63<sup>rd</sup>) full calendar month thereafter (the "Relocation Term").

2.2 Base Rent. During the Relocation Term, Base Rent will be as follows.

<u>Months</u>	<u>Monthly Amount</u>	<u>Annual Rate/RSF</u>
1-3	\$0.00*	\$0.00
4-12	\$20,446.08**	\$36.50
13-24	\$20,866.21	\$37.25
25-36	\$21,286.33	\$38.00
37-48	\$21,706.46	\$38.75
49-60	\$22,126.58	\$39.50
61-63	\$22,546.71	\$40.25

\*Excess Office Operating Expenses are payable during any part of this period that occurs after the Base Year.

\*\*Any first partial month is charged a prorated portion of this amount.

### 3. Adjustments.

3.1 Operating Expenses. Effective on the first day of the Relocation Term, (a) Tenant's Proportionate Share will be calculated based on the rentable square footage of the New Space, (b) the Base Year will be calendar year 2021 and (c) all references to "2017" in Section 4.6 shall be deemed to be "2021".

3.2 Security Deposit and Prepaid Rent. Within ten (10) days following the Relocation Date, Tenant shall pay Landlord (a) \$12,039.27 to be added to the Security Deposit of \$10,507.44 to increase the same to \$22,546.71, and (b) Base Rent for month 4 of the Relocation Term in the amount of \$20,446.08.

3.3 Parking. Effective on the first day of the Relocation Term, Tenant's parking allocation shall be increased to three (3) covered, reserved parking spaces and sixteen (16) covered, unreserved parking spaces in the multi-level parking structure located south of High Street at the monthly rate in effect from time to time (currently \$80.00 per reserved space and \$60.00 per unreserved space). Tenant shall have the right to an additional seven (7) covered, unreserved parking spaces during the Relocation Term, upon one full calendar month's prior written notice to Landlord at the monthly rate in effect from time to time.

3.4 Furniture. The parties acknowledge and agree that Landlord has provided Tenant with the use and possession of the Landlord's Furniture (as defined in the Original Lease). Tenant shall have the right to relocate and continue to use Landlord's Furniture in the New Space. Tenant shall surrender Landlord's Furniture with the Premises at the expiration or earlier termination of the then-current Term of the Lease.

### 4. Renewal Option.

4.1 Grant of Option. Landlord hereby grants to Tenant the option to renew this Lease for one (1) additional term of sixty (60) months (the "Renewal Term"). If this option is exercised, references in the Lease to the Lease Term shall include the Renewal Term.

4.2 Exercise. Tenant must exercise the option to renew, if at all, by giving Landlord written notice of such exercise not fewer than twelve (12) months prior to expiration of

the then current Lease term. Upon exercise of the option to renew, the Lease Term shall be extended through the expiration date of the Renewal Term on the same terms and conditions as contained herein, except that (a) there shall be no further right to renew the Lease term, and (b) Base Rent during the Renewal Term shall be the fair market rental value of the Premises determined pursuant to this Section.

4.3 Base Rent. Base Rent for the Renewal Term shall be established by agreement of the parties or, if they do not agree by the one hundred eightieth (180<sup>th</sup>) day prior to the commencement date of the Renewal Term, then Base Rent for the Renewal Term shall be the fair market rental value of the Premises established pursuant to the terms of this Section. If the parties are not able to agree upon the then fair market rental value of the Premises on or before the one hundred eightieth (180<sup>th</sup>) day prior to the commencement of the Renewal Term, then not later than the one hundred fiftieth (150<sup>th</sup>) day prior to the commencement of the Renewal Term, each party shall submit to the other a written final offer setting forth the then fair market rental value of the Premises. The written notice of the fair market rental value shall also be accompanied by a list of three qualified MAI appraisers, experienced in determining fair market rental values of similar commercial properties in the Scottsdale market. Each party shall have the right to strike one candidate from the list submitted by the other party. The resulting names that are timely submitted shall then be placed in a vessel and one MAI appraiser shall be selected at random. The MAI appraiser so selected (the "Appraiser") need not necessarily conduct an appraisal, but rather shall select, as between the two final offers submitted by the parties, that final offer that sets forth a fair market rental value that is closest to the actual fair market rental value based on retail rates in the Scottsdale market as the same may be determined by the Appraiser using whatever means (including an appraisal) the Appraiser deems reasonable. The decision of the Appraiser shall be final and binding on the parties and shall establish the Base Rent for the Renewal Term. The cost of the Appraiser's fee shall be shared equally by the parties.

4.4 Termination of Option. The rights granted in this Section shall terminate and shall cease to be effective (a) upon any assignment of this Lease or any sublease of all or part of the Premises for which Landlord's consent is required and is not obtained by Tenant pursuant to Section 19 of the Lease, or (b) upon any Event of Default by Tenant which is then continuing at the time of Tenant's exercise of the option to renew, or upon the termination of this Lease or of Tenant's right of possession; provided, if the option to renew shall have been exercised prior to the termination for an Event of Default, then the calculation of damages upon such termination shall include damages with respect to the Renewal Term.

4.5 Amendment to Lease. If Tenant exercises the option to renew this Lease, Landlord and Tenant shall execute and deliver an amendment to this Lease setting forth such fact and the amount of Base Rent for the Renewal Term, subject to Tenant's reasonable prior review and approval.

4.6 Certificate. At such time as the option to renew expires or Tenant otherwise has no further rights under this Section, Tenant shall execute and deliver to Landlord a certificate setting forth such fact, subject to Tenant's reasonable prior review and approval.

5. Improvements. Landlord will improve the New Space pursuant to the Work Letter attached as Exhibit A. Tenant will also be provided with Building standard suite and directory signage at Landlord's cost.

6. Early Expiration Right. Section 1.3.2 of the Original Lease is hereby deleted.

7. Legal Matters.

7.1 Images. Tenant shall not, without Landlord's prior written consent (which shall not be unreasonably withheld, conditioned, or delayed) use or license the use of (a) the name of the Building or the Project, or (b) any actual, digital, augmented or virtual image of all or any part of the interior or exterior of the Building or the Project for any purpose; Landlord reserves the exclusive right to all such usage and to all revenue associated with the same.

7.2 Transfers. Notwithstanding any provision in the Lease, Tenant shall not assign the Lease or sublease all or any portion of the Premises to a proposed transferee, or any person or entity that controls, is controlled by, or is under common control with the proposed transferee, if the proposed transferee or such person or entity (a) leases or occupies space in the Project on the date on which Tenant requests consent to the transfer, or (b) is negotiating with Landlord to lease space in the Project, or has negotiated with Landlord to lease space in the Project, during the twelve (12) month period prior to the date on which Tenant requests such consent.

7.3 Condition of Premises. Tenant agrees that except as expressly stated in the Lease and this Amendment (including Exhibit A), Landlord has made no representations or warranties of any kind, expressed or implied, oral or written, concerning the Premises or the Project or any matter related thereto, including zoning, availability of access or utilities, the presence and location of Hazardous Substances, physical or environmental conditions, or any information Landlord may provide regarding the foregoing. No agent or broker of Landlord has authority to make nor has made any promise, warranty or representation to Tenant. Except only for Landlord's covenants, representations and warranties stated in the Lease and this Amendment (including Exhibit A), the Premises are leased "AS IS, WHERE IS, WITH ALL FAULTS."

8. Acknowledgement. Tenant acknowledges and agrees that Landlord and all predecessor lessors have fully and timely performed each and all of their obligations under the Lease.

9. Effect of Amendment. Submission of this Amendment for review does not constitute an offer by Landlord to Tenant. This document may not be relied upon, nor may any claim for reliance or estoppel be made based upon this document, unless and until this document is fully executed and delivered by each party.

10. Representations. Tenant hereby represents and warrants to Landlord that (a) this Amendment constitutes the binding obligation of Tenant and is enforceable against the Tenant in accordance with its terms, (b) Tenant has not made any assignment, sublease, transfer, conveyance or other disposition of its interest in the Lease or in the Premises (including assignments for security purposes), (c) no consent of any third party is necessary for Tenant to execute, deliver and perform this Amendment, and (d) Tenant has engaged no broker regarding this Amendment. The


persons executing this Amendment on behalf of Landlord and Tenant each warrants his or her authority to do so.

11. Status of Lease. Except as expressly amended hereby, the Lease remains in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first above written.

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

By:   
Name: Ryan Lawrence  
Its: VP Sales

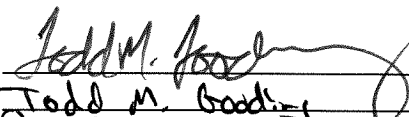
**LANDLORD:**

High Street Buildings, LLC,  
a Delaware limited liability company

By: High Street AZ, LLC,  
a Delaware limited liability company  
Its: Manager

By: SKB-High Street II, LLC,  
an Oregon limited liability company  
Its: Manager

By: ScanlanKemperBard Companies, LLC,  
an Oregon limited liability company  
Its: Operating Manager

By:   
Name: Todd M. Gooding  
Its: President



## EXHIBIT A

### Work Letter

#### 1. Landlord's Work.

1.1 Plans. Landlord shall improve the Premises as generally described on Schedule 1 hereto (the "Final Plans"). The installation of the tenant improvements shown on the Final Plans is herein referred to as "Landlord's Work." Landlord represents that, to its actual knowledge, Landlord's Work as shown on the Final Plans, complies with all applicable codes; if this representation is inaccurate, then the sole remedy of Tenant shall be to require Landlord to cause such compliance at the expense of Landlord.

1.2 Construction. Landlord shall perform Landlord's Work substantially in accordance with the Final Plans. At Landlord's election, substantial completion may be demonstrated by a temporary or permanent certificate of occupancy or other final inspection (with or without conditions) or a certificate of substantial completion from Landlord's architect. Landlord's Work shall be deemed substantially complete on the earlier of (i) the date that Landlord has substantially completed construction in accordance with the Final Plans, or (ii) the date that Landlord could have achieved such substantial completion absent delays attributable to Tenant, including delays related to changes pursuant to Section 1.3 below, and/or delays in Landlord's Work caused by Tenant ("Tenant Delays").

1.3 Changes in Plans. Tenant may request reasonable changes in the Final Plans ("Tenant Changes"). Landlord may disapprove such request on any reasonable grounds. Landlord may require changes to the Final Plans if needed to cure a noncompliance of the Final Plans with applicable code ("Landlord Changes"). The Costs of Landlord's Work (as defined below) include additional Costs required to evaluate and design, and, if approved, to implement, all Tenant Changes and Landlord Changes, including, without limitation, architecture fees and increase in construction costs, except Costs related to a Landlord Change to correct a noncompliance actually known to Landlord at the time this Amendment is executed. Tenant Delays are all delays in substantial completion of Landlord's Work attributable to any act, omission or request of Tenant, including any delay in substantial completion caused by reviewing, processing and/or implementing a Tenant Change.

1.4 Adequacy of Final Plans. Neither the approval by Landlord of Schedule 1 or any other plans, specifications, drawings or other items associated with the Landlord's Work nor Landlord's performance, supervision or monitoring of the Landlord's Work shall constitute any warranty or covenant by Landlord to Tenant of the adequacy of the design for Tenant's intended use of the Premises. Tenant agrees to, and does hereby, assume full and complete responsibility to ensure that Landlord's Work and the Final Plans are adequate to fully meet the needs and requirements of Tenant's intended operations of its business within the Premises and Tenant's use, as described in the Lease of the Premises.

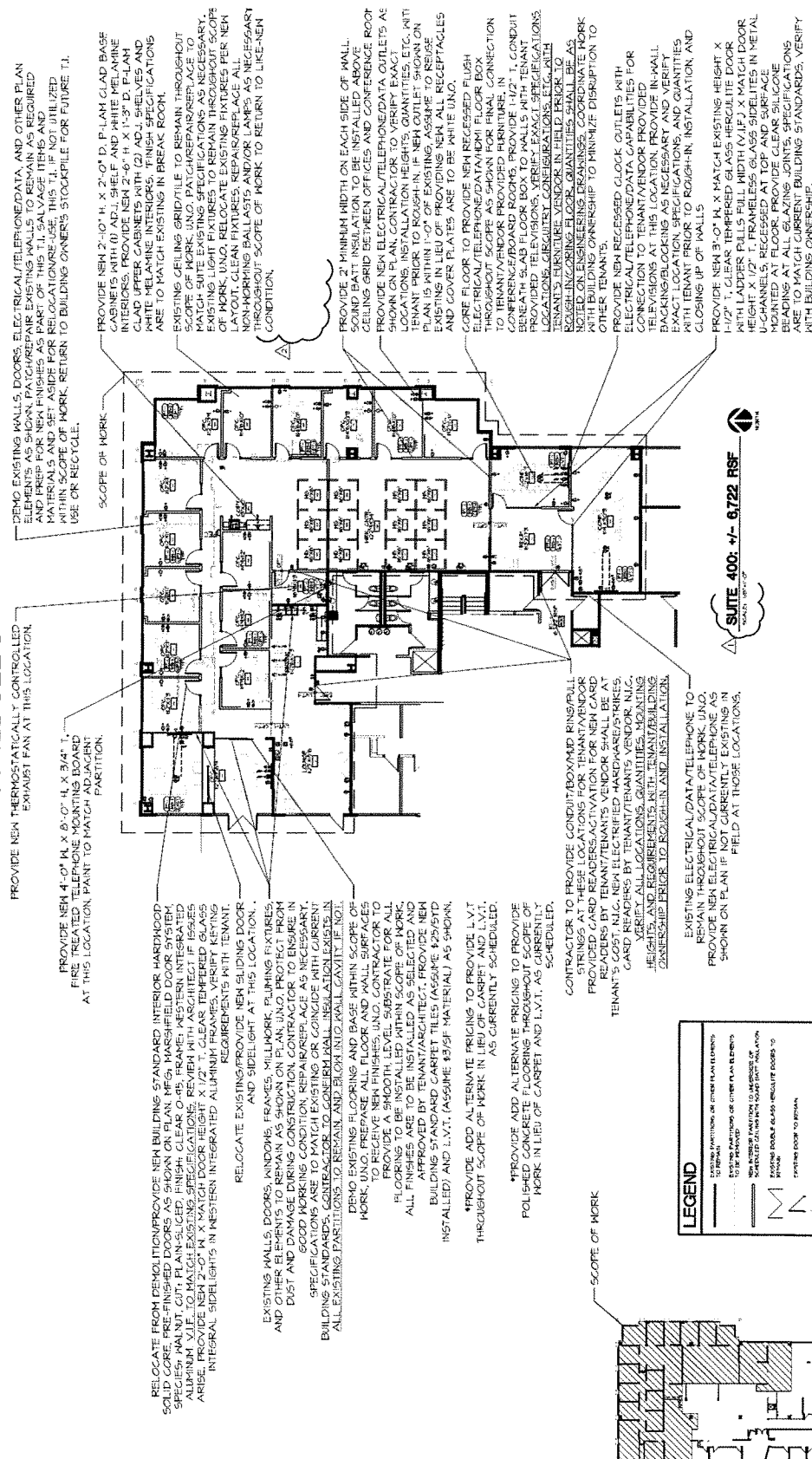
1.5 Inspection and Punchlist. Prior to the date which Landlord anticipates to be the date of substantial completion, Landlord shall deliver to Tenant written notice of the expected date of such substantial completion. Prior to the date of substantial completion, if Tenant desires,

representatives of Landlord and Tenant shall make a joint inspection of the Premises to create an agreed upon list of items yet to be substantially completed. The items included in such list are herein referred to as "Punchlist Items." Certain of the Punchlist Items may be completed by Landlord prior to substantial completion and Landlord shall complete the remaining Punchlist Items with due diligence, but in no event to exceed ninety (90) days unless due to the unavailability of materials or contractors. If the parties are unable to agree whether any particular item is to be included as a Punchlist Item or whether the same has been satisfactorily completed, then the decision of Landlord's architect shall be binding. Landlord shall continue to have complete access to the Premises for the purpose of taking any and all steps related to any then remaining Punchlist Items. Landlord's obligation to complete the Punchlist Items shall not alter the date of substantial completion. The obligation of Landlord to perform Punchlist Items work shall be to perform the same to an industry standard level, not to perfection. Except for the obligation to perform Punchlist Items, Landlord shall have no other or further obligation with respect to construction of Landlord's Work.

2. **Costs.** The "Costs" of Landlord's Work are all hard and soft costs related to Landlord's Work including but not limited to architectural plans, permits, construction costs, and Landlord's project management fee of 6%. Landlord shall pay the Costs up to the amount of the Tenant Improvement Allowance, which is \$336,100.00 (\$50.00 per rentable square foot). Tenant shall pay all Costs in excess of the Tenant Improvement Allowance ("Excess Costs"). A budget for the Landlord's Work based upon the Final Plans is attached hereto as Schedule 2 ("Budget"). Landlord shall notify Tenant of any material increases in the actual cost of Landlord's Work as against the Budget, including in connection with Section 1.3 hereof, and Tenant shall have the opportunity to "value engineer" with Landlord the Final Plans and Budget to address any potential Excess Costs before the same are incurred; any related delay in substantial completion shall be a Tenant Delay. Upon request from time to time, Tenant will pay the Excess Costs to Landlord; if actual Excess Costs vary, the difference shall be paid in cash between the parties promptly following completion of Landlord's Work. The current estimate of certain Costs of Landlord's Work is attached as Schedule 2.

3. **Early Access.** Commencing on a date fourteen (14) days prior to substantial completion of the Landlord's Work (the "Early Access Date") Tenant may have access to the New Space prior to the date of substantial completion in order to install Tenant's trade fixtures, equipment, furniture, systems and inventory ("Tenant's FF&E"). Tenant shall provide Landlord proof that all insurance Tenant is required to carry under the Lease is in full force and effect with respect to the New Space on or before such Early Access Date. All the terms, covenants and agreements set forth in the Lease (other than the payment of Rent) shall apply to any such early occupancy by Tenant.

## SCHEDULE 1

[illegible]

KEHE  
HIGH STREET  
415 E. HIGH STREET  
PHOENIX, ARIZONA

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RECEIVED BY  
RECEIVED BY  
RT  
01/04/21  
01/04/21  
01/04/21

**Intuitive design**

Intuitive architecture  
45 W 31st Street  
Suite 505  
New York, NY 10018  
Tel: 212-693-0882  
Fax: 212-693-0887  
E-mail: info@intuitive.com

1 - EXHIBIT A

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## SCHEDULE 2

**Stevens·Leinweber**  
 CONSTRUCTION INC.

## PRELIMINARY CONSTRUCTION ESTIMATE

PROJECT	KeHE OFFICES ON HIGH STREET 5415 E HIGH STREET #400 PHOENIX, AZ 85054	SUITE AREA	6,722	ARCHITECT	EVOLUTION	
		PLAN DATE	7/9/2021	ESTIMATE DATE	6/11/2021	
	TRADE AND DESCRIPTION	QTY	UNIT	UNIT COST	ITEM COST	BUDGET
102050	<b>DEMOLITION</b> REMOVE PARTITIONS, FLOORING, SECTIONS OF CEILING	1	LS	9067	9,067	\$9,067
106200	<b>FINISH CARPENTRY</b> INSTALL DOORS IN SINGLE FRAMES INSTALL NEW DOORS AND INTEGRAL 2" WIDE SL FRAMES FURNISH/INSTALL TMB BOARD INSTALL DOOR CLOSERS	2 13 1 1	EA EA EA EA	170 290 250 70	340 3,770 250 70	\$4,430
106400	<b>MILLWORK</b> BREAK AREA PLAM UPPER/LOWER CABINETS WITH QUARTZ TOP PLASTIC LAMINATE UPPER AND LOWER CABINETS SOLID SURFACE TOP	0 5	LF LF	560 560	- 2,800	\$2,800
107200	<b>INSULATION</b> IN WALL INSULATION ABOVE CEILING INSULATION AT ALL PARTITIONS BETWEEN OFFICES	2860 3120	SF SF	0.6 0.75	1,728 2,340	\$4,068
108200	<b>ALUMINUM FRAMES/WOOD DOORS/HARDWARE</b> SINGLE DOOR FRAMES DOOR/2 SIDELIGHT FRAME WOOD DOORS (REUSE 6 FROM DEMO) CLOSERS HINGES/STOPS LOCKSETS (REUSE 6 SETS FROM DEMO)	2 13 6 1 14 6	EA EA EA EA EA EA	250 440 370 140 35 465	500 5,720 2,960 140 490 3,720	\$13,530
108600	<b>GLASS</b> SIDELIGHT GLASS IN FRAMES AT OFFICES GLASS DOORS AT CONF ROOMS RELOCATE SLIDING DOOR SYSTEM SIDELIGHT GLASS IN U CHANNEL AT CONFERENCE ROOMS	376 2 1 196	SF EA EA SF	14 2770 2600 18	5,292 5,540 2,600 3,564	\$17,196
109250	<b>GWB &amp; METAL FRAMING</b> DEMO PATCHING NEW PARTITIONS TO GRID NEW PARTITIONS TO DECK AT WORK ROOM AND SERVER ROOM ONLY GLASS HEADER TOUCH UP/REPAIR EXISTING WALLS IN WALL BLOCKING/BACKING BRACING	1 368 0 66 1 1 105	LS LF LF LF LS LS EA	1000 68 66 48 1400 400 20	1,000 25,024 - 3,168 1,400 400 2,100	\$33,092
109500	<b>ACOUSTICAL TREATMENT</b> REPAIR EXST GRID/TILE IN SUITE AND CORRIDOR AND INSTALL NEW AS NEEDED	3240	SF	4.3	13,932	\$13,932
109680	<b>FLOOR COVERING</b> CARPET TILE VCT AT CLOSET LVT AT BREAK ROOM AND LOUNGE LVT AT RECEPTION AND CONF. ROOMS RUBBER WALL BASE BACKSPLASH TILE AT BREAK AREA	680 160 648 630 1400 0	SY SF SF SF LF SF	25 3 5.5 5.5 1.3 30	17,000 480 3,564 3,465 1,820 -	\$26,329
109900	<b>PAINTING</b> PAINT WALLS PAINT EXISTING HARDUD CEILINGS STAIN NEW DOORS	12900 1 6	SF LS EA	0.5 900 115	6,300 900 920	\$6,120
110600	<b>MISCELLANEOUS</b> FIRE EXTINGUISHER CABINETS PER CODE	1	EA	240	240	\$240
115400	<b>PLUMBING</b> SINK, FAUCET, PIPING, INSTA HOT, DISPOSAL, APPLIANCE WATER LINES	0	EA	5690	-	\$0
115500	<b>FIRE SPRINKLER</b> RELOCATE AND ADD HEADS PER CODE	6722	SF	1.05	7,058	\$7,058

115600	<b>HVAC</b>								\$32,557
	AIR DISTRIBUTION ALLOWANCE FOR NEW LAYOUT (ASSUMES USING EXISTING HVAC UNITS AND REZONING SUITE)	6722	SF	4	26.686				
	EXHAUST FAN AT IT CLOSET	1	LS	1075	1.075				
	RELOCATE EXISTING EMS SENSORS AND CONTROLLERS AS NEEDED	5	EA	650	3.250				
	CERTIFIED AIR BALANCE	6722	SF	0.2	1.344				
116000	<b>ELECTRICAL SYSTEMS</b>								\$37,463
	RELOCATE EXISTING 2X4 FIXTURES	38	EA	105	3.990				
	SUPPLEMENT NEW 2X4 FIXTURES FOR MODIFIED OFFICE LAYOUT	18	EA	295	5.310				
	NEW EXIT SIGNS, RELOCATE EXISTING	4	EA	225	900				
	MOTION SENSORS, SWITCHING	6722	SF	0.6	4.033				
	DUPLEX OUTLETS	42	EA	145	6.090				
	TELEVISION OUTLETS	6	EA	165	1.480				
	DATA ROUGH IN	26	EA	45	1.170				
	DEDICATED OUTLETS FOR COPIER AND APPLIANCES	6	EA	365	2.310				
	DEDICATED QUAD OUTLET AT IT CLOSET	1	EA	450	450				
	GFCI OUTLETS	5	EA	160	800				
	JBOXES AND CIRCUIT FOR FURNITURE	5	EA	450	2.250				
	FLOOR OUTLETS AT CONFERENCE ROOM	2	EA	1575	3.150				
	FLOOR OUTLET AT CORNER OFFICE	1	EA	1575	1.575				
	INSTA HOT CIRCUIT AT BREAK AREA	1	EA	475	475				
	EXHAUST FAN CIRCUIT	1	EA	475	475				
	CONDUIT/WIRING	6722	SF	0.45	3.025				
116720	<b>FIRE ALARM</b>								\$9,075
	RELOCATE AND ADD DEVICES PER CODE	6722	SF	1.35	9.075				
101150	<b>GENERAL CONDITIONS</b>								\$26,414
	PROJECT SUPERINTENDENT	9	WK	1600	14.400				
	SUPERINTENDENT BURDEN	9	WK	480	4.320				
	TELEPHONE/COMPUTER	9	WK	40	360				
	FIELD DELIVERIES/COURIER	9	LS	50	450				
	PLASTICS/PROTECTION	1	LS	500	500				
	GENERAL CLEAN-UP	9	WK	360	3.240				
	DUMPSTER	3	EA	350	1.050				
	SMALL TOOLS & EXPENDABLES	1	LS	450	450				
	PLAN & SPEC REPRODUCTION	1	LS	300	300				
	FINAL CLEAN-UP	6722	SF	0.2	1.344				
<hr/>									
	SUBTOTAL DIRECT COST								\$245,392
	INSURANCE								\$2,454
	OH&P								\$16,110
	TOTAL								\$263,955

**ALTERNATE PRICING OPTIONS**

1	ADD TO FURNISH AND INSTALL LVT THROUGHOUT SUITE (IN LIEU OF NOTED CARPET AREAS)	\$15,758
2	ADD TO POLISH CONCRETE THROUGHOUT IN LIEU OF INSTALLING LVT AND CARPET	\$13,922

**QUALIFICATIONS**

- 1) BUDGET DOES NOT INCLUDE SECURITY, TELCO/DATA CABLING, A/V OR SIGNAGE WORK SCOPE
- 2) BUDGET DOES NOT INCLUDE CITY PLAN REVIEW FEE OR PERMIT COST
- 3) BUDGET ASSUMES EXISTING ELECTRICAL PANELS ARE SUFFICIENT FOR NEW SUITE CONFIGURATION
- 4) BUDGET ASSUMES THE EXISTING HVAC UNITS ARE SUFFICIENT TO ACCOMMODATE NEW SUITE CONFIGURATION  
HVAC WILL BE MODIFIED TO FIT NEW SUITE LAYOUT
- 5) BUDGET DOES NOT INCLUDE APPLIANCES
- 6) BUDGET DOES NOT INCLUDE NEW WINDOW COVERINGS