

January 18, 2022

Library Trustees:

Attached for your consideration is a Resolution to approve the lease agreement between the City of Omaha and 1401 Jones, LLC for the lease of certain property generally located at 1401 Jones Street (Omaha). The building to be leased will serve as the Downtown Branch of the Omaha Public Library, upon relocation of those services from the W. Dale Clark Main Library facility.

The attached lease agreement includes obligations of the landlord to restore and remodel the exterior of the building and contribute to the rehabilitation and remodeling of the structure's interior to accommodate library services for the general public.

The City of Omaha Finance Department will pay the cost of this lease in the amount of \$465,000.00 per year, plus operating and maintenance expenses, as more specifically set forth in the lease agreement, from General Fund 11111, Organization 131593.

Your favorable consideration is appreciated.

Respectfully submitted,



Laura Marlane  
Executive Director

**Omaha Public Library  
Board of Trustees  
Omaha, NE**

**RESOLVED BY THE OMAHA PUBLIC LIBRARY BOARD OF TRUSTEES:**

**WHEREAS**, the attached lease agreement between the City of Omaha and 1401 Jones, LLC, for the lease of certain premises located at 1401 Jones Street, beginning November 1, 2022 or earlier as provided for in the lease agreement, for a term of not less than five (5) years with options to extend; and,

**WHEREAS**, the premises located at 1401 Jones Street will serve as the Downtown Branch of the Omaha Public Library upon relocation of those services from the W. Dale Clark Main Library facility; and,

**WHEREAS**, the City of Omaha Finance Department will pay the cost of this lease in the amount of \$465,000.00 per year, plus operating and maintenance expenses, to be paid from General Fund 11111, Organization 131593.

**NOW, THEREFORE, BE IT RESOLVED BY THE OMAHA PUBLIC LIBRARY BOARD OF TRUSTEES:**

**THAT**, the attached lease agreement between the City of Omaha and 1401 Jones, LLC, for the lease of certain premises located at 1401 Jones Street (Omaha), is hereby approved.

**RESOLUTION NO. 2022-01**

**Approved by the Board of Trustees  
of the Omaha Public Library January 20, 2022**

## **LEASE**

THIS LEASE (the "Lease") is made and entered into by and between 1401 Jones, LLC, Nebraska limited liability company ("Landlord"), and The City of Omaha, Nebraska, a municipal corporation ("Tenant"), as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

In consideration of the rents hereinafter reserved and the agreements hereinafter set forth, Landlord and Tenant mutually agree as follows:

### **Article I.**

#### **Basic Terms**

The terms listed below shall have the following meanings throughout this Lease:

- |     |                            |  |
|-----|----------------------------|--|
| (a) | Land                       | The real property legally described as LOTS 1 and 2, Block 196 in the Original City of Omaha, Douglas County, Nebraska       |
| (b) | Building:                  | The building on the Land located at 1401 Jones Street, Omaha, NE 68102   |
| (c) | Premises:                  | The entire main level and second floor of the Building, as more particularly shown on the floor plan attached as Exhibit "A" |
| (d) | Excluded Area              | Approximately 12,000 square feet existing in the basement of the Building  |
| (e) | Rentable Area of Building: | Approximately 42,000 square feet   |
| (f) | Rentable Area of Premises: | Approximately 30,000 square feet   |
| (g) | Commencement Date:         | The earlier of (i) Substantial Completion of the Tenant Improvements or (ii) January 1, 2023.                                |
| (h) | Term:                      | One Hundred Twenty (120) Months (subject to extension as set forth in Section 3.04)  |

- |     |                                 |   |
|-----|---------------------------------|---|
| (i) | Expiration Date:                | One Hundred Twenty (120) Months following the Commencement Date (subject to extension as set forth in Section 3.04) |
| (j) | Use:                            | Public Library  |
| (k) | Tenant Improvements:            | See Section 9.03  |
| (l) | Tenant's Address for Notice:    | Omaha City Clerk<br>w/ copy to Jennifer Taylor<br>1819 Farnam St<br>Omaha, NE 68183                                 |
| (m) | Landlord's Address for Notices: | 10404 Essex Ct STE 101<br>Omaha, NE 68114   |
| (n) | Tenant's Proportionate Share    | 71.43%  |

Certain other defined terms are defined when they first appear within the body of this Lease.

## **Article II. Premises**

Section 2.01 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term and subject to the agreements, conditions and provisions contained in this Lease to each and all of which Landlord and Tenant hereby mutually agree.

Section 2.02 Rentable Area. The Rentable Area of the Premises and the Rentable Area of the Building shall mean the amounts as set forth in Article I. During the Term and after Alterations to the Premises or Building, Landlord shall have the right to redetermine the Rentable Area of the Premises and the Rentable Area of the Building. Prior to the Commencement Date (as defined below), Landlord shall engage an architect to measure the Rentable Area of the Premises. The measurement shall be made in accordance with current Building Owners and Managers Association (BOMA) standards applicable to the Building. Upon the determination of the Rentable Area of the Premises and the Building, the Tenant's Proportionate Share, the Base Rent (including Exhibit "C") and the Tenant Improvement Allowance (each as defined below) shall be adjusted to reflect adjustments (if any) to the Leasable Area.

## **Article III. Delivery of Premises; Term**

Section 3.01 Delivery of Premises. The Premises will be delivered to Tenant by Landlord upon Substantial Completion of the base building improvement set forth on Exhibit "B" and as more particularly described in the plans and specifications dated [ ] and designed by [ ] ("Landlord Work"); provided, Landlord and Tenant shall work together in good faith so that Tenant may commence and prosecute the Tenant Improvements while the Landlord Work is being constructed. Subject to Force Majeure delays and delays caused by Tenant (a "Tenant Delay"), Landlord shall use its commercially reasonable efforts to deliver the Premises with the Landlord Work Substantially Completed as soon as can be reasonably accomplished following execution of this Lease. Subject to Force Majeure delays and Tenant Delays, Landlord estimates that the Landlord Work will be Substantially Completed by November 1, 2022. Notwithstanding anything contained herein to the contrary, this Lease will not be affected thereby nor will the Tenant have any claim against the Landlord by any reason thereof except that no rent will be payable hereunder until the Premises with the Landlord Work Substantially Completed is delivered to Tenant (except to the extent of any Tenant Delay). Except as expressly set forth below, the Landlord is not liable to the Tenant for any damage whatsoever resulting from the delay in delivery of possession of the Premises. Notwithstanding the foregoing, to the extent that the Landlord is unable to deliver timely possession of the Premises due to any Tenant Delay, Base Rent and Additional Rent will commence on the date possession of the Premises would have been delivered to the Tenant with Substantial Completion of the Landlord Work but for the Tenant Delay.

Section 3.02 Substantial Completion. For purposes of this Lease, "Substantial Completion" (i) of the Tenant Improvements shall occur upon the completion of construction of the Tenant Improvements, with the exception of any punch list items (the correction or completion of which will not materially interfere with Tenants occupancy and use of the Premises); and (ii) of the Landlord Work shall occur upon the completion of construction of the Landlord Work, with the exception of any punch list items (the correction or completion of which will not materially interfere with Tenant's occupancy and use of the Premises).

Section 3.03 Early Occupancy. Tenant may enter into the Premises commencing on the date hereof for the purpose of conducting non-invasive inspections of the Premises. In addition, upon the execution of this Lease and to the extent allowed by applicable law, Tenant shall be permitted to access the Premises for the purpose of completing the Tenant Improvements (as defined below) so long as Tenant does not materially interfere with the construction of the Landlord Work. Such early entry shall be subject to all obligations of Tenant under this Lease; provided, Base Rent and Additional Rent shall not be due until the Commencement Date. Any other use of the Premises by Tenant prior to the Commencement Date shall only be with the written agreement of Landlord and shall be subject to all obligations of Tenant under this Lease (including the obligation to pay rent).

Section 3.04 Renewal Term.

(a) Subject to the conditions set forth in subparagraph (b) below, Tenant is granted the option to renew this Lease for up to two (2) additional terms of ten (10) years (each, a "Renewal Term"), the first such Renewal Term commencing on the date following the Expiration Date, and the second such Renewal Term commencing on the date following the expiration of the first Renewal Term. Said options to renew this Lease shall be on the same terms, conditions,

provisions and covenants as are set forth herein, except as specifically set forth hereinafter:

(b) Base Rent during each year of a Renewal Term shall be (i) the fair market value for the first year of such Renewal Term and (ii) after such first year, increased by two percent (2%) over the prior year's Base Rent for each subsequent year of a Renewal Term. Fair market value and other terms specific to any Renewal Term shall be agreed upon by the parties prior to the commencement of the Renewal Term.

(c) Tenant's option for a Renewal Term shall be conditioned upon and subject to each of the following: (i) Tenant shall notify Landlord in writing of Tenant's exercise of its option to exercise a Renewal Term ("Renewal Notice") no earlier than twelve (12) months and no later than nine (9) months prior to the expiration of the initial Term or then existing Renewal Term; (ii) at the time Landlord receives the Renewal Notice and at the scheduled commencement of the Renewal Term, no Event of Default shall exist under this Lease.

(d) This option for any Renewal Term shall be deemed personal to Tenant named herein and may not be exercised by any permitted assignee or subtenant hereunder.

(e) Landlord shall have no obligation to improve or perform any work on or to the Premises or otherwise provide or contribute any tenant improvement allowance as a result of the exercise of Tenant's option for any Renewal Term.

Section 3.05 Termination Right. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have a one-time option to terminate this Lease, effective at the end of the sixtieth (60<sup>th</sup>) month following the Commencement Date ("Termination Date"), by paying the Termination Fee (as defined below) and providing written notice to Landlord (the "Termination Notice") of such intent to terminate no later than nine (9) months prior to the Termination Date (the "Termination Notice Date"). If Tenant does not deliver the Termination Notice and pay the Termination Fee by the Termination Notice Date, Tenant shall have no right to terminate the Lease. In the event Tenant properly terminates the Lease, Tenant shall be responsible for the following costs (collectively, "Termination Fees") (i) nine (9) months of Base Rent payments and (ii) the Unamortized Tenant Improvement Allowance (as defined below). The Termination Fee shall be deemed liquidated damages and not a penalty and is intended to be a fair estimate of losses and damages which are difficult to calculate and which Landlord is likely to sustain due to the corresponding advance of the Expiration Date, including the unamortized portion of certain concessions, allowances and other expenses incurred by Landlord in connection with the Premises and/or loss of future rent in connection therewith. The Termination Fee shall be paid with delivery of the Termination Notice.

As used herein, the term "Unamortized Tenant Improvement Allowance" shall mean a dollar amount determined as follows: The total amount of the Tenant Improvement Allowance shall be amortized on a straight-line basis over Term with interest thereon at the rate of seven percent (7%) per annum. The Tenant Improvement Allowance that remains unamortized as of the Termination Date shall be deemed to be the "Unamortized Tenant Improvement Allowance."

Section 3.06 Purchase Option. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have the option (the "Purchase Option") to purchase the Land and Building by providing written notice thereof to Landlord no earlier than twelve months (12) and no later than six (6) months prior to the fifth (5<sup>th</sup>) anniversary of the Commencement Date the ("PO Exercise Period") upon the following terms and conditions: In the event Tenant desires to purchase the Land and Building, Tenant shall deliver written notice to Landlord (the "Purchase Notice") during the PO Exercise Period. In the event the Purchase Notice is not delivered within the PO Exercise Period, the Purchase Option shall become null and void and of no further force or effect. Within thirty (30) days after receipt of the Purchase Notice, Landlord and Tenant shall execute and deliver an agreement of sale (the "Purchase Agreement") in a form reasonably acceptable to the parties. The purchase price for the Land and Building shall be the fair market value or as otherwise agreed by the parties.

Section 3.07 Right of First Refusal. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have a Right of First Refusal ("ROFR") with respect to a purchase by a third party of the Land and Building, on the following terms and conditions: Prior to accepting a bonafide offer to purchase the Land and Building from any third party that Landlord is prepared and willing to accept (the "Offer"), Landlord shall submit a copy of the Offer to Tenant. Tenant shall have the right to elect to purchase the Land and Building on terms and conditions identical to those contained in the Offer, provided that Tenant delivers written notice of intent to exercise the ROFR within ten (10) business days following delivery of the copy of the Offer from Landlord to Tenant. If Tenant duly and timely expresses its intent to exercise the ROFR, Landlord and Tenant shall promptly enter into a commercially reasonable purchase agreement (the "ROFR Purchase Agreement") for the Land and Building on terms and conditions identical to those contained in the Offer. If for any reason, Tenant fails to duly and timely exercise the ROFR, or if Tenant properly exercises such right but thereafter for any reason does not enter into the ROFR Purchase Agreement within thirty (30) days after exercise of the ROFR (unless the delay is caused by Landlord), then Landlord shall be free to sell the Land and Building to the third party on the terms and conditions of the Offer, and the ROFR shall be null and void and of no further force or effect. In the event that Landlord does not sell the Land and Building to the third party on the terms and conditions of the Offer, the ROFR shall continue in accordance with the foregoing procedure. Notwithstanding the foregoing, however, if Tenant timely exercises the ROFR and (i) fails to enter into the ROFR Purchase Agreement on the terms and conditions of the applicable Offer within the foregoing thirty (30) day period (through no fault of Landlord) or (ii) enters into the ROFR Purchase Agreement and subsequently fails to consummate the transactions contemplated thereby, then, in addition to all other remedies entitled to Landlord at law and equity, the ROFR and the provisions of this section shall terminate and be of no further force and effect. The ROFR shall be deemed personal to Tenant named herein and may not be exercised by any assignee or subtenant hereunder.

#### **Article IV. Base Rent**

Section 4.01 Base Rent. Tenant shall pay to Landlord for the use of the Premises (in addition to the Additional Rent as described in Article VI below) Base Rent in an amount specified in Exhibit "C", payable without notice, counterclaim, setoff or demand in equal monthly installments in advance, beginning on the Commencement Date and on the first day of each calendar month thereafter during the Term.

Section 4.02 Payment. All payments required to be made by Tenant under this Lease shall be in lawful money of the United States of America and shall be made without any set off, deduction or counterclaim whatsoever and shall be made payable to and delivered to Landlord at the office of Landlord or such other place as Landlord may at any time designate. Notwithstanding the foregoing, Landlord, in its sole discretion, may require all payments made by Tenant under this Lease to be made through a debit payment entry or other electronic transfer directly to a demand deposit account designated by Landlord.

Section 4.03 Partial Months. If the Commencement Date is a day other than the first day of a calendar month or if the Term expires or is terminated on a day other than the last day of a calendar month, then the monthly Base Rent and Additional Rent for such fractional months shall be prorated on the basis of the number of days elapsed in the subject month.

## **Article V.**

### **Operating Expenses, Taxes and Insurance**

#### **Section 5.01 Operating Expenses.**

(a) Tenant shall be responsible, at its sole cost and expense, for the procurement and payment of all Operating Expenses. "Operating Expenses" as used herein shall include all costs, charges, expenses and disbursements of every kind, nature and character incurred in the course of the operation, repair, replacement, security and maintenance of the Premises, the Building, and the Land (but excluding (i) the Excluded Area, and (ii) the common elevator and stairwell (item (ii) together, the "Common Areas")), including, without limitation: costs and payments of service, maintenance, repair, replacement and inspection for the landscaping, lawns, trees, shrubbery, janitorial, windows, window cleaning, rubbish removal, exterminating, parking areas and drives, elevator, escalator, life and safety, security, plumbing, telecommunication, electrical and mechanical equipment (including, but not limited to HVAC) or installations and the costs of purchasing or renting all such additional mechanical installations and equipment, service contacts, painting, exterior waterproofing and caulking, wall covering, carpeting, bathroom repairs and modernization, building identification, roof maintenance and repair, equipment, supplies, tools, materials and uniforms. Landlord and/or the Additional Tenant, as applicable, shall be responsible for the operation, repair, replacement, and maintenance of the Excluded Area and Common Areas, subject to Tenant's payment of Additional Rent as set forth below in respect of the Common Area Expenses.

"Operating Expenses" shall not include: the costs and expenses of Landlord Repair Items and Common Area Expenses (as defined below), expenses for repairs, replacements, and general



maintenance paid by proceeds from insurance; principal and interest payments made by Landlord on mortgages on the Building; depreciation; and leasing commissions.

Section 5.02 Taxes. "Taxes" as used herein shall include all taxes, assessments and charges (including costs and expenses (including without limitation, legal fees and disbursements) of contesting the amount or validity thereof by appropriate administrative or legal proceedings) levied upon or with respect to the Building or any personal property of Landlord, or Landlord's interest in the Building or such personal property, including without limitation, all real property taxes and general and special assessments; charges, fees, levies or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Building; service payments in lieu of taxes; and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Building, on the use or occupancy of the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, which may now or hereafter be levied or assessed against Landlord by the United States of America, the State of Nebraska, or any political subdivision, public corporation, district or other political or public entity, and any other tax, fee or other excise, however described, that maybe levied or assessed as a substitute for, or as an addition to (in whole or in part) any other property taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. If the Building is taxed to the Landlord as a larger parcel, Landlord may allocate such tax among all the Buildings.

Section 5.03 Additional Taxes. In addition to the Base Rent and other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes, surcharges, levies, assessments, fees and charges payable by Landlord, whether or not now customary or within the contemplation of the parties hereto: (a) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements, regardless of whether title to such improvements shall be in Tenant or Landlord; (b) upon, or measured by, any rent or other amounts payable hereunder, including, without limitation, any gross income tax, gross receipts tax or excise tax levied by the City of Omaha, County of Douglas, State of Nebraska, the federal government of the United States or any other governmental body with respect to the receipt of such rent or other amounts; (c) upon, or with respect to, the possession, leasing, operation, management, maintenance, alteration, repair, restoration, use or occupancy by Tenant of the Premises or any portion thereof; or (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

Section 5.04 Insurance Expenses. "Insurance Expenses" as used herein, includes all commercially reasonable premiums, deductibles, and other expenses for insurance with respect to the Land and the Building, reasonably incurred by Landlord for commercial liability insurance and special form or similar property insurance.

Section 5.05 Common Area Expenses. "Common Area Expenses" as used herein, means Landlord's costs and expenses incurred for the operation, repair, replacement, and maintenance of the Common Areas.

## **Article VI. Additional Rent**

Section 6.01 Additional Rent. Beginning on the Commencement Date, Tenant shall pay to Landlord (in addition to the Base Rent, as described in Article IV above) an amount equal to Tenant's Proportionate Share of (i) Taxes for each calendar year, (ii) Insurance Expenses and (iii) Common Area Expenses (collectively the "Additional Rent"). Prior to each calendar year, Landlord shall estimate the amount of Additional Rent due for such year, and Tenant shall pay Landlord one-twelfth (1/12th) of such estimate on the first day of each month during such year with Tenant's payment of the monthly Base Rent. Such estimate may be revised by Landlord not more than once per calendar year. After the end of each calendar year, Landlord shall deliver to Tenant a report setting forth the actual Insurance Expenses, Common Area Expenses, and Taxes for such calendar year and a statement in the amount of Additional Rent that Tenant has paid and is payable for such year. Within thirty (30) days after receipt of such report, Tenant shall pay to Landlord the amount of Additional Rent due for such calendar year minus any payments of estimated Additional Rent made by Tenant for such year. If Tenant's estimated payments of Additional Rent exceed the amount due Landlord for such calendar year, Landlord shall, provided Tenant is not then in default hereunder beyond any applicable grace and notice periods, apply such excess as a credit against Tenant's other payment obligations under this Lease or promptly refund such excess to Tenant if the Term has already expired, in either case without interest to Tenant. In the event Landlord shall fail to give Tenant an estimate of Additional Rent prior to the beginning of any calendar year, Tenant shall continue to pay Additional Rent at the rate for the previous calendar year until Landlord delivers such estimate. Notwithstanding the foregoing, Landlord's obligation to credit Tenant's account pursuant to this Section 6.01 shall be conditional upon Tenant having first paid all of its monthly installments of the estimated Insurance Expenses, Common Area Expenses and Taxes pursuant to this Section 6.01.

Section 6.02 Review. Tenant shall have the right, at its cost, upon reasonable prior written notice to Landlord, to inspect Landlord's accounting records relative to Operating Expenses and Taxes during normal business hours at Landlord's offices in Omaha, Nebraska, at any time one (1) year following the furnishing to Tenant of the annual statement of Additional Rent.

Section 6.03 Survival. In the event of the termination of this Lease prior to any determination of final Additional Rent for any calendar year, Tenant's agreement to pay any such sums and Landlord's obligation to refund any such sums shall survive the termination of this Lease.

## **Article VII. Use**

Section 7.01 General. The Premises shall be used only for the Use specified in Article I and for no other use or purpose. Tenant shall maintain sufficient personnel on the Premises to receive and supervise visitors and other business invitees to the Premises. The parties acknowledge and agree that the Use is for a public library, and that members of the public will be permitted to enter and remain on the Premises, subject to the rules implemented by the Tenant

from time to time, and Landlord shall not be permitted to institute any Rules and Regulations that would have the effect of restricting to any persons to the Premises.

Section 7.02 No Nuisance or Waste. Tenant shall not do or permit anything to be done in, or about the Premises which will in any way obstruct or interfere with the rights of Landlord and other tenants or occupants or invitees of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on, or about the Building or the Premises. Tenant shall not commit or suffer the commission of any waste in, on, or about the Building or the Premises.

Section 7.03 No Illegal Use. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated or which conflicts with any certificate of occupancy for the Building or, subject to Section 7.01, is prohibited by any Rules and Regulations which may be reasonably promulgated by Landlord from time to time. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of applicable insurance upon the Building or any of its contents, and Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations, and requirements now in force or which may hereafter be in force, and with the requirements of any Board of Fire Underwriters or other similar body now or hereafter constituted relating to or affecting Tenant's use or occupancy of the Premises.

Section 7.04 Notice of Hazardous Substances/Materials. In the event Tenant knows, or has reasonable cause to believe, that any release by Tenant of a hazardous substance or materials has come to be located on, within or beneath the Premises or the Building, Tenant shall give written notice of such condition to Landlord and Tenant shall comply with all statutes, laws, ordinances, rules, regulations and orders of governmental authorities with respect to any such hazardous substances or materials.

Section 7.05 Hazardous Materials. Tenant will not store, use or dispose of any hazardous, toxic, corrosive, explosive, reactive, or radioactive matter, substance, pollutant, waste or material in, on or about the Premises. Notwithstanding the foregoing sentence, Tenant may use and store the following materials in the ordinary course of business: reasonable amounts of materials customarily used in conjunction with business machines; cleaning supplies in reasonable quantities; and any other similar materials deemed necessary to Tenant's business. Tenant will be solely responsible for and will defend, indemnify and hold harmless Landlord, its agents and employees, from and against any and all claims, penalties, fines, damages, losses, suits, judgments, costs and liabilities, including professional fees and costs, arising out of or in connection with Tenant's breach of its obligations in this Section 7.05. Tenant shall not indemnify Landlord for releases of hazardous materials which exist on, in or under the Premises, Building or Land at the time of the execution of this Lease, or which are introduced to the Premises, Building or Land by some other tenant or by Landlord. Tenant will be solely responsible for all costs relating to any removal, clean-up and restoration necessary to return the Premises and any other property whatever nature located on or in the Premises to its condition

existing prior to Tenant's breach of its obligations under this Section 7.05. All costs and expenses incurred by Landlord for which Tenant is responsible, or for which Tenant has indemnified Landlord, will be paid by Tenant to Landlord within thirty (30) days of demand. Tenant's obligations under this Section 7.05 will survive the termination or expiration of this Lease.

## **Article VIII. Services and Utilities**

Section 8.01 General. During the Term, Tenant will be responsible for and pay all electricity, internet, gas, other fuel, water, sewer and other utilities consumed in the Premises directly to the applicable utility provider, whether billed by the supplying utility to the Landlord or to the Tenant directly. The Tenant will be solely responsible for arranging for supply of such utilities to the Premises with utility service providers during the Term. Prior to the Term, during any period that Tenant occupies the Premise in connection with the Tenant Improvements, Tenant shall be responsible for the payment of all such utilities, which will be billed to Tenant by Landlord.

Section 8.02 Interruption of Access, Use or Services. Landlord shall not be liable for any failure to provide access to the Premises, to assure the beneficial use of the Premises or to furnish any services or utilities when such failure is caused by natural occurrences, riots, civil disturbances, insurrection, war, court order, public enemy, accidents, breakage, repairs, strikes, lockouts, other labor disputes, the making of repairs, alterations or improvements to the Premises or the Building, the inability to obtain an adequate supply of fuel, gas, steam, water, electricity, labor or other supplies or by any other condition beyond Landlord's reasonable control, and Tenant shall not be entitled to any damages resulting from such failure, nor shall such failure relieve Tenant of the obligation to pay all sums due hereunder to Landlord or constitute or be construed as a constructive or other eviction of Tenant. If any governmental entity promulgates or revises any statute, ordinance or building, fire or other code, or imposes mandatory or voluntary controls or guidelines on Landlord or the Building or any part thereof, relating to the use or conservation of energy, water, gas, steam, light or electricity or the provision of any other utility or service provided with respect to this Lease, or if Landlord is required or elects to make alterations to the Building in order to comply with such mandatory or voluntary controls or guidelines, Landlord may, in its sole discretion, comply with such mandatory or voluntary controls or guidelines, or make such alterations to the Building. Neither such compliance nor the making of such alterations shall in any event entitle Tenant to any damages, relieve Tenant of the obligation to pay any of the sums due hereunder to Landlord, or constitute or be construed as a constructive or other eviction of Tenant.

## **Article IX. Alterations**

Section 9.01 Acceptance of Premises. As of the Commencement Date, Tenant shall have fully inspected the Premises, including but not limited to any and all mechanical equipment, and shall accept possession of same in its "As Is", "Where Is" condition without express or implied

warranties of any kind or nature by Landlord. Tenant also acknowledges that the Premises shall be suitable for the purposes for which the same are leased, including installation of the Tenant Improvements in accordance with this Lease. Tenant further acknowledges that Landlord has made no warranties or representations as to either the condition or the suitability of the Premises in terms of the use as specified in Article I.

Section 9.02 Alterations. Except for Permitted Improvements, Tenant shall not make or suffer to be made any future alterations, additions or improvements (collectively "Alterations") in, on or to the Premises or any part thereof without the prior written consent of Landlord, which consent can be withheld in its sole discretion. When applying for any such consent, and during the construction thereof, Tenant shall comply with the requirements of Exhibit "D" ("Work Requirements"). If Landlord consents to the making of any Alterations, the same shall be made by Tenant at Tenant's sole cost and expense. The Tenant Improvements (as defined below) and any subsequent Alterations shall be deemed the property of Landlord upon termination of this Lease unless otherwise agreed in writing by Landlord and Tenant. As used herein, "Permitted Improvements" shall mean alteration projects that (i) in the aggregate do not cost more than \$50,000 during any twelve-month period, (ii) do not affect the structural components or systems of the Premises or Building, (iii) are not visible from the exterior of the Premises, and (iv) do not require a permit.

Section 9.03 Initial Tenant Improvements. Tenant shall use commercially reasonable efforts to cause to be installed on the Premises as soon as practicable certain fixed improvements and alterations to the Premises (excluding furniture and other personal property of Tenant) desired by Tenant in accordance with the Work Requirements (the "Tenant Improvements"). Landlord shall pay for the Tenant Improvements up to a maximum amount of Fifty Dollars (\$50) per square foot of Rentable Area of Premises (the "Tenant Improvement Allowance"). The cost of any improvements to the Premises in excess of the Tenant Improvement Allowance shall be at the sole cost and expense of Tenant. In no event shall any unused Tenant Improvement Allowance entitle Tenant to a credit against rent payable under this Lease.

Section 9.04 Landlord Historic Tax Credits. Without limiting the provisions of this Article, Tenant acknowledges that Landlord has applied for certain state and/or federal tax credits relating to historic rehabilitation in connection with the Landlord Work and rehabilitation of the Building (the "Landlord Historic Tax Credits") and its Part 2 submitted in connection with the Landlord Historic Tax Credits has been approved by applicable governmental entities (as may be amended by the Landlord from time to time, the "Part 2"). The Tenant Improvements shall at all times comply with the Part 2, and in no event shall Tenant's construction of the Tenant Improvements or use of the Premises result in any inability of Landlord to obtain, maintain and preserve the Landlord Historic Tax Credits. Landlord may require that Tenant coordinate the construction of the Tenant Improvements with any persons engaged by Landlord in connection with the Landlord Historic Tax Credits. In addition, the parties acknowledge and agree that Landlord's or its assignees' receipt of the full benefit of the Landlord Historic Tax Credits is an essential component of this Lease, without which Landlord would not otherwise have entered into this Lease. In the event any provision of this Lease would be reasonably likely to invalidate or otherwise affect receipt of the full benefit of the Landlord Historic Tax Credits,

including, without limitation, the determination of the fair market value of Base Rent in connection with a Renewal Term or the determination of the fair market value of the Land and Building in connection with the Purchase Option, the parties agree to work in good faith to amend this Lease under commercially reasonable terms and/or take such further actions to the extent necessary so that Landlord or its assignees receive the full benefit of the Landlord Historic Tax Credits.

Section 9.05 Tenant Historic Tax Credits. Landlord may apply for certain state or federal tax credits relating to historic rehabilitation in connection with the Tenant Improvements (the "Tenant Historic Tax Credits"). To the extent Landlord is granted any Tenant Historic Tax Credits, Landlord shall use commercially reasonable efforts to cause the syndication of the Tenant Historic Tax Credits in an arrangement that will allow Tenant to receive the net benefit of the Tenant Historic Tax Credits (less all of Landlord's cost and expenses).

## **Article X. Repairs**

No representations, except as contained herein, have been made to Tenant respecting the condition of the Premises or the Building, and the acceptance of possession of the Premises on the Commencement Date by Tenant shall be conclusive evidence as against Tenant that the Premises shall be in a tenantable and good repair and condition. Tenant shall take good care of the Premises and shall make all repairs as and when necessary in order to preserve the Premises in good working order, repair and condition. Landlord shall not be liable for, and there shall be no abatement of rent with respect to any injury to or interference with Tenant's business arising from any repairs, maintenance, alteration or improvement in or to any portion of the Premises or the Building or in or to the fixtures, appurtenances or equipment therein. Tenant hereby waives all right to make repairs at Landlord's expense under any statute or common law and instead, all improvements, repairs and/or maintenance expenses incurred with respect to the Premises shall be at the expense of Tenant, and shall be considered as part of the consideration for leasing the Premises. All damages or injury done to the Premises by Tenant or by any person who may be in or upon the Premises with Tenant's consent or at Tenant's invitation, shall be repaired with new material of equal or better quality than the then existing materials and Tenant shall, at the termination of this Lease, surrender the Premises to Landlord in as good condition and repair as when accepted by Tenant, reasonable wear and tear excepted. Except for repairs rendered necessary by any Alterations or the intentional or negligent acts or omissions of Tenant or any of Tenant's agents, employees, contractors, invitees and licensees (in which event(s), Tenant shall be responsible for the cost of any such repairs or replacements), Landlord shall, at Landlord's sole cost and expense, keep in good repair the foundation, roof, exterior walls, exterior doors, and exterior windows (collectively, "Landlord Repair Items").

## **Article XI. Assignment and Subletting**

Tenant shall not, without the prior written consent of Landlord, such consent not to be

unreasonably withheld, delayed or conditioned: (a) assign, mortgage, pledge, encumber or otherwise transfer this Lease, the term or estate hereby granted, or any interest hereunder; (b) permit the Premises or any part thereof to be utilized by anyone other than Tenant (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) except as hereinafter provided, sublet or offer or advertise for subletting the Premises or any part thereof.

## **Article XII. Indemnification**

Section 12.01 Waiver of Liability. Neither Landlord nor any of the Parties (as hereinafter defined) or mortgagee of any Mortgage (collectively the "Indemnitees") shall be liable or responsible in any way for, and Tenant hereby waives all claims against the Indemnitees with respect to or arising out of any death or any injury of any nature whatsoever that may be suffered or sustained by Tenant or any employee, licensee, invitee, guest, agent or customer of Tenant or any other person, from any causes whatsoever, or for any loss or damage or injury to any property outside or within the Premises belonging to Tenant or its employees, agents, customers, licensees, invitees, guests or any other person other than by reason of the gross negligence or willful misconduct of the Indemnitees, their employees or agents. Without limiting the generality of the foregoing, none of the Indemnitees shall be liable for any damage or damages of any nature whatsoever to persons or property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain or other substances leaking, issuing or flowing into any part of the Premises and/or the Building, by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance or alteration of any part of the Building, or by anything done or omitted to be done by any tenant, occupant or person in the Building. None of Landlord's affiliates nor any shareholders, directors or officers of Landlord (collectively the "Parties") shall be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder and shall not seek any damages against any of the Parties. The liability of Landlord for Landlord's obligations under this Lease shall not exceed and shall be limited to Landlord's interest in the Building and Tenant shall not look to the property or assets of any of the Parties in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.

Section 12.02 Indemnity. Tenant shall hold the Indemnitees harmless and defend the Indemnitees from and against any and all losses, damages, claims, or liability for any damage to any property or injury, illness or death of any person: (a) occurring in, on, or about the Premises, or any part thereof or areas adjacent thereto, arising at any time and from any cause whatsoever other than by reason of the gross negligence or willful misconduct of the Indemnitees, their employees or agents; (b) occurring in, on, or about any part of the Building or the areas adjacent thereto other than the Premises, when such damage, injury, illness or death shall be caused in whole or in part by gross negligence or willful misconduct of Tenant, its agents, servants, employees, invitees or licensees or (c) arising out of Tenant's breach of this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any damage, injury, illness or death

occurring prior to such termination. References herein to the Indemnitees shall include their respective agents and employees.

Section 12.03 Self-Insurance. Any portion of any risk for which Tenant is self-insured shall be deemed to be an insured risk under this Lease, and Landlord shall be protected by Tenant in the same manner as if it was an additional named insured under a policy of insurance with a solvent, conventional, third-party insurer. To the extent of any deductible, Tenant shall be deemed to be covering the amount thereof under an informal plan of self-insurance.

### **Article XIII. Destruction or Damage**

(a) In the event of a fire or other casualty in the Premises, Tenant shall immediately give notice thereof to Landlord. The following provisions shall apply to fire or other casualty occurring in the Premises and/or the Building:

(i) If the damage is limited solely to the Premises and the Premises can be made tenantable with all damage substantially repaired within nine (9) months from the date of damage or destruction, then Landlord shall be obligated to rebuild the same and shall proceed diligently to do so; provided, however, that Landlord shall have no obligation to repair or restore the Tenant Improvements or Alterations in the Premises (whether installed by Tenant or by Landlord) except to the extent that Landlord has received insurance proceeds from either Landlord's or Tenant's casualty insurer sufficient for such purposes and for all other restoration and repair purposes or unless Tenant pays all costs and expenses related to the reconstruction of uninsured or underinsured Tenant Improvements or Alterations.

(ii) If portions of the Building outside the boundaries of the Premises are damaged or destroyed (whether or not the Premises are also damaged or destroyed) and the Premises and the Building can both be made tenantable with all damage substantially repaired within twelve (12) months from the date of damage or destruction, and provided that Landlord determines, in its sole discretion, that it is economically feasible, Landlord shall be obligated to do so; provided, however, that Landlord shall have no obligation to repair or restore Tenant Improvements or Alterations in the Premises except to the extent that Landlord has received insurance proceeds from either Landlord's or Tenant's casualty insurer sufficient for such purposes and for all other restoration and repair purposes or unless Tenant pays all costs and expenses related to the reconstruction of uninsured or underinsured Tenant Improvements or Alterations.

(b) If neither clause (i) nor (ii) above applies, Landlord shall notify Tenant within sixty (60) days after the date such damage or destruction is adjusted by Landlord and Landlord's casualty insurer and either Tenant or Landlord may terminate this Lease within thirty (30) days after the date of such notice.

(c) During any period when the Premises, as a result of destruction or damage, are unusable and are actually unused by Tenant, monthly Base Rent shall abate proportionately until such time as the Premises are made tenantable. There shall be no abatement of monthly Base Rent



attributable to the time period following the repair of damage to the Premises by the Landlord where the Premises would have been otherwise reasonably deemed available for Tenant's occupancy, except for reconstruction of the Tenant Improvements or Alterations where such reconstruction did not or has not occurred because of the failure of Tenant to pay to Landlord, or cause to be paid to Landlord, prior to the commencement of the anticipated repairs and reconstruction, an amount sufficient to pay for the cost of the anticipated repair and/or reconstruction or because of any other delays caused by Tenant.

(d) The proceeds from any insurance paid by reason of damage to or destruction of the Building or any part thereof, insured by Landlord, shall belong to and be paid to Landlord subject to the rights of any mortgagee of any Mortgage which constitutes an encumbrance.

(e) Notwithstanding anything contained in this Article XIII, Landlord shall have no obligation to rebuild the Premises or the Building in the event any mortgagee of any Mortgage shall retain, and not make available to Landlord, the proceeds from any insurance or in the event the damage or destruction of the Premises or the Building occurs at any time during the last two (2) years of the Term (excluding any unexercised Renewal Terms, if applicable).

#### **Article XIV. Rules and Regulations**

Tenant shall faithfully observe and comply with the Rules and Regulations and, after notice thereof, all reasonable modifications thereof and additions thereto from time to time promulgated in writing by Landlord, all of which are hereby incorporated herein by this reference. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Building or Building of any of the Rules and Regulations.

#### **Article XV. Entry by Landlord**

Section 15.01 Entry to the Premises. Landlord, its agents, contractors or employees may enter the Premises to: (a) inspect the same; (b) exhibit the same to Superior Lessors, prospective purchasers, lenders or, during the last twelve (12) months of the Term, tenants; (c) determine whether Tenant is complying with all of its obligations hereunder; (d) supply janitorial service and any other service to be provided by Landlord to Tenant hereunder or to any other tenant of the Building; (e) post notices of nonresponsibility; and (f) make repairs required of Landlord under the terms hereof for which Landlord deems necessary or desirable or to make repairs to any adjoining space or utility services or to make repairs, alterations or improvements to any other portion of the Building; provided, however, that all such work shall be done so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant's vaults, safes and similar secure private areas agreed upon in writing by Tenant and Landlord). Landlord shall have the right to use any and all means which Landlord may deem

proper to open such doors in an emergency in order to obtain entry to the Premises, and no entry to the Premises obtained by Landlord by any of such means shall under any circumstance be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof.

Section 15.02 Alterations to Building. Landlord shall have the right from time to time to alter the Building, without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor; provided any such change does not (a) unreasonably reduce, interfere with or deprive Tenant of access to the Building or Premises, (b) reduce the Rentable Area (except by a de minimis amount) of the Premises or (c) materially change the Premises.

## **Article XVI. Default**

Section 16.01 Events of Default. In addition to any other event specified in this Lease as an event of default, the occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a breach of this Lease by Tenant: (a) failure by Tenant to pay any monthly Base Rent or Additional Rent within ten (10) days after the date the same is due; (b) failure by Tenant to pay any other sum when and as the same becomes due and payable if such failure continues for more than ten (10) days after notice thereof from Landlord; (c) failure by Tenant to perform or observe any other obligations of Tenant hereunder, or to comply with the Rules and Regulations, if such failure continues for more than twenty (20) days after notice thereof from Landlord (unless such failure cannot reasonably be cured within such twenty (20) day period and Tenant shall within such period commence and continue to diligently pursue the curing of such failure); (d) the making by Tenant of a general assignment for the benefit of creditors, or the admission of its inability to pay its debts as they become due or the filing of a petition, case or proceeding in bankruptcy, or the adjudication of Tenant bankrupt or insolvent, or the filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of an answer admitting or failing reasonably to contest the material allegations of a petition filed against it in any such proceeding, or the seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties; (e) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or (f) if this Lease or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

Section 16.02 Landlord's Remedies. (a) Upon the occurrence of an Event of Default, Landlord may elect to terminate this Lease, or, without terminating this Lease, terminate Tenant's right to possession of the Premises. Upon any such termination, Tenant shall immediately

surrender and vacate the Premises and deliver possession thereof to Landlord. Tenant grants to Landlord the right to enter and repossess the Premises and to expel Tenant and any others who may be occupying the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass and without relinquishing Landlord's rights to rent or any other right given to Landlord hereunder or by operation of law.

(a) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Landlord may relet the Premises or any part thereof. In such case, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. Tenant shall reimburse Landlord for the costs and expenses of reletting the Premises including, but not limited to, all brokerage, advertising, legal, alteration and other costs and expenses incurred to secure a new tenant for the Premises. In addition, if the consideration collected by Landlord upon any such reletting, after payment of the costs and expenses of reletting the Premises which have not been reimbursed by Tenant, is insufficient to pay monthly the full amount of the Rent (as hereinafter defined), Tenant shall pay to Landlord the amount of each monthly deficiency as it becomes due. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant.

(b) If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant shall pay to Landlord, on demand, as and for liquidated and final damages, an accelerated lump sum amount equal to the amount by which the aggregate amount of Rent owing from the date of such termination through the Expiration Date plus the aggregate costs and expenses of reletting the Premises, exceeds the fair rental value of the Premises for the same period (after deducting from such fair rental value the time needed to relet the Premises and the amount of concessions which would normally be given to a new tenant), both discounted to present value using a discount rate of four percent (4%) per annum.

Section 16.03 Rent Computation. For purposes of computing the rent which would have accrued from the date of termination through the Expiration Date, Rent shall consist of the sum of:

- (a) the total monthly Base Rent for the balance of the Term; plus
- (b) the Unamortized Tenant Improvement Allowance; plus

(c) the Additional Rent for the balance of the Term. For purposes of computing Operating Expenses the Operating Expenses for the calendar year of the default and each future calendar year in the Term shall be assumed to be equal to the Operating Expenses for the calendar year prior to the year in which default occurs compounded at a rate equal to the mean average rate of inflation for the three (3) calendar years preceding the calendar year of the default, as determined by using the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Urban Consumers, All Items, 1982-84=100). If such index is discontinued or revised, the average rate of inflation shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.

Section 16.04 Interest. Every installment of rent and every other payment due under this Lease from Tenant to Landlord not paid within five (5) days of the date when due shall bear interest at the rate of the lower of (i) eighteen percent (18%) per annum (ii) or at the highest rate legally permitted by applicable law, from the date that the same became due and payable until paid, whether or not demand be made therefor.

Section 16.05 Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of monthly Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by an encumbrance covering the Premises or other charges, fees and costs relating to obligations incurred relating to the Premises. Therefore, if any installment of monthly Base Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days of the date when due, Tenant shall pay Landlord a late charge equal to five percent (5%) of such delinquent amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

Section 16.06 Lease Continues Until Termination. Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under Section 16.02 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 repair and 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 right to possession.

Section 16.07 Remedies Cumulative. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

Section 16.08 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Premises or to continue the Lease after being dispossessed or ejected from the Premises.

## **Article XVII.**

### **Landlord's Right to Cure Defaults**

All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's sole cost and expense. If Tenant shall fail to perform any of its obligations hereunder, then Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations, perform any such obligations on Tenant's behalf. All sums so paid by Landlord and all costs incurred by Landlord in performing Tenant's

obligations shall be deemed additional rent hereunder and shall be paid to Landlord on demand.

**Article XVIII.  
Attorneys' Fees**

In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover from the losing party court costs and the fees of its attorneys in such action or proceeding (whether at the administrative, trial or appellate levels) together with all amounts incurred for architects, engineers, brokers and other professionals fees in such action or proceeding and such obligation of the losing party herein shall be incurred on commencement of any action or proceeding whether or not such action or proceeding is prosecuted to judgment or final determination.

**Article XX.  
Holding Over**

If Tenant shall remain in possession after the expiration or sooner termination of this Lease with Landlord's consent (which Landlord may withhold in its sole and absolute discretion), all of the terms, covenants and agreements hereof shall continue to apply and bind Tenant so long as Tenant shall remain in possession insofar as the same are applicable; provided, however, the monthly Base Rent shall be the greater of (a) two (2) times the sum of the monthly Base Rent payable for the last month of the Term, prorated on a daily basis for each day that Tenant remains in possession, or (b) two (2) times the rate Landlord is then asking for comparable space in the Building. Tenant shall indemnify Landlord against any and all claims, losses and liabilities for damages resulting from failure to surrender possession, including, without limitation, indirect and consequential damages and any claims made by any succeeding tenant. If Tenant remains in possession with Landlord's written consent, such tenancy shall be from month to month, terminable by either party on not less than thirty (30) days written notice.

**Article XXI.  
Waiver**

The failure of Landlord to exercise its rights in connection with any breach or violation of any term, covenant or condition herein contained or in the Rules and Regulations shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. 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 acceptance of such rent.

**Article XXII.  
Eminent Domain**

Section 22.01 Taking of Premises. If all or any part of the Premises shall be taken by any

public or quasi public authority as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other within thirty (30) days after the date of such taking; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall, in Landlord's judgment, be of such extent and nature as substantially to handicap, impede and impair Tenant's use of the balance of the Premises. If a material part of the Building is condemned or taken or if substantial alteration or reconstruction of the Building shall, in Landlord's sole opinion, be necessary or desirable as a result of such condemnation or taking, Landlord may terminate this Lease by written notice to Tenant within thirty (30) days after the date of taking.

Section 22.02 Condemnation Award. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, and any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the monthly Base Rent thereafter to be paid shall be equitably reduced by Landlord.

Section 22.03 Temporary Taking. If all of the Premises shall be condemned or taken for governmental occupancy or ownership for a period of more than eighteen (18) months, this Lease shall terminate as of the date of taking and Landlord shall be entitled to any and all compensation, damages, income, rent and awards in connection therewith. If all or any part of the Premises shall be taken by any public or quasi- public authority on a temporary basis for a period of eighteen (18) months or less, this Lease shall remain in full force and effect, Tenant's rent hereunder shall be abated for the period of the temporary taking and Landlord shall be entitled to any and all compensation, damages, income, rent, awards and interest in connection therewith.

### **Article XXIII. Sale by Landlord**

Subject to the ROFR, Landlord shall have the right to sell, convey or assign its interest in the Premises, the Building, the Land and this Lease without the consent of the Tenant at any time and from time to time. In the event of a sale, conveyance or assignment of this Lease, the Building or Land by Landlord, the same shall operate to completely release Landlord from any future liability upon any of the agreements, obligations covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the successor in interest of Landlord in and to this Lease, the Building or the Land as the case may be. In addition, Tenant's right of recovery against Landlord as to any preexisting agreements, obligations, covenants or conditions, express or implied, herein contained in favor of Tenant shall be expressly limited to the net cash proceeds of sale actually received by Landlord, if any. This Lease shall not be affected by any such sale, conveyance or assignment however, and Tenant agrees to attorn to the purchaser or assignee, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Lease.

## **Article XXIV. Subordination**

Section 24.01 Subordination of this Lease. Unless Landlord or any lender holding a lien which affects the Premises elects otherwise, this Lease shall be subject and subordinated at all times to the lien of all mortgages and deeds of trust (a "Mortgage") in any amount or amounts whatsoever now or hereafter placed on or against the Building, on or against Landlord's interest or estate therein, and on or against all such ground or underlying leases, all without the necessity of having further instruments executed on the part of Tenant to effectuate such subordination. Notwithstanding the foregoing in the event of a foreclosure of any such Mortgage or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, or the giving of any deed in lieu of such foreclosure, Tenant shall, if requested, attorn to the purchaser at such foreclosure sale or other action or proceeding, or to the grantee under any such deed given in lieu of foreclosure, or, if requested, enter into a new lease with such successor to Landlord's interest for the balance of the original or extended Term then remaining upon the same terms and provisions as are in this Lease contained (it being understood, however, that no such successor to Landlord's interest shall be bound by any payment of rent or any other charges under this Lease, other than security deposits, made more than one (1) month in advance, or by any amendment to or modification of this Lease made without such successor's consent); and (iii) Tenant agrees to execute and deliver upon demand such further instruments evidencing such subordination of this Lease to such deed, to such Superior Leases, and to the lien of any such Mortgages as may reasonably be required by Landlord. Tenant shall from time to time on request from Landlord execute and deliver any documents or instruments that may be required by any lender to effectuate any subordination. If Tenant fails to execute and deliver any documents or instruments, Tenant irrevocably constitutes and appoints Landlord as Tenant's special attorney in fact to execute and deliver such documents or instruments for and on behalf of Tenant.

Section 24.02 Subordination of Mortgage. Notwithstanding anything to the contrary set forth above, any mortgagee under any Mortgage may at any time subordinate its Mortgage to this Lease in whole or in part, without any need to obtain Tenant's consent, by execution of a written document subordinating such Mortgage to this Lease to the extent set forth in such document and thereupon this Lease shall be deemed prior to such Mortgage to the extent set forth in such document without regard to their respective dates of execution, delivery and/or recording. In that event, to the extent set forth in such document, such Mortgage shall have the same rights with respect to this Lease as would have existed if this Lease had been executed, and a memorandum thereof, recorded prior to the execution, delivery and recording of the Mortgage.

## **Article XXV. No Merger**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof by Landlord and Tenant or any termination of this Lease on account of Tenant's default, shall not work a merger unless Landlord shall in a writing elect otherwise.

## **Article XXVI.**

### **Surrender of Premises**

At the end of the Term or upon sooner termination of this Lease, Tenant shall peaceably deliver up to Landlord possession of the Premises, together with all Tenant Improvements and Alterations, by whomsoever made, in the same condition as received, or first installed, reasonable wear and tear excepted. Tenant may, upon the termination of this Lease, remove all Tenant's personal property, equipment and movable partitions of less than full height from floor to ceiling, as well as any trade fixtures installed by Tenant, repairing promptly any damage caused by such removal. Property not so removed shall be deemed abandoned by Tenant and title to the same shall thereupon automatically pass to Landlord. Notwithstanding the foregoing, Tenant, at its cost, shall be required to remove any or all Alterations designated by Landlord.

### **Article XXVII. Estoppel Certificate**

At any time and from time to time, but in no event on less than ten (10) days prior written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord, promptly upon request, a certificate certifying: (a) that Tenant has accepted the Premises (or, if Tenant has not done so, that Tenant has not accepted the Premises, and specifying the reasons therefor); (b) the commencement and expiration dates of this Lease; (c) whether there are then existing any defaults by Landlord in the performance of its obligations under this Lease (and, if so, specifying the same) (d) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (e) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Tenant; (f) the date, if any, to which rent and other sums payable hereunder have been paid; (g) that Tenant is not in default under the Lease nor does any event exist which, with the passage of time or the giving of notice or both would constitute an Event of Default (except as to defaults specified in the certificate); (h) the amount of any security deposit and prepaid rent; and (i) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any Mortgage affecting the Building or Land. If Tenant fails to deliver the executed certificate within ten (10) days after receipt of Landlord's request to Tenant, Tenant irrevocably constitutes and appoints Landlord as its special attorney in fact to execute and deliver the certificate to any third party on Tenant's behalf.

### **Article XXVIII. No Light, Air or View Easement**

Any diminution or shutting off of light, air or view by any structure which is now or may hereafter be erected on lands adjacent to the Building shall in no way affect this Lease or impose any liability on Landlord. Noise, dust or vibration or other incidents to new construction of improvements on lands adjacent to the Building, whether or not owned by Landlord, shall in no way affect this Lease or impose any liability on Landlord.

### **Article XXIX.**



## **Notices**

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, at the addresses set forth in Article I or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by air courier, or on the third business day after posting if sent by mail.

## **Article XXX.**

### **Successors**

All the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, provided that nothing in this Article XXX shall be deemed to permit any assignment, subletting, occupancy or use by Tenant contrary to the provision of Article XI.

## **Article XXXI.**

### **Additional Tenant**

Landlord may, from time to time, lease all or a part of the Excluded Area to any other person or entity (the "Additional Tenant"); provided, Landlord shall not lease the Excluded Area for any of the following uses: (i) vaping shop or marijuana dispensaries; (ii) adult book or video store (meaning any book or video establishment deriving more than five percent (5%) of its revenue from the sale, lease, rental or display of sexually explicit material of any kind); (iii) check cashing business, except as incidental to the operation of a bank; (iv) payday loan business; (v) pawnshop; or (vi) tattoo or piercing parlor. Prior to leasing the Excluded Area, Landlord shall receive Tenant's written consent to the proposed use of the Excluded Area, such consent not to be unreasonably withheld, delayed or conditioned; provided, (A) Landlord shall not be required to receive such consent if the use of the Excluded Area is for a traditional restaurant (not fast food), coffee shop, or similar food and beverage vendor or general office use and (B) any required consent of Tenant shall be made by any officer or authorized person of Tenant, and shall not require approval of the Omaha City Council. In the event of a lease of the Excluded Space to any Additional Tenant, Additional Tenant and Tenant shall negotiate in good faith to enter into an agreement pursuant to which any Operating Expenses incurred by Tenant that benefit Additional Tenant are equitably allocated to the Additional Tenant based on the rentable area of the Additional Tenant's premises compared to the Rentable Area of the Building.

## **Article XXXII.**

### **Signage**

Tenant, at its sole cost and expense, may install, maintain, repair and replace signs of high quality in the Premises and on the exterior of the Building; provided, however, (i) any such

signage shall require the prior written consent of Landlord, which shall not be unreasonably withheld, and (ii) any such signage shall comply with all applicable laws, statutes, ordinances, and governmental rules or regulations.

### **Article XXXIII. Miscellaneous**

Section 33.01 Captions. The captions and headings of the Articles and Sections in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

Section 33.02 Time of Essence. Time is of the essence of this Lease and of all provisions hereof, except in respect to the delivery of possession of the Premises.

Section 33.03 Number and Genders; Joint and Several Liability. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord or Tenant or if Tenant is a partnership, the respective obligations hereunder imposed upon Landlord, Tenant and the general partners of Tenant, as the case may be, shall be joint and several.

Section 33.04 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Nebraska.

Section 33.05 Cumulative Remedies. It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy by Landlord shall not be to the exclusion of any other remedy.

Section 33.06 Entire Agreement. The terms of this Lease are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Lease and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings, if any, involving this Lease.

Section 33.07 Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

Section 33.08 Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity in good standing in the state in which it has been organized or formed, that Tenant has and is qualified to do business in the state of Nebraska, that Tenant has full

right and authority to enter into this Lease, and that each and both of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with written evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties.

Section 33.09 The submission and negotiation of this Lease shall not be deemed an offer to enter into a lease by Landlord, but the solicitation of such an offer by Tenant and Landlord's acceptance of this Lease shall be evidenced only by Landlord signing and delivering this Lease to Tenant.

Section 33.10 No Representations or Warranties. Neither Landlord nor Landlord's agents or attorneys have made any representations or warranties with respect to the Premises, the Building or this Lease, except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise.

Section 33.11 Brokers. Tenant and Landlord each represent to the other that it has dealt with no broker in connection with this Lease, other than Landlord's Broker and Tenant's Broker, and each shall hold the other harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit or obligation arising out of or relating to a breach of such representation. Any commission payable to Landlord's Broker or Tenant's Broker shall be pursuant to separate agreement between Landlord's Broker, Tenant's Broker and the parties hereto.

Section 33.12 Amendments. This Lease may not be altered, changed, or amended except by an instrument signed by both parties hereto.

Section 33.13 Proration. Any proration required hereunder shall, unless expressly provided otherwise herein, be done on the basis of a three hundred sixty (360) day year and/or a thirty (30) day month.

Section 33.14 Waiver of Jury Trial. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties to this Lease against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any other claims (except claims for personal injury or property damage).

Section 33.15 No Recordation. Neither Landlord nor Tenant shall record this Lease or any short form or memorandum thereof.

Section 33.16 Liens. Tenant shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Tenant. Tenant shall also indemnify, hold harmless and defend Landlord against any such liens, including the reasonable fees of Landlord's attorneys. Such liens shall be discharged by Tenant within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided that Tenant may contest, in good faith and by appropriate proceedings any such liens.

Section 33.17 Binding Effect. The covenants, conditions and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective successors, agents, and except as otherwise provided in this Lease, their assigns.

Section 33.18 Incorporation of Exhibits. All Exhibits attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

Section 33.19 Construction. Landlord and Tenant each acknowledge and agree that both parties have participated in the drafting of this Lease and the Lease has been reviewed by the respective legal counsel for such parties, and the normal rule of construction to the effect that any ambiguities herein are to be resolved against the drafting party shall not be applied to the interpretation or construction of this Lease. No inference in favor of, or against, any party shall be drawn from the fact that one party has drafted any portion of this Lease.

Section 33.20 Counterparts. This Lease may be executed and delivered in counterparts, by facsimile process or otherwise, and each counterpart shall be deemed an original, but all of such counterparts, taken together, shall constitute one and the same instrument.

Section 33.21 Force Majeure. Except for their respective financial obligations (including the obligation of Tenant to pay Base Rent), neither Landlord nor Tenant shall be held responsible for delays in the performance of their obligations hereunder when caused by strikes (except for strikes by either parties' employees), lockouts (except for lockouts by either parties' employees), labor disputes (except for labor disputes by either parties' employees), acts of God, inability to obtain labor or materials or reasonable substitutes therefor, supply chain disruptions, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, pandemics, and other causes beyond the reasonable control of the affected party ("Force Majeure").

Section 33.22 Net Lease. The obligations of Tenant hereunder shall be separate and independent covenants. This is a net lease and Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension or reduction, or defense. This Lease is the absolute and unconditional obligation of Tenant, and the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of the Premises for any reason subject only to: (i) any damage to or destruction of the Premises, as provided in Article XIII of this Lease, or (ii) any condemnation or eminent domain, as provided in Article XXII of this Lease. Except as specifically designated as a Landlord cost in this Lease, all costs and expenses of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period which ends on the Expiration Date or earlier termination of the Term in accordance with the provisions hereof (whether or not the same shall become payable during the Term or thereafter) shall be paid by Tenant.

Section 33.23 Limitation of Liability. Tenant shall neither assert nor seek to enforce any claim against Landlord, for breach of this Lease or otherwise, other than against Landlord's interest in the Premises, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease. Landlord and Tenant specifically agree that in no event shall any officer, manager, member, trustee, employee or representative of either of them ever be personally liable for any obligation under this Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates set forth below and this Lease shall be effective as of the date first written above.

LANDLORD:

1401 Jones, LLC

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

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

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

TENANT:

City of Omaha

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

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

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

APPROVED AS TO FORM:

 1/7/2022

ASSISTANT CITY ATTORNEY

**EXHIBIT A**  
**FLOOR PLAN**

**EXHIBIT B**  
**LANDLORD WORK**

- Roofing completed
- New protected stairwells as required by City of Omaha code Sprinkler system compliant
- Windows replaced
- Electrical to the space
- New modernized elevator
- Plumbing stubbed to space for restroom
- Entry lobby to the building complete
- Dock replacement
- All structural requirements completed
- Fire alarm to the building

Note that no interior buildout will be included in the Landlord Work except as described above.



**EXHIBIT C**  
**BASE RENT<sup>1</sup>**

Rentable Square Feet	30,000 (Subject to adjustment in accordance with Section 2.02)
Initial Rate (Annual/SF)	15.50/square foot (Subject to 2% annual increases)

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<sup>1</sup> NTD: Parties to include table of Base Rent based on a Rentable Area of Premises of 30,000, which will be subject to change based on adjustment in accordance with Section 2.02.

**EXHIBIT D**  
**WORK REQUIREMENTS**

1. **Applicability.** These Work Requirements shall be applicable to Tenant in connection with the construction of any Alterations or Tenant Improvements (together, the "Work").

2. **Construction of Alterations.**

(a) Prior to commencement of the construction of any Alterations, Landlord may require Tenant to submit preliminary drawings, space plans, working drawings and other documents reasonably require by Landlord which shall indicate Tenant's intentions with respect to the design and construction of any Alterations.

3. **Compliance.** All Work shall comply in all respects with the following: (a) the Building Code of the city and state in which the Building is located and state, county, city or other laws, codes, ordinances and regulations as each may apply according to the rulings of the controlling public official, agent or other such person, (b) applicable standards of the National Board of Fire Underwriters and National Electrical Code, (c) building material manufacturer's specifications, and (d) the Part 2 and any other requirements applicable to the Work necessary in order for Landlord to qualify for, obtain, maintain and preserve the Landlord Historic Tax Credits and Tenant Historic Tax Credits (if applicable). In no event shall any Work conflict with the design of the Building, the Part 2, or Landlord's obtainment, maintenance and preservation of the Landlord Historic Tax Credits or Tenant Historic Tax Credits (if applicable).

4. **Performance.**

(a) The Work shall be commenced within a reasonable time after Landlord approves the same and shall thereafter be diligently prosecuted to completion, subject to Force Majeure. The Work shall be coordinated under Landlord's direction with Landlord's Work and any other work being completed by Landlord so that the Work will not interfere with or delay the completion of the Landlord Work any other construction work in the Building.

(b) The Work shall be performed in a thoroughly first class and workmanlike manner in conformity with the design approved by Landlord and shall be in good and usable condition at the date of completion.

(c) Tenant shall be required to obtain and pay for all necessary permits and/or fees with respect to the Work.

(d) Each contractor and subcontractor shall be required to obtain prior written approval from Landlord for any space outside the Premises within the Building, which such contractor or subcontractor desires to use for storage, handling and moving of its materials and equipment, as well as for the location of any facilities for its personnel.

(e) The contractors and subcontractors shall be required to remove from the

Premises and dispose of, at least once a week and more frequently as Landlord may direct, all debris and rubbish caused by or resulting from the construction. Upon completion of the Work, the contractors and subcontractors shall remove all surplus materials, debris and rubbish of whatever kind remaining within the Building which has been brought in or created by the contractors and subcontractors in the performance of the Work. If any contractor or subcontractor shall neglect, refuse or fail to remove any such debris, rubbish, surplus material or temporary structures within two (2) days after notice to Tenant from Landlord with respect thereto, Landlord may cause the same to be removed by contract or otherwise as Landlord may determine expedient and charge the cost thereof to Tenant as additional rent under the Lease.

(f) Tenant shall obtain and furnish Landlord all approvals with respect to electrical, water and telephone work as may be required by the respective company supplying the service. Tenant shall obtain utility service from the utility company supplying such service, unless Landlord elects to supply such service.

(g) Landlord's acceptance of the Work shall be subject to Landlord's inspection and written approval. Tenant shall give Landlord prior written notification of the anticipated completion date of the Work.

(h) If an expansion joint occurs within the Premises, Tenant shall install finish floor covering to or covering such joint in a workmanlike manner, and Landlord shall not accept responsibility for any finish floor covering applied to or installed over the expansion joint.

(i) Copies of as built" drawings shall be provided to Landlord no later than thirty (30) days after completion of the Work.

(j) Landlord's approval of any Work shall not be deemed a warranty as to the quality or adequacy of the Work, or the design thereof, or of its compliance with laws, codes and other legal requirements. The Work shall be prosecuted at all times in accordance with, and Tenant shall be solely responsible for, all state, federal and local laws, regulations and ordinance, including without limitation all OSHA and other safety laws, the Americans with Disabilities Act and all applicable governmental permit and code requirements in connection with the Work.

(k) Tenant shall conduct its labor relations with its employees, agents, contractors, subcontractors or suppliers so as to avoid strikes, picketing and boycotts of, on or about the Premises or Building. If any employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors, subcontractors or suppliers, in or about the Premises or Building, Tenant shall immediately close the Premises and remove or cause to be removed all such employees, agents, contractors, subcontractors and suppliers until the dispute has been settled.

(l) Landlord may impose reasonable additional requirements from time to time (including requiring certain Work to be performed outside business hours), in order to ensure that the Work, and the construction thereof, (i) does not disturb or interfere with any other tenants of the Building, or their visitors, contractors or agents, nor interfere with the efficient, safe and secure option

of the Building and (ii) is in compliance with the Part 2 and any other requirements applicable to the Work necessary in order for Landlord to qualify for, obtain, maintain and preserve the Landlord Historic Tax Credits and Tenant Historic Tax Credits (if applicable)..

5. **Insurance.** All contractors and subcontractors shall carry such insurance and be subject to such bonding requirements as are required by Tenant and applicable law. In the event that during the course of the Work any damage shall occur to the construction and improvements being made by Tenant, then Tenant shall repair the same at Tenant's cost.

6. **Incorporation into Lease; Default.** THE PARTIES AGREE THAT THE PROVISIONS OF THESE WORK REQUIREMENTS EXHIBIT ARE HEREBY INCORPORATED BY THIS REFERENCE INTO THE LEASE FULLY AS THOUGH SET FORTH THEREIN. In the event of any express inconsistencies between the Lease and this Exhibit, the latter shall govern and control. If Tenant shall default under this Exhibit, Landlord may, in addition to all other remedies under the Lease, order that all Work being performed in the Premises be stopped immediately and that no further deliveries to the Premises be made until such default is cured, without limitation as to Landlord's other remedies. Any default by Tenant hereunder shall constitute a default under the Lease and shall be subject to the remedies and other provisions applicable thereto under the Lease.

## **LEASE**

THIS LEASE (the "Lease") is made and entered into by and between 1401 Jones, LLC, Nebraska limited liability company ("Landlord"), and The City of Omaha, Nebraska, a municipal corporation ("Tenant"), as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

In consideration of the rents hereinafter reserved and the agreements hereinafter set forth, Landlord and Tenant mutually agree as follows:

### **Article I.**

#### **Basic Terms**

The terms listed below shall have the following meanings throughout this Lease:

- |                                |  |
|--------------------------------|--|
| (a) Land                       | The real property legally described as LOTS 1 and 2, Block 196 in the Original City of Omaha, Douglas County, Nebraska       |
| (b) Building:                  | The building on the Land located at 1401 Jones Street, Omaha, NE 68102   |
| (c) Premises:                  | The entire main level and second floor of the Building, as more particularly shown on the floor plan attached as Exhibit "A" |
| (d) Excluded Area              | Approximately 12,000 square feet existing in the basement of the Building  |
| (e) Rentable Area of Building: | Approximately 42,000 square feet   |
| (f) Rentable Area of Premises: | Approximately 30,000 square feet   |
| (g) Commencement Date:         | The earlier of (i) Substantial Completion of the Tenant Improvements or (ii) January 1, 2023.                                |
| (h) Term:                      | One Hundred Twenty (120) Months (subject to extension as set forth in Section 3.04)  |

- |     |                                 |   |
|-----|---------------------------------|---|
| (i) | Expiration Date:                | One Hundred Twenty (120) Months following the Commencement Date (subject to extension as set forth in Section 3.04) |
| (j) | Use:                            | Public Library  |
| (k) | Tenant Improvements:            | See Section 9.03  |
| (l) | Tenant's Address for Notice:    | Omaha City Clerk<br>w/ copy to Jennifer Taylor<br>1819 Farnam St<br>Omaha, NE 68183                                 |
| (m) | Landlord's Address for Notices: | 10404 Essex Ct STE 101<br>Omaha, NE 68114   |
| (n) | Tenant's Proportionate Share    | 71.43%  |

Certain other defined terms are defined when they first appear within the body of this Lease.

## **Article II. Premises**

Section 2.01 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term and subject to the agreements, conditions and provisions contained in this Lease to each and all of which Landlord and Tenant hereby mutually agree.

Section 2.02 Rentable Area. The Rentable Area of the Premises and the Rentable Area of the Building shall mean the amounts as set forth in Article I. During the Term and after Alterations to the Premises or Building, Landlord shall have the right to redetermine the Rentable Area of the Premises and the Rentable Area of the Building. Prior to the Commencement Date (as defined below), Landlord shall engage an architect to measure the Rentable Area of the Premises. The measurement shall be made in accordance with current Building Owners and Managers Association (BOMA) standards applicable to the Building. Upon the determination of the Rentable Area of the Premises and the Building, the Tenant's Proportionate Share, the Base Rent (including Exhibit "C") and the Tenant Improvement Allowance (each as defined below) shall be adjusted to reflect adjustments (if any) to the Leasable Area.

## **Article III. Delivery of Premises; Term**

Section 3.01 Delivery of Premises. The Premises will be delivered to Tenant by Landlord upon Substantial Completion of the base building improvement set forth on Exhibit "B" and as more particularly described in the plans and specifications dated [ ] and designed by [ ] ("Landlord Work"); provided, Landlord and Tenant shall work together in good faith so that Tenant may commence and prosecute the Tenant Improvements while the Landlord Work is being constructed. Subject to Force Majeure delays and delays caused by Tenant (a "Tenant Delay"), Landlord shall use its commercially reasonable efforts to deliver the Premises with the Landlord Work Substantially Completed as soon as can be reasonably accomplished following execution of this Lease. Subject to Force Majeure delays and Tenant Delays, Landlord estimates that the Landlord Work will be Substantially Completed by November 1, 2022. Notwithstanding anything contained herein to the contrary, this Lease will not be affected thereby nor will the Tenant have any claim against the Landlord by any reason thereof except that no rent will be payable hereunder until the Premises with the Landlord Work Substantially Completed is delivered to Tenant (except to the extent of any Tenant Delay). Except as expressly set forth below, the Landlord is not liable to the Tenant for any damage whatsoever resulting from the delay in delivery of possession of the Premises. Notwithstanding the foregoing, to the extent that the Landlord is unable to deliver timely possession of the Premises due to any Tenant Delay, Base Rent and Additional Rent will commence on the date possession of the Premises would have been delivered to the Tenant with Substantial Completion of the Landlord Work but for the Tenant Delay.

Section 3.02 Substantial Completion. For purposes of this Lease, "Substantial Completion" (i) of the Tenant Improvements shall occur upon the completion of construction of the Tenant Improvements, with the exception of any punch list items (the correction or completion of which will not materially interfere with Tenants occupancy and use of the Premises); and (ii) of the Landlord Work shall occur upon the completion of construction of the Landlord Work, with the exception of any punch list items (the correction or completion of which will not materially interfere with Tenant's occupancy and use of the Premises).

Section 3.03 Early Occupancy. Tenant may enter into the Premises commencing on the date hereof for the purpose of conducting non-invasive inspections of the Premises. In addition, upon the execution of this Lease and to the extent allowed by applicable law, Tenant shall be permitted to access the Premises for the purpose of completing the Tenant Improvements (as defined below) so long as Tenant does not materially interfere with the construction of the Landlord Work. Such early entry shall be subject to all obligations of Tenant under this Lease; provided, Base Rent and Additional Rent shall not be due until the Commencement Date. Any other use of the Premises by Tenant prior to the Commencement Date shall only be with the written agreement of Landlord and shall be subject to all obligations of Tenant under this Lease (including the obligation to pay rent).

Section 3.04 Renewal Term.

(a) Subject to the conditions set forth in subparagraph (b) below, Tenant is granted the option to renew this Lease for up to two (2) additional terms of ten (10) years (each, a "Renewal Term"), the first such Renewal Term commencing on the date following the Expiration Date, and the second such Renewal Term commencing on the date following the expiration of the first Renewal Term. Said options to renew this Lease shall be on the same terms, conditions,

provisions and covenants as are set forth herein, except as specifically set forth hereinafter:

(b) Base Rent during each year of a Renewal Term shall be (i) the fair market value for the first year of such Renewal Term and (ii) after such first year, increased by two percent (2%) over the prior year's Base Rent for each subsequent year of a Renewal Term. Fair market value and other terms specific to any Renewal Term shall be agreed upon by the parties prior to the commencement of the Renewal Term.

(c) Tenant's option for a Renewal Term shall be conditioned upon and subject to each of the following: (i) Tenant shall notify Landlord in writing of Tenant's exercise of its option to exercise a Renewal Term ("Renewal Notice") no earlier than twelve (12) months and no later than nine (9) months prior to the expiration of the initial Term or then existing Renewal Term; (ii) at the time Landlord receives the Renewal Notice and at the scheduled commencement of the Renewal Term, no Event of Default shall exist under this Lease.

(d) This option for any Renewal Term shall be deemed personal to Tenant named herein and may not be exercised by any permitted assignee or subtenant hereunder.

(e) Landlord shall have no obligation to improve or perform any work on or to the Premises or otherwise provide or contribute any tenant improvement allowance as a result of the exercise of Tenant's option for any Renewal Term.

Section 3.05 Termination Right. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have a one-time option to terminate this Lease, effective at the end of the sixtieth (60<sup>th</sup>) month following the Commencement Date ("Termination Date"), by paying the Termination Fee (as defined below) and providing written notice to Landlord (the "Termination Notice") of such intent to terminate no later than nine (9) months prior to the Termination Date (the "Termination Notice Date"). If Tenant does not deliver the Termination Notice and pay the Termination Fee by the Termination Notice Date, Tenant shall have no right to terminate the Lease. In the event Tenant properly terminates the Lease, Tenant shall be responsible for the following costs (collectively, "Termination Fees") (i) nine (9) months of Base Rent payments and (ii) the Unamortized Tenant Improvement Allowance (as defined below). The Termination Fee shall be deemed liquidated damages and not a penalty and is intended to be a fair estimate of losses and damages which are difficult to calculate and which Landlord is likely to sustain due to the corresponding advance of the Expiration Date, including the unamortized portion of certain concessions, allowances and other expenses incurred by Landlord in connection with the Premises and/or loss of future rent in connection therewith. The Termination Fee shall be paid with delivery of the Termination Notice.

As used herein, the term "Unamortized Tenant Improvement Allowance" shall mean a dollar amount determined as follows: The total amount of the Tenant Improvement Allowance shall be amortized on a straight-line basis over Term with interest thereon at the rate of seven percent (7%) per annum. The Tenant Improvement Allowance that remains unamortized as of the Termination Date shall be deemed to be the "Unamortized Tenant Improvement Allowance."



Section 3.06 Purchase Option. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have the option (the "Purchase Option") to purchase the Land and Building by providing written notice thereof to Landlord no earlier than twelve months (12) and no later than six (6) months prior to the fifth (5<sup>th</sup>) anniversary of the Commencement Date the ("PO Exercise Period") upon the following terms and conditions: In the event Tenant desires to purchase the Land and Building, Tenant shall deliver written notice to Landlord (the "Purchase Notice") during the PO Exercise Period. In the event the Purchase Notice is not delivered within the PO Exercise Period, the Purchase Option shall become null and void and of no further force or effect. Within thirty (30) days after receipt of the Purchase Notice, Landlord and Tenant shall execute and deliver an agreement of sale (the "Purchase Agreement") in a form reasonably acceptable to the parties. The purchase price for the Land and Building shall be the fair market value or as otherwise agreed by the parties.

Section 3.07 Right of First Refusal. Provided that no Event of Default shall exist under this Lease beyond any applicable notice and cure periods, Tenant shall have a Right of First Refusal ("ROFR") with respect to a purchase by a third party of the Land and Building, on the following terms and conditions: Prior to accepting a bonafide offer to purchase the Land and Building from any third party that Landlord is prepared and willing to accept (the "Offer"), Landlord shall submit a copy of the Offer to Tenant. Tenant shall have the right to elect to purchase the Land and Building on terms and conditions identical to those contained in the Offer, provided that Tenant delivers written notice of intent to exercise the ROFR within ten (10) business days following delivery of the copy of the Offer from Landlord to Tenant. If Tenant duly and timely expresses its intent to exercise the ROFR, Landlord and Tenant shall promptly enter into a commercially reasonable purchase agreement (the "ROFR Purchase Agreement") for the Land and Building on terms and conditions identical to those contained in the Offer. If for any reason, Tenant fails to duly and timely exercise the ROFR, or if Tenant properly exercises such right but thereafter for any reason does not enter into the ROFR Purchase Agreement within thirty (30) days after exercise of the ROFR (unless the delay is caused by Landlord), then Landlord shall be free to sell the Land and Building to the third party on the terms and conditions of the Offer, and the ROFR shall be null and void and of no further force or effect. In the event that Landlord does not sell the Land and Building to the third party on the terms and conditions of the Offer, the ROFR shall continue in accordance with the foregoing procedure. Notwithstanding the foregoing, however, if Tenant timely exercises the ROFR and (i) fails to enter into the ROFR Purchase Agreement on the terms and conditions of the applicable Offer within the foregoing thirty (30) day period (through no fault of Landlord) or (ii) enters into the ROFR Purchase Agreement and subsequently fails to consummate the transactions contemplated thereby, then, in addition to all other remedies entitled to Landlord at law and equity, the ROFR and the provisions of this section shall terminate and be of no further force and effect. The ROFR shall be deemed personal to Tenant named herein and may not be exercised by any assignee or subtenant hereunder.

#### **Article IV. Base Rent**

Section 4.01 Base Rent. Tenant shall pay to Landlord for the use of the Premises (in addition to the Additional Rent as described in Article VI below) Base Rent in an amount specified in Exhibit "C", payable without notice, counterclaim, setoff or demand in equal monthly installments in advance, beginning on the Commencement Date and on the first day of each calendar month thereafter during the Term.

Section 4.02 Payment. All payments required to be made by Tenant under this Lease shall be in lawful money of the United States of America and shall be made without any set off, deduction or counterclaim whatsoever and shall be made payable to and delivered to Landlord at the office of Landlord or such other place as Landlord may at any time designate. Notwithstanding the foregoing, Landlord, in its sole discretion, may require all payments made by Tenant under this Lease to be made through a debit payment entry or other electronic transfer directly to a demand deposit account designated by Landlord.

Section 4.03 Partial Months. If the Commencement Date is a day other than the first day of a calendar month or if the Term expires or is terminated on a day other than the last day of a calendar month, then the monthly Base Rent and Additional Rent for such fractional months shall be prorated on the basis of the number of days elapsed in the subject month.

## **Article V.**

### **Operating Expenses, Taxes and Insurance**

#### Section 5.01 Operating Expenses.

(a) Tenant shall be responsible, at its sole cost and expense, for the procurement and payment of all Operating Expenses. "Operating Expenses" as used herein shall include all costs, charges, expenses and disbursements of every kind, nature and character incurred in the course of the operation, repair, replacement, security and maintenance of the Premises, the Building, and the Land (but excluding (i) the Excluded Area, and (ii) the common elevator and stairwell (item (ii) together, the "Common Areas")), including, without limitation: costs and payments of service, maintenance, repair, replacement and inspection for the landscaping, lawns, trees, shrubbery, janitorial, windows, window cleaning, rubbish removal, exterminating, parking areas and drives, elevator, escalator, life and safety, security, plumbing, telecommunication, electrical and mechanical equipment (including, but not limited to HVAC) or installations and the costs of purchasing or renting all such additional mechanical installations and equipment, service contacts, painting, exterior waterproofing and caulking, wall covering, carpeting, bathroom repairs and modernization, building identification, roof maintenance and repair, equipment, supplies, tools, materials and uniforms. Landlord and/or the Additional Tenant, as applicable, shall be responsible for the operation, repair, replacement, and maintenance of the Excluded Area and Common Areas, subject to Tenant's payment of Additional Rent as set forth below in respect of the Common Area Expenses.

"Operating Expenses" shall not include: the costs and expenses of Landlord Repair Items and Common Area Expenses (as defined below), expenses for repairs, replacements, and general

maintenance paid by proceeds from insurance; principal and interest payments made by Landlord on mortgages on the Building; depreciation; and leasing commissions.

Section 5.02 Taxes. "Taxes" as used herein shall include all taxes, assessments and charges (including costs and expenses (including without limitation, legal fees and disbursements) of contesting the amount or validity thereof by appropriate administrative or legal proceedings) levied upon or with respect to the Building or any personal property of Landlord, or Landlord's interest in the Building or such personal property, including without limitation, all real property taxes and general and special assessments; charges, fees, levies or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Building; service payments in lieu of taxes; and any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Building, on the use or occupancy of the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, which may now or hereafter be levied or assessed against Landlord by the United States of America, the State of Nebraska, or any political subdivision, public corporation, district or other political or public entity, and any other tax, fee or other excise, however described, that maybe levied or assessed as a substitute for, or as an addition to (in whole or in part) any other property taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. If the Building is taxed to the Landlord as a larger parcel, Landlord may allocate such tax among all the Buildings.

Section 5.03 Additional Taxes. In addition to the Base Rent and other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes, surcharges, levies, assessments, fees and charges payable by Landlord, whether or not now customary or within the contemplation of the parties hereto: (a) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements, regardless of whether title to such improvements shall be in Tenant or Landlord; (b) upon, or measured by, any rent or other amounts payable hereunder, including, without limitation, any gross income tax, gross receipts tax or excise tax levied by the City of Omaha, County of Douglas, State of Nebraska, the federal government of the United States or any other governmental body with respect to the receipt of such rent or other amounts; (c) upon, or with respect to, the possession, leasing, operation, management, maintenance, alteration, repair, restoration, use or occupancy by Tenant of the Premises or any portion thereof; or (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

Section 5.04 Insurance Expenses. "Insurance Expenses" as used herein, includes all commercially reasonable premiums, deductibles, and other expenses for insurance with respect to the Land and the Building, reasonably incurred by Landlord for commercial liability insurance and special form or similar property insurance.

Section 5.05 Common Area Expenses. "Common Area Expenses" as used herein, means Landlord's costs and expenses incurred for the operation, repair, replacement, and maintenance of the Common Areas.

## **Article VI. Additional Rent**

Section 6.01 Additional Rent. Beginning on the Commencement Date, Tenant shall pay to Landlord (in addition to the Base Rent, as described in Article IV above) an amount equal to Tenant's Proportionate Share of (i) Taxes for each calendar year, (ii) Insurance Expenses and (iii) Common Area Expenses (collectively the "Additional Rent"). Prior to each calendar year, Landlord shall estimate the amount of Additional Rent due for such year, and Tenant shall pay Landlord one-twelfth (1/12th) of such estimate on the first day of each month during such year with Tenant's payment of the monthly Base Rent. Such estimate may be revised by Landlord not more than once per calendar year. After the end of each calendar year, Landlord shall deliver to Tenant a report setting forth the actual Insurance Expenses, Common Area Expenses, and Taxes for such calendar year and a statement in the amount of Additional Rent that Tenant has paid and is payable for such year. Within thirty (30) days after receipt of such report, Tenant shall pay to Landlord the amount of Additional Rent due for such calendar year minus any payments of estimated Additional Rent made by Tenant for such year. If Tenant's estimated payments of Additional Rent exceed the amount due Landlord for such calendar year, Landlord shall, provided Tenant is not then in default hereunder beyond any applicable grace and notice periods, apply such excess as a credit against Tenant's other payment obligations under this Lease or promptly refund such excess to Tenant if the Term has already expired, in either case without interest to Tenant. In the event Landlord shall fail to give Tenant an estimate of Additional Rent prior to the beginning of any calendar year, Tenant shall continue to pay Additional Rent at the rate for the previous calendar year until Landlord delivers such estimate. Notwithstanding the foregoing, Landlord's obligation to credit Tenant's account pursuant to this Section 6.01 shall be conditional upon Tenant having first paid all of its monthly installments of the estimated Insurance Expenses, Common Area Expenses and Taxes pursuant to this Section 6.01.

Section 6.02 Review. Tenant shall have the right, at its cost, upon reasonable prior written notice to Landlord, to inspect Landlord's accounting records relative to Operating Expenses and Taxes during normal business hours at Landlord's offices in Omaha, Nebraska, at any time one (1) year following the furnishing to Tenant of the annual statement of Additional Rent.

Section 6.03 Survival. In the event of the termination of this Lease prior to any determination of final Additional Rent for any calendar year, Tenant's agreement to pay any such sums and Landlord's obligation to refund any such sums shall survive the termination of this Lease.

## **Article VII. Use**

Section 7.01 General. The Premises shall be used only for the Use specified in Article I and for no other use or purpose. Tenant shall maintain sufficient personnel on the Premises to receive and supervise visitors and other business invitees to the Premises. The parties acknowledge and agree that the Use is for a public library, and that members of the public will be permitted to enter and remain on the Premises, subject to the rules implemented by the Tenant

from time to time, and Landlord shall not be permitted to institute any Rules and Regulations that would have the effect of restricting to any persons to the Premises.

Section 7.02 No Nuisance or Waste. Tenant shall not do or permit anything to be done in, or about the Premises which will in any way obstruct or interfere with the rights of Landlord and other tenants or occupants or invitees of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on, or about the Building or the Premises. Tenant shall not commit or suffer the commission of any waste in, on, or about the Building or the Premises.

Section 7.03 No Illegal Use. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated or which conflicts with any certificate of occupancy for the Building or, subject to Section 7.01, is prohibited by any Rules and Regulations which may be reasonably promulgated by Landlord from time to time. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of applicable insurance upon the Building or any of its contents, and Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations, and requirements now in force or which may hereafter be in force, and with the requirements of any Board of Fire Underwriters or other similar body now or hereafter constituted relating to or affecting Tenant's use or occupancy of the Premises.

Section 7.04 Notice of Hazardous Substances/Materials. In the event Tenant knows, or has reasonable cause to believe, that any release by Tenant of a hazardous substance or materials has come to be located on, within or beneath the Premises or the Building, Tenant shall give written notice of such condition to Landlord and Tenant shall comply with all statutes, laws, ordinances, rules, regulations and orders of governmental authorities with respect to any such hazardous substances or materials.

Section 7.05 Hazardous Materials. Tenant will not store, use or dispose of any hazardous, toxic, corrosive, explosive, reactive, or radioactive matter, substance, pollutant, waste or material in, on or about the Premises. Notwithstanding the foregoing sentence, Tenant may use and store the following materials in the ordinary course of business: reasonable amounts of materials customarily used in conjunction with business machines; cleaning supplies in reasonable quantities; and any other similar materials deemed necessary to Tenant's business. Tenant will be solely responsible for and will defend, indemnify and hold harmless Landlord, its agents and employees, from and against any and all claims, penalties, fines, damages, losses, suits, judgments, costs and liabilities, including professional fees and costs, arising out of or in connection with Tenant's breach of its obligations in this Section 7.05. Tenant shall not indemnify Landlord for releases of hazardous materials which exist on, in or under the Premises, Building or Land at the time of the execution of this Lease, or which are introduced to the Premises, Building or Land by some other tenant or by Landlord. Tenant will be solely responsible for all costs relating to any removal, clean-up and restoration necessary to return the Premises and any other property whatever nature located on or in the Premises to its condition

existing prior to Tenant's breach of its obligations under this Section 7.05. All costs and expenses incurred by Landlord for which Tenant is responsible, or for which Tenant has indemnified Landlord, will be paid by Tenant to Landlord within thirty (30) days of demand. Tenant's obligations under this Section 7.05 will survive the termination or expiration of this Lease.

## **Article VIII. Services and Utilities**

Section 8.01 General. During the Term, Tenant will be responsible for and pay all electricity, internet, gas, other fuel, water, sewer and other utilities consumed in the Premises directly to the applicable utility provider, whether billed by the supplying utility to the Landlord or to the Tenant directly. The Tenant will be solely responsible for arranging for supply of such utilities to the Premises with utility service providers during the Term. Prior to the Term, during any period that Tenant occupies the Premise in connection with the Tenant Improvements, Tenant shall be responsible for the payment of all such utilities, which will be billed to Tenant by Landlord.

Section 8.02 Interruption of Access, Use or Services. Landlord shall not be liable for any failure to provide access to the Premises, to assure the beneficial use of the Premises or to furnish any services or utilities when such failure is caused by natural occurrences, riots, civil disturbances, insurrection, war, court order, public enemy, accidents, breakage, repairs, strikes, lockouts, other labor disputes, the making of repairs, alterations or improvements to the Premises or the Building, the inability to obtain an adequate supply of fuel, gas, steam, water, electricity, labor or other supplies or by any other condition beyond Landlord's reasonable control, and Tenant shall not be entitled to any damages resulting from such failure, nor shall such failure relieve Tenant of the obligation to pay all sums due hereunder to Landlord or constitute or be construed as a constructive or other eviction of Tenant. If any governmental entity promulgates or revises any statute, ordinance or building, fire or other code, or imposes mandatory or voluntary controls or guidelines on Landlord or the Building or any part thereof, relating to the use or conservation of energy, water, gas, steam, light or electricity or the provision of any other utility or service provided with respect to this Lease, or if Landlord is required or elects to make alterations to the Building in order to comply with such mandatory or voluntary controls or guidelines, Landlord may, in its sole discretion, comply with such mandatory or voluntary controls or guidelines, or make such alterations to the Building. Neither such compliance nor the making of such alterations shall in any event entitle Tenant to any damages, relieve Tenant of the obligation to pay any of the sums due hereunder to Landlord, or constitute or be construed as a constructive or other eviction of Tenant.

## **Article IX. Alterations**

Section 9.01 Acceptance of Premises. As of the Commencement Date, Tenant shall have fully inspected the Premises, including but not limited to any and all mechanical equipment, and shall accept possession of same in its "As Is", "Where Is" condition without express or implied

warranties of any kind or nature by Landlord. Tenant also acknowledges that the Premises shall be suitable for the purposes for which the same are leased, including installation of the Tenant Improvements in accordance with this Lease. Tenant further acknowledges that Landlord has made no warranties or representations as to either the condition or the suitability of the Premises in terms of the use as specified in Article I.

Section 9.02 Alterations. Except for Permitted Improvements, Tenant shall not make or suffer to be made any future alterations, additions or improvements (collectively "Alterations") in, on or to the Premises or any part thereof without the prior written consent of Landlord, which consent can be withheld in its sole discretion. When applying for any such consent, and during the construction thereof, Tenant shall comply with the requirements of Exhibit "D" ("Work Requirements"). If Landlord consents to the making of any Alterations, the same shall be made by Tenant at Tenant's sole cost and expense. The Tenant Improvements (as defined below) and any subsequent Alterations shall be deemed the property of Landlord upon termination of this Lease unless otherwise agreed in writing by Landlord and Tenant. As used herein, "Permitted Improvements" shall mean alteration projects that (i) in the aggregate do not cost more than \$50,000 during any twelve-month period, (ii) do not affect the structural components or systems of the Premises or Building, (iii) are not visible from the exterior of the Premises, and (iv) do not require a permit.

Section 9.03 Initial Tenant Improvements. Tenant shall use commercially reasonable efforts to cause to be installed on the Premises as soon as practicable certain fixed improvements and alterations to the Premises (excluding furniture and other personal property of Tenant) desired by Tenant in accordance with the Work Requirements (the "Tenant Improvements"). Landlord shall pay for the Tenant Improvements up to a maximum amount of Fifty Dollars (\$50) per square foot of Rentable Area of Premises (the "Tenant Improvement Allowance"). The cost of any improvements to the Premises in excess of the Tenant Improvement Allowance shall be at the sole cost and expense of Tenant. In no event shall any unused Tenant Improvement Allowance entitle Tenant to a credit against rent payable under this Lease.

Section 9.04 Landlord Historic Tax Credits. Without limiting the provisions of this Article, Tenant acknowledges that Landlord has applied for certain state and/or federal tax credits relating to historic rehabilitation in connection with the Landlord Work and rehabilitation of the Building (the "Landlord Historic Tax Credits") and its Part 2 submitted in connection with the Landlord Historic Tax Credits has been approved by applicable governmental entities (as may be amended by the Landlord from time to time, the "Part 2"). The Tenant Improvements shall at all times comply with the Part 2, and in no event shall Tenant's construction of the Tenant Improvements or use of the Premises result in any inability of Landlord to obtain, maintain and preserve the Landlord Historic Tax Credits. Landlord may require that Tenant coordinate the construction of the Tenant Improvements with any persons engaged by Landlord in connection with the Landlord Historic Tax Credits. In addition, the parties acknowledge and agree that Landlord's or its assignees' receipt of the full benefit of the Landlord Historic Tax Credits is an essential component of this Lease, without which Landlord would not otherwise have entered into this Lease. In the event any provision of this Lease would be reasonably likely to invalidate or otherwise affect receipt of the full benefit of the Landlord Historic Tax Credits,

including, without limitation, the determination of the fair market value of Base Rent in connection with a Renewal Term or the determination of the fair market value of the Land and Building in connection with the Purchase Option, the parties agree to work in good faith to amend this Lease under commercially reasonable terms and/or take such further actions to the extent necessary so that Landlord or its assignees receive the full benefit of the Landlord Historic Tax Credits.

Section 9.05 Tenant Historic Tax Credits. Landlord may apply for certain state or federal tax credits relating to historic rehabilitation in connection with the Tenant Improvements (the "Tenant Historic Tax Credits"). To the extent Landlord is granted any Tenant Historic Tax Credits, Landlord shall use commercially reasonable efforts to cause the syndication of the Tenant Historic Tax Credits in an arrangement that will allow Tenant to receive the net benefit of the Tenant Historic Tax Credits (less all of Landlord's cost and expenses).

## **Article X. Repairs**

No representations, except as contained herein, have been made to Tenant respecting the condition of the Premises or the Building, and the acceptance of possession of the Premises on the Commencement Date by Tenant shall be conclusive evidence as against Tenant that the Premises shall be in a tenantable and good repair and condition. Tenant shall take good care of the Premises and shall make all repairs as and when necessary in order to preserve the Premises in good working order, repair and condition. Landlord shall not be liable for, and there shall be no abatement of rent with respect to any injury to or interference with Tenant's business arising from any repairs, maintenance, alteration or improvement in or to any portion of the Premises or the Building or in or to the fixtures, appurtenances or equipment therein. Tenant hereby waives all right to make repairs at Landlord's expense under any statute or common law and instead, all improvements, repairs and/or maintenance expenses incurred with respect to the Premises shall be at the expense of Tenant, and shall be considered as part of the consideration for leasing the Premises. All damages or injury done to the Premises by Tenant or by any person who may be in or upon the Premises with Tenant's consent or at Tenant's invitation, shall be repaired with new material of equal or better quality than the then existing materials and Tenant shall, at the termination of this Lease, surrender the Premises to Landlord in as good condition and repair as when accepted by Tenant, reasonable wear and tear excepted. Except for repairs rendered necessary by any Alterations or the intentional or negligent acts or omissions of Tenant or any of Tenant's agents, employees, contractors, invitees and licensees (in which event(s), Tenant shall be responsible for the cost of any such repairs or replacements), Landlord shall, at Landlord's sole cost and expense, keep in good repair the foundation, roof, exterior walls, exterior doors, and exterior windows (collectively, "Landlord Repair Items").

## **Article XI. Assignment and Subletting**

Tenant shall not, without the prior written consent of Landlord, such consent not to be



unreasonably withheld, delayed or conditioned: (a) assign, mortgage, pledge, encumber or otherwise transfer this Lease, the term or estate hereby granted, or any interest hereunder; (b) permit the Premises or any part thereof to be utilized by anyone other than Tenant (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) except as hereinafter provided, sublet or offer or advertise for subletting the Premises or any part thereof.

## **Article XII. Indemnification**

Section 12.01 Waiver of Liability. Neither Landlord nor any of the Parties (as hereinafter defined) or mortgagee of any Mortgage (collectively the "Indemnitees") shall be liable or responsible in any way for, and Tenant hereby waives all claims against the Indemnitees with respect to or arising out of any death or any injury of any nature whatsoever that may be suffered or sustained by Tenant or any employee, licensee, invitee, guest, agent or customer of Tenant or any other person, from any causes whatsoever, or for any loss or damage or injury to any property outside or within the Premises belonging to Tenant or its employees, agents, customers, licensees, invitees, guests or any other person other than by reason of the gross negligence or willful misconduct of the Indemnitees, their employees or agents. Without limiting the generality of the foregoing, none of the Indemnitees shall be liable for any damage or damages of any nature whatsoever to persons or property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain or other substances leaking, issuing or flowing into any part of the Premises and/or the Building, by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance or alteration of any part of the Building, or by anything done or omitted to be done by any tenant, occupant or person in the Building. None of Landlord's affiliates nor any shareholders, directors or officers of Landlord (collectively the "Parties") shall be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder and shall not seek any damages against any of the Parties. The liability of Landlord for Landlord's obligations under this Lease shall not exceed and shall be limited to Landlord's interest in the Building and Tenant shall not look to the property or assets of any of the Parties in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.

Section 12.02 Indemnity. Tenant shall hold the Indemnitees harmless and defend the Indemnitees from and against any and all losses, damages, claims, or liability for any damage to any property or injury, illness or death of any person: (a) occurring in, on, or about the Premises, or any part thereof or areas adjacent thereto, arising at any time and from any cause whatsoever other than by reason of the gross negligence or willful misconduct of the Indemnitees, their employees or agents; (b) occurring in, on, or about any part of the Building or the areas adjacent thereto other than the Premises, when such damage, injury, illness or death shall be caused in whole or in part by gross negligence or willful misconduct of Tenant, its agents, servants, employees, invitees or licensees or (c) arising out of Tenant's breach of this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any damage, injury, illness or death

occurring prior to such termination. References herein to the Indemnitees shall include their respective agents and employees.

Section 12.03 Self-Insurance. Any portion of any risk for which Tenant is self-insured shall be deemed to be an insured risk under this Lease, and Landlord shall be protected by Tenant in the same manner as if it was an additional named insured under a policy of insurance with a solvent, conventional, third-party insurer. To the extent of any deductible, Tenant shall be deemed to be covering the amount thereof under an informal plan of self-insurance.

### **Article XIII. Destruction or Damage**

(a) In the event of a fire or other casualty in the Premises, Tenant shall immediately give notice thereof to Landlord. The following provisions shall apply to fire or other casualty occurring in the Premises and/or the Building:

(i) If the damage is limited solely to the Premises and the Premises can be made tenantable with all damage substantially repaired within nine (9) months from the date of damage or destruction, then Landlord shall be obligated to rebuild the same and shall proceed diligently to do so; provided, however, that Landlord shall have no obligation to repair or restore the Tenant Improvements or Alterations in the Premises (whether installed by Tenant or by Landlord) except to the extent that Landlord has received insurance proceeds from either Landlord's or Tenant's casualty insurer sufficient for such purposes and for all other restoration and repair purposes or unless Tenant pays all costs and expenses related to the reconstruction of uninsured or underinsured Tenant Improvements or Alterations.

(ii) If portions of the Building outside the boundaries of the Premises are damaged or destroyed (whether or not the Premises are also damaged or destroyed) and the Premises and the Building can both be made tenantable with all damage substantially repaired within twelve (12) months from the date of damage or destruction, and provided that Landlord determines, in its sole discretion, that it is economically feasible, Landlord shall be obligated to do so; provided, however, that Landlord shall have no obligation to repair or restore Tenant Improvements or Alterations in the Premises except to the extent that Landlord has received insurance proceeds from either Landlord's or Tenant's casualty insurer sufficient for such purposes and for all other restoration and repair purposes or unless Tenant pays all costs and expenses related to the reconstruction of uninsured or underinsured Tenant Improvements or Alterations.

(b) If neither clause (i) nor (ii) above applies, Landlord shall notify Tenant within sixty (60) days after the date such damage or destruction is adjusted by Landlord and Landlord's casualty insurer and either Tenant or Landlord may terminate this Lease within thirty (30) days after the date of such notice.

(c) During any period when the Premises, as a result of destruction or damage, are unusable and are actually unused by Tenant, monthly Base Rent shall abate proportionately until such time as the Premises are made tenantable. There shall be no abatement of monthly Base Rent

attributable to the time period following the repair of damage to the Premises by the Landlord where the Premises would have been otherwise reasonably deemed available for Tenant's occupancy, except for reconstruction of the Tenant Improvements or Alterations where such reconstruction did not or has not occurred because of the failure of Tenant to pay to Landlord, or cause to be paid to Landlord, prior to the commencement of the anticipated repairs and reconstruction, an amount sufficient to pay for the cost of the anticipated repair and/or reconstruction or because of any other delays caused by Tenant.

(d) The proceeds from any insurance paid by reason of damage to or destruction of the Building or any part thereof, insured by Landlord, shall belong to and be paid to Landlord subject to the rights of any mortgagee of any Mortgage which constitutes an encumbrance.

(e) Notwithstanding anything contained in this Article XIII, Landlord shall have no obligation to rebuild the Premises or the Building in the event any mortgagee of any Mortgage shall retain, and not make available to Landlord, the proceeds from any insurance or in the event the damage or destruction of the Premises or the Building occurs at any time during the last two (2) years of the Term (excluding any unexercised Renewal Terms, if applicable).

#### **Article XIV. Rules and Regulations**

Tenant shall faithfully observe and comply with the Rules and Regulations and, after notice thereof, all reasonable modifications thereof and additions thereto from time to time promulgated in writing by Landlord, all of which are hereby incorporated herein by this reference. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Building or Building of any of the Rules and Regulations.

#### **Article XV. Entry by Landlord**

Section 15.01 Entry to the Premises. Landlord, its agents, contractors or employees may enter the Premises to: (a) inspect the same; (b) exhibit the same to Superior Lessors, prospective purchasers, lenders or, during the last twelve (12) months of the Term, tenants; (c) determine whether Tenant is complying with all of its obligations hereunder; (d) supply janitorial service and any other service to be provided by Landlord to Tenant hereunder or to any other tenant of the Building; (e) post notices of nonresponsibility; and (f) make repairs required of Landlord under the terms hereof for which Landlord deems necessary or desirable or to make repairs to any adjoining space or utility services or to make repairs, alterations or improvements to any other portion of the Building; provided, however, that all such work shall be done so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant's vaults, safes and similar secure private areas agreed upon in writing by Tenant and Landlord). Landlord shall have the right to use any and all means which Landlord may deem

proper to open such doors in an emergency in order to obtain entry to the Premises, and no entry to the Premises obtained by Landlord by any of such means shall under any circumstance be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof.

Section 15.02 Alterations to Building. Landlord shall have the right from time to time to alter the Building, without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor; provided any such change does not (a) unreasonably reduce, interfere with or deprive Tenant of access to the Building or Premises, (b) reduce the Rentable Area (except by a de minimis amount) of the Premises or (c) materially change the Premises.

## **Article XVI. Default**

Section 16.01 Events of Default. In addition to any other event specified in this Lease as an event of default, the occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a breach of this Lease by Tenant: (a) failure by Tenant to pay any monthly Base Rent or Additional Rent within ten (10) days after the date the same is due; (b) failure by Tenant to pay any other sum when and as the same becomes due and payable if such failure continues for more than ten (10) days after notice thereof from Landlord; (c) failure by Tenant to perform or observe any other obligations of Tenant hereunder, or to comply with the Rules and Regulations, if such failure continues for more than twenty (20) days after notice thereof from Landlord (unless such failure cannot reasonably be cured within such twenty (20) day period and Tenant shall within such period commence and continue to diligently pursue the curing of such failure); (d) the making by Tenant of a general assignment for the benefit of creditors, or the admission of its inability to pay its debts as they become due or the filing of a petition, case or proceeding in bankruptcy, or the adjudication of Tenant bankrupt or insolvent, or the filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of an answer admitting or failing reasonably to contest the material allegations of a petition filed against it in any such proceeding, or the seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties; (e) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or (f) if this Lease or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

Section 16.02 Landlord's Remedies. (a) Upon the occurrence of an Event of Default, Landlord may elect to terminate this Lease, or, without terminating this Lease, terminate Tenant's right to possession of the Premises. Upon any such termination, Tenant shall immediately

surrender and vacate the Premises and deliver possession thereof to Landlord. Tenant grants to Landlord the right to enter and repossess the Premises and to expel Tenant and any others who may be occupying the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass and without relinquishing Landlord's rights to rent or any other right given to Landlord hereunder or by operation of law.

(a) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Landlord may relet the Premises or any part thereof. In such case, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. Tenant shall reimburse Landlord for the costs and expenses of reletting the Premises including, but not limited to, all brokerage, advertising, legal, alteration and other costs and expenses incurred to secure a new tenant for the Premises. In addition, if the consideration collected by Landlord upon any such reletting, after payment of the costs and expenses of reletting the Premises which have not been reimbursed by Tenant, is insufficient to pay monthly the full amount of the Rent (as hereinafter defined), Tenant shall pay to Landlord the amount of each monthly deficiency as it becomes due. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant.

(b) If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant shall pay to Landlord, on demand, as and for liquidated and final damages, an accelerated lump sum amount equal to the amount by which the aggregate amount of Rent owing from the date of such termination through the Expiration Date plus the aggregate costs and expenses of reletting the Premises, exceeds the fair rental value of the Premises for the same period (after deducting from such fair rental value the time needed to relet the Premises and the amount of concessions which would normally be given to a new tenant), both discounted to present value using a discount rate of four percent (4%) per annum.

Section 16.03 Rent Computation. For purposes of computing the rent which would have accrued from the date of termination through the Expiration Date, Rent shall consist of the sum of:

- (a) the total monthly Base Rent for the balance of the Term; plus
- (b) the Unamortized Tenant Improvement Allowance; plus

(c) the Additional Rent for the balance of the Term. For purposes of computing Operating Expenses the Operating Expenses for the calendar year of the default and each future calendar year in the Term shall be assumed to be equal to the Operating Expenses for the calendar year prior to the year in which default occurs compounded at a rate equal to the mean average rate of inflation for the three (3) calendar years preceding the calendar year of the default, as determined by using the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Urban Consumers, All Items, 1982-84=100). If such index is discontinued or revised, the average rate of inflation shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.

Section 16.04 Interest. Every installment of rent and every other payment due under this Lease from Tenant to Landlord not paid within five (5) days of the date when due shall bear interest at the rate of the lower of (i) eighteen percent (18%) per annum (ii) or at the highest rate legally permitted by applicable law, from the date that the same became due and payable until paid, whether or not demand be made therefor.

Section 16.05 Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of monthly Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by an encumbrance covering the Premises or other charges, fees and costs relating to obligations incurred relating to the Premises. Therefore, if any installment of monthly Base Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days of the date when due, Tenant shall pay Landlord a late charge equal to five percent (5%) of such delinquent amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

Section 16.06 Lease Continues Until Termination. Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under Section 16.02 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 repair and 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 right to possession.

Section 16.07 Remedies Cumulative. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

Section 16.08 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Premises or to continue the Lease after being dispossessed or ejected from the Premises.

## **Article XVII.**

### **Landlord's Right to Cure Defaults**

All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's sole cost and expense. If Tenant shall fail to perform any of its obligations hereunder, then Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations, perform any such obligations on Tenant's behalf. All sums so paid by Landlord and all costs incurred by Landlord in performing Tenant's

obligations shall be deemed additional rent hereunder and shall be paid to Landlord on demand.

**Article XVIII.  
Attorneys' Fees**

In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover from the losing party court costs and the fees of its attorneys in such action or proceeding (whether at the administrative, trial or appellate levels) together with all amounts incurred for architects, engineers, brokers and other professionals fees in such action or proceeding and such obligation of the losing party herein shall be incurred on commencement of any action or proceeding whether or not such action or proceeding is prosecuted to judgment or final determination.

**Article XX.  
Holding Over**

If Tenant shall remain in possession after the expiration or sooner termination of this Lease with Landlord's consent (which Landlord may withhold in its sole and absolute discretion), all of the terms, covenants and agreements hereof shall continue to apply and bind Tenant so long as Tenant shall remain in possession insofar as the same are applicable; provided, however, the monthly Base Rent shall be the greater of (a) two (2) times the sum of the monthly Base Rent payable for the last month of the Term, prorated on a daily basis for each day that Tenant remains in possession, or (b) two (2) times the rate Landlord is then asking for comparable space in the Building. Tenant shall indemnify Landlord against any and all claims, losses and liabilities for damages resulting from failure to surrender possession, including, without limitation, indirect and consequential damages and any claims made by any succeeding tenant. If Tenant remains in possession with Landlord's written consent, such tenancy shall be from month to month, terminable by either party on not less than thirty (30) days written notice.

**Article XXI.  
Waiver**

The failure of Landlord to exercise its rights in connection with any breach or violation of any term, covenant or condition herein contained or in the Rules and Regulations shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. 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 acceptance of such rent.

**Article XXII.  
Eminent Domain**

Section 22.01 Taking of Premises. If all or any part of the Premises shall be taken by any

public or quasi public authority as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other within thirty (30) days after the date of such taking; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall, in Landlord's judgment, be of such extent and nature as substantially to handicap, impede and impair Tenant's use of the balance of the Premises. If a material part of the Building is condemned or taken or if substantial alteration or reconstruction of the Building shall, in Landlord's sole opinion, be necessary or desirable as a result of such condemnation or taking, Landlord may terminate this Lease by written notice to Tenant within thirty (30) days after the date of taking.

Section 22.02 Condemnation Award. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, and any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the monthly Base Rent thereafter to be paid shall be equitably reduced by Landlord.

Section 22.03 Temporary Taking. If all of the Premises shall be condemned or taken for governmental occupancy or ownership for a period of more than eighteen (18) months, this Lease shall terminate as of the date of taking and Landlord shall be entitled to any and all compensation, damages, income, rent and awards in connection therewith. If all or any part of the Premises shall be taken by any public or quasi- public authority on a temporary basis for a period of eighteen (18) months or less, this Lease shall remain in full force and effect, Tenant's rent hereunder shall be abated for the period of the temporary taking and Landlord shall be entitled to any and all compensation, damages, income, rent, awards and interest in connection therewith.

### **Article XXIII. Sale by Landlord**

Subject to the ROFR, Landlord shall have the right to sell, convey or assign its interest in the Premises, the Building, the Land and this Lease without the consent of the Tenant at any time and from time to time. In the event of a sale, conveyance or assignment of this Lease, the Building or Land by Landlord, the same shall operate to completely release Landlord from any future liability upon any of the agreements, obligations covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the successor in interest of Landlord in and to this Lease, the Building or the Land as the case may be. In addition, Tenant's right of recovery against Landlord as to any preexisting agreements, obligations, covenants or conditions, express or implied, herein contained in favor of Tenant shall be expressly limited to the net cash proceeds of sale actually received by Landlord, if any. This Lease shall not be affected by any such sale, conveyance or assignment however, and Tenant agrees to attorn to the purchaser or assignee, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Lease.



## **Article XXIV. Subordination**

Section 24.01 Subordination of this Lease. Unless Landlord or any lender holding a lien which affects the Premises elects otherwise, this Lease shall be subject and subordinated at all times to the lien of all mortgages and deeds of trust (a "Mortgage") in any amount or amounts whatsoever now or hereafter placed on or against the Building, on or against Landlord's interest or estate therein, and on or against all such ground or underlying leases, all without the necessity of having further instruments executed on the part of Tenant to effectuate such subordination. Notwithstanding the foregoing in the event of a foreclosure of any such Mortgage or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, or the giving of any deed in lieu of such foreclosure, Tenant shall, if requested, attorn to the purchaser at such foreclosure sale or other action or proceeding, or to the grantee under any such deed given in lieu of foreclosure, or, if requested, enter into a new lease with such successor to Landlord's interest for the balance of the original or extended Term then remaining upon the same terms and provisions as are in this Lease contained (it being understood, however, that no such successor to Landlord's interest shall be bound by any payment of rent or any other charges under this Lease, other than security deposits, made more than one (1) month in advance, or by any amendment to or modification of this Lease made without such successor's consent); and (iii) Tenant agrees to execute and deliver upon demand such further instruments evidencing such subordination of this Lease to such deed, to such Superior Leases, and to the lien of any such Mortgages as may reasonably be required by Landlord. Tenant shall from time to time on request from Landlord execute and deliver any documents or instruments that may be required by any lender to effectuate any subordination. If Tenant fails to execute and deliver any documents or instruments, Tenant irrevocably constitutes and appoints Landlord as Tenant's special attorney in fact to execute and deliver such documents or instruments for and on behalf of Tenant.

Section 24.02 Subordination of Mortgage. Notwithstanding anything to the contrary set forth above, any mortgagee under any Mortgage may at any time subordinate its Mortgage to this Lease in whole or in part, without any need to obtain Tenant's consent, by execution of a written document subordinating such Mortgage to this Lease to the extent set forth in such document and thereupon this Lease shall be deemed prior to such Mortgage to the extent set forth in such document without regard to their respective dates of execution, delivery and/or recording. In that event, to the extent set forth in such document, such Mortgage shall have the same rights with respect to this Lease as would have existed if this Lease had been executed, and a memorandum thereof, recorded prior to the execution, delivery and recording of the Mortgage.

## **Article XXV. No Merger**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof by Landlord and Tenant or any termination of this Lease on account of Tenant's default, shall not work a merger unless Landlord shall in a writing elect otherwise.

## **Article XXVI.**

### **Surrender of Premises**

At the end of the Term or upon sooner termination of this Lease, Tenant shall peaceably deliver up to Landlord possession of the Premises, together with all Tenant Improvements and Alterations, by whomsoever made, in the same condition as received, or first installed, reasonable wear and tear excepted. Tenant may, upon the termination of this Lease, remove all Tenant's personal property, equipment and movable partitions of less than full height from floor to ceiling, as well as any trade fixtures installed by Tenant, repairing promptly any damage caused by such removal. Property not so removed shall be deemed abandoned by Tenant and title to the same shall thereupon automatically pass to Landlord. Notwithstanding the foregoing, Tenant, at its cost, shall be required to remove any or all Alterations designated by Landlord.

### **Article XXVII. Estoppel Certificate**

At any time and from time to time, but in no event on less than ten (10) days prior written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord, promptly upon request, a certificate certifying: (a) that Tenant has accepted the Premises (or, if Tenant has not done so, that Tenant has not accepted the Premises, and specifying the reasons therefor); (b) the commencement and expiration dates of this Lease; (c) whether there are then existing any defaults by Landlord in the performance of its obligations under this Lease (and, if so, specifying the same) (d) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (e) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Tenant; (f) the date, if any, to which rent and other sums payable hereunder have been paid; (g) that Tenant is not in default under the Lease nor does any event exist which, with the passage of time or the giving of notice or both would constitute an Event of Default (except as to defaults specified in the certificate); (h) the amount of any security deposit and prepaid rent; and (i) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any Mortgage affecting the Building or Land. If Tenant fails to deliver the executed certificate within ten (10) days after receipt of Landlord's request to Tenant, Tenant irrevocably constitutes and appoints Landlord as its special attorney in fact to execute and deliver the certificate to any third party on Tenant's behalf.

### **Article XXVIII. No Light, Air or View Easement**

Any diminution or shutting off of light, air or view by any structure which is now or may hereafter be erected on lands adjacent to the Building shall in no way affect this Lease or impose any liability on Landlord. Noise, dust or vibration or other incidents to new construction of improvements on lands adjacent to the Building, whether or not owned by Landlord, shall in no way affect this Lease or impose any liability on Landlord.

### **Article XXIX.**

## **Notices**

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, at the addresses set forth in Article I or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by air courier, or on the third business day after posting if sent by mail.

## **Article XXX.**

### **Successors**

All the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, provided that nothing in this Article XXX shall be deemed to permit any assignment, subletting, occupancy or use by Tenant contrary to the provision of Article XI.

## **Article XXXI.**

### **Additional Tenant**

Landlord may, from time to time, lease all or a part of the Excluded Area to any other person or entity (the "Additional Tenant"); provided, Landlord shall not lease the Excluded Area for any of the following uses: (i) vaping shop or marijuana dispensaries; (ii) adult book or video store (meaning any book or video establishment deriving more than five percent (5%) of its revenue from the sale, lease, rental or display of sexually explicit material of any kind); (iii) check cashing business, except as incidental to the operation of a bank; (iv) payday loan business; (v) pawnshop; or (vi) tattoo or piercing parlor. Prior to leasing the Excluded Area, Landlord shall receive Tenant's written consent to the proposed use of the Excluded Area, such consent not to be unreasonably withheld, delayed or conditioned; provided, (A) Landlord shall not be required to receive such consent if the use of the Excluded Area is for a traditional restaurant (not fast food), coffee shop, or similar food and beverage vendor or general office use and (B) any required consent of Tenant shall be made by any officer or authorized person of Tenant, and shall not require approval of the Omaha City Council. In the event of a lease of the Excluded Space to any Additional Tenant, Additional Tenant and Tenant shall negotiate in good faith to enter into an agreement pursuant to which any Operating Expenses incurred by Tenant that benefit Additional Tenant are equitably allocated to the Additional Tenant based on the rentable area of the Additional Tenant's premises compared to the Rentable Area of the Building.

## **Article XXXII.**

### **Signage**

Tenant, at its sole cost and expense, may install, maintain, repair and replace signs of high quality in the Premises and on the exterior of the Building; provided, however, (i) any such

signage shall require the prior written consent of Landlord, which shall not be unreasonably withheld, and (ii) any such signage shall comply with all applicable laws, statutes, ordinances, and governmental rules or regulations.

### **Article XXXIII. Miscellaneous**

Section 33.01 Captions. The captions and headings of the Articles and Sections in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

Section 33.02 Time of Essence. Time is of the essence of this Lease and of all provisions hereof, except in respect to the delivery of possession of the Premises.

Section 33.03 Number and Genders; Joint and Several Liability. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord or Tenant or if Tenant is a partnership, the respective obligations hereunder imposed upon Landlord, Tenant and the general partners of Tenant, as the case may be, shall be joint and several.

Section 33.04 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Nebraska.

Section 33.05 Cumulative Remedies. It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy by Landlord shall not be to the exclusion of any other remedy.

Section 33.06 Entire Agreement. The terms of this Lease are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Lease and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings, if any, involving this Lease.

Section 33.07 Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

Section 33.08 Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity in good standing in the state in which it has been organized or formed, that Tenant has and is qualified to do business in the state of Nebraska, that Tenant has full

right and authority to enter into this Lease, and that each and both of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with written evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties.

Section 33.09 The submission and negotiation of this Lease shall not be deemed an offer to enter into a lease by Landlord, but the solicitation of such an offer by Tenant and Landlord's acceptance of this Lease shall be evidenced only by Landlord signing and delivering this Lease to Tenant.

Section 33.10 No Representations or Warranties. Neither Landlord nor Landlord's agents or attorneys have made any representations or warranties with respect to the Premises, the Building or this Lease, except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise.

Section 33.11 Brokers. Tenant and Landlord each represent to the other that it has dealt with no broker in connection with this Lease, other than Landlord's Broker and Tenant's Broker, and each shall hold the other harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit or obligation arising out of or relating to a breach of such representation. Any commission payable to Landlord's Broker or Tenant's Broker shall be pursuant to separate agreement between Landlord's Broker, Tenant's Broker and the parties hereto.

Section 33.12 Amendments. This Lease may not be altered, changed, or amended except by an instrument signed by both parties hereto.

Section 33.13 Proration. Any proration required hereunder shall, unless expressly provided otherwise herein, be done on the basis of a three hundred sixty (360) day year and/or a thirty (30) day month.

Section 33.14 Waiver of Jury Trial. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties to this Lease against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any other claims (except claims for personal injury or property damage).

Section 33.15 No Recordation. Neither Landlord nor Tenant shall record this Lease or any short form or memorandum thereof.

Section 33.16 Liens. Tenant shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Tenant. Tenant shall also indemnify, hold harmless and defend Landlord against any such liens, including the reasonable fees of Landlord's attorneys. Such liens shall be discharged by Tenant within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided that Tenant may contest, in good faith and by appropriate proceedings any such liens.

Section 33.17 Binding Effect. The covenants, conditions and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective successors, agents, and except as otherwise provided in this Lease, their assigns.

Section 33.18 Incorporation of Exhibits. All Exhibits attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

Section 33.19 Construction. Landlord and Tenant each acknowledge and agree that both parties have participated in the drafting of this Lease and the Lease has been reviewed by the respective legal counsel for such parties, and the normal rule of construction to the effect that any ambiguities herein are to be resolved against the drafting party shall not be applied to the interpretation or construction of this Lease. No inference in favor of, or against, any party shall be drawn from the fact that one party has drafted any portion of this Lease.

Section 33.20 Counterparts. This Lease may be executed and delivered in counterparts, by facsimile process or otherwise, and each counterpart shall be deemed an original, but all of such counterparts, taken together, shall constitute one and the same instrument.

Section 33.21 Force Majeure. Except for their respective financial obligations (including the obligation of Tenant to pay Base Rent), neither Landlord nor Tenant shall be held responsible for delays in the performance of their obligations hereunder when caused by strikes (except for strikes by either parties' employees), lockouts (except for lockouts by either parties' employees), labor disputes (except for labor disputes by either parties' employees), acts of God, inability to obtain labor or materials or reasonable substitutes therefor, supply chain disruptions, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, pandemics, and other causes beyond the reasonable control of the affected party ("Force Majeure").

Section 33.22 Net Lease. The obligations of Tenant hereunder shall be separate and independent covenants. This is a net lease and Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension or reduction, or defense. This Lease is the absolute and unconditional obligation of Tenant, and the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of the Premises for any reason subject only to: (i) any damage to or destruction of the Premises, as provided in Article XIII of this Lease, or (ii) any condemnation or eminent domain, as provided in Article XXII of this Lease. Except as specifically designated as a Landlord cost in this Lease, all costs and expenses of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period which ends on the Expiration Date or earlier termination of the Term in accordance with the provisions hereof (whether or not the same shall become payable during the Term or thereafter) shall be paid by Tenant.

Section 33.23 Limitation of Liability. Tenant shall neither assert nor seek to enforce any claim against Landlord, for breach of this Lease or otherwise, other than against Landlord's interest in the Premises, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease. Landlord and Tenant specifically agree that in no event shall any officer, manager, member, trustee, employee or representative of either of them ever be personally liable for any obligation under this Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates set forth below and this Lease shall be effective as of the date first written above.

LANDLORD:

1401 Jones, LLC

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

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

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

TENANT:

City of Omaha

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

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

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

APPROVED AS TO FORM:

 1/7/2022  
\_\_\_\_\_  
ASSISTANT CITY ATTORNEY



**EXHIBIT A**  
**FLOOR PLAN**



1 Level 1 - Area Plan  
AP-01 1" = 20'-0"



1 Level 2 - Area Plan  
AP-02 1" = 20'-0"

**EXHIBIT B**  
**LANDLORD WORK**

- Roofing completed
- New protected stairwells as required by City of Omaha code Sprinkler system compliant
- Windows replaced
- Electrical to the space
- New modernized elevator
- Plumbing stubbed to space for restroom
- Entry lobby to the building complete
- Dock replacement
- All structural requirements completed
- Fire alarm to the building

Note that no interior buildout will be included in the Landlord Work except as described above.

**EXHIBIT C**  
**BASE RENT<sup>1</sup>**

Rentable Square Feet	30,000 (Subject to adjustment in accordance with Section 2.02)
Initial Rate (Annual/SF)	15.50/square foot (Subject to 2% annual increases)

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<sup>1</sup> NTD: Parties to include table of Base Rent based on a Rentable Area of Premises of 30,000, which will be subject to change based on adjustment in accordance with Section 2.02.

**EXHIBIT D**  
**WORK REQUIREMENTS**

1. **Applicability.** These Work Requirements shall be applicable to Tenant in connection with the construction of any Alterations or Tenant Improvements (together, the "Work").

2. **Construction of Alterations.**

(a) Prior to commencement of the construction of any Alterations, Landlord may require Tenant to submit preliminary drawings, space plans, working drawings and other documents reasonably require by Landlord which shall indicate Tenant's intentions with respect to the design and construction of any Alterations.

3. **Compliance.** All Work shall comply in all respects with the following: (a) the Building Code of the city and state in which the Building is located and state, county, city or other laws, codes, ordinances and regulations as each may apply according to the rulings of the controlling public official, agent or other such person, (b) applicable standards of the National Board of Fire Underwriters and National Electrical Code, (c) building material manufacturer's specifications, and (d) the Part 2 and any other requirements applicable to the Work necessary in order for Landlord to qualify for, obtain, maintain and preserve the Landlord Historic Tax Credits and Tenant Historic Tax Credits (if applicable). In no event shall any Work conflict with the design of the Building, the Part 2, or Landlord's obtainment, maintenance and preservation of the Landlord Historic Tax Credits or Tenant Historic Tax Credits (if applicable).

4. **Performance.**

(a) The Work shall be commenced within a reasonable time after Landlord approves the same and shall thereafter be diligently prosecuted to completion, subject to Force Majeure. The Work shall be coordinated under Landlord's direction with Landlord's Work and any other work being completed by Landlord so that the Work will not interfere with or delay the completion of the Landlord Work any other construction work in the Building.

(b) The Work shall be performed in a thoroughly first class and workmanlike manner in conformity with the design approved by Landlord and shall be in good and usable condition at the date of completion.

(c) Tenant shall be required to obtain and pay for all necessary permits and/or fees with respect to the Work.

(d) Each contractor and subcontractor shall be required to obtain prior written approval from Landlord for any space outside the Premises within the Building, which such contractor or subcontractor desires to use for storage, handling and moving of its materials and equipment, as well as for the location of any facilities for its personnel.

(e) The contractors and subcontractors shall be required to remove from the

Premises and dispose of, at least once a week and more frequently as Landlord may direct, all debris and rubbish caused by or resulting from the construction. Upon completion of the Work, the contractors and subcontractors shall remove all surplus materials, debris and rubbish of whatever kind remaining within the Building which has been brought in or created by the contractors and subcontractors in the performance of the Work. If any contractor or subcontractor shall neglect, refuse or fail to remove any such debris, rubbish, surplus material or temporary structures within two (2) days after notice to Tenant from Landlord with respect thereto, Landlord may cause the same to be removed by contract or otherwise as Landlord may determine expedient and charge the cost thereof to Tenant as additional rent under the Lease.

(f) Tenant shall obtain and furnish Landlord all approvals with respect to electrical, water and telephone work as may be required by the respective company supplying the service. Tenant shall obtain utility service from the utility company supplying such service, unless Landlord elects to supply such service.

(g) Landlord's acceptance of the Work shall be subject to Landlord's inspection and written approval. Tenant shall give Landlord prior written notification of the anticipated completion date of the Work.

(h) If an expansion joint occurs within the Premises, Tenant shall install finish floor covering to or covering such joint in a workmanlike manner, and Landlord shall not accept responsibility for any finish floor covering applied to or installed over the expansion joint.

(i) Copies of as built" drawings shall be provided to Landlord no later than thirty (30) days after completion of the Work.

(j) Landlord's approval of any Work shall not be deemed a warranty as to the quality or adequacy of the Work, or the design thereof, or of its compliance with laws, codes and other legal requirements. The Work shall be prosecuted at all times in accordance with, and Tenant shall be solely responsible for, all state, federal and local laws, regulations and ordinance, including without limitation all OSHA and other safety laws, the Americans with Disabilities Act and all applicable governmental permit and code requirements in connection with the Work.

(k) Tenant shall conduct its labor relations with its employees, agents, contractors, subcontractors or suppliers so as to avoid strikes, picketing and boycotts of, on or about the Premises or Building. If any employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors, subcontractors or suppliers, in or about the Premises or Building, Tenant shall immediately close the Premises and remove or cause to be removed all such employees, agents, contractors, subcontractors and suppliers until the dispute has been settled.

(l) Landlord may impose reasonable additional requirements from time to time (including requiring certain Work to be performed outside business hours), in order to ensure that the Work, and the construction thereof, (i) does not disturb or interfere with any other tenants of the Building, or their visitors, contractors or agents, nor interfere with the efficient, safe and secure operation

of the Building and (ii) is in compliance with the Part 2 and any other requirements applicable to the Work necessary in order for Landlord to qualify for, obtain, maintain and preserve the Landlord Historic Tax Credits and Tenant Historic Tax Credits (if applicable)..

5. **Insurance.** All contractors and subcontractors shall carry such insurance and be subject to such bonding requirements as are required by Tenant and applicable law. In the event that during the course of the Work any damage shall occur to the construction and improvements being made by Tenant, then Tenant shall repair the same at Tenant's cost.

6. **Incorporation into Lease; Default.** THE PARTIES AGREE THAT THE PROVISIONS OF THESE WORK REQUIREMENTS EXHIBIT ARE HEREBY INCORPORATED BY THIS REFERENCE INTO THE LEASE FULLY AS THOUGH SET FORTH THEREIN. In the event of any express inconsistencies between the Lease and this Exhibit, the latter shall govern and control. If Tenant shall default under this Exhibit, Landlord may, in addition to all other remedies under the Lease, order that all Work being performed in the Premises be stopped immediately and that no further deliveries to the Premises be made until such default is cured, without limitation as to Landlord's other remedies. Any default by Tenant hereunder shall constitute a default under the Lease and shall be subject to the remedies and other provisions applicable thereto under the Lease.



**PARKING GARAGE/LOT  
PRICING**

- 1 \$5/Day or \$30/Month
- 2 \$5/Day or \$38/Month
- 3 \$2/Day or \$70/Month
- 4 \$5-10/Day or \$75/Month  
(\$10 depending on event)
- 5 Exclusive Parking

**1401  
JONES**

**34 Spots**

**90 Exclusive  
Spots**

**62 Spots**

**432 Spots**

**49 Spots**

