

LEASE
Cicero Building

between

Fielding Group, LLC,
a Utah limited liability company,
as Landlord,

and

Central Wasatch Commission,
a Utah interlocal entity and political subdivision
of the State of Utah,
as Tenant

Dated September 18, 2018

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Page</u>
1. Definitions	1
2. Agreement of Lease; Work of Improvement; Certain References.....	11
3. Term; Commencement Date; Tenant Rights	12
4. Basic Monthly Rent	14
5. Operating Expenses	14
6. Security Deposit.....	17
7. Use and Operation.....	18
8. Utilities and Services	19
9. Maintenance and Repairs; Alterations; Access to Premises; Reserved Rights in Common Areas	22
10. Assignment and Subleasing	24
11. Indemnity	29
12. Insurance	30
13. Damage and Destruction.....	31
14. Condemnation	33
15. Landlord's Financing	34
16. Default	34
17. Expiration and Termination	36
18. Estoppel Certificate; Financial Statements	38
19. Parking	38
20. Landlord's Representations and Warranties	39
21. General Provisions	41

EXHIBIT A WORK LETTER Exhibit A-1

EXHIBIT B RULES Exhibit B-1

LEASE

THIS LEASE (this "*Lease*") is entered into as of the 18th day of September, 2018, between Fielding Group, LLC, a Utah limited liability company ("*Landlord*"), and Central Wasatch Commission, an interlocal entity and political subdivision of the State of Utah ("*Tenant*"). (Landlord and Tenant are referred to in this Lease collectively as the "*Parties*" and individually as a "*Party*.")

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions. As used in this Lease, each of the following terms shall have the meaning indicated:

"*ADA*" means the Americans with Disabilities Act of 1990, as amended and with its associated regulations.

"*affiliate*" means an entity that directly or indirectly controls (including a direct or indirect parent), is controlled by (including a direct or indirect subsidiary), or is under common control with, the entity concerned, where "*control*" is the holding of fifty percent (50%) or more of the outstanding voting interests, or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

"*Alteration*" means any alteration, change, addition, improvement or repair to the Premises, including, without limitation, the attachment of any fixture (including any so-called "trade fixture"), equipment or signage, or the addition of any pipe, line, wire, cable, conduit or related facility for water, electricity, natural gas, telecommunication (including Tenant's voice and data lines, wiring, cabling and facilities), sewer or other utility, but excluding (i) the moving of Tenant's furniture (including cubicles), phones, computers and other personal property, provided that each of the foregoing is readily movable and unattached to the Premises, and (ii) the hanging of typical pictures, diplomas and similar items.

"*applicable municipality*" means the City of Salt Lake City, Utah.

"*Base Year*" means calendar year 2019.

"*Base Year Operating Expenses*" means Operating Expenses that are actually incurred in the Base Year, as adjusted in accordance with this Lease.

"*Basic Monthly Rent*" means the following amounts commencing on the Commencement Date (or, if the Commencement Date does not occur on the first day of a calendar month, on the date that is the first day of the calendar month following the Commencement Date) and continuing thereafter for the periods indicated based on 1,500 rentable square feet, which amounts are subject to adjustment as set forth in the definition of "Premises"; *provided, however*, that if the Commencement Date occurs on a date other than the Projected Commencement Date, then the periods set forth below shall begin on such other date that is the Commencement Date (as memorialized in a certificate entered into between the Parties) and shall shift accordingly in a manner consistent with the definition of "Expiration Date" (with the Expiration Date being on the last day of the relevant month):

Dates	Square Feet	Base Rent PSF	Basic Monthly Rent	Annual Base Rent
12/1/2018 – 11/30/2019	1,500	\$27	\$3,375.00	\$40,500
12/1/2019 – 11/30/2020	1,500	\$27.81	\$3,476.25	\$41,715
12/1/2020 – 11/30/2021	1,500	\$28.64	\$3,580.00	\$42,960
12/1/2021 – 11/30/2022	1,500	\$29.50	\$3,687.50	\$44,250
12/1/2022 – 11/30/2023	1,500	\$30.38	\$3,797.50	\$45,570

If the extension option is exercised pursuant to Section 3.3 herein, then the Basic Monthly Rent shall be as follows:

Dates	Square Feet	Base Rent PSF	Basic Monthly Rent	Annual Base Rent
12/1/2023 – 11/30/2024	1,500	\$31.29	\$3,911.25	\$46,935
12/1/2024 – 11/30/2025	1,500	\$32.23	\$4,028.75	\$48,345
12/1/2025 – 11/30/2026	1,500	\$33.20	\$4,150.00	\$49,800
12/1/2026 – 11/30/2027	1,500	\$34.20	\$4,275.00	\$51,300
12/1/2027 – 11/30/2028	1,500	\$35.23	\$4,403.75	\$52,845

“*best efforts*” means best, commercially reasonable efforts, exercised in good faith and with due diligence.

“*Building*” means the Cicero building with the street address of 41 N. Rio Grande, Salt Lake City, Utah, which contains approximately 63,556 rentable square feet, subject to final measurement and verification as set forth in the definition of “Premises”.

“*Building Hours*” means Monday through Friday from 7:00 a.m. to 7:00 p.m.

“*business day*” means any day other than a Saturday, Sunday or legal holiday on which banks in Utah are authorized by Laws to close.

“*Commencement Date*” means the later of the following, with either of such dates to be certified by Landlord’s architect to Tenant:

- (i) the date on which Substantial Completion occurs; or
- (ii) December 1, 2018.

“*Common Areas*” means all areas and facilities on the Property that are provided for the general, nonexclusive use and convenience of more than one tenant of the Building, including, without limitation, driveways, parking areas, walkways, delivery areas, trash removal areas, landscaped areas, entryways, lobbies, hallways, stairways, elevators and restrooms, subject to Paragraph 9.4.

“*Comparable Buildings*” means other comparable office buildings in the downtown Salt Lake City area.

“Condemnation Proceeding” means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through the exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

“Default Rate” means the greater of (i) the Prime Rate plus four percent (4%) per annum, or (ii) twelve percent (12%) per annum.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act and the Resource Conservation and Recovery Act, each as amended and with its associated regulations, and all other Laws relating to Hazardous Materials existing on or after the date of this Lease.

“Estimated Operating Expenses” means the projected amount of Operating Expenses for any given Operating Year as reasonably estimated by Landlord in a manner consistent with Comparable Buildings.

“Expiration Date” means the date that is the last day of the month, sixty (60) months after the later of the following:

(i) the Commencement Date, if the Commencement Date occurs on the first day of a calendar month; or

(ii) the first day of the first full calendar month following the Commencement Date, if the Commencement Date does not occur on the first day of a calendar month, as such date may be extended or sooner terminated in accordance with this Lease.

“force majeure” has the meaning set forth in Paragraph 22.2.

“Hazardous Materials” means substances defined as “hazardous materials,” “hazardous wastes”, “hazardous substances” or “toxic substances” or similarly defined in any Environmental Laws, as well as so-called industrial and biomedical wastes.

“HVAC” means heating, ventilating and air conditioning.

“Improvements” means the Building and the related improvements owned by Landlord.

“Interest Rate” means the Prime Rate plus two percent (2%) per annum.

“Landlord Default” has the meaning set forth in Paragraph 16.4.

“Landlord Delay” shall have the meaning set forth in Paragraph 2 of the attached Exhibit A.

“Laws” means any or all applicable federal, state and local laws, statutes, codes, ordinances, rules, regulations requirements, judgments, decrees, writs, orders, licenses, guidelines and policies, including, without limitation, the ADA and Environmental Laws, together with future enactments and amendments, insurance regulations and requirements, utility company requirements, administrative promulgations and governmental orders, and any requirements or conditions on or with respect to the issuance, maintenance or renewal of any

permits, consents, decisions, qualifications, licenses, certifications or exemptions from, and all filings with, and any notice to, any government or quasi-governmental authority.

“*Lease end*” means the expiration of the Term or the sooner termination of this Lease.

“*Non-Consent Transfer*” means any assignment or sublease permitted without Landlord’s consent, as described in Paragraph 10.2.

“*Operating Expenses*” means all reasonable, customary and actual costs, expenses, fees and other charges incurred or payable by Landlord in connection with this Lease (including, without limitation, those incurred or payable under Paragraphs 8.1, 9.1 and 12.2) and the ownership, operation, management, maintenance and repair of the Property (which operation, management, maintenance and repair shall be performed by Landlord in a manner consistent with Comparable Buildings), determined in accordance with generally accepted accounting principles consistently applied to the extent applicable to cash-basis accounting, including, without limitation, the reasonable, customary and actual costs, expenses, fees and other charges of the following, subject to the OpEx Adjustments and excluding the OpEx Exclusions:

- (i) real property taxes and assessments and, if applicable (e.g., lobby furniture, movable generators and other personal property directly and reasonably related to the operation of the Property), personal property taxes and assessments (and any tax levied in whole or in part in lieu of or in addition to such taxes and assessments);
- (ii) rent and gross receipts taxes, except to the extent imposed in lieu of income taxes;
- (iii) assessments for the Project levied under a common maintenance regime; *provided*, that such assessments shall not exceed assessments generally charged under common maintenance regimes for projects comparable to the Project, and the cost of common area maintenance allocated to the Building shall be determined by reference to the floor area of the Building compared to the floor area of all buildings included within such common maintenance regime;
- (iv) removal of snow, ice, trash and other refuse;
- (v) landscaping, cleaning, sweeping, janitorial, parking and security services;
- (vi) resurfacing, re-striping and resealing of parking areas, and replacing damaged or worn-out improvements (including lighting) located in the Common Areas;
- (vii) fire protection, including alarm and sprinkler systems;
- (viii) utilities (including, without limitation, the utilities used in the Premises, but excluding the cost of separately metered utilities provided to the Premises and paid directly by Tenant or provided to other premises in the Building);
- (ix) supplies and materials used in connection with the operation, management, maintenance and repair of the Property;
- (x) premiums for insurance carried by Landlord pursuant to Paragraph 12.2 (except for any increase in insurance premiums caused by the acts or omissions of other tenants of the Building);
- (xi) licenses, permits and inspections directly and reasonably related to the operation of the Property;

(xii) administrative services, including, without limitation, clerical and accounting services, directly and reasonably related to the operation, management, maintenance and repair of the Property;

(xiii) labor and personnel directly and reasonably related to the operation, management, maintenance and repair of the Property (but excluding costs, expenses, fees and other charges for employees of Landlord above the senior building manager level);

(xiv) [reserved];

(xv) rental or a reasonable allowance for depreciation of personal property used for normal maintenance, repair and janitorial services in connection with the Property;

(xvi) improvements to and maintenance and repair of the Building and all equipment used in the Building, so long as such equipment is maintained as required by the manufacturer's specifications;

(xvii) management services attributable to the Property; *provided*, that:

(a) the cost of such management services shall not exceed management fees generally charged by property management companies for Comparable Buildings, and in no event shall such management fees exceed five percent (5%) of the monthly rents for the Building; and

(b) the cost of such management services comprising a part of Base Year Operating Expenses shall not be at a discounted cost;

(xviii) that part of office rent or the rental value of space in the Building or another building used by Landlord to operate, manage, maintain and repair the Property; *provided, however*, that the office rent or the rental value of such space and the amount of such space shall be reasonable under the circumstances; and

(xix) compliance with Laws.

“Operating Year” means each calendar year, all or a portion of which falls within the Term.

“OpEx Adjustments” means the following adjustments to Operating Expenses:

(i) All Operating Expenses shall be computed on an annual basis, and shall be reduced by all cash, trade or quantity discounts, reductions, reimbursements, refunds or credits received by Landlord (net of reasonable expenses incurred in obtaining the same, if any) in the purchase of any goods, utilities, insurance or services in connection with the operation, management, maintenance and repair of the Property.

(ii) All Operating Expenses that are considered capital repairs, replacements, improvements, and equipment under generally accepted accounting principles in excess of \$5,000 shall be amortized by Landlord over a period equal to the useful life of the improvement concerned in accordance with generally accepted accounting principles, such amortized cost and related interest shall only be included in Operating Expenses for that portion of the useful life of such improvement that falls within the Term, and only the amortized portion of such cost and related interest applicable to a given Operating Year shall be included in the Operating Expenses for such Operating Year.

(iii) When Landlord, acting reasonably, deems it reasonable to do so, Landlord shall contest any real property taxes or assessments applicable to the Property, and any reduction in, or refund of, such taxes or assessments, less any reasonable expenses incurred by Landlord in achieving such reduction, shall inure to the benefit of Tenant and the other tenants of the Building.

(iv) If the Building is in operation for less than all of the Base Year, Base Year Operating Expenses shall be prorated by Landlord to the amount that Operating Expenses would have been if the Building had been in operation for all of the Base Year.

(v) If all or any portion of the Property is subject to any tax abatement program or otherwise not fully assessed for the purpose of real property taxes for the Base Year, Base Year Operating Expenses shall be grossed up to reflect what the real property taxes would have been for the Base Year if the Property had been fully assessed. After the retirement of any special assessments included in Base Year Operating Expenses, Base Year Operating Expenses shall be reduced to eliminate such special assessments to the extent that such special assessments are included in Base Year Operating Expenses but not included in Operating Expenses in the Operating Year concerned. Operating Expenses in any Operating Year following the Base Year shall not include any increases in real property taxes resulting solely from a new addition to the Building or other portions of the Property, such as the new addition of a Building floor or a structured parking terrace.

(vi) Operating Expenses (including, without limitation, Base Year Operating Expenses) that vary with occupancy (including, without limitation, real property taxes) and are attributable to any part of the Term in which less than ninety-five percent (95%) of the rentable area of the Building is occupied by tenants shall be adjusted by Landlord to the amount that Operating Expenses that were actually incurred or payable would have been if ninety-five percent (95%) of the rentable area of the Building had been occupied by tenants for the period concerned.

(vii) Base Year Operating Expenses shall not include any atypical, non-repetitive costs, expenses, fees or other charges incurred or payable by Landlord in the Base Year that would artificially inflate Base Year Operating Expenses, such as (without limiting the generality of the foregoing) costs comprising Landlord's reasonable insurance deductible related to a casualty occurring in the Base Year or a one-time governmental or quasi-governmental assessment made in the Base Year.

“OpEx Commencement Date” means January 1st of the Operating Year following the Base Year.

“OpEx Exclusions” means the following, which shall be excluded from Operating Expenses:

(i) costs incurred in connection with the initial development and improvement of the Property, including, without limitation, impact fees;

(ii) any expenditure required to be capitalized for federal income tax purposes that is in the nature of a new addition to the Building or other portions of the Property, such as the new addition of a Building floor or a structured parking terrace, as distinguished from such an expenditure (the amortized cost of which *shall* be included in Operating Expenses) that is in the nature of a replacement of an existing improvement, such as a replacement HVAC unit or the replacement of parking area surfaces;

(iii) non-cash items, such as but not limited to depreciation and amortization (except as expressly set forth in subparagraph (xv) in the definition of “Operating Expenses” with respect to certain personal property);

(iv) debt service on indebtedness secured by any mortgage, deed of trust or similar instrument encumbering the Property, and points, prepayment penalties and financing and refinancing costs for such indebtedness, including, without limitation, the cost of appraisals, title insurance and environmental, geotechnical, zoning and other reports;

(v) expenses of procuring tenants and marketing, negotiating and enforcing Building leases, including, without limitation, brokerage commissions, attorneys' fees, advertising and promotional expenses, rent concessions and costs incurred in removing and storing the property of former tenants and other occupants of the Building;

(vi) expenses of any tenant improvement work that Landlord performs for any tenant or prospective tenant of the Building, including, without limitation, tenant improvement work to the Premises that Landlord performs for Tenant, and of relocating and moving any tenant in the Building;

(vii) items for which Landlord is otherwise reimbursed or entitled to be reimbursed, including, without limitation, by insurance or condemnation proceeds or under any warranties;

(viii) expenses (including, without limitation, penalties and interest) resulting from the violation of Laws or any contract by Landlord, Landlord's employees, agents or contractors or other tenants of the Building;

(ix) penalties, charges and interest for late payment by Landlord;

(x) (a) Landlord's income, franchise, capital stock, inheritance, estate, gift, sales, capital levy, excess profits, transfer and revenue taxes; (b) other taxes, assessments and charges imposed on or measured by gross income; (c) Landlord's general corporate overhead; and (d) leasehold taxes on other tenants' personal property;

(xi) to the extent of such excess, any expense paid to Landlord or an affiliate of Landlord for goods and services that is in excess of the amount that would be paid in the absence of such relationship for comparable goods and services delivered or rendered by unaffiliated third parties on a competitive basis;

(xii) expenses for repairs and other work caused by (a) construction or design defects, (b) subsurface or soil conditions, (c) the failure of the Improvements to comply as of the Commencement Date with any then-existing Laws, (d) the exercise of the right of eminent domain, or (e) fire, windstorm and other insured casualty (excluding costs comprising Landlord's reasonable insurance deductible), and any uninsured or under-insured casualty;

(xiii) expenses as a result of the presence of Hazardous Materials in the Building or on the Property;

(xiv) expenses in connection with services or other benefits provided on an ongoing basis to other Building tenants that are not available to Tenant;

(xv) costs as a result of (a) the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors, (b) the breach by Landlord of any lease in the Building, and (c) the negligence or willful misconduct of other identified tenants of the Building;

(xvi) costs for which Landlord bills other tenants directly (other than as a part of Operating Expenses) under the provisions of such tenants' leases, and the cost of any item or service for which Tenant separately reimburses Landlord or pays third parties;

(xvii) rental under any ground or underlying lease and under any lease or sublease assumed, directly or indirectly, by Landlord (e.g., a take-back sublease);

(xviii) charitable, civic and political contributions and professional dues;

(xix) costs for the acquisition, leasing, maintenance and insurance of paintings, sculptures and other objects of art located in the Building;

(xx) costs arising from actual and potential claims, litigation and arbitration pertaining to Landlord and the Property (including in connection therewith all attorneys' fees and costs of settlement and judgments and payments in lieu thereof);

(xxi) expenses for the use of the Building to accommodate events including, without limitation, shows, promotions, kiosks, displays, filming, photography, private events and parties and ceremonies;

(xxii) entertainment, dining and travel expenses;

(xxiii) costs of flowers (excluding flowers used to decorate the lobbies and other common areas in the Building), gifts, balloons, etc. provided to any person, including, without limitation, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;

(xxiv) costs of selling, syndicating and otherwise transferring the Property and Landlord's interest in the Property, including, without limitation, brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums and transfer and other similar taxes and charges;

(xxv) costs of installing, operating and maintaining any specialty service such as an observatory, broadcast facility, luncheon, athletic or recreational club, child care, restaurant, cafeteria, delicatessen or other dining facility, hair salon or other retail use or commercial concession operated by Landlord, but Operating Expenses may include the costs of operating and maintaining any gym or fitness center for the general use of tenants in the Building (including Tenant);

(xxvi) costs of magazine, newspaper, trade and other subscriptions;

(xxvii) costs of "tenant relations" parties, events and promotions inconsistent with other Comparable Buildings;

(xxviii) costs of "tap fees" and sewer and water connection fees for the benefit of any particular tenant in the Building;

(xxix) costs of traffic studies, environmental impact reports, transportation system management plans and reports, traffic mitigation measures and other similar matters;

(xxx) auditing fees other than those incurred by Landlord in connection with the performance of its obligations under this Lease and other leases in the Building; and

(xxxi) reserves of any kind.

"Permitted Use" means only the following, and no other purpose: general office purposes, including normal and reasonable uses customarily incidental thereto, such as executive, administrative, technical support, customer service and

data functions. In no event may the Premises be used as a call center or as an executive office suite operation without Landlord's prior consent; *provided, however*, that the prohibition of a call center shall not prohibit or limit any typical business or customer service telephone communication of the type currently conducted by Weave Communications, Inc.

"person" means any individual (male or female), corporation, limited liability company, partnership, joint venture, estate, trust, association or other entity.

"Premises" means Suite 202 on the second floor of the Building, consisting of approximately 1,500 rentable square feet, to be designed and constructed in accordance with the Work Letter attached hereto as Exhibit A and subject to final measurement and verification as set forth below in this definition. The Premises do not include, and Landlord reserves, the land and other area beneath the floor of the Premises, the pipes, ducts, conduits, wires, fixtures and equipment above the suspended ceiling of the Premises and the structural elements that serve the Premises or comprise the Building; *provided, however*, that, subject to Paragraphs 9.2 and 17.1, Tenant may, at Tenant's sole cost and expense, install Tenant's voice and data lines, wiring, cabling and facilities above the suspended ceiling of the Premises for the conduct by Tenant of business in the Premises for the Permitted Use. Landlord's reservation includes the right to install, use, inspect, maintain, repair, alter and replace those areas and items and to enter the Premises in order to do so in accordance with and subject to Paragraph 9.3. Notwithstanding anything herein to the contrary, Landlord and Tenant agree that prior to the Commencement Date, the number of rentable square feet comprising the Premises shall be measured (according to industry standards) and confirmed in writing by a signed and stamped letter from Tenant's licensed architect, to be attached to an addendum to this Lease. The "rentable square feet" hereunder shall be calculated by multiplying the actual space square footage by a load factor of 1.12. Such addendum will also include an exhibit depicting the Premises and, if the number of rentable square feet comprising the Premises is more or less than 1,500, the Basic Monthly Rent and other amounts that vary by the size of the Premises (including Tenant's Percentage of Operating Expenses) will be appropriately adjusted and confirmed in said addendum.

"Prime Rate" means a variable interest rate per annum equal to the highest rate quoted in the "Money Rates" section (or replacement section) of the *Wall Street Journal* as the "Prime Rate" for such day (or the previous day of publication for days on which the *Wall Street Journal* is not published). The Prime Rate shall be adjusted on and as of the effective date of any change in the Prime Rate. If the *Wall Street Journal* ceases to publish the Prime Rate, the Prime Rate shall be the highest prevailing base or reference rate on corporate loans at U.S. money center commercial banks.

"Project" means the Cicero Building, located in Salt Lake City, Utah.

"Projected Commencement Date" means December 1, 2018.

"Property" means the Improvements and the related land owned by Landlord.

"reasonable" means "good faith and commercially reasonable" and **"reasonably"** means in good faith and in a commercially reasonable manner.

"Rent" means Basic Monthly Rent and Tenant's Share of Operating Expenses.

"Security Deposit" means an amount equal to Basic Monthly Rent for the first and last month of full rent payment (\$6,750.00), which amount is subject to adjustment as set forth in the definition of "Premises".

"structural" means only footings, foundations, floor slabs, load-bearing walls, exterior walls, roofs and beams that support the roof joists.

"Substantial Completion" means the date on which all of the following have occurred:

(i) Tenant Improvements have been completed in accordance with the attached Exhibit A, as evidenced by a certificate of substantial completion from Landlord's architect or, if required, a certificate of occupancy for the Premises issued by the applicable municipality that will permit the conduct of business in the Premises for the Permitted Use;

(ii) Landlord has delivered vacant, "broom clean" and exclusive possession of the Premises to Tenant; and

"Tenant Default" has the meaning set forth in Paragraph 16.1.

"Tenant Improvements" has the meaning set forth in the attached Exhibit A.

"Tenant's Estimated Share of Operating Expenses" means the result obtained by subtracting Base Year Operating Expenses from the Estimated Operating Expenses for any given Operating Year, and then multiplying the difference by Tenant's Percentage of Operating Expenses. Tenant's Estimated Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Estimated Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year.

"Tenant's Occupants" means any assignee, subtenant, employee, agent, contractor, licensee, franchisee or invitee of Tenant.

"Tenant's Percentage of Operating Expenses" means 2.36 percent, which is the percentage determined by dividing the rentable square feet of the Premises (1,500 rentable square feet) by the rentable square feet of the Building (63,556 rentable square feet) (whether or not leased), multiplying the quotient by 100 and rounding to the third (3rd) decimal place, which percentage is subject to adjustment as set forth in the definition of "Premises".

"Tenant's Property" means only the following if, but only if, installed in or made to the Premises by Tenant at Tenant's sole cost and expense, and not paid for in whole or in part, directly or indirectly, by Landlord (which shall remain the property of Tenant, subject to Paragraph 17.1):

(i) Tenant's furniture, phones, computers and other personal property, provided that each of the foregoing is readily movable and unattached to the Premises; *provided, however*, that typical pictures, diplomas and other similar items, and movable cubicles with electrical connections, shall not be considered to be "attached" to the Premises for purposes of this definition;

(ii) Tenant's voice and data lines, wiring, cabling and facilities; and

(iii) any other Alteration made by Tenant with Landlord's prior consent if, but only if, at the time such consent was given and prior to installation, Tenant also obtained Landlord's express consent and agreement to such Alteration remaining the property of Tenant and being removed from the Premises at Lease end.

"Tenant's Share of Operating Expenses" means the result obtained by subtracting Base Year Operating Expenses from Operating Expenses actually incurred in any given Operating Year, and then multiplying the difference by Tenant's Percentage of Operating Expenses. Tenant's Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year. By way of explanation only, Tenant's Share of Operating Expenses in any given calendar year is, in essence, Tenant's pro rata share of the increase (only) of Operating Expenses for such calendar year over

Operating Expenses for the Base Year. And, since Tenant's Share of Operating Expenses is calculated in reference to an increase of Operating Expenses over Base Year Operating Expenses, Tenant's Share of Operating Expenses during the Base Year shall be zero, and Tenant will not commence paying Tenant's Share of Operating Expenses until the OpEx Commencement Date.

"Term" means the period commencing at 12:01 a.m. of the Commencement Date and expiring at midnight of the Expiration Date, as such period may be extended or sooner terminated in accordance with this Lease.

"untenantable" means that the Premises are reasonably incapable for use and occupancy by Tenant for the Permitted Use.

2. Agreement of Lease; Work of Improvement; Certain References.

2.1. Agreement of Lease. Subject to and in accordance with the provisions set forth in this Lease, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term, together with a license for the nonexclusive use of the Common Areas in common with other tenants of the Building (subject to Paragraph 9.4), subject to any covenants, conditions and restrictions affecting the Property. Landlord shall not have the right to relocate Tenant to premises other than the Premises during the Term.

2.2. Work of Improvement. Landlord shall perform the Tenant Improvements diligently, in a first-class and workmanlike manner and in accordance with Laws, and shall use its best efforts to complete the Tenant Improvements. All improvements made to the Premises pursuant to the attached Exhibit A, whether made by or at the expense of either Party, shall on installation be and remain the property of Landlord, excluding only Tenant's Property.

2.3. Certain References. Whenever in this Lease (including in the Exhibits attached to this Lease):

(a) the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary;

(b) there is a reference to costs, expenses, fees or other charges (including, without limitation, attorneys' fees and costs), such reference shall be deemed to be to reasonable, reasonably necessary and actual costs, expenses, fees and other charges, of which the Party incurring such costs, expenses, fees or other charges has some reasonable documentation, record or evidence, a copy of which shall be provided to the other Party;

(c) either Party is given the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, such Party shall act reasonably;

(d) there is a reference to "days", such reference shall be deemed to be to "calendar days" unless the phrase "business days" is expressly set forth;

(e) payment or performance is required but a specific date or number of days within which payment or performance is to be made is not set forth, or the words "immediately", "promptly", "on demand" or the equivalent are used to specify when such payment or performance is due, then such payment or performance shall be due within ten (10) business days after receipt of written notice by the paying or performing Party;

(f) the date on which any payment is due under this Lease is not a business day, such payment shall be due on the immediately following business day; and

(g) there is a reference to a consent, approval, description, designation, estimate, notice, request, response, statement or other communication between the Parties, such reference shall be deemed to require the same to be in writing, unless otherwise expressly set forth.

3. Term; Commencement Date; Tenant Rights.

3.1. Term; Commencement Date. Tenant's obligation to pay Basic Monthly Rent and other amounts due under this Lease shall commence on the Commencement Date unless otherwise set forth in the definition of "Basic Monthly Rent", and shall be for the Term. Within ten (10) business days after the Commencement Date, the Parties shall execute an acknowledgement of the Commencement Date, the Expiration Date and the Basic Monthly Rent schedule, which acknowledgement shall be attached as an addendum to and be deemed to be a part of this Lease and, to the extent applicable, shall serve to amend this Lease, and shall be consented to by any guarantor of this Lease.

3.2. Commencement Date Delay.

(a) Subject to force majeure and any unreasonable delay from Tenant's failure to cooperate with Landlord in the construction of the Tenant Improvements, if Substantial Completion has not occurred on or before the date that is ninety (90) days after the Projected Commencement Date (subject to postponement as set forth in this Paragraph 3.2, the "**Outside Date**"), then Tenant may give notice to Landlord of the termination of this Lease at any time after the Outside Date and prior to the occurrence of Substantial Completion; *provided, however*, that notwithstanding such notice of termination, if Substantial Completion occurs within thirty (30) days after Tenant's receipt of such notice of termination, then such notice of termination shall be void *ab initio* (from the beginning) and have no force or effect whatever and this Lease shall continue uninterrupted. The Outside Date shall be postponed one day for each day of force majeure delay or Landlord Delay.

(b) Termination of this Lease in accordance with the foregoing subparagraph (a) shall (subject to the proviso contained in said subparagraph) be effective as of thirty (30) days after the date of receipt by Landlord of notice of termination from Tenant, the Parties shall thereafter be released and discharged from all further obligations under this Lease (except for any obligations that expressly survive Lease end and except as provided in the remainder of this sentence) and Tenant shall receive a refund of any Security Deposit actually received by Landlord.

(c)

3.3. Extension.

(a) Tenant shall have the option to extend the initial period constituting the Term under this Lease for one (1) additional period of five (5) years, provided that Tenant gives Landlord notice of the exercise of each such option on or before the date that is six (6) months prior to the expiration of the then-existing period constituting the Term, and that at the time each such notice is given and on the commencement of the extension term concerned:

(i) this Lease is in full force and effect;

(ii) no Tenant Default then exists; and

(iii) Tenant has not assigned this Lease or subleased all or any portion of the Premises under any then-existing sublease (excluding any Non-Consent Transfer), and such extension is not being made in connection with or for the purpose of facilitating any such assignment or sublease.

Each such extension term shall commence at 12:01 a.m. on the first day following the expiration of the immediately preceding period constituting the Term.

(b) During each such extension term, all provisions of this Lease shall apply (but as to this Paragraph 3.3, only with respect to any remaining options to extend, if any), except for any provision relating to the improvement of the Premises by Landlord or at Landlord's expense. If Tenant exercises such option in a timely manner as provided in this Paragraph 3.3, the Basic Monthly Rent shall be as provided in the definition of "*Basic Monthly Rent*" and the new Expiration Date shall be extended five (5) years. In the event Tenant has not delivered notice of its exercise of an option to extend the Term as provided in Paragraph 3(a), Landlord shall deliver written notice to Tenant and Tenant's right to exercise such option shall terminate and be of no force or effect if notice of Tenant's exercise of the option is not delivered to Landlord within ten (10) days of receipt of Landlord's notice.

3.4 Right of First Offer.

(a) Tenant shall have a continuing right of first offer to lease the remaining wester portion of the Building adjacent to the Premises containing approximately 2,086 rentable square feet ("ROFO Space"). Upon the availability of the ROFO Space, Landlord shall give notice of such availability. Tenant shall have a period of five (5) business days after receipt of such notice to elect to lease the ROFO Space on the same terms and conditions set forth in this Lease, whereupon the Landlord and Tenant shall enter into an amendment to this Lease, adding such ROFO Space to this Lease in a manner consistent with such terms and conditions.

(b) If either of the following occurs: (i) within such five (5)-business day period, Tenant either delivers notice to Landlord that Tenant elects not to lease such ROFO Space, or fails to deliver any written response to Landlord; or (ii) Tenant fails to enter into an amendment to this Lease within ten (10) business days after Tenant delivers notice to Landlord that Tenant elects to lease such ROFO Space, then such right of first offer with respect to such ROFO Space shall terminate and be of no further force or effect.

4. Basic Monthly Rent.

(a) Tenant covenants to pay to Landlord, without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand, Basic Monthly Rent in lawful money of the United States at the address for Landlord set forth in Paragraph 22.3, or at such other such place as Landlord may designate to Tenant not less than ten (10) business days prior to the next payment due date, in advance on or before the first day of each calendar month during the Term, commencing on the Commencement Date unless otherwise set forth in the definition of "*Basic Monthly Rent*". Tenant may make payments to Landlord under this Lease by electronic transfer or similar means, but each payment of Basic Monthly Rent shall be made pursuant to an automatic payment procedure set up by Tenant that ensures that each such payment will be received by Landlord on or before the first day of each calendar month.

(b) If the first day on which Basic Monthly Rent is due under this Lease is not the first day of a calendar month, on or before such due date Basic Monthly Rent shall be paid for the initial fractional calendar month prorated on a per diem basis. If the Term expires or this Lease terminates on a day other than the last day of a calendar month, Basic Monthly Rent for such fractional month shall be prorated on a per diem basis.

5. Operating Expenses.

5.1. Payment of Operating Expenses.

(a) In addition to Basic Monthly Rent, Tenant covenants to pay to Landlord, without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand, Tenant's Share of Operating Expenses (to the extent that Operating Expenses in the Operating Year concerned are greater than Base Year Operating Expenses) in lawful money of the United States at the address for Landlord set forth in Paragraph 22.3, or at such other such place as Landlord may designate to Tenant not less than ten (10) business days prior to the next payment due date, in advance (as Tenant's Estimated Share of Operating Expenses) on or before the first day of each calendar month during the Term, commencing on the OpEx Commencement Date, in accordance with the provisions of this Paragraph 5; *provided, however*, that Tenant's Share of Operating Expenses for the Base Year and any prior year shall be zero.

(b) On or prior to the OpEx Commencement Date, and prior to each Operating Year after the Operating Year commencing on the OpEx Commencement Date, or as soon thereafter as is reasonably practicable (but not later than May 1st of the Operating Year concerned), Landlord shall furnish Tenant with a statement (the "**Estimated OpEx Statement**") showing in reasonable detail, reasonably sufficient for Tenant verification, the component breakdown of the Estimated Operating Expenses for the Operating Year concerned and the computation of Tenant's Estimated Share of Operating Expenses for such Operating Year. Each such estimate of Operating Expenses shall be based on the actual Operating Expenses for the immediately prior year and Landlord's reasonable estimate of Operating Expenses for the coming year.

(c) On or prior to the OpEx Commencement Date, and on the first day of each month following the OpEx Commencement Date, Tenant shall pay to Landlord one-twelfth (1/12th) of Tenant's Estimated Share of Operating Expenses as specified in the Estimated OpEx Statement for such Operating Year. If Landlord fails to give Tenant an Estimated OpEx Statement prior to any applicable Operating Year, Tenant shall continue to pay on the basis of the Estimated OpEx Statement for the prior Operating Year until the Estimated OpEx Statement for the current Operating Year is received. If at any time it appears to Landlord that Operating Expenses for a particular Operating Year will vary from Landlord's original estimate, Landlord may (but if the variation is a material reduction in such Operating Expenses from Landlord's original estimate, Landlord shall) deliver to Tenant (but not more than once in any Operating Year) a revised Estimated OpEx Statement for such Operating Year, and subsequent payments by Tenant for such Operating Year shall be based on such revised Estimated OpEx Statement; *provided, however*, that in all events, Tenant shall be given at least ten (10) business days after the delivery of any original or revised Estimated OpEx Statement to make any payment required to be made pursuant to the statement concerned.

(d) As soon as reasonably practicable after the expiration of any applicable Operating Year (but not later than May 1st following the Operating Year concerned), Landlord shall furnish Tenant with a statement (the "**Actual OpEx Statement**") showing in reasonable detail, reasonably sufficient for verification, the component breakdown of Operating Expenses for the Operating Year concerned, the computation of Tenant's Share of Operating Expenses for such Operating Year and the amount by which Tenant's Share of Operating Expenses exceeds or is less than the amounts paid by Tenant during such Operating Year, which shall be deemed to be certified by Landlord to be true and accurate when furnished. If the Actual OpEx Statement indicates that the amount actually paid by Tenant for the relevant Operating Year is less than Tenant's Share of Operating Expenses for such Operating Year, Tenant shall pay to Landlord such deficit within thirty (30) days after delivery of the Actual OpEx Statement. Such payments by Tenant shall be made even though the Actual OpEx Statement is furnished to Tenant after Lease end, provided that Tenant receives the Actual OpEx Statement within ninety (90) days after Lease end. If the Actual OpEx Statement indicates that the amount actually paid by Tenant for the relevant Operating Year exceeds Tenant's Share of Operating Expenses for such Operating Year, such excess shall be refunded to Tenant within thirty (30) days after delivery to Tenant of the Actual OpEx Statement. The Parties' obligations set forth in this subparagraph (d) shall survive Lease end.

(e) No failure by Landlord to require the payment of Tenant's Share of Operating Expenses for any period shall constitute a waiver of Landlord's right to collect Tenant's Share of Operating Expenses for such period or for any subsequent period; *provided, however*, that, except for Operating Expenses that are being amortized over a term of years,

Landlord shall not be entitled to collect from Tenant any Operating Expenses that are billed to Tenant for the first time more than twelve (12) months after the Operating Year in which such Operating Expenses arise. If Base Year Operating Expenses exceed Operating Expenses that were actually incurred or payable for any full or (on a pro rata basis) partial Operating Year after the Base Year, Tenant shall not be entitled to any refund, credit or adjustment of Basic Monthly Rent. Tenant shall, however, be entitled to receive a refund of, or credit for, any Estimated Operating Expenses paid by Tenant during such full or partial Operating Year.

(f) Landlord shall use its best efforts to control Operating Expenses to the extent reasonably practicable, and shall pay all Operating Expenses in a timely manner prior to delinquency, subject to payment of Rent by Tenant in a timely manner. For any particular Operating Year, Landlord may not collect Operating Expenses from tenants in the Building in an amount (as grossed up to account for any base year or expense stop provided to such tenants) that is in excess of one hundred percent (100%) of Operating Expenses actually paid or incurred by Landlord for such Operating Year.

(g) Notwithstanding the other provisions of this Paragraph 5, Tenant shall have sole responsibility for, and shall pay when due, all taxes, assessments, charges and fees levied by any governmental or quasi-governmental authority on Tenant's use of the Premises or Tenant's Property.

5.2. Resolution of Disagreement.

(a) Every statement given by Landlord to Tenant under Paragraph 5.1 at the address for notices to Tenant set forth in Paragraph 22.3 shall be conclusive and binding on Tenant unless within sixty (60) days after the receipt of such statement, Tenant:

(i) notifies Landlord that Tenant disputes the correctness of such statement, specifying the particular respects in which the statement is claimed to be incorrect;

(ii) requests reasonable clarification of Landlord's information and computations, including reasonable detail as to any questioned expense item; or

(iii) initiates an audit of such statement.

Pending the determination of such dispute by agreement between the Parties, Tenant shall, within thirty (30) days after receipt of such statement, pay the amounts set forth in such statement in accordance with such statement, and such payment shall be without prejudice to Tenant's position. Tenant may not audit Base Year Operating Expenses following the first audit of Operating Expenses for any Operating Year after the Base Year.

(b) If such dispute exists and it is subsequently determined that Tenant has paid amounts in excess of those then due and payable under this Lease, Landlord shall refund such excess to Tenant within thirty (30) days after such determination is made. If such dispute is not resolved between the Parties within sixty (60) days, then at the request of either Party, such dispute shall be resolved by an independent certified public accountant, whose decision shall be binding. The Parties, acting reasonably, shall mutually select, and equally share the cost of, such accountant.

5.3. Tenant Audit Right.

(a) Landlord shall maintain its books and records relating to Operating Expenses for a period of at least three (3) years following the year in which such Operating Expenses were incurred, in a manner that is consistent with generally accepted accounting principles consistently applied to the extent applicable to cash-basis accounting. Such books and records shall be available after at least five (5) business days' request by Tenant at Landlord's office during normal

business hours for audit, examination and copying by Tenant and Tenant's employees or agents during such period, at Tenant's sole cost and expense (including Landlord's out-of-pocket costs incurred as a result of such audit), provided that:

(i) neither Tenant nor Tenant's employees or agents may divulge the contents of such books and records or the results of such examination to any third party, except as may reasonably be necessary in Tenant's business operations (so long as the person to whom such contents or results are divulged also agrees to maintain their confidentiality) or as may otherwise be required by applicable legal requirements;

(ii) Tenant has not previously examined such books and records with respect to the same Operating Year; and

(iii) Tenant provides to Landlord, at no cost, a copy of the report of such examination within ten (10) business days after receipt by Tenant.

(b) Notwithstanding the foregoing to the contrary, if such verification reveals that Tenant's Share of Operating Expenses set forth in any Actual OpEx Statement exceeded by more than five percent (5%) the amount that actually was due, Landlord shall reimburse Tenant for the lesser of the actual cost of such examination or the reasonable charges of such examination based on a reasonable hourly charge (even if such accountant is actually paid on some other basis), together with other reasonable expenses incurred by such accountant. Tenant may not hire an accountant or other person to perform such examination on a contingency, percentage, bonus or similar basis, unless such accountant or other person is nationally recognized, reputable and reasonable in its approach. Any overcharge or underpayment revealed thereby shall be reconciled between the Parties, acting reasonably and in good faith, within thirty (30) days after the completion of such verification and examination.

6. Security Deposit.

(a) Concurrently with its execution and delivery of this Lease, Tenant shall deposit with Landlord the Security Deposit as security for the faithful performance by Tenant of its obligations under this Lease. Landlord may intermingle the Security Deposit with Landlord's own funds. The Security Deposit is not a limitation on Landlord's damages or other rights under this Lease, a payment of liquidated damages or prepaid Rent and shall not be applied by Tenant to Rent for the last (or any) month of the Term, or to any other amount due under this Lease.

(b) If a Tenant Default occurs under this Lease, then Landlord may, prior to, concurrently with, or subsequent to, exercising any other right or remedy, use, apply or retain all or any part of the Security Deposit for the payment of any monetary obligation due under this Lease, or to compensate Landlord for any other expense, loss or damage that Landlord may reasonably incur by reason of Tenant's failure, including any damage or deficiency in the reletting of the Premises. If all or any portion of the Security Deposit is so used, applied or retained, Landlord shall promptly notify Tenant of such use, application or retention, and Tenant shall, within ten (10) business days following such notification, deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its original amount.

(c) The Security Deposit shall be returned (without interest) to Tenant within thirty (30) days after Lease end and surrender of possession of the Premises to Landlord in accordance with Paragraph 17.1 if, at such time, Tenant has paid to Landlord all amounts payable under this Lease and no Tenant Default then exists; *provided, however*, that if such Tenant Default is a monetary default, and the Security Deposit is equal to or greater than the amount concerned, then Landlord shall apply the Security Deposit in full payment of such amount and remit to Tenant any remaining portion of the Security Deposit within such thirty (30)-day period, together with an itemization of any deductions therefrom, provided that Tenant has paid all other amounts payable under this Lease. Notwithstanding the foregoing, Landlord may withhold the Security Deposit after Lease end until Tenant has paid in full Tenant's Share of Operating Expenses for the Operating Year in

which Lease end occurs, provided that Landlord provides to Tenant an Actual OpEx Statement for such Operating Year (or portion thereof) within ninety (90) days after Lease end, and concurrently returns to Tenant any remaining Security Deposit balance, together with an itemization of any deductions therefrom.

(d) If Landlord's interest in this Lease is conveyed, transferred or assigned and the transferee assumes in writing Landlord's obligations under this Lease, Landlord shall transfer or credit the Security Deposit to Landlord's successor in interest, and, upon such transfer or credit to Landlord's successor-in-interest, Landlord shall be released from any liability for the return of the Security Deposit.

7. Use and Operation.

7.1. Prohibitions. The Premises shall not be used or occupied for any purpose other than for the Permitted Use, and neither Tenant nor Tenant's Occupants shall do anything that will:

(a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property (and Landlord represents that the Permitted Use does not do so);

(b) create a public or private nuisance, constitute a disreputable business or purpose, commit waste or unreasonably interfere with or disturb any other tenant or occupant of the Building or Landlord in the operation of the Building;

(c) overload the floors or otherwise damage the structure of the Building;

(d) increase the cost of any utility service beyond the level permitted by Paragraph 8 unless Tenant pays such increased cost in accordance therewith; or

(e) in its use of, operations in, and improvements to, the Premises, violate Laws.

7.2. Covenants. Tenant shall, at Tenant's sole cost and expense:

(a) use the Premises in a careful, safe and proper manner, consistent with normal business practices;

(b) in its use of, operations in, and improvements to, the Premises, comply with Laws; *provided, that:*

(i) subject to reimbursement as part of Operating Expenses to the extent permitted by Paragraph 5, Landlord shall be solely responsible for compliance with the ADA and other Laws in connection with the Building and the Common Areas (except to the extent of any additional costs incurred by Landlord solely as a result of Tenant's particular use of the Premises, which additional costs shall be payable solely by Tenant within ten (10) business days after receipt of an invoice therefor) and any improvements made by Landlord to the Premises; and

(ii) Tenant shall have no obligation to Landlord with respect to:

(A) any Hazardous Materials on the Property not stored, used or disposed of by Tenant or Tenant's Occupants; or

(B) any failure of the Improvements to comply as of the Commencement Date with any then-existing Laws, except to the extent of improvements made by Tenant;

(c) keep the Premises free of reasonably objectionable noises and odors; and

(d) not store, use or dispose of any Hazardous Materials on the Property, except for *de minimis* quantities of typical cleaning and office supplies, all of which shall be stored, used and disposed of in accordance with Laws.

7.3. Qualifications. Nothing contained in this Paragraph 7 shall be deemed to impose any obligation on Tenant to make any structural changes, repairs or improvements unless necessitated solely by reason of a particular use by Tenant of the Premises, or shall be deemed to impose any obligation on Tenant with respect to actions or omissions of persons other than Tenant and Tenant's Occupants. Tenant's Occupants will be required to smoke outside the Building in compliance with the Utah Indoor Clean Air Act.

7.4. No Continuous Operation. Systematic and continuous occupancy or operation in all or any portion of the Premises before or after Building Hours is not permitted. This includes, but is not limited to, any ongoing twenty-four (24) hour, seven (7) day a week operation or use of the Premises. However, the foregoing portion of this Paragraph 7.4 shall not:

(a) prohibit or limit the continuous operation of data servers or other similar equipment in the Premises; or

(b) prevent late or early hour or all night work that would be typical in the offices of a company similar to Tenant, including, without limitation, a limited number of employees working all day and all night for a limited number of days when necessary to complete a particular project,

and Tenant may have a limited number of technical and customer service employees regularly working after Building Hours in the Premises. To the extent set forth in the immediately preceding sentence, Landlord acknowledges that Tenant's employees may, from time to time, work in the Premises before and after Building Hours; *however*, in all events Tenant shall pay to Landlord the cost of any increased security, maintenance, repair (including repair as a result of any after-hours damage), janitorial and similar items resulting from such work within thirty (30) business days after receipt by Tenant of an invoice therefor.

8. Utilities and Services.

8.1. Services Provided.

(a) Landlord shall, as part of Operating Expenses, cause to be furnished to the Premises:

(i) electricity for normal lighting and office computers, servers, copiers and other typical office equipment used by Tenant for the Permitted Use;

(ii) HVAC in sufficient quantities for the reasonably comfortable use and occupancy of the Premises by Tenant;

(iii) janitorial services and window washing consistent with Comparable Buildings, with the janitorial service provider being bonded, insured and licensed, and its employees having passed appropriate criminal background checks;

- (iv) cleaning and stocking services for restrooms;
- (v) replacement bulbs and ballasts for Building standard ceiling fluorescent lighting;
- (vi) hot and cold water in the restrooms and, if any, in Tenant's kitchen/break room area, and water for drinking in the water fountains;
- (vii) functioning toilets;
- (viii) snow removal, landscaping, grounds keeping and elevator service;
- (ix) security to the Building consistent with the security provided to other Comparable Buildings; and
- (x) all other services typically provided under "full service" leases of Comparable Buildings,

all in a manner consistent with Comparable Buildings. Tenant shall, at Tenant's sole cost and expense, provide telecommunication service to the Premises; provided, however, that Landlord represents and warrants that First Digital Fiber is part of the building condition to be delivered to Tenant in accordance with Exhibit A.

(b) Subject to the provisions of this Lease, Tenant shall have reasonable access over the Common Areas to the Premises at all times during the Term, twenty-four (24) hours a day, seven (7) days a week, including (if the Premises are located above the first floor) passenger elevators without operators serving the floor on which the Premises are located and freight elevator service in common with other tenants of the Building.

(c) Tenant may not install its own backup generator. If Tenant elects to connect to the Building backup generator, such connection shall be made by Landlord for Tenant, at Tenant's sole cost and expense, and an additional \$0.50 per rentable square foot of the Premises (on an annual basis) shall be added to any Basic Monthly Rent payable on the Commencement Date.

8.2. Excess Services.

(a) If Landlord provides:

(i) electric current to the Premises for Tenant load (that is, excluding HVAC and lighting) in excess of two (2) watts per rentable square foot to enable Tenant to operate any office computers, servers, copiers or other equipment requiring electric current in excess of that typically required for routine office purposes in Comparable Buildings; or

(ii) any other utility or service that is in excess of that typically required for routine office purposes, including additional cooling necessitated by Tenant's equipment and additional services relating to after-hours usage of the Property as contemplated by Paragraph 7.4, all as determined by reference to general Building tenant usage and Comparable Buildings,

Landlord shall reasonably determine or calculate the actual, reasonable cost of such additional electric current, utility or service, and Tenant shall pay such cost, together with a reasonable charge for administrative costs related to such

determination, calculation and billing, on a monthly basis to Landlord within ten (10) business days after receipt by Tenant of an invoice therefor.

(b) If Landlord reasonably believes that Tenant is using excess electricity or water, Landlord may cause an electric or water meter to be installed in the Premises in order to measure the amount of electricity or water consumed for any excess use described in the foregoing subparagraph (a), and if such meter actually evidences excess use, the reasonable cost of such meter and of any related wiring or plumbing and their installation shall be paid by Tenant within ten (10) business days after receipt by Tenant of an invoice therefor. (The Building will have one meter for electricity and one meter for water, with respect to each of which Landlord will receive a single bill; therefore, any meter installed in order to measure the amount of electricity or water consumed for any such excess use by Tenant will, in fact, be a sub-meter, and the actual cost of any electricity or water sub-metered to the Premises will be determined by Landlord by extrapolating from the Building cost concerned.) Any such utility expense that is separately billed to and paid for by Tenant pursuant to this Paragraph 8.2 shall not be part of Operating Expenses.

8.3. Certain After-Hours Services. Subject to the provisions of this Lease, and as part of Operating Expenses, Landlord shall furnish lighting and HVAC to the Premises during Building Hours. Tenant may require such services after Building Hours on demand, and may be separately billed, and if billed shall pay within ten (10) business days after receipt by Tenant of an invoice therefor Landlord's standard charges (set forth below), for any lighting and HVAC used in the Premises during any period other than during Building Hours, provided that such after-hours services are requested or activated by Tenant or Tenant's Occupants. Currently, Landlord's standard charges (which approximate actual costs) for such after-hours services are approximately \$3.00 per hour per zone for lighting and approximately \$25.00 per hour for HVAC. Landlord may, from time to time, increase the charge for providing such after-hours services to reflect any increase in Landlord's approximate actual costs, which increased charge shall be consistently applied to all Building tenants. Landlord shall use its best efforts to charge Tenant and other Building tenants for after-hours services in a consistent, non-discriminatory manner. Any such charges for after-hours services that are separately billed to and paid for by Tenant pursuant to this Paragraph 8.3 shall not be part of Operating Expenses.

8.4. Service Interruption. Tenant shall immediately notify Landlord of the interruption (a "***Service Interruption***") of any service furnished by Landlord under this Lease, and following the receipt of such notice, Landlord shall use its best efforts to restore such service to the Premises as soon as reasonably practicable. Subject to force majeure, and except in cases covered by Paragraphs 13 or 14, with respect to any Service Interruption that renders the Premises untenable and is not caused by Tenant or Tenant's Occupants:

(a) commencing on the third (3rd) consecutive business day of such Service Interruption, Tenant shall be entitled to an equitable diminution of Rent to the extent that the Premises are untenable as a result of such Service Interruption; and

(b) if the Premises will be or are untenable for a period of more than thirty (30) consecutive days as a result of such Service Interruption, Tenant shall be entitled to terminate this Lease on notice given to Landlord within ten (10) business days after the later of:

(i) the date on which Landlord provides to Tenant an estimate of the time required to cure such Service Interruption (which notice shall be given by Landlord to Tenant as soon as reasonably practicable, but Landlord shall use its best efforts to provide such notice to Tenant no later than ten (10) days after the occurrence of such Service Interruption); or

(ii) the expiration of such thirty (30)-day period,

and on such notice, Tenant shall vacate and surrender the Premises to Landlord in accordance with the applicable provisions of this Lease.

9. Maintenance and Repairs; Alterations; Access to Premises; Reserved Rights in Common Areas.

9.1. Maintenance and Repairs.

(a) Landlord shall, as part of Operating Expenses, maintain the Property (excepting the Premises and other leased premises in the Building) in good order, condition and repair, in a clean and sanitary condition and in compliance with Laws, in a manner consistent with those procedures and practices generally employed by owners or managers of Comparable Buildings; *provided, however*, that, subject to reimbursement of Landlord to the extent provided by Paragraph 5, and, subject to Paragraph 12.3, excluding damage caused by Tenant or Tenant's Occupants, Landlord shall be solely responsible for maintenance and repair of the exterior windows and structural components of the Building, the electrical, gas, plumbing, fire, life safety, HVAC and other base systems and facilities of the Building (excepting any installed by Tenant) and the restrooms, lobbies and other Common Areas, in such manner. Any costs, expenses and fees incurred or payable by Landlord in connection with the maintenance, repair or replacement of any supplemental or other HVAC equipment (beyond the standard Building HVAC) for any data room of Tenant shall not be part of Operating Expenses and shall be directly reimbursed by Tenant to Landlord within ten (10) business days after receipt by Tenant of an invoice therefor. In addition, Tenant shall pay to Landlord the cost of any increased maintenance and repair (including repair as a result of any after-hours damage) resulting from Tenant's employees' work in the Premises before and after Building Hours, as set forth in Paragraph 7.4.

(b) Except as expressly set forth in subparagraph 8.1(a), in the foregoing subparagraph 9.1(a), or elsewhere in this Lease, and excluding damage caused by Landlord or Landlord's employees, agents or contractors, Tenant shall, at Tenant's sole cost and expense, maintain the interior, nonstructural elements of the Premises (including, without limitation, all floor and wall coverings, doors and locks) and Tenant's Property in good order, condition and repair and in a clean and sanitary condition, subject to normal and reasonable wear and tear and the other provisions of this Lease regarding casualty, condemnation, insurance and indemnification.

(c) All work to be performed by either Party under this Paragraph 9.1 shall be completed promptly (and such work shall be performed by Landlord in a manner that is reasonably calculated to minimize disruption to Tenant's business to the extent reasonably practicable), but in any event each Party shall use its best efforts to complete such work within twenty-four (24) hours in any emergency and within ten (10) business days for all other repairs. If any work cannot reasonably be completed within twenty-four (24) hours or ten (10) business days, as the case may be, such work shall be commenced within the applicable period and thereafter prosecuted continuously and diligently until completed.

9.2. Alterations.

(a) Tenant shall not make or cause or permit to be made any Alteration, unless such Alteration:

- (i) equals or exceeds the then-current standard for the Building, and utilizes only new and first-grade materials;
- (ii) is in conformity with Laws, and is made after obtaining any required permits and licenses;

(iii) is made with the prior consent of Landlord, which consent, in the case of nonstructural, cosmetic Alterations such as carpeting or painting that have absolutely no impact or effect on the structure or the roof, exterior, mechanical, water, electrical, gas, plumbing, fire, life safety, HVAC, telephone, sewer or other systems or facilities of the Building, shall be given or denied within five (5) business days after receipt by Landlord of Tenant's written request therefor, accompanied by a reasonably detailed description of the change, addition or improvement to be made;

(iv) is made pursuant to plans and specifications approved in advance by Landlord or, if such Alteration does not require a building permit, is made pursuant to a description of such proposed work; *provided*, that Landlord may not charge Tenant a fee for the review of such plans and specifications or description;

(v) is carried out by persons approved by Landlord, who, if required by Landlord, deliver to Landlord before commencement of their work proof of such insurance coverage as Landlord may reasonably require, with Landlord named as an additional insured; and

(vi) is done only at such time and in such manner as Landlord may reasonably specify.

(b) Subject to Paragraph 17.1, any such Alteration (excluding only Tenant's Property) shall immediately become and remain the property of Landlord. Tenant shall pay when due the entire cost of any such Alteration. Within thirty (30) days following the imposition of any lien resulting from any such Alteration, Tenant shall cause such lien to be released of record by payment of money or posting of a proper bond.

(c) Notwithstanding anything herein to the contrary, Tenant may make minor cosmetic alterations, such as painting and carpeting, without Landlord consent, as long as said alterations do not exceed \$25,000 in cost per Lease Year.

9.3. Access to Premises.

(a) Landlord and Landlord's employees, agents and contractors may enter the Premises at reasonable times (including during Building Hours) on at least twenty-four (24) hours' prior written or verbal notice to Tenant (except in the event of an emergency) for the purpose of:

(i) cleaning, inspecting, altering, improving and repairing the Premises or other parts of the Building;

(ii) at reasonable intervals, ascertaining compliance with the provisions of this Lease by Tenant; and

(iii) showing the Premises to prospective purchasers, tenants or mortgagees (but with respect to prospective tenants for the Premises, only during the last six (6) months of the Term, as the same may be extended, and at any time a Tenant Default exists under this Lease).

Landlord shall have free access to the Premises in an emergency, but Landlord shall use its best efforts to notify Tenant of such emergency as soon as possible. Landlord shall at all times have a key with which to unlock all of the doors in the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in advance); *provided, however*, that Tenant may designate a limited number of specified rooms, offices or closets within the Premises as off-limits to janitorial service providers, and such providers shall not be permitted to enter therein.

(b) In any entry into the Premises and in any work done by Landlord in the Building, Landlord and Landlord's employees, agents and contractors shall:

(i) use their best efforts to avoid and minimize any damage or injury to, interference with, and disturbance of, Tenant and the operation of Tenant's business in the Premises;

(ii) comply with all reasonable security regulations and procedures as may then be in effect with respect to Tenant's operations in the Premises; and

(iii) use their best efforts to maintain the confidentiality of any materials within the Premises.

Tenant may secure the Premises at all times and may require that any individual entering the Premises be accompanied by an employee of Tenant at all times (except in the case of an emergency).

9.4. Reserved Rights in Common Areas. Landlord reserves the right, at any time or from time to time, to:

(a) establish and enforce reasonable rules and regulations for the use of the Common Areas (including, without limitation, the delivery of goods and the disposal of trash), in accordance with and subject to Paragraph 21;

(b) use or permit the use of the Common Areas by persons to whom Landlord may grant or may have granted such rights in such manner as Landlord may from time to time reasonably designate;

(c) close all or any portion of the Common Areas to make repairs or changes to, to prevent a dedication of, to prevent the accrual of any rights of any person or the public in, or to discourage non-Tenant Occupant use of or parking on, the Common Areas;

(d) construct additional buildings in, or expand existing buildings into, the Common Areas and change the layout of the Common Areas, including, without limitation, enlarging or reducing the shape and size of the Common Areas, whether by the addition of buildings or other improvements or in any other manner;

(e) enter into operating agreements relating to the Common Areas with persons selected by Landlord; and

(f) do such other acts in and to the Common Areas as in Landlord's reasonable judgment may be desirable;

provided, however, that Landlord, in exercising its reserved rights under the foregoing portion of this sentence, shall exercise reasonable efforts to minimize any adverse impact on the Premises and the operation of Tenant's business in the Premises, and except during non-Building Hours, shall not materially impair the access to and from the Premises. If the Common Areas are diminished in accordance with and subject to the foregoing proviso, Landlord shall not be subject to any liability, Tenant shall not be entitled to any compensation or diminution of rent and such diminishment shall not be deemed to be an actual or constructive eviction.

10. Assignment and Subleasing.

10.1. Prohibition.

(a) Except as expressly provided in Paragraph 10.2, Tenant shall not do any of the following without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed:

(i) assign, transfer, mortgage, encumber, pledge or hypothecate this Lease or Tenant's interest in this Lease, in whole or in part, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise;

(ii) sublease the Premises or any part of the Premises; or

(iii) permit the use and occupancy of the Premises or any part of the Premises by any persons other than (A) employees of Tenant, (B) employees of Tenant's affiliates, or (C) persons occupying a portion of the Premises for the purpose of transacting business with Tenant.

Consent to any assignment or sublease shall not operate as a waiver of the necessity for consent to any subsequent assignment or sublease and the terms of such consent shall be binding on any person holding by, through or under Tenant. At Landlord's option, any assignment or sublease without Landlord's prior consent, when such consent is required by the terms of this Lease, shall be void *ab initio* (from the beginning).

(b) Without limiting the other instances in which it may be reasonable for Landlord to withhold its consent, Landlord may withhold its consent under subparagraph (a) unless:

(i) Tenant provides to Landlord (A) the name and address of the proposed assignee or subtenant, (B) the terms and conditions of (including all consideration for) the proposed assignment or sublease, (C) any information reasonably required by Landlord with respect to the nature and character of the proposed assignee or subtenant and its business, business history, activities and intended use of the Premises, (D) any references and current financial information reasonably required by Landlord with respect to the net worth, cash flow, credit and financial responsibility of the proposed assignee or subtenant, and (E) a copy of the proposed assignment or sublease;

(ii) the nature, character and reputation of the proposed assignee or subtenant and its business, activities and intended use of the Premises are suitable to and in keeping with the standards of the Building, and in compliance with this Lease (including, without limitation, the Permitted Use) and Laws, and the proposed assignee or subtenant is a reputable party whose net worth, cash flow, credit and financial strength are, considering the responsibilities involved, reasonably satisfactory to Landlord (and, whether or not this Lease is then guaranteed, Landlord may require the principal(s) of any assignee also to guaranty this Lease);

(iii) the proposed assignee or subtenant (and any affiliate of such assignee or subtenant) is not then an occupant of the Building or of any other building within the Project or a person who actively dealt with Landlord or any affiliate of Landlord or any employee, agent or representative of Landlord or any affiliate of Landlord (directly or through a broker) with respect to space in the Building or of any other building within the Project during the six (6) months immediately preceding Tenant's request for Landlord's consent (with "*actively dealt with*" meaning, at least, written correspondence and negotiation for the lease of space within the Project, but excluding, without more, the mere delivery of leasing or property information relating to the Project); *provided, however*, that Landlord shall not unreasonably withhold, condition or delay its consent to an assignment of this Lease or a sublease of the Premises to a proposed assignee or subtenant under the foregoing portion of this subparagraph (iii) if neither Landlord nor any affiliate of Landlord is willing and able to accommodate the space needs of such assignee or subtenant within the Project, and Tenant is able to do so by such assignment or sublease;

(iv) the proposed assignee or subtenant is not a governmental entity or instrumentality thereof, unless otherwise approved by Landlord, which approval may be withheld by Landlord if Landlord reasonably

determines that the use to be made of the Premises by such governmental entity would be undesirable (such as, for example purposes only, and without limiting the generality of the foregoing, use as a welfare or other social services office for indigent individuals, as a court to which handcuffed defendants may be brought, or as an office to which uniformed or armed individuals may come and go);

(v) the proposed assignment or sublease will not violate any enforceable exclusive use or similar clause in another lease in the Project or give a tenant in the Project a right to cancel its lease;

(vi) neither Landlord nor its affiliates have experienced previous defaults by, and are not in litigation with, the proposed assignee or subtenant or its affiliates;

(vii) (A) the proposed assignee's or subtenant's anticipated use of the Premises does not involve the generation, storage, use, treatment or disposal of Hazardous Material; (B) the proposed assignee or subtenant has not been required by any other landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination resulted from such assignee's or subtenant's actions or use of the property in question; or (C) the proposed assignee or subtenant is not subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material;

(viii) the use of the Premises by the proposed assignee or subtenant will not violate Law, and will not violate Paragraph 7 or any other provision of this Lease;

(ix) the assignment or sublease is not prohibited by Landlord's lender;

(x) the proposed assignment or sublease will not result in a number of occupants on a floor that exceeds the design capacity of the Building systems;

(xi) the proposed assignment or sublease will not trigger incremental ADA or other legal requirements in the Common Areas or by Landlord in the Premises, or result in a materially greater burden to the Common Areas or require increased services by Landlord; and

(xii) the proposed assignee or subtenant is not a controversial entity such as a terrorist organization, is not an entity traditionally thought or perceived to be sexist such as Playboy, Hustler and Penthouse magazines and the like, and is not an organization traditionally perceived to be racist such as the Ku Klux Klan, American Nazi Party and the like.

(c) If the rent to be charged by Tenant during the term of any assignment or sublease is less than the rent being quoted by Landlord at the time of such assignment or sublease for comparable space in the Building for a comparable term, calculated using a present-value analysis, Tenant shall not advertise such rent and, further, shall require any such assignee or subtenant, in writing, to keep the amount of such rent confidential.

(d) (i) If Tenant requests Landlord's consent to an assignment of this Lease or to a subleasing of the whole or any part of the Premises where such consent is required, Tenant shall submit to Landlord the terms of such assignment or subleasing, the name and address of the proposed assignee or subtenant, such information relating to the nature of such assignee's or subtenant's business and finances as Landlord may reasonably require and the proposed effective date (the "*Effective Date*") of the proposed assignment or subleasing (which Effective Date shall be neither less than fifteen (15) days nor more than six (6) months following the date of Tenant's submission of such information). On receipt of such request and all such information from Tenant, Landlord shall have a reasonable period of time (not to exceed ten (10) business days) either to accept or reject such request. In addition, Landlord may, by notice within ten (10) business days after such

receipt, terminate this Lease if the request is to assign this Lease or to sublease all of the Premises or, if the request is to sublease more than fifty percent (50%) of the Premises for more than two (2) years, terminate this Lease with respect to such portion, in each case as of the Effective Date, *unless* within ten (10) business days after notice from Landlord to Tenant of such termination, Tenant withdraws such request. On such withdrawal by Tenant, Landlord's related prior termination of this Lease with respect to all or a portion of the Premises shall have no further force or effect (and Tenant shall not assign this Lease or sublease the Premises as proposed). In the event Landlord does not deliver to Tenant written notice of acceptance or rejection of the requested assignment or sublease, or a notice of termination, within ten (10) business days of its receipt of same, Landlord shall be deemed to have approved such request.

(ii) If Landlord exercises such termination right, Tenant shall surrender possession of the entire Premises or the portion that is the subject of the right, as the case may be, on the Effective Date in accordance with the provisions of Paragraph 17, and Tenant shall be released from all obligations arising under this Lease for the period on and after (but not prior to) the date of such termination if this Lease is terminated as to the entire Premises or, if this Lease is terminated as to only a portion of the Premises, Tenant shall be released from all obligations arising under this Lease for the period on and after (but not prior to) the date of such termination to the extent, but only to the extent, that such obligations relate to the portion of the Premises as to which this Lease is terminated, excepting (in each case) any obligation that expressly survives Lease end. If this Lease is terminated as to a portion of the Premises only, the Premises shall be redefined to exclude such portion and the Rent payable by Tenant under this Lease shall be reduced proportionately commencing as of the Effective Date, based on the percentage of the Premises as to which this Lease has been terminated.

(iii) Alternatively, Tenant may give Landlord earlier notice (a "*Notice of Intent*") that Tenant intends to assign this Lease or sublease the whole or any part of the Premises and the projected Effective Date of the intended assignment or subleasing (which projected Effective Date shall be not less than sixty (60) days nor more than six (6) months following the date of Landlord's receipt of such Notice of Intent). Landlord may, by notice given within ten (10) business days after such receipt, terminate this Lease if the request is to assign this Lease or to sublease all of the Premises or, if the request is to sublease a portion of the Premises only, terminate this Lease with respect to such portion, in each case as of the projected Effective Date set forth in such Notice of Intent. If Landlord fails so to terminate this Lease in accordance with the immediately preceding sentence, then Landlord's right of termination under this subparagraph (d) shall not apply to an assignment of this Lease or to the sublease of the Premises described in such Notice of Intent, so long as such assignment or sublease actually occurs within six (6) months after Landlord's receipt of such Notice of Intent. If such assignment or sublease does not actually occur within six (6) months after Landlord's receipt of such Notice of Intent, then Tenant shall once again be subject to, and Landlord shall once again have the rights set forth in, this subparagraph (d).

(iv) If Landlord exercises the termination right set forth in this subparagraph (d), the Parties shall promptly enter into a termination agreement for this Lease or, if the termination is as to only a portion of the Premises, an amendment to this Lease, on Landlord's standard form, memorializing such termination.

(v) Notwithstanding the foregoing to the contrary, although all other provisions of this Paragraph 10 shall apply, the termination right set forth in this subparagraph (d) shall not be triggered by a sublease of not more than one-half (1/2) of the Premises made by Tenant to an unaffiliated third party for the purpose of creating a synergistic business relationship in the Premises.

10.2. Affiliate and Certain Other Transfers. Notwithstanding anything contained in Paragraph 10.1 to the contrary, Tenant may, without the consent of Landlord, assign this Lease or sublease all or any portion of the Premises to:

- (a) an affiliate or related entity of Tenant;
- (b) a person that acquires all or substantially all of the assets or stock of Tenant; or

- (c) an entity resulting from a merger, consolidation or reorganization with Tenant,

provided that (i) such assignee or subtenant assumes the relevant obligations of Tenant under this Lease, (ii) Tenant gives Landlord notice of such assignment or sublease no later than five (5) business days thereafter, accompanied by an executed counterpart of any assignment or sublease agreement concerned (from which any financial terms may be redacted) if such an assignment or sublease agreement exists, and (iii) such assignee or subtenant has a net worth, cash balance and operating income immediately following such transaction that is reasonably sufficient to satisfy the financial obligations under this Lease or such sublease, as the case may be. In addition, the sale of stock or other equity interests in Tenant on a public stock exchange (e.g., NYSE or NASDAQ), whether in connection with an initial public offering or thereafter, shall not be deemed an assignment of this Lease and shall not require Landlord's consent.

10.3. Landlord's Rights.

(a) If this Lease is assigned or if all or any portion of the Premises is subleased or occupied by any person without obtaining Landlord's prior consent when such consent is required, Landlord may collect Rent and other charges from such assignee or other person, and apply the amount collected to Rent and other charges payable under this Lease, but such collection and application shall not constitute consent or waiver of the necessity of consent to such assignment, sublease or occupancy, nor shall such collection and application constitute the recognition of such assignee, subtenant or occupant as Tenant under this Lease or a release of Tenant from the further payment and performance of all obligations of Tenant under this Lease.

(b) No consent by Landlord to any assignment or sublease by Tenant (and no assignment or sublease by Tenant, whether made with or without Landlord's consent) shall relieve Tenant of any obligation to be paid or performed by Tenant under this Lease, whether occurring before or after such consent, assignment or sublease, but rather Tenant and Tenant's assignee or (to the extent of its obligations under its sublease) subtenant, as the case may be, shall be jointly and severally primarily liable for such payment and performance (including, without limitation, the provisions of this Lease limiting the use of the Premises), which shall be confirmed to Landlord in writing on Landlord's standard form, and any guarantor of this Lease shall remain fully liable under such guarantor's guaranty, which also shall be confirmed to Landlord in writing on Landlord's standard form.

(c) Tenant shall reimburse Landlord for Landlord's reasonable attorneys' and other fees and costs, not to exceed \$1,000 per occurrence (assuming that Landlord is not asked to prepare the assignment or sublease agreement, or to negotiate or revise substantially Landlord's standard form consent documents) incurred in connection with both determining whether to give consent and giving consent when such consent is required.

(d) No assignment under this Lease requiring Landlord's consent shall be effective unless and until Tenant provides to Landlord an executed counterpart of the assignment agreement concerned in form and substance reasonably satisfactory to Landlord, in which the assignee has assumed and agreed to perform all of Tenant's obligations under this Lease on and after the effective date of such assignment, and Landlord has executed and delivered a consent thereto on Landlord's standard form. No subleasing under this Lease requiring Landlord's consent shall be effective unless and until Tenant provides to Landlord an executed counterpart of the sublease agreement concerned in form and substance reasonably satisfactory to Landlord.

(e) Without affecting any of its other obligations under this Lease, if this Lease is assigned or all or any portion of the Premises is subleased (excluding any Non-Consent Transfer), and the rent, additional rent, compensation and other economic consideration received or to be received by Tenant in connection with such assignment or sublease (including, without limitation, any payment in excess of fair market value for services rendered by Tenant to the assignee or

subtenant or for assets, fixtures, inventory, equipment or furniture transferred by Tenant to the assignee or subtenant) exceeds Rent payable by Tenant under this Lease for the period concerned (calculated on a per rentable square foot basis if less than all of the Premises is subleased), then Tenant shall pay fifty percent (50%) of such excess to Landlord when received, after deducting reasonable advertising expenses, brokerage commissions, tenant improvement costs and attorneys' fees actually incurred by Tenant and payable to non-affiliated third parties in connection with such assignment or subleasing, all of which must be amortized over the applicable assignment or sublease term. Prior to Landlord consenting to any such assignment or sublease, Tenant shall provide to Landlord a detailed written schedule of all rent, additional rent, compensation and other economic consideration received or to be received by Tenant in connection with such assignment or sublease, and all reasonable advertising expenses, brokerage commissions, tenant improvement costs and attorneys' fees actually incurred or to be incurred by Tenant and payable to non-affiliated third parties in connection with such assignment or subleasing, which schedule shall be certified by Tenant to Landlord as true, correct and complete in all respects, with such certification executed by Tenant. As used in this subparagraph (e), the term "Tenant" refers to the assignor in the event of an assignment, and to the sublandlord in the event of a sublease.

11. Indemnity.

11.1. Indemnity by Tenant. Subject to Paragraph 12.3, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's employees from and against all demands, claims, causes of action, judgments, losses, damages, liabilities, fines, penalties, costs and expenses, including attorneys' fees, arising from either of the following:

(a) the occupancy or use of the Premises by Tenant or Tenant's Occupants, unless directly and proximately caused by Landlord or Landlord's employees, agents or contractors; or

(b) any Hazardous Materials deposited, released or stored by Tenant or Tenant's Occupants on the Property.

If any action or proceeding is brought against Landlord or Landlord's employees by reason of any of the matters set forth in the preceding sentence that creates an obligation under the preceding sentence for Tenant to defend, Tenant, on notice from Landlord, shall defend Landlord and Landlord's employees at Tenant's sole cost and expense with competent and licensed legal counsel reasonably satisfactory to Landlord, but selected by Tenant. The provisions of this Paragraph 11.1 shall survive Lease end.

11.2. Indemnity by Landlord. Subject to Paragraph 12.3, Landlord shall indemnify, defend and hold harmless Tenant and Tenant's agents, officers and employees from and against all demands, claims, causes of action, judgments, losses, damages, liabilities, fines, penalties, costs and expenses, including attorneys' fees, arising from either of the following:

(a) the occupancy, management, operation or use of any portion of the Property (other than the Premises) by Landlord or Landlord's employees, agents or contractors (including, without limitation, any slip and fall or other accident on the Property involving Landlord or Landlord's employees, agents or contractors), unless directly and proximately caused by Tenant or Tenant's Occupants; or

(b) any Hazardous Materials deposited, released or stored by Landlord or Landlord's employees, agents or contractors on the Property.

If any action or proceeding is brought against Tenant or Tenant's employees by reason of any of the matters set forth in the preceding sentence that creates an obligation under the preceding sentence for Landlord to defend, Landlord, on notice from Tenant, shall defend Tenant and Tenant's employees at Landlord's sole cost and expense with competent and licensed legal

counsel reasonably satisfactory to Tenant, but selected by Landlord. The provisions of this Paragraph 11.2 shall survive Lease end.

Notwithstanding anything contained in this Paragraph 11 to the contrary, the indemnities set forth in this Paragraph 11 shall not cover employees of Federal Express, United Parcel Service, the United States Postal Service or other mail/package courier companies who enter onto the Property to service multiple tenants of the Building or the Building generally.

12. Insurance.

12.1. Tenant's Insurance. On or before the date of this Lease, Tenant shall, at Tenant's sole cost and expense, procure and continue in force the following insurance coverage:

(a) commercial general liability insurance covering the Premises and Tenant's interests in the Common Areas with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and at least a \$2,000,000 umbrella;

(b) property insurance with special causes of loss including theft coverage, insuring against fire, extended coverage risks, vandalism and malicious mischief, and including boiler and sprinkler leakage coverage, in an amount equal to the full replacement cost (without deduction for depreciation) of Tenant's Property; and

(c) workers' compensation insurance satisfying Tenant's obligations under the workers' compensation laws of the state of Utah, and other insurance required by Laws for the protection of employees of Tenant working on or around the Property with no less than the limits required by Laws,

and furnish Landlord with certificates of coverage of such insurance. Such minimum limits shall in no event limit the liability of Tenant under this Lease. Such liability insurance shall name Landlord as an additional insured, and both such liability and property insurance shall be with companies authorized to do business in Utah and having a rating of not less than A:XII in the most recent issue of Best's Key Rating Guide, Property-Casualty. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage that Landlord may carry, and shall only be subject to reasonable deductibles. Tenant may maintain all or any part of the insurance required pursuant to this Lease in the form of a blanket policy covering other locations in addition to the Premises, and Tenant may satisfy its obligations under this Lease with its umbrella policies. Tenant shall, at least ten (10) days prior to the expiration of such policies or as soon thereafter as the same are received by Tenant, furnish Landlord with renewed certificates of insurance. Landlord shall use its best efforts to impose the foregoing insurance requirements on all tenants of the Building.

12.2. Landlord's Insurance. Landlord shall, as part of Operating Expenses, procure and continue in force:

(a) commercial general liability insurance with a combined single limit for bodily injury and property damage covering the entire Property of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and at least a \$5,000,000 umbrella;

(b) at least basic form property insurance covering the Building for its full replacement cost, subject to such reasonable deductibles as Landlord may select, together with rental income insurance in a reasonable amount;

(c) any insurance required by Laws for the protection of employees of Landlord working on or around the Property (including, without limitation, worker's compensation insurance) with no less than the limits required by Laws; and

(d) such other reasonable insurance as may reasonably be (i) deemed prudent by Landlord, (ii) required by Landlord's mortgage lender, or (iii) carried by landlords in Comparable Buildings.

Such minimum limits shall in no event limit the liability of Landlord under this Lease. All such insurance shall be with companies authorized to do business in Utah and having a rating of not less than A:XII in the most recent issue of Best's Key Rating Guide, Property-Casualty.

12.3. Waiver of Subrogation. Tenant shall cause the property insurance policy required to be carried by Tenant pursuant to Paragraph 12.1(b), and Landlord shall cause the property insurance policy required to be carried by Landlord pursuant to Paragraph 12.2(b), to be written in a manner so as to provide that the insurance company waives all right of recovery by way of subrogation against the other Party in connection with any loss or damage covered by such policy. Regardless of whether such waivers are included in the applicable property insurance policies, and notwithstanding any other provision of this Lease to the contrary:

(a) Tenant waives (with the intent that the waiver be effective against Tenant itself and against any third party claiming by, through or under Tenant, including any insurance company claiming by way of subrogation) all rights that Tenant may have now or in the future against Landlord for compensation for any damage to or destruction of Tenant's Property caused by fire or other casualty to the extent that Tenant is or will be compensated by property insurance or would be but for a failure of Tenant to maintain property insurance for the full replacement cost of Tenant's Property (excluding a reasonable deductible) that is required to be carried by Tenant pursuant to Paragraph 12.1(b); and

(b) Landlord waives (with the intent that the waiver be effective against Landlord itself and against any third party claiming by, through or under Landlord, including any insurance company claiming by way of subrogation) all rights that Landlord may have now or in the future against Tenant for compensation for any damage to or destruction of the Building caused by fire or other casualty to the extent that Landlord is or will be compensated by property insurance or would be but for a failure of Landlord to maintain property insurance for the full replacement cost of the Building (excluding a reasonable deductible) that is required to be carried by Landlord pursuant to Paragraph 12.2(b).

The foregoing provisions of this Paragraph 12.3 shall survive Lease end.

13. Damage and Destruction.

13.1. Repair. If the Premises are damaged or destroyed by any casualty, then unless this Lease is terminated in accordance with this Paragraph 13, Landlord shall, as soon as reasonably practicable, in a reasonable, good and workmanlike manner and in accordance with Laws, repair the Premises to the condition in which the Premises were immediately prior to such damage or destruction; *provided, however*, that Landlord shall not be required to repair any damage to, or to make any restoration or replacement of, Tenant's Property. If Tenant does not occupy the Premises during the period of such repairs, then during such period, Landlord shall regularly communicate with Tenant regarding the progress of such repairs so that Tenant can reasonably plan for the recommencement of Tenant's occupancy of the Premises. Landlord shall permit Tenant and its agents to enter the Premises during the thirty (30)-day period prior to the completion of such repairs to prepare the Premises for Tenant's use and occupancy, including the installation of Tenant's Property. Any such permission shall constitute a license only and shall be subject to the conditions set forth in Paragraph 4 of the attached Exhibit A.

13.2. Abatement. Until such repair is complete or this Lease is terminated in accordance with this Paragraph 13, Rent shall be abated proportionately commencing on the date of such damage or destruction as to that portion of the Premises rendered untenantable by such damage or destruction, if any; *provided*, that if only a portion of the Premises is damaged, but such damage causes the entire Premises to be untenantable, the entire Rent shall be abated. If the damage is caused by the negligence or willful misconduct of Tenant or Tenant's Occupants, Rent shall not abate except to the extent of

rental income insurance proceeds relating to this Lease actually received by Landlord, or which would have been received by Landlord had Landlord carried the rental income insurance required to be carried by Landlord pursuant to Paragraph 12.2. Landlord shall use its best efforts to collect such insurance proceeds. If Landlord elects to repair any such damage and Tenant has not elected to terminate this Lease as provided below, any abatement of Rent shall end on the date on which a factually correct notice is given by Landlord to Tenant that the Premises have been repaired, and exclusive possession of the Premises is delivered to Tenant.

13.3. Termination by Landlord. If:

- (a) the Premises are damaged as a result of a risk not required to be covered by insurance;
- (b) the Premises are damaged in whole or in part during the last twelve (12) months of the Term existing as of the date immediately prior to such damage or destruction;
- (c) the Building (whether or not the Premises are damaged) is damaged to the extent of forty percent (40%) or more of its then-replacement value;
- (d) the Premises are damaged to the extent that it would take, according to the reasonable estimate of Landlord's architect or contractor, in excess of nine (9) months after the date on which such damage occurs to complete the requisite repairs; or
- (e) insurance proceeds adequate to repair the Property are not available to Landlord for any reason beyond Landlord's reasonable control (other than any applicable deductible amount) (excluding Landlord's failure to carry the insurance required under Paragraph 12.2),

then Landlord may either elect to repair the damage or terminate this Lease by notice of termination given to Tenant within thirty (30) days after such event, so long as Landlord terminates leases in the Building covering an aggregate of at least seventy-five percent (75%) of the rentable square footage of the Building.

13.4. Termination by Tenant. If the Premises are damaged, Landlord shall provide to Tenant as soon as reasonably practicable, but in no event later than thirty (30) days after the occurrence of such damage, a reasonable estimate of Landlord's architect or contractor, setting forth the estimated time required to complete the requisite repairs. If the Premises are damaged to the extent that it would take, according to such estimate, in excess of six (6) months after the date on which such damage occurs, or three (3) months after the date on which such damage occurs if such damage occurs within the last twelve (12) months of the Term, to complete the requisite repairs, and the Premises or a material portion thereof would be untenable for such six (6)-month or three (3)-month period, respectively, Tenant may elect to terminate this Lease by notice of termination given by Tenant to Landlord within thirty (30) days after Landlord provides to Tenant such estimate. If Tenant has the right to, but does not, terminate this Lease pursuant to the immediately preceding sentence, but, subject to force majeure, Landlord fails to repair or restore the Building and Premises within thirty (30) days after the later of (a) the date set forth in such estimate, or (b) the expiration of such six (6)-month or three (3)-month period, respectively, then Tenant may terminate this Lease as of the date of such damage by giving notice of such termination to Landlord within thirty (30) days after the expiration of such thirty (30)-day period.

13.5. On Termination. If this Lease is terminated pursuant to Paragraphs 13.3 or 13.4, Tenant shall vacate and surrender the Premises to Landlord as soon as reasonably practicable in accordance with Paragraph 17.1, but in no event later than thirty (30) days after Tenant receives or gives a notice of termination. If this Lease is so terminated, Landlord shall return the Security Deposit to Tenant in accordance with Paragraph 6.

14. Condemnation.

14.1. Termination. If the whole of the Premises is taken through a Condemnation Proceeding, this Lease shall automatically terminate as of the date of the taking. The phrase “*the date of the taking*” means the date of taking actual physical possession by the condemning authority, the entry of an order of occupancy or such earlier date as the condemning authority gives notice that it is deemed to have taken possession. If part, but not all, of the Premises is taken, either Party may terminate this Lease as set forth in this Paragraph 14.1. Landlord may terminate this Lease if any portion of the Property (whether or not including the Premises) is taken that, in Landlord’s reasonable judgment, substantially interferes with Landlord’s ability to operate or use the Property for the purposes for which the Property was intended, so long as Landlord terminates leases in the Building covering an aggregate of at least seventy-five percent (75%) of the rentable square footage of the Building. Tenant may terminate this Lease if any portion of the Property (not including the Premises) is taken that terminates all reasonably acceptable physical access to and from the Premises and the public rights-of-way abutting the Property, and Landlord fails to provide reasonably acceptable substitute access.

Any such termination must be accomplished through notice given no later than thirty (30) days after, and shall be effective as of, the date of the taking. If this Lease is so terminated, Landlord shall return the Security Deposit to Tenant in accordance with Paragraph 6.

14.2. Restoration. In all other cases, or if neither Landlord nor Tenant exercises its right to terminate, this Lease shall remain in effect and Landlord shall restore the remaining portion of the Property and, to the extent affected thereby, the Building and the Premises to the extent of Building standard improvements, to its and their former condition as nearly as is reasonably practicable, and any condemnation award paid in connection with such taking shall be used to the extent necessary for such purpose.

14.3. General. If a portion of the Premises is taken and this Lease is not terminated, Rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises immediately prior to such taking. Whether or not this Lease is terminated as a consequence of a Condemnation Proceeding, all damages or compensation awarded for a partial or total taking, including any award for severance damage and any sums compensating for diminution in the value of or deprivation of the leasehold estate under this Lease, shall be the sole and exclusive property of Landlord; *provided*, that Tenant shall be entitled to any award for loss of, or damage to, Tenant’s Property, loss of business and moving expenses, if a separate award is actually made to Tenant.

15. Landlord’s Financing. Within ten (10) business days after Landlord’s request, Tenant shall execute a subordination, non-disturbance and attornment agreement or other similar document, subordinating this Lease to any mortgage, deed of trust or similar instrument covering the Property, and providing a non-disturbance agreement in favor of Tenant, all in reasonable form and substance reasonably satisfactory to Tenant and the lender concerned. If the holder of any mortgage or deed of trust elects to have this Lease superior to the lien of its mortgage or deed of trust and gives written notice of such election to Tenant, this Lease shall be deemed prior to such mortgage or deed of trust, whether such notice is given before or after foreclosure. On any sale, assignment or transfer of Landlord’s interest under this Lease or in the Premises, including any such disposition resulting from Landlord’s default under a debt obligation, Tenant shall attorn to Landlord’s successors and assigns and shall recognize such successors or assigns as Landlord under this Lease, regardless of any rule of law to the contrary or absence of privity of contract, provided that such successors and assigns recognize this Lease and do not disturb Tenant’s use and occupancy of the Premises so long as no Tenant Default exists under this Lease. On Tenant’s request, Landlord shall use its best efforts to obtain a subordination, non-disturbance and attornment agreement in favor of Tenant from Landlord’s current mortgage lender in form and substance reasonably satisfactory to the Parties and such lender, and Tenant shall be solely responsible for any costs, expenses or fees payable in connection therewith.

16. Default.

16.1. Tenant Default. The occurrence of any of the following events shall constitute a “*Tenant Default*” under this Lease:

(a) Tenant fails to pay any Rent or other sum on the date when due under this Lease, and such failure is not cured within five (5) business days after notice is given to Tenant that the same is past due;

(b) Tenant fails to observe or perform any other term, covenant or condition to be observed or performed by Tenant on the date when due under this Lease, and such failure is not cured within ten (10) business days after notice is given to Tenant of such failure; *provided, however*, that if more than ten (10) business days is reasonably required to cure such failure, no Tenant Default shall occur if Tenant commences such cure within such ten (10)-business day period and thereafter diligently prosecutes such cure to completion;

(c) Tenant or any guarantor of this Lease (i) files a petition in bankruptcy, (ii) becomes insolvent, (iii) has taken against it in any court, pursuant to state or federal statute, a petition in bankruptcy or insolvency or for reorganization or appointment of a receiver or trustee (and such petition is not dismissed within sixty (60) days), (iv) petitions for or enters into an arrangement for the benefit of creditors, or (v) suffers this Lease to become subject to a writ of execution;

(d) Tenant vacates the Premises, if such vacation would adversely affect or render void the property insurance carried by Landlord on the Building; *provided, however*, that if the sole, adverse effect caused by such vacation is an increase in the premium for such property insurance and Tenant pays the incremental amount of such increase within ten (10) business days after notice thereof, such vacation shall not be a Tenant Default under this Lease; or

(e) any guarantor of this Lease attempts to rescind or terminate its guaranty.

16.2. Remedies.

(a) On any Tenant Default under this Lease, Landlord may at any time, without waiving or limiting any other right or remedy available to Landlord:

(i) perform in Tenant’s stead any obligation that Tenant has failed to perform, and Landlord shall be reimbursed within ten (10) business days after demand for any reasonable cost incurred by Landlord, with interest thereon at the Default Rate from the date of such expenditure until paid in full, with interest;

(ii) terminate Tenant’s rights under this Lease by at least five (5) days’ additional written notice and opportunity to cure;

(iii) reenter and take possession of the Premises by any lawful means (with or without terminating this Lease); or

(iv) pursue any other remedy allowed by Law.

(b) Tenant shall pay to Landlord the reasonable cost of recovering possession of the Premises, all reasonable costs of reletting (including reasonable renovation, remodeling and alteration of the Premises in a manner that is typical and customary for Comparable Buildings), the reasonable amount of any commissions paid by Landlord in connection with such reletting, and all other reasonable costs and damages proximately caused by the Tenant Default, including attorneys’ fees and costs actually incurred, and shall repay to Landlord all free rent and any other similar concession given to Tenant; *provided, however*, that for purposes of Tenant’s liability under the foregoing portion of this sentence, such costs of

reletting and commissions (only) shall be amortized over the initial term of the new lease, with interest thereon at the Interest Rate, and Tenant shall be liable only for that portion so amortized falling within the remaining portion of the Term.

(c) Notwithstanding any termination or reentry, the liability of Tenant for Rent payable under this Lease shall not be extinguished for the balance of the Term, and Tenant agrees to compensate Landlord on demand for any deficiency (which deficiency shall be reduced by all amounts actually received by Landlord from reletting the Premises). In the event of a Tenant Default, Landlord shall use its best efforts to mitigate its damages in accordance with Utah law.

(d) No reentry or taking possession of the Premises or other action by Landlord or Landlord's employees, agents or contractors on or following the occurrence of any Tenant Default shall be construed as an election by Landlord to terminate this Lease or as an acceptance of any surrender of the Premises, unless Landlord provides Tenant notice of such termination or acceptance.

16.3. Past Due Amounts.

(a) If Tenant fails to pay when due any amount required to be paid by Tenant under this Lease, such unpaid amount shall bear interest at the Default Rate from the due date of such amount to the date of payment in full, with interest.

(b) Notwithstanding the foregoing to the contrary, such interest shall not apply if the failure by Tenant to pay when due any amount required to be paid by Tenant under this Lease is cured within three (3) business days after the date on which Landlord gives Tenant written or verbal notice of such failure; *provided*, that such three (3)-day notice and cure period shall not be applicable more than once in any twelve (12)-month period. Therefore, on the second time in any twelve (12)-month period that Tenant fails to pay when due any amount required to be paid by Tenant under this Lease, such interest and late payment charge will be due and payable by Tenant and such notice and cure period will be inapplicable. (Such notice and cure period applies only to such interest and late payment charge.)

(c) All amounts due under this Lease are and shall be deemed to be rent or additional rent, and shall be paid without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand. Landlord shall have the same remedies for a failure to pay any amount due under this Lease as Landlord has for the failure to pay Basic Monthly Rent.

16.4. Landlord Default. Landlord shall be in default under this Lease (a "**Landlord Default**") if Landlord fails to perform an obligation required of Landlord, or to correct a representation or warranty of Landlord made, under this Lease within thirty (30) days after notice by Tenant to Landlord and the holder of any mortgage or deed of trust covering the Property whose name and address have been furnished to Tenant, specifying the respects in which Landlord has failed to perform such obligation, and such holder fails to perform such obligation within a second thirty (30)-day period commencing on the expiration of such first thirty (30)-day period; *provided, however*, that if the nature of such obligation is such that more than thirty (30) days are reasonably required for performance or cure, no Landlord Default shall occur if Landlord or such holder commences performance or cure within its thirty (30)-day cure period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Lease or withhold the payment of rent or other charges provided for in this Lease as a result of a Landlord Default, unless Tenant first obtains a judicial order expressly authorizing Tenant to do so pursuant to a judicial proceeding, notice of which has been given to Landlord by personal service as required by the Utah Rules of Civil Procedure for such proceeding. Subject to the foregoing provisions of this Paragraph 16.4 and to the provisions of Paragraph 22.8, in the event of a Landlord Default, Tenant shall have the right to pursue all rights and remedies (legal and equitable) available to Tenant under Utah law. Notwithstanding the foregoing portion of this Paragraph 16.4, on receipt of any notice of default from Tenant, Landlord shall promptly commence, and thereafter diligently prosecute to completion,

the cure of such default, whether or not Tenant gives notice of such default to the holder of any mortgage or deed of trust covering the Property whose name and address have been furnished to Tenant.

17. Expiration and Termination.

17.1. Surrender of Premises.

(a) Prior to Lease end, Tenant shall, at Tenant's sole cost and expense:

(i) remove only Tenant's Property; *provided, however,* that Tenant shall not remove Tenant's Property from the Premises without Landlord's prior consent if such removal will impair or damage the structure of the Building;

(ii) repair any damage to the Property caused by or in connection with the removal of any property from the Premises by or at the direction of Tenant; and

(iii) deliver all keys and access cards to the Premises to Landlord, and promptly and peaceably surrender the Premises to Landlord "broom clean," in good order and condition, subject to normal and reasonable wear and tear and the other provisions of this Lease regarding maintenance, repair, casualty, condemnation, insurance and indemnification.

(b) Any of Tenant's Property not removed from the Premises on the abandonment of the Premises or on Lease end for any cause shall conclusively be deemed to have been abandoned and may be appropriated, removed, sold, stored, destroyed or otherwise disposed of by Landlord without notice to, and without any obligation to account to, Tenant or any other person unless required to do so by Laws. Tenant shall pay to Landlord all reasonable expenses incurred in connection with the removal and disposition of such Tenant's Property in excess of any amount received by Landlord from such removal and disposition.

(c) In addition, Landlord may require Tenant to remove any other Alteration made to the Premises by Tenant or by Landlord for Tenant and to restore the Premises to their condition prior to making such Alteration; *provided,* that, except as set forth in subparagraph (a)(i) above with respect to Tenant's Property, Tenant shall have no obligation to remove:

(i) the Tenant Improvements made pursuant to Exhibit A; or

(ii) any other Alteration made by Tenant with Landlord's prior consent if, but only if, at the time such consent was given and prior to installation, Tenant also obtained Landlord's express consent and agreement to such Alteration remaining in the Premises at Lease end.

17.2. Holding Over.

(a) Tenant must obtain the prior consent of Landlord in order to remain in possession of the Premises after Lease end. If Tenant remains in possession of the Premises after Lease end *without* obtaining the prior consent of Landlord:

(i) such holdover shall not be deemed to be a renewal of this Lease but shall be deemed to create a month-to-month term which may be terminated by either party on twenty (20) days' written notice to the other party. In the event that any such holdover exists, all of the terms and provisions of this Lease shall be applicable during such

holdover period, except that Tenant shall pay one hundred twenty-five percent (125%) of the Rent in effect on the termination date computed on a daily basis for each day of the holdover period.; and

(ii) Tenant shall reimburse Landlord within thirty (30) business days after the receipt of an invoice therefor, accompanied by such detail as may reasonably be requested by Tenant, for all reasonable out-of-pocket costs, expenses, fees, charges or penalties incurred or payable by Landlord in connection with any other tenant or lease for the Premises resulting from the delay by Tenant in surrendering the Premises in accordance with the provisions of this Lease, including, without limitation, penalties or holdover rent paid or credit given to the next tenant for the Premises as a result of late delivery to such tenant of the Premises.

(b) If Tenant remains in possession of the Premises after Lease end *with* the prior consent of Landlord, such occupancy shall be a tenancy from month-to-month on all of the terms of this Lease and provisions of Utah law applicable to a month-to-month tenancy (which tenancy shall be terminable as of the end of any calendar month by written notice given by either Party to the other at least fifteen (15) days prior to the end of the month concerned) at a rental (and not as a penalty) in the amount of one hundred twenty-five percent (125%) of the last Rent payable by Tenant to Landlord each month of such occupancy thereafter, plus all other charges payable under this Lease.

(c) Notwithstanding anything contained in this Paragraph 17.2 to the contrary, on any termination of this Lease pursuant to Paragraphs 13 or 14, Tenant shall have up to thirty (30) days to surrender the Premises after the effective date of such termination, and the provisions of this Paragraph 17.2 shall not be applicable until after the expiration of such thirty (30)-day period.

17.3. Survival. The provisions of this Paragraph 17 shall survive Lease end.

18. Estoppel Certificate; Financial Statements.

18.1. Estoppel Certificate. Either Party shall, within ten (10) business days after request by the other Party, execute and deliver to the requesting Party an estoppel certificate in commercially reasonable form in favor of the requesting Party and such other persons as the requesting Party may reasonably request setting forth the following:

(a) a ratification of this Lease;

(b) the Commencement Date and Expiration Date;

(c) that this Lease is in full force and effect and (if Landlord is the responding Party, to Landlord's current, actual knowledge) this Lease has not been assigned, subleased, modified, supplemented or amended (except by such writing as shall be stated);

(d) that, to the current, actual knowledge of the responding Party, all conditions under this Lease to be performed by the requesting Party have been satisfied or, in the alternative, those claimed by the responding Party to be unsatisfied;

(e) that, to the current, actual knowledge of the responding Party, no defenses, claims or offsets exist against the enforcement of this Lease by the requesting Party or, in the alternative, those claimed by the responding Party to exist;

(f) that, to the current, actual knowledge of the responding Party, the responding Party is not in default under this Lease;

- (g) that (if true) Tenant has accepted and occupied the Premises;
- (h) the amount of advance Rent, if any (or none if such is the case), paid by Tenant;
- (i) the date to which Rent has been paid;
- (j) the amount of the Security Deposit; and
- (k) such other factual information reasonably related to this Lease as the requesting Party may

reasonably request.

The requesting party and third parties reasonably designated by the requesting Party shall be entitled to rely on any such estoppel certificate. Any estoppel certificate executed and delivered by Tenant shall also be executed by any guarantor of this Lease, along with a confirmation of the guaranty concerned.

18.2. Intentionally Omitted.

19. Parking. Tenant shall pay as additional rent an amount equal to \$200 for each voucher booklet containing a selection of full day and half-day parking validations totaling 50 full days, as requested by Tenant from time to time.

20. Landlord's Representations and Warranties.

20.1. Representations and Warranties. Landlord represents and warrants to Tenant that (unless otherwise expressly indicated) as of the date of this Lease:

(a) (i) Landlord has good and marketable fee simple title to the Premises and the Property, with full right and authority to lease the Premises to Tenant;

(ii) there are no liens, encumbrances or other matters affecting such title that would interfere with the Permitted Use;

(iii) the Property is zoned to permit the Permitted Use; and

(iv) to Landlord's current, actual knowledge, there are no covenants, restrictions or other agreements that would interfere with the Permitted Use;

(b) to Landlord's current, actual knowledge:

(i) the Property has not been used to treat, store, process or dispose of Hazardous Materials;

(ii) there are no releases nor have there ever been any releases of Hazardous Materials at, on or under the Property that would give rise to a cleanup or remediation obligation under any applicable Environmental Laws; and

(iii) the Property does not contain (A) any underground storage tanks, nor have there ever been any underground storage tanks on the Property, (B) asbestos in any form, including insulation or flooring, (C)

PCB-containing equipment, including transformers or capacitors, or (D) any other Hazardous Materials that could affect or impair Tenant's use of or operations at the Property or the health or safety of Tenant's employees,

and notwithstanding anything contained in this Lease to the contrary, Tenant shall have no liability of any kind to Landlord for any pre-existing Hazardous Materials located on the Property as of the date of this Lease, or for any Hazardous Materials that migrate onto or under the Property or otherwise become present at the Property as the result of the activities of anyone other than Tenant or Tenant's Occupants;

(c) to Landlord's current, actual knowledge, the Building (including the Premises) complies (and will, as of the Commencement Date, comply) with Laws and any covenants, conditions and restrictions affecting the Building;

(d) to Landlord's current, actual knowledge, as of the Commencement Date:

(i) the Building (including the Premises) will be free from any material defect in materials or workmanship;

(ii) the Premises will be in good, structurally sound condition and watertight;

(iii) the Building utilities and mechanical, electrical and HVAC systems will be in good, working condition and repair; and

(iv) the fire sprinklers in the Building (including in the Premises) will have adequate flow and pressure in accordance with the regulations of the National Fire Protection Association;

(e) no pending Condemnation Proceeding relating to or affecting the Property exists, and Landlord has no current, actual knowledge that any such action is presently threatened or contemplated; and

(f) as of the Commencement Date, Tenant shall have exclusive possession of the Premises.

20.2. Remedy. If any representation or warranty set forth in Paragraph 20.1 is inaccurate or untrue as of the date when made, Landlord's sole and exclusive obligation and liability (and Tenant's sole and exclusive right and remedy) under this Paragraph 20 shall be to cause the condition causing such representation or warranty to be inaccurate or untrue to be corrected or remedied at Landlord's sole cost and expense, *subject, however,* to any provision of this Lease (such as, but without limitation, Paragraphs 7 and 9) expressly allocating responsibility to Tenant. Landlord shall so correct or remedy such condition as soon as reasonably practicable following notice of such condition. Notwithstanding anything herein to the contrary, failure to so remedy such condition within thirty (30) days after written notice from Tenant shall constitute a Landlord Default in accordance with Paragraph 16.4 and shall entitle Tenant to all remedies provided therein.

21. Rules. Tenant and Tenant's Occupants shall faithfully observe and comply with all of the rules set forth on the attached Exhibit B, and Landlord may from time to time amend, modify or make additions to or deletions from such rules in a reasonable and nondiscriminatory manner, consistent with Comparable Buildings; *provided,* that no such amendments, modifications, additions or deletions (either individually or in the aggregate) shall, without Tenant's prior consent:

(a) adversely affect Tenant's business operations as permitted under this Lease, Tenant's compliance with Laws, or Tenant's use of, or access to and from, the Premises;

(b) materially increase any of Tenant's obligations, or materially decrease any of Tenant's rights, under this Lease, or require the payment of any monies to Landlord; or

(c) conflict with any of the express provisions of this Lease.

Such amendments, modifications, additions and deletions shall be effective ten (10) business days after receipt by Tenant of notice, accompanied by a copy of such amendments, modifications, additions or deletions. Although Landlord shall use its best efforts to enforce such rules in a consistent and nondiscriminatory manner against all tenants of the Building (and shall promptly undertake to enforce such rules (without the obligation of bringing a lawsuit) on receipt of notice from Tenant of another tenant's or occupant's breach of the rules that is disturbing Tenant or Tenant's Occupants), Landlord shall not be responsible to Tenant for the failure of any other tenant or person to observe such rules. In the event of any conflict between such rules and the provisions of this Lease, the provisions of this Lease shall prevail.

22. General Provisions.

22.1. No Partnership. Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of Tenant's business or otherwise.

22.2. Force Majeure. If either Party is delayed or hindered in or prevented from the performance of any act required under this Lease by reason of acts of God, weather, strikes, boycotts, lockouts, other labor troubles (other than within such Party's organization), inability to procure labor or materials, fire or other casualty, accident, failure of power, governmental requirements, restrictive Laws of general applicability, riots, civil commotion, insurrection, terrorism, war or other reason not the fault of the Party delayed, hindered or prevented and beyond the control of such Party (financial inability excepted) (any of the foregoing, "*force majeure*"), performance of the action in question shall be excused for the period of delay and the period for the performance of such action shall be extended for a period equivalent to the period of such delay; *provided, however*, that the time period customarily associated with obtaining any approvals, permits, consents or waivers shall not be an event of force majeure. The provisions of this Paragraph 22.2 shall not, however, operate to excuse Tenant from the prompt payment of Rent or any other amount required to be paid by Tenant under this Lease, or excuse Landlord from the prompt payment of any amount required to be paid by Landlord under this Lease. The Party claiming the benefit of any force majeure delay shall use its best efforts to notify the other Party promptly following the occurrence of any event constituting a force majeure delay.

22.3. Notices. Unless otherwise expressly provided in this Lease, any communication to be given by either Party to the other shall be given in writing by personal service, express mail, Federal Express or any other similar form of courier or delivery service providing proof of delivery, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

If to Landlord:

Fielding Group, LLC
35 North Rio Grande
Salt Lake City, UT 84101
Attention: Randy Shumway

with a required copy to:

the holder of any mortgage or deed of trust covering the Property

and to:

Matthew T. Wirthlin, Esq.
Holland & Hart LLP
222 South Main, Suite 2200
Salt Lake City, Utah 84101

If to Tenant:

Prior to the Commencement Date:

Central Wasatch Commission
c/o Jones Waldo Holbrook & McDonough, P.C.
170 South Main Street, Suite 1500
Salt Lake City, UT 84101

After the Commencement Date:

Central Wasatch Commission
41 North Rio Grande Street, Suite 202
Salt Lake City, Utah 84101
Attn: Ralph Becker

And to:

Wm. Shane Topham
Jones Waldo Holbrook & McDonough, P.C.
170 South Main Street, Suite 1500
Salt Lake City, UT 84101

Either Party may change the address at which such Party desires to receive notice on notice of such change to the other Party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; *provided, however*, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice. Notwithstanding the foregoing, communications under this Lease may also be delivered via fax (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after faxing). Such fax notice given in the foregoing manner shall be deemed given upon confirmed transmission if sent by fax transmission, provided such transmission is prior to 5:00 p.m. on a business day. If such transmission is after 5:00 p.m. on a business day or is on a non-business day, such notice will be deemed given on the following business day. Any notice to be given by either Party may be given by such Party's employee, attorney or other agent.

22.4. Severability. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which such provision is held invalid shall not be affected by such invalidity. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by Laws.

22.5. Brokerage Commissions.

(a) Landlord represents and warrants to Tenant that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Lease based on any agreement made by Landlord; and

(b) Tenant represents and warrants to Landlord that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Lease based on any agreement made by Tenant.

Landlord shall indemnify, defend and hold harmless Tenant from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Lease based on an actual or alleged agreement made by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Lease based on an actual or alleged agreement made by Tenant.

22.6. Use of Pronouns. The use of the neuter singular pronoun to refer to either Party shall be deemed a proper reference even though either Party may be comprised of one or more persons. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where more than one Party exists and to two or more persons, shall in all instances be assumed as though in each case fully expressed. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another.

22.7. Successors. Subject to Paragraph 10, all provisions contained in this Lease shall be binding on, and shall inure to the benefit of, the Parties and their respective successors and assigns; *provided, however*, that on and after any sale of the Premises and assignment of this Lease by Landlord and assumption in writing of this Lease by the transferee, Landlord shall be relieved entirely of all of Landlord's obligations under this Lease to the extent arising after such sale, assignment and assumption, and such obligations shall automatically pass to Landlord's successor in interest.

22.8. Recourse by Tenant. Notwithstanding anything in this Lease to the contrary, Tenant shall look solely to the right, title and interest of Landlord in the Property, together with the rents, issues and profits, the proceeds of any sale or insurance carried by Landlord, and the awards of any Condemnation Proceeding, with respect to the Property, subject to the prior rights of the holder of any superior mortgage or deed of trust, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord on any Landlord Default, and no other asset of Landlord or any other person shall be subject to levy, execution or other procedure for the satisfaction of Tenant's remedies. Nothing contained in this Paragraph 22.8 shall limit or affect any right that Tenant may otherwise have to obtain injunctive relief or to exercise any other remedies or actions against Landlord that do not require Landlord to respond with other than Landlord's interest in the Property. The provisions of this Paragraph apply not only to claims under the express terms of this Lease, but also to claims of any kind whatsoever arising from the relationship between the Parties or any rights and obligations they may have relating to the Property or this Lease.

22.9. Quiet Enjoyment. On Tenant paying Rent and all other amounts payable by Tenant under this Lease and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed under this Lease within any applicable notice and cure period given to Tenant in this Lease, Tenant shall have quiet use and enjoyment of the Premises for the Term without interference, hindrance or interruption from Landlord, or anyone claiming by, through or under Landlord, subject to all of the provisions of this Lease.

22.10. No Waiver. No failure by either Party to insist on the strict performance of any covenant, duty or condition of this Lease or to exercise any right or remedy on a breach of this Lease by the other Party shall constitute a waiver of such covenant, duty, condition or breach. Either Party may, but shall not be obligated to, waive any covenant or duty of any other Party, or any of its rights, or any conditions to its obligations, under this Lease by notice to the other Party. No such waiver by either Party will imply or constitute its further waiver of the same or any other matter. No waiver shall affect or alter the remainder of this Lease, but each other covenant, duty and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequently-occurring breach. No act or thing done by Landlord or

Landlord's agents during the Term will be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender will be valid unless in writing signed by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord will not constitute a termination of this Lease unless Landlord has entered into a written agreement to that effect. No payment by either Party, or receipt from either Party, of a lesser amount than the Rent or other amount due will be deemed to be anything other than a payment on account of the earliest Rent or other amount due. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent or other amount, will be deemed an accord and satisfaction. The recipient will accept any check for payment without prejudice to its right to recover the balance of such Rent or other amount due or to pursue any other remedy available to such recipient.

22.11. Rights and Remedies. Except as expressly set forth in this Lease, the rights and remedies of the Parties shall not be mutually exclusive and the exercise of one or more of the provisions of this Lease shall not preclude the exercise of any other provision. The Parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach by either Party of any of the provisions of this Lease. The Parties' respective rights and obligations under this Lease shall be enforceable by specific performance, injunction or any other equitable remedy. Neither Landlord nor Tenant shall be liable to the other for any consequential, indirect, special, exemplary, punitive or similar damages under Paragraphs 11, 16.2 or 16.4 or any other provision of this Lease.

22.12. Authorization. Each entity Party represents and warrants that:

(a) the individual executing this Lease on behalf of such entity has full power and authority under such entity's governing documents to execute and deliver this Lease in the name of, and on behalf of, such entity and to cause such entity to perform its obligations under this Lease, without the consent of any third party;

(b) such entity is duly organized and in good standing under the Laws of the state of its formation; and

(c) such entity has the power and authority under Laws and its governing documents to execute and deliver this Lease and to perform its obligations under this Lease.

22.13. Attorneys' Fees. If any action, lawsuit, mediation, arbitration or proceeding, including bankruptcy proceeding, is brought to recover any Rent or other amount due under this Lease because of any Landlord Default or Tenant Default, to enforce or interpret any provision of this Lease, or for recovery of possession of the Premises, the Party prevailing in such action shall be entitled to recover from the other Party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including, without limitation, reasonable attorneys' fees, incurred by Landlord in any case or proceeding involving Tenant or any assignee or subtenant of Tenant as the debtor under or related to any bankruptcy or insolvency law. Landlord shall be responsible for all expenses, including, without limitation, reasonable attorneys' fees, incurred by Tenant in any case or proceeding involving Landlord as the debtor under or related to any bankruptcy or insolvency law. The foregoing provisions of this Paragraph 22.13 shall survive Lease end.

22.14. Merger. Neither the surrender of this Lease by Tenant nor the termination of this Lease by agreement of the Parties or as a result of a Tenant Default shall work a merger, and shall, at Landlord's option, either terminate any subleases of part or all of the Premises or operate as an assignment to Landlord of any of those subleases. Landlord's option under this Paragraph 22.14 may be exercised by notice to Tenant and all known subtenants in the Premises.

22.15. Anti-Terrorism.

(a) Tenant represents and warrants to Landlord that:

(i) Tenant and, to Tenant's actual knowledge, each person owning an interest in Tenant, is (A) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("*OFAC*") or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "*List*"), and (B) not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of United States law, regulation or Executive Order of the President of the United States;

(ii) to Tenant's actual knowledge, none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as defined below);

(iii) to Tenant's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly);

(iv) to Tenant's actual knowledge, none of the funds of Tenant has been derived from any unlawful activity with the result that the investment in Tenant is prohibited by Laws or that this Lease is in violation of Laws; and

(v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true at all times.

The term "*Embargoed Person*" means any person or government subject to trade restrictions under U.S. law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C.S. Appx. §1 *et seq.*, and any Executive Orders or regulations promulgated under it with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(b) Tenant agrees:

(i) to comply with all requirements of law applicable to Tenant relating to money laundering, anti-terrorism, trade embargos and economic sanctions, in effect now or after the date of this Lease;

(ii) to notify Landlord promptly in writing if any of the representations, warranties or covenants set forth in this Paragraph 22.15 are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached;

(iii) not knowingly to use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under this Lease; and

(iv) at the request of Landlord, to provide such information as may reasonably be requested by Landlord to determine Tenant's compliance with the terms of this Paragraph 22.15.

(c) Tenant's inclusion on the List at any time during the Term shall be a default under this Lease. Tenant shall not knowingly permit all or any portion of the Premises to be used or occupied by any person on the List or by any Embargoed Person (on a permanent, temporary or transient basis).

22.16. Entire Agreement. This Lease (including Exhibits A, B and C (with any Appendixes to Exhibit A) and the Guaranty attached to this Lease) exclusively encompasses the entire agreement of the Parties, and supersedes all

previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence. The Parties have not relied on any representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance (including, without limitation, one relating to square footage), made by or on behalf of any other Party or any other person whatsoever (including, without limitation, any real estate broker or agent), prior to the execution of this Lease. The Parties hereby waive all rights and remedies, at law or in equity, arising or that may arise as the result of a Party's reliance on any such representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance.

22.17. Construction. This Lease has been prepared by Landlord and its professional advisors and reviewed by Tenant and its professional advisors. Landlord, Tenant and their separate advisors believe that this Lease is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Party or against either Party merely because of such Party's efforts in preparing it. The Table of Contents and captions to the Paragraphs of this Lease are for convenience of reference only, do not define, limit or describe the scope or intent of any provisions of this Lease and shall not be deemed relevant in resolving questions of construction or interpretation under this Lease. Unless otherwise set forth in this Lease, all references to Paragraphs are to Paragraphs in this Lease. Exhibits referred to in this Lease and any addendums, riders and schedules attached to this Lease shall be deemed to be incorporated in this Lease as though a part of this Lease.

22.18. Miscellaneous. Tenant shall not record this Lease or a memorandum or notice of this Lease, and any such recordation by or at the direction of Tenant shall be void *ab initio* (from the beginning) and shall be a breach of this Lease. Any guaranty delivered in connection with this Lease is an integral part of this Lease and constitutes consideration given to Landlord to enter into this Lease. No amendment to this Lease shall be binding on either Party unless reduced to writing and signed by both Parties. This Lease shall be governed by and construed and interpreted in accordance with the laws (excluding the choice of laws rules) of the state of Utah. Venue on any action arising out of this Lease shall be proper only in the state or federal courts having jurisdiction over the county in which the Property is located. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES OR RELATED IN ANY WAY TO THE PROPERTY OR THE PARTIES' LANDLORD/TENANT RELATIONSHIP.** Time is of the essence of each provision of this Lease. If there is more than one Tenant named in this Lease (or if more than one Tenant at any time assumes this Lease), the liability of each such Tenant under this Lease for payment and performance according to this Lease shall be joint and several. The submission of this Lease to Tenant is not an offer to lease the Premises or an agreement by Landlord to reserve the Premises for Tenant. Landlord shall not be bound to Tenant until Tenant has duly executed and delivered duplicate original copies of this Lease to Landlord, and Landlord has duly executed and delivered one of those duplicate original copies to Tenant.

22.19. Non-Funding. The parties acknowledge that funds are not presently available for performance of this Agreement by Tenant beyond 30 June 2019. Tenant's obligation for performance of this Agreement beyond that date (or beyond the end of any of Tenant's future fiscal years within the term of this Agreement) is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or in the event there is a reduction in appropriations of Tenant, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on Tenant as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to Tenant of any kind whatsoever, and no right of action for damages or other relief shall accrue

to the benefit of Landlord or its successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

[Remainder of page intentionally left blank; signatures on following page]

THE PARTIES have executed this Lease on the respective dates set forth below, to be effective as of the date first set forth above.

LANDLORD:

Fielding Group, LLC, a Utah limited liability company

By _____
Randy Shumway, Manager

Date _____

TENANT:

Central Wasatch Commission,
an interlocal entity and political subdivision of the State of Utah

ATTEST:

By: _____
Ben McAdams, Secretary

By _____
Chris McCandless, Chair

Date _____

EXHIBIT A

to

LEASE

WORK LETTER

This Work Letter Agreement (“**Work Letter**”) is effective concurrently with that certain Lease Agreement (the “**Lease**”) between Fielding Group, LLC, as “Landlord”, and Central Wasatch Commission, as “Tenant”, relating to the Premises located at 41 North Rio Grande Street, Suite 202, Salt Lake City, Utah, which Premises are more fully identified in the Lease. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Lease.

For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. TENANT’S WORK. Except as noted in this Work Letter, Tenant shall not be required to make any improvements to the Premises. Tenant shall cooperate with Landlord in reviewing and approving plans and specifications in a timely fashion.

2. LANDLORD’S WORK - TENANT IMPROVEMENTS.

2.1. Tenant Improvements and Plans. Landlord’s work shall be defined to include all work required to make the Premises suitable for commercial occupancy in accordance with the Final Plans (defined below) (the “**Tenant Improvements**”).

2.2. Prior Occupancy Period/Commencement Date. Upon execution of the Lease, Landlord and its contractor shall commence and complete all Tenant Improvements in the Premises. Tenant will not be required to pay Basic Monthly Rent until the Commencement Date, and will not be allowed to conduct business operations in the Premises prior to the Commencement Date.

2.3. Approval of Plans and Specifications. Landlord and Tenant shall cooperate with Landlord’s architect to prepare plans and specifications for the Tenant Improvements which will: be compatible with the design, construction, and equipment of the Building; comply with all applicable Laws; be capable of logical measurement and construction; contain all such information as may be required for the construction of the Tenant Improvements, and the preparation of the Final Plans (defined below); and contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements. Landlord shall deliver the initial design/architectural plans and specifications (“**Plans and Specs**”) to Tenant as soon as they are prepared. Tenant shall review and provide comments to the Plans and Specs within two (2) business days after receipt thereof from the Landlord. Landlord shall cause the Landlord’s architect to prepare the final plans and specifications and shall deliver them to the Tenant for a final review (“**Final Plans**”). Tenant shall have two (2) business days to provide any final comments to the Final Plans, whereupon the Landlord shall finalize the Final Plans after Tenant input hereunder and give notice to Tenant that the Final Plans are adopted. . Within two (2) business days of adoption of the Final Plans, Tenant and Landlord shall meet together with Landlord’s architect, contractor and any related parties to value engineer the Tenant Improvements to meet the intended budget and to coordinate efforts. Thereafter, Tenant

shall dedicate at least one (1) hour per week to walk through the Premises with a representative of the Landlord, Landlord's architect and Landlord's contractor, to provide feedback on the construction of the Tenant Improvements.

2.4. Permits and Approvals. Landlord shall be responsible for obtaining all governmental approvals of the Final Plans to the full extent necessary for the issuance of a building permit(s) for the Tenant Improvements based upon such Final Plans. Thereafter, Landlord shall also cause to be obtained all other necessary approvals and permits from all governmental agencies having authority over the construction and installation of the Tenant Improvements in accordance with the approved Final Plans and shall undertake all steps necessary to insure that the construction of the Tenant Improvements is accomplished in strict compliance with all state or local laws, ordinances, rules and regulations applicable to such construction, and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease.

2.5. Construction Standards. All work with respect to the construction of the Tenant Improvements shall be done (1) in a good and workmanlike manner, (2) using only new, first class quality materials that are consistent and compatible in design and quality with the existing Building, (3) in accordance with the Final Plans and all applicable state, county, and municipal laws and ordinances, (4) in accordance with a timeline and critical path schedule approved by Tenant and Landlord, and (5) in accordance with a budget (including any modifications to the budget) and expenses that are approved by Tenant and Landlord. Landlord shall provide for the lien-free construction and completion of such work. All work with respect to the construction of the Tenant Improvements shall be done pursuant to a construction contract in Landlord's sole discretion. Landlord shall promptly cause any defective work objected to by Tenant to be corrected in a timely manner.

3. TENANT IMPROVEMENT ALLOWANCE.

3.1. Tenant Improvement Allowance. Landlord will pay a Tenant Improvement Allowance to be applied toward the cost of the construction of the Tenant Improvements and for no other purpose (the "**Tenant Improvement Allowance**"). The Tenant Improvement Allowance shall be paid directly from Landlord to Landlord's contractors performing the Tenant Improvements. If the cost of construction of the Tenant Improvements exceeds or is less than \$90,000, then the Basic Monthly Rent will be increased or reduced, as applicable, by one cent (\$.01) for every \$150 increment in which the actual cost of construction of the Tenant Improvements is more than or less than, as applicable, \$90,000.

3.2. Change Orders. In the event that Tenant requests, in writing, or approves of any material changes to the Final Plans including changes due to field conditions (each, a "**Change Order**"), Landlord shall not unreasonably withhold its consent to any such Change Order, provided the Change Orders do not affect the Building's structure, systems, equipment or appearance and do not result in the use of materials in the construction of Landlord's Work of a lesser quality than required hereunder.

4. MISCELLANEOUS.

A. This Work Letter shall be governed by the laws of the State of Utah.

B. This Work Letter may not be amended except by a written instrument signed by the party or parties to be bound thereby.

C. Any person signing this Work Letter on behalf of Tenant warrants and represents he/she has authority to sign and deliver this Work Letter and bind Tenant.

D. Notices under this Work Letter shall be given in the same manner as under the Lease.

E. The headings set forth herein are for convenience only.

F. Except as otherwise specifically set forth herein, this Work Letter sets forth the entire agreement of Tenant and Landlord regarding the Work.

[Remainder of Page Intentionally Left Blank]

THE PARTIES have executed this Work Letter on the respective dates set forth below, to be effective as of the date first set forth above.

LANDLORD:

Fielding Group, LLC, a Utah limited liability company

By _____
Randy Shumway, Manager

Date _____

TENANT:

Central Wasatch Commission,
an interlocal entity and political subdivision of the State of Utah

ATTEST:

By: _____
Ben McAdams, Secretary

By _____
Chris McCandless, Chair

Date _____

EXHIBIT B

to

LEASE

RULES

The rules set forth in this Exhibit are a part of the foregoing Office Lease (the "Lease"). Whenever the term "Tenant" is used in these rules, such term shall be deemed to include Tenant and Tenant's Occupants. The following rules may from time to time be modified by Landlord in the manner set forth in the Lease. The terms capitalized in this Exhibit shall have the same meaning as set forth in the Lease.

1. **Obstruction.** Any sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other common facilities of the Building shall not be obstructed by Tenant or used for any purpose other than ingress or egress to and from the Premises. Tenant shall not place any item in any of such locations, whether or not such item constitutes an obstruction, without the prior written consent of Landlord. Landlord may remove any obstruction or any such item without notice to Tenant and at the sole cost of Tenant. Any sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other common facilities of the Building are not for the general public, and Landlord shall in all cases retain the right to control and prevent access to them by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation or interests of the Property or Landlord's tenants. Tenant shall not go on the roof of the Building.

2. **Deliveries.** All deliveries and pickups of supplies, materials, garbage and refuse to or from the Premises shall be made only through such access as may be designated by Landlord for deliveries and only during the ordinary business hours of the Building. Tenant shall not obstruct or permit the obstruction of such access. Tenant shall be liable for the acts and omissions of any persons making such deliveries or pickups.

3. **Moving.** Furniture and equipment shall be moved in and out of the Building only through such access as may be designated by Landlord and then only during such hours and in such manner as may be prescribed by Landlord. If Tenant's movers damage any part of the Improvements, Tenant shall pay to Landlord on demand the amount required to repair such damage.

4. **Heavy Articles.** No safe or article, the weight of which may, in the reasonable opinion of Landlord, constitute a hazard of damage to the Building, shall be moved into the Premises. Other safes and heavy articles shall be moved into, from or about the Building only during such hours and in such manner as shall be prescribed by Landlord, and Landlord may designate the location of such safes and articles.

5. **Building Security.** On Saturdays, Sundays and legal holidays, and on other days between the hours of 6:00 p.m. that evening and 7:30 a.m. the following day, access to the Building, the halls, corridors, elevators or stairways in the Building or to the Premises will be locked and require a key card to enter the premises. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In the event of an invasion, mob, riot, public excitement or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors of the Building or any other reasonable method, for the safety of the tenants and protection of the Building and property in the Building. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Building. Tenant shall be entitled to receive a number of key cards for after-hours access to the Building. Tenant may also receive key fobs for a fee that will be not less than \$10 per key fob. Replacement cards for any key cards or key fobs that are lost or stolen may be issued by Landlord for a handling fee to be reasonably determined by Landlord, but such fee will not be less than \$25 per replacement card or fob.

6. Pass Key. The janitor of the Building may at all times keep a pass key to the Premises, and such janitor and other agents of Landlord shall at all times be allowed admittance to the Premises.

7. Locks, Access Cards and Keys. No additional lock or locks shall be placed by Tenant on any door in the Building and no existing lock shall be changed unless written consent of Landlord shall first have been obtained. A reasonable number of access cards and keys to the Premises and to the toilet rooms, if locked by Landlord, will be furnished by Landlord, and Tenant shall not have any additional access cards or keys made. At the termination of this tenancy, Tenant shall promptly return to Landlord all access cards and keys to offices and toilet rooms and provide Landlord with all combinations and keys for any locks, safes, cabinets and vaults remaining in the Premises. Tenant shall keep the doors of the Premises closed and securely locked when Tenant is not at the Premises.

8. Use of Water Fixtures. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended. No foreign substances of any kind shall be placed in them, and any damage resulting to the same from use on the part of Tenant shall be paid for by Tenant. No persons shall waste water by tying back or wedging the faucets or in any other manner. On leaving the Premises, Tenant shall shut off all water faucets and major electrical apparatus located within the Premises (but specifically excluding Tenant's data servers and similar equipment).

9. No Animals; Excessive Noise. No animals shall be allowed in the Building, other than service animals for disabled persons under the ADA. No persons shall disturb the occupants of the Building or adjoining buildings or space by the use of any electronic equipment or musical instrument or by the making of loud or improper noises.

10. Bicycles. Bicycles and other vehicles shall only be permitted in those areas designated by the Landlord for bicycle parking. Bicycles cannot be ridden inside the Building nor on the sidewalks outside the Building, except to access designated bicycle parking.

11. Trash. Tenant shall not allow anything to be placed on the outside of the Building, nor shall anything be thrown by Tenant out of the windows or doors, or down the corridors or ventilating ducts or shafts, of the Building. All trash and refuse shall be placed in receptacles provided by Landlord for the Building or by Tenant for the Premises.

12. Exterior Windows, Walls and Doors. No awnings shall be placed over the windows without Landlord's prior written consent.

13. Hazardous Operations and Items. Tenant shall not install or operate any steam or gas engine or boiler, or carry on any mechanical business in the Premises without Landlord's prior written consent. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or other inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord. Explosives or other articles deemed extra hazardous shall not be brought into the Building.

14. Hours for Repairs, Maintenance and Alteration. Any repairs, maintenance and alterations required or permitted to be done by Tenant under the Lease shall be done only during the ordinary business hours of the Building unless Landlord shall have first consented in writing to such work being done at other times. If Tenant desires to have such work done by Landlord's employees on Saturdays, Sundays, holidays or weekdays outside of ordinary business hours, Tenant shall pay the extra cost for such labor.

15. No Defacing of Premises. Except as permitted by Landlord by prior written consent (which consent Landlord shall not unreasonably withhold), Tenant shall not paint, mark on, place signs on, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions or floors of the Premises or of the Building, and any defacement, damage or

injury directly or indirectly caused by Tenant shall be paid for by Tenant. Pictures or diplomas shall be hung on tacks or small nails; Tenant shall not use adhesive hooks for such purposes.

17. Solicitation; Food and Beverages. Landlord reserves the right to restrict, control or prohibit canvassing, soliciting and peddling within the Building. No cooking shall be done or permitted by Tenant on the Premises. Tenant may use a microwave oven and coffee pot in connection with its use of the Premises. Tenant may install a refrigerator in the Premises, but shall not connect any water lines to such refrigerator without the prior written consent of Landlord. Notwithstanding anything herein to the contrary, Tenant may install vending machines on the Premises and/or provide food or concession services for Tenant's employees and/or guests.

18. Directory. Any bulletin board, directory or monument sign for Building tenants shall be provided exclusively for the display of the name and location of Building tenants only and Landlord reserves the right to exclude any other names. Landlord reserves the right to review and approve all signage and directory listings. Tenant shall pay Landlord's reasonable charges for changing any directory listing at Tenant's request.

19. Building Name. Landlord may, without notice or liability to Tenant, name the Building and change the name, number or designation by which the Building is commonly known. Tenant shall not use the name of the Building for any purpose other than the address of the Building.

20. Expulsion. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

21. Public Areas. Landlord may control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as Landlord deems best for the benefit of the tenants generally.