



CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Deputy City Manager of Operations
Chris Dodd, Facilities Services Manager
Andreana Campbell, Management Analyst

Date: May 6, 2021

Subject: PROPOSED LEASE OF REAL PROPERTY - 12801 NE 85th STREET

RECOMMENDATION:

That the City Council approve Resolution R-5477 authorizing the City Manager to execute a leases of real property as part of the Fire Proposition 1 Implementation Plan, providing for a temporary fire station while Station 22 in Houghton and Station 26 in Rose Hill are renovated at an estimated savings of \$1 million from the original temporary station estimates. By approving the consent agenda, Council will be authorizing the City Manager to execute the lease of the Rose Hill Plaza at 12801 NE 85th Street in Rose Hill.

BACKGROUND:

Late in 2020, staff began evaluating potential sites for a temporary fire station to house Firefighter/EMTs while Stations 22 in Houghton and 26 in Rose Hill are renovated. To reasonably maintain response times during renovation requires that the temporary station house three Firefighter/EMTs, an engine and possibly an aid car. Initially, staff were working through the logistics with WSDOT and King County Metro to build a temporary facility at the Houghton Park and Ride. TCA architects estimated a cost of roughly \$3.2 million to permit, build, operate, and lease the land needed for this temporary fire station.

Due to a high estimated cost and the fact that this temporary facility would need to be demolished and the pavement restored after the temporary periods staff began looking at alternative, and more cost-effective options for a temporary station, such as purchasing or renting a house/commercial building and/or leasing space in an already existing commercial building. The team has evaluated the options and recommends leasing space within the Rose Hill Plaza commercial building located at 12801 NE 85th Street in Rose Hill as a temporary station location.



Preliminary estimates to lease the commercial building are \$1.35 million over four years. At the May 4 Council meeting, Council adopted Resolution R-5474 authorizing the City Manager to execute the lease of the Longhouse Offices located at 10829 NE 68th Street in Houghton (as shown in the map below), very close to Station 22 to maintain travel times while Station 22 is being renovated. This twelve-hour aid car would be in addition to a cross-staffed aid car and fire engine and the Rose Hill temporary station on NE 85th and would be stationed at the Longhouse Offices during peak call hours from 0900 to 2100 (9:00am to 9:00pm) to respond to aid calls.



To lease both spaces, and staff the twelve-hour aid car with overtime beginning March 1, 2022 for the duration of Station 22's renovation, at an estimated cost of roughly \$500,000, the total cost of this recommendation is estimated at \$2.2 million, including a \$280,000 contingency. This is a savings of \$1 million from the preliminary estimates provided to the City from TCA Architects when evaluating the Houghton Park and Ride as the site of the temporary fire station. Staff is recommending that the \$1 million savings be set aside as a contingency for the fire station projects.

Staff is in the process of finalizing lease negotiations with the property owner. A draft lease is included as an attachment to the resolution. If Council authorizes the City Manager to enter into a lease agreement with substantially similar terms, staff will discontinue conversations with King County Metro and WSDOT to build a temporary station at the Houghton Park and Ride and thank both those organizations and Northwest University (who offered another potential location for the temporary aid car) for being great partners as staff explored options to work together.

RESOLUTION R-5477

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY LEASE AND LEASE AGREEMENT TO PROVIDE A TEMPORARY FIRE STATION WHILE STATION 22 IN HOUGHTON AND STATION 26 IN ROSE HILL ARE RENOVATED.

1 WHEREAS, The Council approved Resolution R-5474 at its
2 May 4 Council Meeting authorizing the City Manager to enter into
3 a lease agreement at the Longhouse Office located at 10829 NE
4 68th Street in Houghton and station a twelve-hour aid car to
5 maintain travel times in Station 22's area while Station 22 is
6 renovated; and
7

8 WHEREAS, staff also recommends leasing space within the
9 Rose Hill Plaza commercial building located at 12801 NE 85th
10 Street as a temporary station location to house firefighter/EMTs
11 while Stations 26 in Rose Hill and 22 in Houghton are renovated;
12 and
13

14 WHEREAS, staff has negotiated proposed Lease
15 Agreements as provided in the attached Exhibit A for the total
16 amount of \$1.35 million over four years to lease the space in Rose
17 Hill, and
18

19 WHEREAS, the estimated total cost of this recommendation
20 is \$2.2 million, including \$500,000 for the twelve-hour aid car and
21 a \$280,000 contingency, which provides a savings of \$1 million
22 from the preliminary estimates for using the Houghton Park and
23 Ride as the site of the temporary fire station. Staff is
24 recommending the \$1 million dollar savings be set aside as a
25 contingency for the Proposition 1 fire station projects.
26

27 NOW, THEREFORE, be it resolved by the City Council of the
28 City of Kirkland as follows:
29

30 Section 1. The City Manager is hereby authorized and
31 directed to execute on behalf of the City of Kirkland a Real
32 Property Lease and Lease Agreements for the properties
33 substantially similar to those attached to this Resolution as Exhibit
34 A.

35
36
37
38
39

Passed by majority vote of the Kirkland City Council in open meeting this 18 day of May 2021.

Signed in authentication thereof this ____ day of _____, 2021.

Penny Sweet, Mayor

Attest:

Kathi Anderson, City Clerk

MASTER LEASE

PROPERTY: Rose Hill Plaza

TENANT: City of Kirkland

MUTUAL EXECUTION DATE: April _____, 2021

Table of Contents:

ARTICLE 1. BASIC TERMS 4

 1.1 Lease Term: Forty-two (42) Months 4

 1.2 Minimum Monthly Rent 4

 1.3 Payments Due Dates 4

 1.4 Security & Rent Deposits: 5

 1.5 Initial Monthly Payment for Common Area Maintenance (CAM or NNN) 5

 1.6 Initial Monthly Payment for Taxes 5

 1.7 Name of Business 5

 1.8 Hours of Operation 5

 1.9 Premises Delivery Date 5

 1.10 Use 5

 1.11 Radius Restriction 5

 1.12 Contents of Lease 5

ARTICLE 2. TERM 5

 2.1 Primary Term 5

 2.2 Option(s) to Renew 5

ARTICLE 3. MINIMUM RENT 6

 3.1 Minimum Monthly Rent 6

 3.2 Intentionally Omitted 6

ARTICLE 4. INTENTIONALLY OMITTED 6

ARTICLE 5. USE OF PREMISES 6

 5.1 Type of Business and Minimum Hours of Operation 6

 5.2 Prohibited Actions 6

 5.3 Interference With Other Tenants - Insurance Rate Increase 6

 5.4 Tenant's Furniture, Equipment and Inventory 7

 5.5 Compliance With Laws 7

 5.6 Hazardous Substances 7

ARTICLE 6. SECURITY DEPOSIT 7

 6.1 Deposit 7

 6.2 Use of Deposit During Lease 7

 6.3 Refund of Deposit at End of Term 7

 6.4 Forfeiture - Lease Termination Prior to Commencement 8

ARTICLE 7. UTILITIES 8

 7.1 Tenant Responsibility 8

 7.2 Damages Upon Interruption 8

ARTICLE 8. REAL PROPERTY TAXES 8

 8.1 Tenant Responsibility 8

 8.2 Tenant's Proportionate Share 8

 8.3 Payable Monthly - Actual Reconciliation 9

 8.4 Proration For Partial Years 9

ARTICLE 9. CONSTRUCTION AND ACCEPTANCE 9

 9.1 AS-IS Premises 9

 9.3 15-Day Notice of Defects 9

ARTICLE 10. REPAIRS, MAINTENANCE AND ALTERATIONS 9

 10.1 Landlord's Duties 9

 10.2 Tenant's Duties 10

 10.3 Alterations 10

 10.4 Interior Layout 10

ARTICLE 11. COMMON AREAS 10

 11.1 Common Areas Defined - Landlord's Duties 10

 11.2 Design and Operation of Common Area 10

 11.3 Tenant's Compliance With Rules 10

 11.4 Building Common Area Expenses (CAM/NNN) - Tenant's Obligation 11

 11.5 Intentionally Omitted 11

 11.6 Intentionally Omitted 12

 11.7 Monthly Payment of Estimate - Annual or Quarterly Adjustment 12

 11.8 Year-End Accounting 12

 11.9 Reconciliation of Monies 12

Landlord

Tenant

ARTICLE 12.	TRADE FIXTURES AND SURRENDER	12
12.1	Surrender	12
12.2	Trade Fixtures, Furniture and Other Personal Property	12
12.3	Merger and Subleases	12
12.4	Early Re-Entry	13
ARTICLE 13.	DAMAGE OR DESTRUCTION	13
13.1	Insured Damage	13
13.2	Substantial Damage - Insufficient Proceeds	13
13.3	Uninsured Damage	13
13.4	Abatement of Rent	13
13.5	Damage to Tenant's Personal Property	13
ARTICLE 14.	EMINENT DOMAIN	13
14.1	Taking of and Payment for All	13
14.2	Taking of Portion of Premises	14
14.3	Tenant's Damages	14
ARTICLE 15.	INSURANCE	14
15.1	Tenant's Duties	14
15.2	Landlord's Duties - Casualty and Liability	14
15.3	Landlord's Remedy; Tenant's Insurance	15
ARTICLE 16.	WAIVER OF SUBROGATION	15
ARTICLE 17.	RELEASE AND INDEMNITY	15
17.1	Tenant's Indemnity	15
17.2	Landlord's Liability	15
ARTICLE 18.	INSOLVENCY OF TENANT	16
18.1	Bankruptcy or Levy	16
18.2	Transfer by Operation of Law	16
18.3	Damages	16
ARTICLE 19.	PERSONAL PROPERTY AND OTHER TAXES	16
19.1	Tenant Personal Property and Business Taxes	16
19.2	Tenant Leasehold Improvement Taxes	16
19.3	Tenant Rental Taxes	16
19.4	Landlord Taxes	16
ARTICLE 20.	SIGNS AND PROMOTIONS	17
20.1	Exterior Sign Design and Approval	17
20.2	Exterior and Interior Sign Prohibitions	17
20.3	Billboard Signs	17
20.4	Name of Building	17
ARTICLE 21.	ASSIGNMENT AND SUBLETTING	17
21.1	Assignment or Sublease - Consent Required	17
21.2	Reasonable Refusal of Consent	17
21.3	Assumption of Liability With Tenant Required	18
21.4	Transfer of Interest in Entity – Assignment	18
21.5	Notice and Information Required From Tenant	18
21.6	Division of Excess Payment	18
21.7	Landlord's Costs and Attorneys' Fees	18
ARTICLE 22.	ENTRY RIGHTS RESERVED BY LANDLORD	18
ARTICLE 23.	CONSENT OF LANDLORD	19
ARTICLE 24.	RIGHT OF LANDLORD TO PERFORM	19
ARTICLE 25.	LANDLORD DEFAULT	19
25.1	Notice to Landlord	19
25.2	Landlord's Liability	19
ARTICLE 26.	DEFAULT AND REMEDIES	19
26.1	Events of Default	19
26.2	Damages Upon Termination	20
26.3	"Worth at the Time"	20
26.4	Removal of Personal Property	20
26.5	Remedy Upon Re-Entry Without Termination	20
26.6	Application of Rentals Upon Re letting	20
26.7	Re-Entry Not Termination	21
26.8	Landlord's Right to Damages and Indemnification Preserved	21

26.9	Interest	21
26.10	"Rent" and "Rental"	21
26.11	Late Charges.....	21
26.12	Guaranteed Payment	21
26.13	Attorney's Fees.....	21
ARTICLE 27.	PRIORITY OF LEASE AND ESTOPPEL CERTIFICATE	21
27.1	Priority of Lease	21
27.2	Modifications Required by Lender	22
27.3	Estoppel Certificate	22
ARTICLE 28.	HOLDING OVER.....	22
ARTICLE 29.	NOTICES	22
ARTICLE 30.	LIENS	23
30.1	No Liens Permitted	23
30.2	Tenant's Bond on Contest.....	23
30.3	Landlord's Right to Pay Lien Claims.....	23
30.4	Notice Prior to Commencement of Work.....	23
ARTICLE 31.	QUIET ENJOYMENT.....	23
ARTICLE 32.	ATTORNEYS' FEES.....	23
ARTICLE 33.	MISCELLANEOUS	24
33.1	No Partnership or Joint Venture	24
33.2	Separation of Provisions - Construction of Lease	24
33.3	Corporate Representatives.....	24
33.4	Entire Agreement	24
33.5	Other Tenancies and Improvements.....	24
33.6	Jurisdiction - Construction of Lease	24
33.7	Non-Waiver - Landlord's Acceptance of Payment	24
33.8	Force Majeure.....	25
33.9	"Landlord" – Release	25
33.10	Relocation	25
33.10	Financial Statements	25
33.11	Time for Performance	25
33.12	Binding Effect	25
33.13	Submission Not Offer	25
33.14	Captions.....	25
33.15	Recordation.....	25
33.16	Automatic Termination	25
33.17	Conditions.....	26
33.18	Addendum	26
33.19	Number and Gender.....	26
SIGNATURE PAGE.....		27
LANDLORD NOTARY		28
TENANT NOTARY		29
ADDENDUM ONE		30
EXHIBIT A - LEGAL DESCRIPTION.....		31
EXHIBIT B – SPACE/SITE PLAN		32
EXHIBIT C – CONTINGENCIES.....		33
NONE EXHIBIT D - LANDLORD AND TENANT'S WORK.....		33
EXHIBIT E - ARBITRATION RIDER.....		35
EXHIBIT F - RULES & REGULATIONS		36
EXHIBIT G – AGENCY DISCLOSURE		37
EXHIBIT H – FIRST RIGHT OF REFUSAL		38
EXHIBIT G – AGENCY DISCLOSURE.....		39
EXHIBIT H – FIRST RIGHT OF REFUSAL		40

Landlord

Tenant

MASTER LEASE for Tenant: City of Kirkland

THIS LEASE is made and entered into on this _____ day of, April 2021 between SEAWEST INVESTMENT ASSOCIATES, LLC, a Washington limited liability company (hereafter "Landlord") and CITY OF KIRKLAND, a Washington municipal corporation (hereafter "Tenant").

A. DEMISE. Landlord hereby leases, demises and lets to Tenant, and Tenant hereby leases, hires and takes from Landlord those certain premises (the "Premises") described as follows:

That certain building or portion of a Building, being part of 12801 NE 85th Street, Suite 101 & 202, Kirkland, Washington 98033 described on Exhibit A, outlined in highlight on the Site Plan marked Exhibit B, comprising approximately 5,224 square feet ("Tenant's Gross Leasable Area"), to be constructed by Landlord and Tenant in accordance with Article 9 hereof.

Tenant takes the demised Premises subject to all applicable zoning, municipal, county and state laws, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the leased Premises. Tenant has conducted its own investigation and has relied entirely thereon and upon those of its agents, representatives and consultants in evaluating said conditions.

B. TERMS, COVENANTS AND CONDITIONS. The parties agree that this Lease is made upon the following terms, covenants and conditions:

ARTICLE 1. BASIC TERMS

In all instances, the basic terms set forth in this Article 1 are subject to the main body of the Lease in general and those Articles noted in parentheses in particular.

1.1 Lease Term: Forty-two (42) Months

Options to Renew: One (1) Option to Renew for (m-t-m) up to 12 months

1.2 Minimum Monthly Rent

First Month Rent + CAM (NNN) & Security Deposit (Equal to Last Month Rent) is Due at Lease Execution.

[] subject to cost of living increases each calendar year; or

[X] subject to the following increases: Initial rent will be fixed as follows until Landlord completes necessary improvements described as Landlord's Work in Exhibit D. Upon completion of Landlord's Work, rent will be recalculated in order to amortize into the remaining rental term additional costs of Landlord's Tenant Improvement ~~costs not previously incorporated~~ into the ~~remaining rental term amount~~; provided that, the recalculated rate cannot exceed XXX. The recalculated rate will then be fixed for the remainder of year one. Thereafter, annual rent increases of three percent (3%) will be applied on the Lease Commencement anniversary for years two through the end of the term. Initial amount reflected in the following table:

<u>MONTHLY RENT TABLE:</u>	
Year 1	\$17,053.50
Year 2	\$17,565.11
Year 3	\$18,092.06
Year 4	\$18,634.82

EARLY ACCESS: See Section 1.5 below.

1.3 Payments Due Dates

Rent and CAM are due on the 1st of each month.

Charges for "NSF" Checks: \$120.00/each

Late Fees: See Section 26.11

Landlord Tenant

1.4 Security & Rent Deposits

First Month's Rent and CAMs: \$23,092.21
Security Deposit: \$18,634.82

Prepaid Rent & Deposit: Due at mutual execution of the Lease

1.5 Initial Monthly Payment for Common Area Maintenance (CAM or NNN)

\$5,968.42/mo (2021)

Commencement Dates:

Rent Commencement: Upon the later of occurrence; mutual execution of the Lease or July 1st, 2021.

CAM Commencement: Upon the later of occurrence; mutual execution of the Lease or July 1st, 2021.

Early Access: Tenant shall have reasonable access to the Premises preceding the Commencement Date for the sole purpose of planning, design, inspection, and other related activities. Such access shall be fully coordinated with Landlord in advance and Tenant shall not interfere with Landlord's Work. All of the terms and conditions of this Lease, including Tenant's insurance and indemnification obligations, shall apply during such time, except for payment of Base Rent and CAM. If Landlord permits Tenant to possess or occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1.

1.6 Initial Monthly Payment for Taxes

No separate payment for taxes; taxes are included in CAM provided in item 1.5 above.

1.7 Name of Business

City of Kirkland Temporary Fire Station.

1.8 Hours of Operation

Maximum hours of operation shall be: 24 hrs per day, 7 days a week subject to City, County, and State Laws, rules, regulations, and ordinances.

1.9 Premises Delivery Date

Upon completion of Landlord's Work (Exhibit D for further detail).

1.10 Use

Temporary Fire Station & Vehicle Parking (including a Fire Engine, an Aid Car, and employee and visitor vehicles).

1.11 Radius Restriction

None.

1.12 Contents of Lease

Articles 1 through 33, Addendum (1), and Exhibits A, B, C, D, E, F, G and H are attached to this Lease and are hereby incorporated herein by this reference.

ARTICLE 2. TERM

2.1 Primary Term

The term of the Lease shall commence on the date of Lease execution and shall terminate at midnight on the last day of the month following the number of years set forth in Subsection 1.1 after the Rent Commencement Date as defined in Subsection 3-1.5.

2.2 Option(s) to Renew

Provided that Tenant is not in default hereunder, either at the time of exercising an option to renew or upon the commencement of any renewal term, Landlord hereby grants to

Landlord

Tenant

Tenant the option to renew this Lease for **one (1)** additional term(s) ("Renewal Term[s]") of **up to (1)** year. The Renewal Term(s) shall be on the same terms and conditions as are provided for in this Lease, except for term, which shall be month to month, with one hundred eighty (180) days written notice of termination and for the minimum monthly rent, which shall be for **\$18,634.82/mo** + then current CAM. Rent will increase to \$19,193.87 after the one hundred eightieth (180th) day of the renewal option.

The Renewal Term shall begin upon the expiration of the primary term. The Renewal Term shall not be severable or separately assignable from this Lease.

Tenant shall exercise a renewal option by delivering to Landlord written notice of its election to renew no later than one hundred twenty (120) days prior to the expiration of the primary term. Time is of the essence in the exercise of an option to renew, and Tenant's failure for any reason to exercise a renewal option within the time provided for herein shall constitute a waiver of Tenant's right to exercise such option.

ARTICLE 3. MINIMUM RENT

3.1 Minimum Monthly Rent

Tenant covenants and agrees to pay without offset or deduction of any kind the minimum monthly rent set forth in Subsection 1.2 above in advance at Landlord's address on the first day of each calendar month during the term of this Lease, provided that Tenant may elect to pay the monthly rent up to six (6) months in advance. Tenant's obligation to pay such rent shall commence on the Rent Commencement Date as defined in Section 1.25. If the Rent Commencement Date is not the first day of a calendar month, the first month's rent shall be prorated on the basis of a thirty (30) day month and shall be payable with the first full monthly rental due hereunder. Landlord's address shall be as set forth in Article 29 or as from time to time designated by Landlord to Tenant in writing.

3.2 Intentionally Omitted

3.3. Rent Escalation Upon Completion of Tenant Improvements by Landlord

In recalculating rent, as described in Section 1.2, the increase will be calculated on a per square foot basis based on the actual costs of the agreed-upon Tenant Improvements constructed by Landlord, amortized over the remaining lease term, which actual costs must be within the approved budgeted amounts agreed to by the Landlord and Tenant. To assist in determining the appropriate escalation, Landlord shall provide Tenant reasonably detailed statements of the actual costs of Landlord's Work, and Tenant shall have the right to audit, inspect, and copy Landlord's books and records related to Landlord's Work. The recalculated rate cannot exceed the amount stated in Section 1.2.

ARTICLE 4. INTENTIONALLY OMITTED

ARTICLE 5. USE OF PREMISES

5.1 Type of Business and Minimum Hours of Operation

The Premises shall be used and occupied only for the purposes described in Subsection 1.10 above, and for no other purposes without Landlord's prior written consent. Notwithstanding any other term or provision hereof, Tenant's operations in the Premises shall be within the business hours established in Subsection 1.8. This restriction shall include, but is not limited to, business hours, property maintenance, and operation of equipment (excluding ventilation, heating, and similar building mounted equipment).

5.2 Prohibited Actions

Tenant shall not do or permit to be done in or about the Premises anything, which is illegal or unlawful; or which is of a hazardous or dangerous nature. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, or commit any waste therein or thereon. Tenant shall not allow refuse, garbage or trash to accumulate outside of the demised Premises.

5.3 Interference With Other Tenants - Insurance Rate Increase

Tenant shall not do or permit to be done in or about the Premises anything which will increase the rate of or cause cancellation of any insurance on the building of which the Premises are a part without Landlord's prior written consent. Tenant shall pay any increased costs occasioned by such action. Tenant shall not obstruct or interfere with the rights of any other tenants of the Building or their customers and invitees, nor injure or annoy them. Nothing herein is intended to limit or restrict reasonable uses and noise given the purpose of the lease as a temporary fire station.

Landlord Tenant

5.4 Tenant's Furniture, Equipment and Inventory

Tenant shall furnish, install and maintain in the Premises such trade fixtures, furniture, equipment and inventory reasonably appropriate to the conduct of Tenant's business.

5.5 Compliance With Laws.

Tenant agrees that, at its own cost and expense, it will comply with and conform to all laws and ordinances and any and all lawful requirements and orders of any properly constituted governmental board of authority, in any way relating to the use or occupancy of the Premises throughout the entire term of this Lease.

5.6 Hazardous Substances

(a) Tenant shall not cause or permit any hazardous substance to be used, stored, generated or disposed of on or in the Premises by Tenant, Tenant's agents, employees, contractors or invitees without first obtaining Landlord's written consent. If hazardous substances are used, stored, generated or disposed of on or in the Premises, or if the Premises become contaminated in any manner for which Tenant is legally liable, Tenant shall indemnify and hold harmless the Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during Tenant's occupancy of the Premises for any purposes or during or after the lease term and arising as a result of the contamination by Tenant. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Tenant causes or permits the presence of any hazardous substance on the Premises and that results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such hazardous substance on the Premises. Tenant shall first obtain Landlord's approval for any such remedial action.

(b) As used herein, "hazardous substance" means any substance that is toxic, ignitable, reactive or corrosive and that is regulated by any local government, the State of Washington, or the United States Government. "Hazardous substance" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs") and petroleum.

ARTICLE 6. SECURITY DEPOSIT

6.1 Deposit

Upon execution of this Lease, Tenant has deposited with Landlord the sum specified in Subsection 1.4 above. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all of the obligations of this Lease to be kept and performed by Tenant. Said deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so by Tenant shall not be binding upon Landlord. **Under no circumstances will Tenant be allowed to use the Security Deposit as their last month Rent/CAM payment.**

6.2 Use of Deposit During Lease

If Tenant defaults with respect to any provision of this Lease, or should Landlord make any payment on behalf of Tenant, Landlord may (but shall not be required to) use, apply or retain all or any part of said deposit for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord has suffered or may suffer by reason of Tenant's default. If any portion of said deposit is so used, applied or retained, Tenant shall forthwith upon Landlord's demand therefore, deposit cash with Landlord in an amount sufficient to restore said deposit to its original sum. Tenant's failure to do so shall constitute a material breach of this Lease.

6.3 Refund of Deposit at End of Term

Landlord shall not be required to keep said deposit separate from its general funds and is in no event to be deemed a trustee thereof; and Tenant shall not be entitled to interest on any sums deposited or re-deposited under this Article. If Tenant shall have fully and faithfully performed all of its obligations under this Lease, said deposit or its then remaining balance shall be refunded to Tenant within thirty (30) business days after the termination of this Lease. In the event Landlord's interest in this Lease is sold or otherwise terminated, Landlord shall transfer said deposit to its successor in interest, and

Landlord

Tenant

thereupon Landlord shall be discharged from any further liability with respect thereto. The provisions of the preceding sentence shall likewise apply to any subsequent transferees.

6.4 Forfeiture - Lease Termination Prior to Commencement

If for any reason this Lease is terminated prior to the commencement of the term (other than for nonperformance of Landlord), in addition to any other rights it may have, Landlord shall have the right to retain the security deposit.

ARTICLE 7. UTILITIES

7.1 Tenant Responsibility

Tenant, at its own cost and expense, shall pay for all special utilities or service charges related to its occupancy of the Premises not included in the CAM payment. CAM payments cover the Tenant's normal water, sewer, and garbage usage and pay for these utilities. Tenant shall be responsible for janitorial service inside the suite. Electricity is sub metered and will be the responsibility of the Tenant.

7.2 Damages Upon Interruption

Landlord shall not be liable in damages, consequential or otherwise, nor shall there be any rent abatement, arising out of any interruption or reduction whatsoever in utility services (i) which is due to fire, accident, strike, governmental authority, acts of God, or other causes beyond the reasonable control of Landlord or any temporary interruption in such service, (ii) which is necessary to the making of alterations, repairs or improvements to the Building or any part of it, or (iii) which the Landlord with advance notice to Tenant deems necessary in order to conserve energy.

ARTICLE 8. REAL PROPERTY TAXES

8.1 Tenant Responsibility

Tenant shall pay as additional rent its proportionate share of all "Taxes" (as hereinafter defined), which may be levied, assessed or imposed against or become a lien upon the land, buildings and all other improvements in the Building. The term "Taxes" shall mean and include real estate taxes, assessments (special or otherwise) including impositions for the purpose of funding special assessment districts, water and sewer rents, rates and charges (including water and sewer charges which are measured by the consumption of the actual user of the item or service for which the charge is made), levies, fees (including license fees) and all other taxes, governmental levies and charges of every kind and nature whatsoever (and whether or not the same presently exist or shall be enacted in the future), which may during the term be levied, assessed, imposed, become a lien upon or due and payable with respect to, out of or for:

- (a) The Building or any part thereof, or of any land, building or improvements thereon, or the use, occupancy or possession thereof;
- (b) Any interest of Landlord and/or Tenant (including any legal or equitable interest of Landlord or its mortgagee, if any) in the Premises or Building and/or the underlying realty or upon the Lease or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises;
- (c) Imposed or based upon or measured by the rents receivable by Landlord for the Building, including gross receipts taxes, business taxes, business and occupation taxes but excluding net income or excess profits taxes; and
- (d) The ownership, leasing, operation, maintenance, alteration or repair of the Premises or Building.

"Taxes" shall also include interest on installment payments and all costs and fees (including reasonable attorneys' and appraisers' fees) incurred by Landlord in contesting Taxes and negotiating with public authorities as to the same. Taxes shall not include, however, any franchise, estate, inheritance, corporation, transfer, net income or excess profits tax.

8.2 Tenant's Proportionate Share

Tenant's shall pay its proportionate share of Taxes with respect to any tax fiscal year during the term hereof shall be that portion of the total of the Taxes assessed in any such tax fiscal year, multiplied by a fraction, the numerator of which is the Gross Leasable Area of the Premises, and the denominator of which is ninety-five percent (95%) of the

Landlord

Tenant

total Gross Leasable Area of all premises in the Building. Tenant acknowledges and understands Gross Leasable Area is subject to change at Landlord's sole discretion based upon additions and/or modifications to the Building.

8.3 Payable Monthly - Actual Reconciliation

Commencing with the Rent Commencement Date, Tenant shall pay Landlord monthly, with each payment of minimum monthly rent, the amount set forth in Subsection 1.6 above as an impound toward its share of Taxes. Tenant's actual obligation for Taxes shall be determined and computed by Landlord not less often than annually and at the time each such computation is made; Landlord and Tenant shall adjust for any difference between impounded amounts and Tenant's actual share. At the time of each such computation, Landlord may revise the monthly payment for Taxes set forth in Subsection 1.6 above by written notification to Tenant. Tenant shall pay its share of Taxes, for both the Premises and the Common Areas, during each year of the Lease term. Landlord shall furnish such figures, computation and information as Tenant may reasonably request for the purpose of verifying the amounts charged to Tenant by Landlord.

8.4 Proration For Partial Years

If this Lease shall terminate on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the term commences. The obligation of Tenant under this Article shall survive the termination of this Lease.

ARTICLE 9. CONSTRUCTION AND ACCEPTANCE

9.1 AS-IS Premises

The demised Premises are leased to Tenant "as is," without representation or warranty by the Landlord ~~except as detailed in Exhibit D~~, and Tenant accepts the Premises in the condition existing as of the date of execution hereof, ~~except as detailed in Exhibit D~~. Landlord will coordinate with Tenant to begin Landlord's work (as outlined in Exhibit ~~CD~~) in a timely manner. ~~such other work as it may deem necessary to open for the conduct of its business in the Premises~~

9.2 15-Day Notice of Defects

Tenant shall have a period of fifteen (15) days from delivery of the Premises, with Landlord's work completed per Exhibit D, within which to notify Landlord in writing of any defects or nonconformance in Landlord's construction. In the event of Tenant's proper notice, Landlord shall within a reasonable time correct the defect or nonconformance. From and after said fifteen (15) day period, Landlord shall have no obligation in regard to said construction except as otherwise provided by this Lease; and Landlord extends no warranties, express or implied, other than as stated above.

9.4 Tenant's Opening Intentionally Omitted

ARTICLE 10. REPAIRS, MAINTENANCE AND ALTERATIONS

10.1 Landlord's Duties

Subject to reimbursement by Tenant as provided in Article 11 hereof, Landlord shall keep and maintain the roof (including the structural integrity thereof), foundation, columns, footings, slabs, and the exterior walls of the building in which the Leased Premises are located (exclusive of doors, door frames, door checks, other entrances, windows and window frames which are not part of common areas, and storefronts) in good repair, provided that Landlord shall not be required to make any such repairs occasioned by the act or negligence of Tenant, its agents, employees, invitees, licensees or contractors. Tenant shall give Landlord written notice of any damage to the Premises requiring repair by Landlord.

Subject to reimbursement by Tenant as provided in Article 11 hereof, Landlord reserves the right to remodel the exterior of the buildings, including but not limited to windows, doors, roofs and exterior walls, when in Landlord's sole discretion it will result in the betterment of the Building. Where any such capital improvement is discretionary rather than required in order to conform to subsequent in any applicable laws, then the Landlord cannot include the improvement costs in the CAM charge without Tenant's prior written consent. Where such capital improvement costs are included in CAM, the cost of the improvement must be amortized over the useful life of the improvement.

10.2 Tenant's Duties

Except as provided in Subsection 10.1 hereof, Tenant shall, at its own expense throughout the term of this Lease, keep and maintain the Premises and every part thereof (including but not limited to electrical and plumbing fixtures and conduits, partitions, interior portions of outer walls, ceiling, sub ceilings, roof, doors, door frames, door checks, storefronts and all storefront window/door systems, other entrances, windows and window frames) in good order, condition and repair, and shall do such reasonable periodic painting of the interior thereof as may from time to time be required by Landlord to help preserve and maintain the general appearance, standards, and look of the Center. Tenant shall keep its sewers and drains and the pipes leading therefrom not maintained by any governmental entity open and clear and shall keep the sidewalks and common areas adjacent to the Premises clean and free of debris. Tenant shall reimburse Landlord on demand for the cost of damage to the Premises or the building caused by Tenant or its employees, agents or invitees. If Tenant shall fail to comply with the foregoing requirements, beyond a 20-day notice period, Landlord may (but shall not be obligated to) effect such maintenance and repair; and the cost thereof together with interest thereon at the maximum rate permitted by law shall be due and payable as additional rent to Landlord, together with Tenant's next rental installment.

10.3 Alterations

Tenant shall not make any alterations, changes or improvements in or to the Premises or any part thereof, ~~including "Tenant's Work" on Exhibit C hereto~~, without first obtaining Landlord's written consent, both as to the proposed alterations, additions and improvements and as to the plans and specifications for the same; and all of the same shall be at Tenant's sole cost. Landlord may impose as a condition of its consent such requirements as Landlord, in its sole discretion, may deem reasonable and desirable, including but not limited to, the requirement that Tenant utilize for such purposes only contractors, materials, mechanics and suppliers approved by Landlord. All alterations, additions, changes and improvements made by Tenant shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord upon the expiration or sooner termination of the term hereof. Further, Landlord may designate by written notice, those alterations, additions and improvements (this specifically excludes any of Tenant's Work or Landlord's Work in Exhibit "D") which shall be removed by Tenant at the expiration or termination of the Lease; and Tenant shall promptly remove the same and repair all damage caused by such removal at its cost and with all due diligence.

10.4 Interior Layout

Tenant shall maintain the interior of its space in an attractive, orderly manner acceptable to Landlord. Tenant's fixtures, equipment, inventory and leasehold improvements shall be clean and neatly laid out. Said items shall not appear to be in need of repair or replacement, shall not be arranged in such a way as to give a cluttered appearance.

ARTICLE 11. COMMON AREAS

11.1 Common Areas Defined - Landlord's Duties

Landlord agrees to operate and maintain during the term of this Lease, all Common Areas within the Building. The term "Common Areas" as used in this Lease shall include parking areas, roadways, walkways, driveways, delivery areas, landscaped areas, public restrooms, outside walls, roof, traffic signs and Building identification signs, utility lines, storm drains and sewers, and other areas, facilities and improvements provided by Landlord for the convenience and use of tenants of the Building, their employees, customers and invitees. Tenant agrees to comply with and observe all reasonable rules and regulations established by Landlord from time to time for the Building, provided such rules and regulations are not in conflict with this Lease and Tenant's use of and access to the Premises and the parking area are not adversely affected.

11.2 Design and Operation of Common Area

The manner and method of operation, maintenance, service and repair of the Common Areas and the expenditures thereof, shall be in the sole and absolute discretion of Landlord. Landlord reserves the right from time to time to make changes in, additions to and deletions from the Common Areas and the purposes to which they are devoted, provided Tenant's use of and access to the Premises and the parking area are not adversely affected.

11.3 Tenant's Compliance With Rules

Tenant agrees to comply with such reasonable rules, regulations and charges for parking as Landlord may adopt from time to time for the orderly and proper operation of the Common Areas, including, without limitation, the restricting of employee parking to limited, designated areas and the removal, storage and disposal of refuse and rubbish.

Landlord

Tenant

Upon Landlord's written request Tenant shall furnish a list of the automobile license numbers of the cars of Tenant's employees and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. Landlord may tow away and charge Tenant towing fees for any car belonging to Tenant or its employees that is parked in any area other than that designated by Landlord, or Landlord may assess Tenant Ninety Dollars (\$90.00) for each instance that a car belonging to Tenant or its employees is improperly parked and such charge shall be deemed owing by Tenant as part of the following month's minimum rent.

11.4 Building Common Area Expenses (CAM/NNN) - Tenant's Obligation

During the term of this Lease, Tenant shall pay to Landlord as part of its monthly rent, at the time and in the manner specified herein below, Tenant's pro rata share of all costs and expenses of every kind and nature paid or incurred by Landlord in operating, policing, protecting, lighting, providing sanitation and sewer and other services for, insuring, repairing, replacing and maintaining the Common Areas and all buildings within the Building ("operating and maintenance costs"). The Tenant's pro rata share of the operating and maintenance costs is referred to as CAM or NNN.

Operating and maintenance costs shall include the following: (1) operating, cleaning, sweeping, re-stripping and making repairs to the parking lot and driveway areas; (2) maintaining and replacing or adding to the plantings and landscaping (including maintenance of any wetland mitigation areas, including buffer zones); (3) maintaining, repairing, replacing and adding to the landscape sprinkler systems, parking bumpers, directional signs and other signs and markers, fire protection systems, lights and light standards (including bulb replacement), drainage systems (including any storm detention ponds) and utility systems; (4) janitorial services for the Common Areas; (5) operating and maintaining Building sign(s), and paying the rent for such sign(s) if leased; (6) depreciation on all improvements for the benefit of the Common Areas and all equipment purchased for the purpose of operating and/or maintaining the Common Areas, or rent for such equipment if leased, and maintaining and repairing such equipment; (7) cleaning, maintaining and repairing all sidewalks, including those situated on the perimeter of the boundaries of the Building (but nothing shall be construed as obligating Landlord to clean, maintain or repair any areas or improvement outside the Building boundaries); (8) maintaining and repairing the building walls and maintaining and making repairs to the roofs, as provided in Article 10; (9) operation, maintenance and repair of any public address systems, music systems and security and/or alarm systems, including rent for such systems if leased; (10) the reasonable costs of personnel to implement such service and to regulate employee parking and to police and provide security for the Common Areas and for the buildings in the Building, including all social security, medical insurance and other contributions and workers' compensation insurance; (11) casualty, liability, business interruption insurance and other insurance carried by Landlord on the buildings and Common Areas; (12) all regular maintenance and repair of heating and cooling HVAC systems and their components if used by tenant (Tenant acknowledges and understands a portion of CAM payments go to maintaining all of the heating and cooling systems in the building); (13) all maintenance, repair, cleaning and operation costs associated with the ground floor utility room, the second floor mechanical room, and the second floor janitorial/maintenance room; (14) the amount of any taxes, assessments, surcharges or other charges which may be imposed by governmental authority under any energy legislation, which tax or charge is based upon the existence of vehicular parking facilities on the Common Areas; (15) Legal fees incurred in connection with Common Area matters, except to the extent such legal fees are incurred by Landlord in conjunction with the indemnification provisions of Section 17.3; (16) audit expenses and costs incurred in connection with attempt to control trespassing, picketing, demonstrations, gatherings or assemblies, vandalism, thefts and any other interferences with the use of the Common Areas by the persons authorized to use the Common Areas as hereinabove provided; (17) personal property taxes, sales taxes and use taxes on material, equipment, supplies and services; (18) the costs of on site or off site manager(s), to administer the Building, including the office supplies and facilities occupied by such manager(s); (19) costs of Christmas decorations for the Building; and (20) fees for any licenses and/or permits required for the operation of the Common Areas, or any part thereof.

Tenant's pro rata share of the Common Area Expenses described in this Subsection relating to all areas of the Building shall be determined by multiplying the aggregate of such costs by a fraction, the numerator of which is the Gross Leasable Area of the demised Premises and the denominator of which is ninety-five percent (95%) of the Gross Leasable Area of all premises in the Building.

11.5 Intentionally Omitted.

Landlord

Tenant

11.6 Intentionally Omitted.

11.7 Monthly Payment of Estimate - Annual or Quarterly Adjustment

As additional rent, Tenant shall pay Landlord monthly a CAM charge in an amount estimated by Landlord to be Tenant's share of the "operating and maintenance costs" on the first day of each month, commencing on the Rent Commencement Date and continuing on the first day of each month thereafter during the term hereof. In the event of overdue, unpaid, late, or accrued CAM charge(s), they are subject to late fees per Section 26.11

Landlord may adjust the monthly CAM charge at the end of each calendar year or quarter on the basis of Landlord's anticipated costs for the following calendar year or quarter.

11.8 Year-End Accounting

Within ninety (90) days after the end of each calendar year, Landlord shall furnish to Tenant a reasonably detailed statement showing the total expenses for "operating and maintenance costs," Tenant's share of such costs, and the total of the monthly payments made by Tenant to Landlord during the calendar year just ended. At Landlord's election, Landlord may furnish to Tenant quarterly statements. Landlord shall certify all statements as being correct. Landlord shall keep good and accurate books and records in accordance with generally accepted accounting principles concerning the operation, maintenance and management of the Common Areas; and Tenant and its agents (at Tenant's sole expense) shall have the right, upon ten (10) days' notice, to audit, inspect and copy such books and records at Landlord's offices. In the event of discrepancies discovered by Tenant's audit (exceeding 10% of total annual CAM cost), Tenant shall not be responsible for the Landlord's costs incurred by the audit; otherwise Tenant shall be responsible for all such costs.

11.9 Reconciliation of Monies

If Tenant's share of the "operating and maintenance costs" for any annual or quarterly accounting period exceeds the payments made by Tenant, Tenant shall pay Landlord the deficiency within thirty (30) days after the receipt of Landlord's statement. If Tenant's payments made during the accounting period exceed Tenant's pro rata share of the "operating and maintenance costs," Tenant may deduct the amount of the excess from the estimated payments next due to Landlord.

ARTICLE 12. TRADE FIXTURES AND SURRENDER

12.1 Surrender

Upon the expiration or sooner termination of the term hereof, Tenant shall surrender the Premises, including without limitation, all fixtures then upon the Premises, in good commercially reasonable condition, ordinary wear and tear from reasonable and normal use alone excepted, broom clean and free of trash and rubbish and, subject to Landlord's election set forth in Subsection 10.3, with all alterations, changes, additions and improvements which may have been made or installed from time to time either by Landlord or Tenant in, on or about the Premises. All of the same shall be the property of Landlord and shall be surrendered by Tenant without any injury, damage or disturbance thereto; and Tenant shall not be entitled to any payment thereof. Said property of Landlord shall include, without limitation, all lighting fixtures, fluorescent tubes and bulbs, and all partitions whether removable or otherwise.

12.2 Trade Fixtures, Furniture and Other Personal Property

Movable trade fixtures, furniture and other personal property installed in the Premises by Tenant at its cost shall be Tenant's property unless otherwise provided in this Lease and if not in default hereunder. Tenant shall remove all of the same prior to the termination of this Lease and at its own cost repair any damage, or may be required by Landlord to reinstall or replace any original lighting removed or modified by Tenant during the course of their tenancy or improvements to the Premises and the building caused by such removal. If Tenant fails to remove any of such property, Landlord may at its option retain such property as abandoned by Tenant and title thereto shall thereupon vest in Landlord; or Landlord may remove the same and dispose of it in any manner and Tenant shall, upon demand, pay Landlord the actual expense of such removal and disposition plus the cost of repair of any and all damage to said Premises and building resulting from or caused by such removal.

12.3 Merger and Subleases

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Landlord, terminate all or

any existing subleases and sub-tenancies, or may, at Landlord's option, operate as an assignment to it of any or all such subleases or sub-tenancies.

12.4 Early Re-Entry

If, at any time during the last thirty (30) days of the term hereof, Tenant has removed all or substantially all of its aforesaid property from the Premises, Landlord shall thereafter have the right to enter said Premises for the purpose of altering, renovating and/or redecorating the same. Any such entry or work by Landlord shall not entitle Tenant to any abatement of rent or any other sum payable hereunder nor shall such entry or work be deemed an eviction or disturbance of Tenant's use and occupancy.

ARTICLE 13. DAMAGE OR DESTRUCTION

13.1 Insured Damage

Except as otherwise provided in Subsection 13.2, if the Premises are damaged and destroyed by any casualty covered by Landlord's fire insurance policy, Landlord shall repair such damage as soon as reasonably possible, to the extent of the available proceeds, and the Lease shall continue in full force and effect. Tenant may be required to pay rent or CAM during the restoration period.

13.2 Substantial Damage - Insufficient Proceeds

If the Premises are damaged or destroyed by any casualty covered by Landlord's fire insurance policy to such an extent as to render the same untenable in whole or substantial part, or to the extent of twenty-five percent (25%) or more of the replacement value of the Premises during the last twenty-four (24) months of the term herein, or if the insurance proceeds are not sufficient to repair the damage, or the Building is damaged to the extent of twenty percent (20%) or more (whether or not the demised Premises are damaged), then Landlord may, at Landlord's option, either (i) repair such damage as soon as reasonably possible, in which event this Lease shall continue in full force and effect, or (ii) cancel and terminate this Lease as of the date of the occurrence of such damage by giving Tenant written notice of Landlord's election to do so within ninety (90) days after the date of the occurrence of the damage.

13.3 Uninsured Damage

If at any time during the term herein the Premises are damaged and such damage was caused by a casualty not covered under Landlord's insurance policy specified in Subsection 15.2 hereafter, Landlord may, at its option, either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) cancel and terminate this Lease as of the date of the occurrence of such damage, by giving Tenant written notice of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage, in which event this Lease shall so terminate unless within thirty (30) days thereafter Tenant agrees to repair the damage at its cost and expense or pay for Landlord's repair of such damage.

13.4 Abatement of Rent

In the event of damage or destruction not caused by Tenant's fault or neglect, then and only then shall the minimum rent payable hereunder be proportionately reduced during the period of damage and any repair or restoration pursuant to this Article 13, said reduction to be based upon the extent to which the damage or the making of such repairs or restoration shall interfere with Tenant's business conducted in the Premises. In the event of damage or destruction caused by Tenant's failure or neglect, minimum rent shall continue unabated.

13.5 Damage to Tenant's Personal Property

Landlord shall in no event be required or obligated to repair, restore or replace any of Tenant's leasehold improvements, trade fixtures or any other property whatever installed or contained in the Premises by Tenant.

ARTICLE 14. EMINENT DOMAIN

14.1 Taking of and Payment for All

If all or substantially all of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain (or similar law authorizing the involuntary taking of private property, which shall include a sale in lieu thereof to a public body), either party hereto shall have the right, at its option, to terminate this Lease effective as of the date possession is taken by said authority; and Landlord shall be entitled to any and all income, rent, award and any interest thereon whatsoever which

Landlord

Tenant

may be paid or made in connection with such public or quasi-public use or purpose. Tenant hereby assigns to Landlord its entire interest in any and all such awards, and shall have no claim against Landlord for the value of any unexpired term of this Lease.

14.2 Taking of Portion of Premises

If only a portion of the Premises is taken, then this Lease shall continue in full force and effect and the proceeds of the award shall be used by Landlord to restore the remainder of the improvements on the Premises so far as practicable to a complete unit of like quality and condition to that which existed immediately prior to the taking, and the Minimum Rent shall be reduced in proportion to the floor area of the Premises taken. Landlord's restoration work shall not exceed the scope of work done by Landlord in originally constructing the Premises and the cost of such work shall not exceed the amount of the award received by Landlord.

14.3 Tenant's Damages

Nothing hereinbefore contained shall be deemed to deny to Tenant its right to claim from the condemning authority compensation or damages for its trade fixtures and personal property or for its moving expenses.

ARTICLE 15. INSURANCE

15.1 Tenant's Duties

Tenant shall, at all times during the term hereof, at its expense, carry and maintain insurance policies in the amounts and in the form hereafter provided:

(a) Public Liability and Property Damage: Tenant is a member of a self-funded, municipal risk pool—the Washington Cities Insurance Authority—that provides Tenant liability coverage against claims for injuries to persons or damage to property that may arise from or in connection activities by the Tenant and its employees. WCIA further provides contractual liability coverage to the ~~(MEMBER-NAME). The Tenant, and the~~ contractual liability coverage provides that WCIA shall pay on behalf of the ~~(MEMBER NAME)Kirkland~~ all sums which the member shall be obligated to pay by reason of liability assumed under contract by the member. ~~Tenant's coverage with WCIA further provides contractual liability coverage to the Tenant for liability assumed under contract,~~ which will insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and loss of or damage to property contained in Article 17 hereof.

(b) Plate Glass: Tenant shall, at its expense, carry and maintain plate glass insurance.

(c) Tenant Improvements: Insurance covering all of Tenant's leasehold improvements, trade fixtures, merchandise and other personal property from time to time in the Premises in an amount not less than eighty percent (80%) of their full replacement cost from time to time, providing protection against any peril included within the coverage termed by the insurance industry as "special form" or equivalent. The proceeds of such insurance shall, so long as this Lease remains in effect, be used to repair or replace the property damaged or destroyed.

(d) Liquor Liability Insurance: If alcoholic beverages are to be sold by Tenant, Tenant's indemnification obligations under this Lease shall extend to damage resulting from risks insurable by liquor liability insurance. In such event, the public liability insurance required by this Lease shall include liquor liability insurance.

(e) Policy Form: All insurance to be carried by Tenant hereunder shall be in companies, on forms and with loss payable clauses satisfactory to Landlord and copies of such policies or certificates or letters evidencing such insurance shall be delivered to Landlord within ten (10) days after delivery of possession of the Premises to Tenant and within thirty (30) days prior to the expiration date of each policy. No such policy shall be cancelable except after twenty (20) days' advance written notice to Landlord.

15.2 Landlord's Duties - Casualty and Liability

Subject to reimbursement by Tenant as provided in Article 11 herein, Landlord shall obtain and keep in force during the term hereof, a policy or policies of reasonable limits for similar commercial properties for insurance covering loss or damage to the Premises, providing protection against all perils included within the coverage termed by the insurance industry as "special form" or equivalent, together with an endorsement providing for rental income insurance covering a period of twelve (12) months covering minimum rental and all other leasehold expenses of Tenant hereunder, and, at Landlord's sole option, Landlord may obtain earthquake insurance.

Landlord Tenant

Landlord shall procure such public liability and property damage insurance and such other insurance as in its sole discretion it deems reasonable and necessary for its protection with regard to the ownership and operation of the Building.

15.3 Landlord's Remedy; Tenant's Insurance

If Tenant shall fail to procure and maintain any insurance policy required herein, Landlord may (but shall not be obligated to) procure the same on Tenant's behalf, and the cost of same shall be due with the next installment of rent, together with interest at the maximum rate permitted by law.

ARTICLE 16. WAIVER OF SUBROGATION

Any insurance carried by either party with respect to the Premises and property contained in the Premises or occurrences related to them shall include a clause or endorsement denying to the insurer rights of subrogation against the other party to the extent rights have been waived by the insured prior to occurrence of injury or loss. Tenant shall upon request provide to Landlord written evidence from its insurer or insurance broker that such a clause is contained in Tenant's insurance policy. Each party, notwithstanding any provisions of this Lease to the contrary, waives any right of recovery against the other for injury or loss due to hazards covered by insurance containing such clause or endorsement.

ARTICLE 17. RELEASE AND INDEMNITY

17.1 Tenant's Indemnity

Tenant shall indemnify and hold harmless Landlord and any property manager of Landlord against and from any and all claims, actions, damages, liability and expenses, including attorneys' fees, arising from or out of Tenant's use of the Premises or from the conduct of its business or from any activity, work or other things done, permitted or suffered by the Tenant in or about the Premises. Tenant shall further indemnify and hold Landlord and any property manager of Landlord harmless from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of the Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest or invitee of Tenant, and from all costs, damages, attorneys' fees and liabilities incurred in defense of any such claim of any action or proceeding brought thereon, including any action or proceeding brought against Landlord and any property manager of Landlord by reason of such claim. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence or tortious actions, bad faith, or willful misconduct. Tenant shall give prompt notice to Landlord in case of casualty or accident in the Premises, except for Tenant is not required to provide Landlord with notice of a casualty or accident involving only Tenant's employees.

17.2 Landlord's Liability

Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or by any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the same, whether the said damage or injury results from conditions arising upon the demised Premises or from other sources. Neither Landlord nor any property manager of Landlord shall be liable for any damages arising from any act or neglect of any other tenant of the Building.

17.3 Landlord's Indemnity

Landlord shall indemnify and hold harmless Tenant against and from any and all claims, actions, damages, liability and expenses, including attorneys' fees, arising from or out of Landlord's conduct of its business or from any activity, work or other things done, permitted or suffered by the Landlord in or about the Premises. Landlord shall further indemnify and hold Tenant harmless from any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of the Lease, or arising from any act or negligence of the Landlord, or any officer, agent, employee, guest or invitee of Landlord, and from all costs, damages, attorneys' fees and liabilities incurred in defense of any such claim of any action or proceeding brought thereon, including any action or proceeding brought against Tenant by reason of such claim. Landlord, as a material part of the consideration to Tenant, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from

any cause other than Tenant's negligence or tortious actions or omissions, bad faith, or willful misconduct.

ARTICLE 18. INSOLVENCY OF TENANT

18.1 Bankruptcy or Levy

The filing of any petition in bankruptcy, whether voluntary or involuntary, or the adjudication of Tenant as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of Tenant's assets, or an assignment by Tenant for the benefit of its creditors, or any action taken or suffered by Tenant under any state or federal insolvency or bankruptcy act, including, without limitation, the filing of a petition for or in reorganization, or the taking or seizure under levy of execution or attachment of the Premises or any part thereof, shall constitute a breach of this Lease by Tenant, and in any one or more of said events Landlord may at its option terminate this Lease by written notice to Tenant.

18.2 Transfer by Operation of Law

Neither this Lease nor any interest therein or thereunder, nor any estate thereby created in favor of Tenant, shall be an asset of Tenant in or under any bankruptcy, insolvency or reorganization proceeding, nor shall any of the same pass by operation of law under any state or federal insolvency or bankruptcy law to any trustee, receiver or assignee for the benefit of creditors or any other person whatever without Landlord's express written consent.

18.3 Damages

Landlord shall be entitled, notwithstanding any provision of this Lease to the contrary, upon re-entry of the Premises in case of a breach under this Article, to recover from Tenant as damages for loss of the bargain resulting from such breach, and not as a penalty, such amounts as are specified in Article 26, unless any statute governing the proceeding in which such damages are to be proved shall lawfully limit the amount thereof capable of proof, in which latter event Landlord shall be entitled to recover as and for its damages the maximum amount permitted under said statute.

ARTICLE 19. PERSONAL PROPERTY AND OTHER TAXES

19.1 Tenant Personal Property and Business Taxes

Tenant shall pay, before delinquency, any and all taxes and assessments, sales, use, business, occupation or other taxes, and license fees or other charges whatever levied, assessed or imposed upon its business operations conducted in the Premises. Tenant shall also pay, before delinquency, any and all taxes and assessments levied, assessed or imposed upon its equipment, furniture, furnishings, trade fixtures, merchandise and other personal property in, on or upon the Premises.

19.2 Tenant Leasehold Improvement Taxes

Tenant shall pay all taxes and assessments levied, assessed or imposed on its leasehold improvements, regardless of whether such improvements were installed and/or paid for by Tenant or by Landlord, and regardless of whether or not the same are deemed to be a part of said building, but excluding only those improvements to the Premises which are a part of "Landlord's Work" as defined in Exhibit D hereto and were installed by Landlord.

19.3 Tenant Rental Taxes

Tenant shall pay (or reimburse Landlord thereof forthwith on demand) any excise tax, gross receipts tax, or any other tax however designated, and whether charged to Landlord, or to Tenant, or to either or both of them, which is imposed on or measured by or based on the rentals to be paid under this or any estate or interest of Tenant, or any occupancy, use or possession of the Premises by Tenant.

19.4 Landlord Taxes

Nothing hereinabove contained in this Article shall be construed as requiring Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income or profits tax or taxes imposed upon Landlord.

Landlord

Tenant

ARTICLE 20. SIGNS AND PROMOTIONS

20.1 Exterior Sign Design and Approval

Tenant shall have the right, or Landlord may require Tenant to install, maintain and replace on the store, such signs as may be reasonably necessary for commercial identification in a manner aesthetically compatible with the Building, as reasonably determined by Landlord in accordance with the sign criteria Landlord may adopt from time to time, provided that erection of such signs by Tenant shall first have been approved by Landlord and by applicable governmental authorities. In no event shall Tenant install on or about the Premises or the Building any internally illuminated cabinet signs or any backlit translucent awnings. Tenant acknowledges that the signage is a critical aspect in the success of the Building. Tenant shall pay all costs relating to the construction, installation, maintenance and repair of its signs. Tenant shall have no right to erect a pole sign.

20.2 Exterior and Interior Sign Prohibitions

Tenant shall not place, construct or maintain on the store windows, doors or exterior walls or roof of the Premises or any interior portions that may be visible from the exterior of the Premises, any signs, advertisements, names, trademarks or other similar item without Landlord's consent, but in no event will Landlord consent to window signs that occupy more than 15% of the window area. Landlord at Tenant's cost may remove any item so placed or maintained which does not comply with the provisions of this paragraph. In no circumstance are Tenant's banners and/or posters hung off any portion of the building, fascia, soffits or eaves. Tenant shall not put "A" board signage, flag signage, pole signage, or any exterior signage on the property without Landlord's prior consent. Provided, however, that vehicle markings designed to identify official City of Kirkland vehicles owned and operated by Tenant shall not be a violation of this section

20.3 Billboard Signs

In the event Landlord elects to procure outdoor billboard advertising identifying the Building, Tenant agrees to pay Landlord its pro rata share of the cost of such advertising, computed as provided in Subsection 11.5.

20.4 Name of Building

Tenant agrees that when mentioning the Building in any of its advertising in any form of media it shall refer to said Building as Rose Hill Plaza. Tenant shall not have or acquire any property right or interest in the name of the Building and Landlord reserves the right to change said name upon notice to Tenant. Tenant waives all claims for damages caused by any such change.

ARTICLE 21. ASSIGNMENT AND SUBLETTING

21.1 Assignment or Sublease - Consent Required

Tenant shall not voluntarily, involuntarily, or by operation of law assign, transfer, hypothecate, or otherwise encumber this Lease or Tenant's interest therein, and shall not sublet or permit the use by others of the Premises or any part thereof without first obtaining in each instance Landlord's written consent. If consent is once given by Landlord to any such assignment, transfer, hypothecation or subletting, such consent shall not operate as a waiver of the necessity for obtaining Landlord's consent to any subsequent assignment, transfer, hypothecation or sublease. Any such assignment or transfer without Landlord's consent shall be void and shall, at Landlord's option, constitute a material breach of this Lease. This Lease shall not, nor shall any interest therein, be assignable as to Tenant's interest by operation of law, without Landlord's express prior written consent. Approval by Landlord of any assignment or subletting shall not eliminate Tenant's liability for all obligations contained herein during the remainder of the Lease term.

21.2 Reasonable Refusal of Consent

The consent of Landlord required under Subsection 21.1 above shall not be unreasonably withheld. Should Landlord withhold its consent for any of the following reasons, the withholding shall be deemed to be reasonable:

- (a) Conflict or incompatibility of the proposed use (which must be a use authorized by Subsection 5.1) with other uses in the Building;
- (b) Financial inadequacy of the proposed sublessee or assignee;
- (c) A proposed use (which must be a use authorized by Subsection 5.1) which would diminish the reputation of the Building or the other businesses located therein;

Landlord

Tenant

(d) The unsuitability of percentage rent clause for the proposed new assignee or subtenant.

(e) A proposed use (which must be a use authorized by Subsection 5.1) whose impact on the common facilities of the other tenants in the Building would be disadvantageous;

(f) A proposed use which involves the use, storage, generation or disposal of hazardous substances as defined by Subsection 5.6 of this Lease.

21.3 Assumption of Liability With Tenant Required

Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of all rents due hereunder, and for the due performance during the term of all the covenants and conditions herein set forth by Tenant to be performed. No assignment or transfer shall be effective or binding on Landlord unless said assignee or transferee shall, concurrently, deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not release or discharge the assignee or transferee from its liability aforesaid.

21.4 Transfer of Interest in Entity – Assignment

If Tenant is not a publicly traded corporation, or if Tenant is an unincorporated association or a partnership, the transfer, assignment or hypothecation by one or more persons and/or entities of any stock or interest in such corporation, association or partnership in excess of fifty percent (50%) shall be deemed an assignment within the meaning of this Article.

21.5 Notice and Information Required From Tenant

If Tenant intends to assign this Lease or any interest therein, sublet all or any part of the Premises, Tenant shall give prior written notice to Landlord of each such proposed assignment or subletting, specifying the proposed assignee or subtenant and the terms of such proposed assignment or sublease and the use to which the Premises will be put. Said notice shall be accompanied by the proposed assignee's or sublessee's certified financial statement, business plan, and pro forma statement of the business to be operated. Landlord shall, within thirty (30) days thereafter, notify Tenant in writing either, that it consents (subject to any conditions of consent that may be imposed by Landlord) or does not consent to such transaction.

21.6 Division of Excess Payment

In the event of an approved assignment or subletting pursuant to this Article 21, Tenant shall assign to Landlord one-half of all consideration paid to Tenant directly or indirectly for the assignment by Tenant of its leasehold interest, and fifty percent (50%) of any and all subrentals payable by sublessees to Tenant which are in excess of the minimum monthly rent payable by Tenant hereunder, after first deducting all sub lessee costs.

21.7 Landlord's Costs and Attorneys' Fees

Tenant agrees to reimburse Landlord for Landlord's reasonable costs and attorneys' fees incurred in connection with the processing and documentation of any requested assignment, transfer, hypothecation or subletting of this Lease aforesaid.

ARTICLE 22. ENTRY RIGHTS RESERVED BY LANDLORD

Subject to Tenant's security requirements, upon reasonable prior notice, Tenant shall permit Landlord, its lenders, or its agents to enter the Premises at reasonable times for the purpose of:

(a) Inspection of the Premises and/or the building of which it is a part as well as all equipment used in connection therewith;

(b) Making repairs to and/or remodeling the Premises, the building of which it is a part, and/or the electrical or other utility systems serving any portion of the same;

(c) Showing the Premises to persons wishing to purchase or make a mortgage loan upon the same;

(d) Posting notice of non responsibility;

Landlord

Tenant

(e) Posting "For Lease" signs and showing the Premises to persons wishing to rent the Premises during the last six (6) months of the term of this Lease.

ARTICLE 23. CONSENT OF LANDLORD

Whenever Landlord's consent or approval is required prior to any action under this Lease, in no event shall Landlord be liable in monetary damages for withholding its consent or approval unless Tenant proves the same to have been withheld maliciously or in bad faith.

ARTICLE 24. RIGHT OF LANDLORD TO PERFORM

All covenants to be performed by Tenant hereunder shall be performed by Tenant at its sole cost and expense and without any abatement of any rent to be paid hereunder. If Tenant shall fail to pay any sum, other than rent, required to be paid by it or shall fail to perform any other act on its part to be performed, and such failure shall continue beyond the applicable grace period set forth in Article 26, Landlord may (but shall not be obligated to) and without waiving or releasing Tenant from any of its obligations, make any such payment or perform any such other act on Tenant's part to be made or performed as herein provided. All sums so paid by Landlord and all necessary incidental costs, together with interest at the maximum lawful rate per annum from the date of such payment by Landlord shall be payable by Tenant forthwith on Landlord's demand thereof. In the event of nonpayment thereof by Tenant, Landlord shall have, in addition to all other rights and remedies, the same rights and remedies as in the case of default by Tenant in the payment of rent.

ARTICLE 25. LANDLORD DEFAULT

25.1 Notice to Landlord

If Landlord shall be in default of any covenant of this Lease to be performed by it, Tenant, prior to exercising any right or remedy it may have against Landlord on account thereof, shall give Landlord a ten (10) day written notice of such default, specifying the nature of such default. Notwithstanding anything to the contrary elsewhere in this Lease, Tenant agrees that if the default specified in said notice is of such nature that it can be cured by Landlord, but cannot with reasonable diligence be cured within said thirty (30) day period, then such default shall be deemed cured if Landlord within said thirty (30) day period shall have commenced the curing thereof and shall continue thereafter with all due diligence to cause such curing to proceed to completion.

25.2 Landlord's Liability

If Landlord shall fail to cure a default of any covenant of this Lease to be performed by it and, as a consequence of such uncured default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied solely out of the proceeds of sale received upon execution of such judgment against the right, title and interest of Landlord in the building and its underlying realty and out of the rents, or other income from said property receivable by Landlord, or out of the consideration received by Landlord's right, title and interest in said property, but neither Landlord nor any partner or joint venture of Landlord shall be personally liable for any deficiency.

ARTICLE 26. DEFAULT AND REMEDIES

26.1 Events of Default

The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant:

- (a) Any failure by Tenant to pay when due any of the rent required to be paid by Tenant hereunder where such failure continues for ten (10) days after the same is due;
- (b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord; provided, that if the nature of such default is such that the same cannot with due diligence be cured within said period, Tenant shall not be deemed to be in default if it shall within said period commence such curing and thereafter diligently prosecutes the same to completion;
- (c) The abandonment or vacation of the Premises.

Landlord

Tenant

26.2 Damages Upon Termination

In the event of any default as aforesaid by Tenant, then in addition to any and all other remedies available to Landlord at law or in equity, Landlord shall have the right to immediately terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of its election so to do. If Landlord shall elect to terminate this Lease, then it may recover from Tenant:

- (a) The worth at the time of the award of the unpaid rent, assessments and charges payable hereunder which had been earned at the date of such termination; plus
- (b) The worth at the time of the award of the amount by which the unpaid rent, assessments and charges which would have been earned after termination and until the time of the award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus
- (c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus
- (d) Any other amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations hereunder or which, in the ordinary course of affairs, would likely result there from; and
- (e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by applicable Washington law from time to time.

26.3 "Worth at the Time"

As used in subparagraphs (a) and (b) above, the "worth at the time of the award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in subparagraph (c) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

26.4 Removal of Personal Property

In the event of any default aforesaid by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the demised Premises and remove all property and persons there from, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant.

26.5 Remedy Upon Re-Entry Without Termination

If Landlord shall elect to re-enter as above provided or shall take possession of said Premises pursuant to legal proceedings or pursuant to any notice provided by law, and if Landlord has not elected to terminate this Lease, Landlord may either recover all rental as it becomes due or re let the demised Premises or any part of parts thereof for such term or terms and upon such provisions as Landlord, in its sole judgment, may deem advisable and shall have the right to make repairs to and alterations of the demised Premises.

26.6 Application of Rentals Upon Re letting

If Landlord shall elect to re let as aforesaid, then rentals received by Landlord there from shall be applied as follows:

- (a) To the payment of any indebtedness other than rent due hereunder from Tenant;
- (b) To the payment of all costs and expenses incurred by Landlord in connection with such reletting;
- (c) To the payment of the cost of any alterations of and repairs to the Premises; and
- (d) To the payment of rent due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable hereunder during that month by Tenant, then Tenant shall pay such deficiency to Landlord forthwith upon demand, and said deficiency shall be calculated and paid monthly. Tenant shall also pay Landlord as soon as ascertained and upon demand, all costs and expenses incurred by Landlord in

connection with such reletting and in making any such alterations and repairs which are not covered by the rentals received from such reletting.

26.7 Re-Entry Not Termination

No re-entry or taking possession of the Premises by Landlord under this Article shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof be adjudged by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of Tenant's default, Landlord may at any time after such reletting elect to terminate this Lease because of such default.

26.8 Landlord's Right to Damages and Indemnification Preserved

Nothing contained in this Article shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damages to it caused by Tenant's default; nor shall anything in this Article adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to persons or property occurring prior to a termination of this Lease.

26.9 Interest

Any unpaid rent and any other sums due and payable hereunder by Tenant shall bear interest at the maximum lawful rate per annum from the due date and until payment thereof.

26.10 "Rent" and "Rental"

The terms "rent" and "rental" as used herein and elsewhere in this Lease shall be deemed to be and mean the minimum rent, all additional rents, rental adjustments, taxes and utilities, and any and all other sums, however designated, required to be paid by Tenant hereunder.

26.11 Late Charges

Tenant acknowledges that late payment by Tenant to Landlord of rent and/or CAM payments will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, Landlord's bank fees, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of rent or CAM due from Tenant is not received by Landlord within twenty-five (25) days following the due date, Tenant shall pay to Landlord an additional sum of five percent (5%) of the amount owed as a late charge. After written notice by Landlord and if more than one hundred twenty (120) days without full payment of outstanding balance of rent payments/CAM and late fees by Tenant, the Landlord may terminate this Lease with thirty (30) days written notice without prejudice or surrender of Landlord's rights and/or Tenant's remaining obligations within this lease. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

26.12 Guaranteed Payment

Tenant agrees that in the event Tenant makes any payment to Landlord by check or draft which as a result of any act or omission of Tenant causes said instrument to be non-negotiable by Landlord in the normal course of its business, Landlord may at its option demand that all future payments to Landlord from Tenant be made by certified or cashier's check or by money order.

26.13 Attorney's Fees

If Landlord shall retain an attorney for the purpose of collecting any rental due from Tenant or for the purpose of enforcing any other term or provision of this Lease, Tenant shall pay the reasonable fees of such attorney for the attorney's services regardless of the fact that no legal proceeding or action may have been filed or commenced.

ARTICLE 27. PRIORITY OF LEASE AND ESTOPPEL CERTIFICATE

27.1 Priority of Lease

At Landlord's election, this Lease shall be either superior to or subordinate to any and all trust deeds, mortgages or other security instruments, ground leases or leaseback financing arrangements now existing or which may hereafter be executed covering the Premises and/or the land underlying the same or any part or parts of either thereof, and

Landlord

Tenant

for the full amount of all advances made or to be made thereunder together with interest thereon, and subject to all the provisions thereof, all without the necessity of having further instruments executed by Tenant to effectuate the same. Tenant agrees to execute, acknowledge and deliver upon request by Landlord any and all documents or instruments which are or may be deemed necessary or proper by Landlord to more fully and certainly assure the superiority or the subordination of this Lease and to any such trust deeds, mortgages or other security instruments, ground leases or leasebacks. Provided, that if this Lease shall be subordinate, any person or persons purchasing or otherwise acquiring any interest at a foreclosure sale under said trust deed, mortgages or other security instruments, or by termination of said ground leases or leasebacks, shall continue this Lease in full force and effect in the same manner as if such person or persons had been named as Landlord herein.

This Lease shall continue in full force and effect as aforesaid, and Tenant shall automatically become the tenant of Landlord's successor in interest and shall attorn to said successor in interest. If requested, Tenant shall execute an attornment agreement satisfactory in form to said successor in interest. The words "person" and "persons" as used herein or elsewhere in this Lease shall mean individuals, partnerships, firms, associations and corporations.

27.2 Modifications Required by Lender

It is understood by Tenant that during the term of this Lease, Landlord may place new or additional financing upon the Building and in that event, this Lease must be approved by the financing institution making such loans. Accordingly, if any such financial institution requires, as a condition to making its loan, any non-substantive modification of this Lease, Tenant agrees to enter into an agreement so modifying this Lease. In the event Tenant refuses on the grounds that the modification is substantive, then that issue only shall be arbitrated through the offices of the American Arbitration Association under the rules and guidelines of that association as then existing, with each party to bear its own costs incurred therein, and to share one-half of the mutually incurred arbitration costs. If it is determined by such arbitration that Tenant is required to enter into such amendment and if Tenant refuses to execute such amendment within twenty (20) days after such determination, then Landlord shall have the right, in addition to any other remedies it may have at law or in equity, by giving written notice to Tenant, to terminate this Lease.

27.3 Estoppel Certificate

Tenant shall at any time and from time to time execute, acknowledge and deliver to Landlord, within twenty (20) days after Landlord's request therefore, a written statement certifying as follows:

- (a) That this Lease is unmodified and in full force (or if there has been modification thereof, that the same is in full force as modified and stating the nature thereof);
- (b) That to the best of its knowledge, there are no uncured defaults on the part of Landlord (or if any such default exists, the specific nature and extent thereof);
- (c) The date to which any rents and other charges have been paid in advance, if any.

ARTICLE 28. HOLDING OVER

If, without the execution of a new Lease or written extension of this Lease, and with the consent of Landlord, Tenant shall hold over after the expiration of the term of this Lease, then Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month, which tenancy may be terminated as provided by law. During said tenancy, the minimum rent payable to Landlord by Tenant shall be one hundred twenty percent (120%) of the minimum rental set forth in Article 3 of this Lease, unless a different rate is agreed upon, and upon all of the other terms, covenants and conditions set forth in this Lease so far as the same are applicable. Provided that if Tenant shall fail to surrender the Premises upon the termination of this Lease, in addition to any other liabilities to Landlord arising there from, Tenant shall and does hereby agree to indemnify and hold Landlord harmless from loss and liability resulting from such failure including, but not limited to, claims made by any succeeding tenant founded on such failure.

ARTICLE 29. NOTICES

Wherever in this Lease it shall be required or permitted that notice, approval, advice, consent or demand be given or served by either party to this Lease to or on the other, the same shall be given or served, and shall not be deemed to have been duly given or

Landlord

Tenant

served unless in writing and forwarded by certified or registered mail, addressed to the addresses of the parties as specified herein. Notice shall be deemed given when so mailed and addressed. Either party may change such address by written notice forwarded by certified or registered mail to the other.

LANDLORD: **SEAWEST INVESTMENT ASSOCIATES, LLC**
 13120 N.E. 70th Place, Suite 201
 Kirkland, WA. 98033
Phone **(425) 828-7777**
Fax **(425) 827-3276**

TENANT: **City of Kirkland**
 123 5th Ave
 Kirkland, WA 98033
Phone: _____

Email Contact: _____

ARTICLE 30. LIENS

30.1 No Liens Permitted

Tenant shall pay all costs for work done by it or caused to be done by it in the Premises and Tenant shall keep both said Premises and the Building free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify and hold Landlord harmless against liability, loss, damage, costs, attorneys' fees and any other expenses on account of claims of lien of laborers or suppliers for work performed or materials or supplies furnished for Tenant or persons claiming under it. Tenant shall take all steps as Landlord may direct, including the furnishing of a bond or bonds, to insure the protection of Landlord, the Premises and the building from loss by virtue of any such lien.

30.2 Tenant's Bond on Contest

If Tenant shall desire to contest any claim of lien, it shall furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest or a bond of a responsible corporate surety in that amount conditioned on discharge of the lien. Tenant shall pay and satisfy forthwith any final judgment entered which establishes the validity or existence of a lien.

30.3 Landlord's Right to Pay Lien Claims

If Tenant shall not have paid a charge for which a mechanics' lien claim and suit to foreclose the same have been filed, and shall not have given the security aforesaid, Landlord may (but shall not be obligated to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith shall be immediately due and owing from Tenant to Landlord as additional rent, together with interest at the maximum lawful rate from the date of Landlord's payment thereof.

30.4 Notice Prior to Commencement of Work

Tenant shall, at least ten (10) days prior to commencing any work, which might result in a lien as aforesaid, give Landlord written notice of its intention so to do to enable Landlord to post, file and record legally effective notice of non-responsibility. Landlord or its representatives shall have the right to enter into the demised Premises and inspect the same at all reasonable times, and shall have the right to post and keep posted thereon said notices of non-responsibility and such other notices as Landlord may deem proper to protect its interest therein.

ARTICLE 31. QUIET ENJOYMENT

Landlord agrees that Tenant, except as otherwise provided herein, upon payment of rent, additional rent and all other sums and charges required to be paid by Tenant hereunder, and the due and punctual performance of all of Tenant's other covenants and obligations under this Lease, shall have the quiet and undisturbed possession of the Premises.

ARTICLE 32. ATTORNEYS' FEES

Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages or for declaratory or other relief hereunder, the prevailing party shall be entitled to receive from the losing party, in addition to court costs, such amount as the court may adjudge to be reasonable as attorneys' fees for services

Landlord

Tenant

rendered to said prevailing party, and said amount may be made a part of the judgment against the losing party.

ARTICLE 33. MISCELLANEOUS

33.1 No Partnership or Joint Venture

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be in any manner responsible for the debts or obligations of Tenant, or any other party.

33.2 Separation of Provisions - Construction of Lease

If any provision of this Lease shall be determined to be void or voidable by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void or voidable and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

33.3 Corporate Representatives

If Tenant hereunder is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord that: They have the authority to bind Tenant; Tenant is a valid and existing corporation; all things necessary to qualify Tenant to do business in Washington have been accomplished prior to the date of this Lease; all franchise and other corporate taxes have been paid to the date of this Lease; all forms, reports, fees and taxes required to be filed or paid by said corporation in compliance with applicable laws will be filed and paid when due.

33.4 Entire Agreement

The entire agreement between the parties hereto is set forth in this Lease, and any agreement hereafter made shall be ineffective to change, modify, alter or discharge it in whole or in part unless such agreement is in writing and signed by both said parties. It is further understood that there are no oral agreements between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between said parties or displayed by Landlord to Tenant with respect to the subject matter of this Lease, and none of the same shall be available to interpret or construe this Lease. All negotiations and oral agreements acceptable to both parties hereto have been merged into and are included in this Lease.

33.5 Other Tenancies and Improvements

Landlord reserves the absolute right to effect such other tenancies in the Building as Landlord shall determine to best promote the interests of the Building. Landlord may change the shape, size, location, number and extent of the improvements to any portion of the Building without the consent of Tenant. Tenant does not rely on the fact nor does Landlord represent that any specific tenant or number of tenants shall during the term of this Lease occupy any space in the Building.

33.6 Jurisdiction - Construction of Lease

The laws of the State of Washington shall govern the validity, performance and enforcement of this Lease. King County shall be the venue of any action arising out of this Lease. Although the printed provisions of this Lease were prepared and drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but its construction shall be at all times in accord with the general tenor of the language so as to reach a fair and equitable result.

33.7 Non-Waiver - Landlord's Acceptance of Payment

A waiver of any breach or default shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. The acceptance by Landlord of any rental or other payments due hereunder with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by Landlord of any sum less than that which is required to be paid by Tenant shall, unless Landlord specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in a letter of transmittal.

Landlord

Tenant

33.8 Force Majeure

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, enemy or hostile governmental action, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage except that subject to the provisions of Subsection 13.4, Tenant's obligations to pay rent, additional rent and any other sums or charges pursuant to this Lease shall not be affected thereby so long as the Premises have been delivered to Tenant.

33.9 "Landlord" – Release

The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Premises; and in the event of any transfer or transfers of title thereto, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations hereunder on the part of Landlord to be performed thereafter.

33.10 Relocation

During the term of this Lease Landlord shall have the right to relocate the demised Premises to another location in the Building of approximately the same size as the original Premises described herein, upon thirty (30) days' written notice, provided that the cost of relocating Tenant's fixtures and equipment and constructing those leasehold improvements required by Tenant's business shall be borne solely by Landlord. All other costs, if any, shall be borne by Tenant.

33.10 Financial Statements

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

33.11 Time for Performance

Time is of the essence with respect to the performance of each of the covenants and agreements of this Lease.

33.12 Binding Effect

Each and all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and (except as set forth in Subsection 33.9 above and as otherwise specifically provided elsewhere in this Lease), their respective personal representatives, successors and assigns, subject at all times to all provisions and restrictions elsewhere in this Lease respecting the assignment, transfer, encumbering or subletting of all or any part of the Premises or Tenant's interest in this Lease.

33.13 Submission Not Offer

Submission of this instrument by or on behalf of Landlord for examination or execution by Tenant does not constitute a reservation of or option for Lease, and this instrument shall not be effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

33.14 Captions

The captions shown in this Lease are for convenience or reference only, and shall not, in any manner, be utilized to construe the scope or the intent of any provisions thereof.

33.15 Recordation

Tenant shall not record this Lease nor any short form memorandum thereof without Landlord's written consent.

33.16 Automatic Termination

In the event that the Rent Commencement Date has not occurred within thirty-six (36) months after the date hereof, this Lease shall terminate and be of no further force and effect.

Landlord Tenant

33.17 Conditions

All agreements herein by Tenant, whether expressed as covenants or conditions, shall be deemed to be conditions for the purpose of this Lease.

33.18 Addendum

An Addendum is attached hereto and incorporated herein.

33.19 Number and Gender

Unless some other meaning and intent are apparent from the context, the plural shall include the singular and vice versa; masculine, feminine and neuter words shall be used interchangeably.

SIGNATURE PAGE

WITNESS the signatures of the parties hereto, this ____ day of _____, 2021.

LANDLORD:

SEAWEST INVESTMENT ASSOCIATES, LLC

By _____

Its _____

Print Name _____

TENANT:

CITY OF KIRKLAND

By _____

Its _____

Print Name _____

Landlord

Tenant

LANDLORD NOTARY

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of SEAWEST INVESTMENT ASSOCIATES, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: _____

(Print Name)
NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

Landlord _____
Tenant

TENANT NOTARY

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _City of Kirkland_____ of _N/A_____ to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: _____

(Print Name)
NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

Landlord _____
 Tenant

ADDENDUM ONE

This Addendum dated the _____ day of May, 2021 is to that certain Lease between Seawest Investment Associates LLC as "Landlord" and City of Kirkland. as "Tenant". Wherein this Addendum differs from said Lease, this Addendum shall control.

1. Parking: **Tenant shall have unreserved access to its proportional parking area. Tenant shall be allowed to erect and maintain a temporary parking structure or cover if allowed by Code.** Tenant shall be allowed access to all parking for the property 24 hours a day, 7 days a week. Tenant shall be permitted to park emergency response apparatus and aid car on site.

Landlord

Tenant

EXHIBIT A - LEGAL DESCRIPTION

To be attached.

Landlord

Tenant

EXHIBIT B – SPACE/SITE PLAN

To be attached.

EXHIBIT C – CONTINGENCIES

NONE

EXHIBIT D - LANDLORD AND TENANT'S WORK

- I. **LANDLORD'S WORK:** The demised Premises are leased to Tenant "as is," without representation or warranty by the Landlord, with the following exceptions: Landlord shall provide in good working order all mechanical systems, electrical systems, and window systems for the Premises, and Landlord shall complete the following improvements to the Premises prior to occupancy:

kitchen improvements, PPE room, decon room, construction of showers, three (3) sleeping quarters, exercise area, and a dayroom ("Tenant Improvement Work").

Before commencing: the scope of work for such improvements shall be submitted to Tenant for Tenant's review. Landlord shall hire an architect (approved by Tenant) and complete plans and specs for work to be completed, or City shall submit proposal for their preferred Architect for Landlord's review and approval to complete plans and specs for work to be completed. Landlord shall complete Tenant Improvement Work in-house or shall hire contractor to complete Tenant Improvement Work. Tenant shall have the right to review and approve all plans submitted by Landlord's architect for the Tenant Improvement Work. Tenant shall have the right to review and approve Tenant Improvements and associated costs and approve the selected contractor. Consistent with RCW 39.04.260, Landlord shall comply with chapter 39.12 RCW, related to prevailing wages, in performing Landlord's Work. To the extent Landlord constructs the Tenant Improvements Work in-house, WAC 296-127-026 exempts owners from paying themselves prevailing wage for work on the project.

- II. **TENANT'S WORK:** Tenant is responsible for any and all work necessary to improve the Premises for Tenant's occupation not specifically described as "Landlord's Work."

Any work done at the space by Tenant during the term of the Lease:

- Tenant shall hire a licensed and bonded Contractor, subject to Landlord's approval, which shall not be unreasonably withheld. Prior to application for permits, Working Drawings prepared by licensed professionals shall be submitted to Landlord for Landlord's review and approval, which approval shall not be unreasonably withheld.
- Tenant warrants that all improvements, including all mechanical and HVAC, electrical and plumbing systems, and excluding those installed by Landlord, shall be constructed up to current applicable Building and Governmental codes. Tenant is solely responsible for verifying all existing plumbing, mechanical, HVAC, and electrical is adequate for their use. Tenant is solely responsible for verifying their intended use is permitted by City and governing authorities, including but not limited to County and State (if applicable). All work by the Tenant shall be done according to Code. All plans for such work shall be presented to the Landlord for the Landlord's approval prior to the start of work. Plans shall be presented to the Landlord within fifteen (15) days after mutual signing of the Lease.

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EXHIBIT E - ARBITRATION RIDER

Any controversy or claim arising out of or relating to this Lease, or the breach thereof, other than an action by Landlord against Tenant for nonpayment of Rent, or for unlawful detainer or ejectment, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Landlord

Tenant

EXHIBIT F - RULES & REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be displayed or affixed on or to any part of the outside of the Building, including but not limited to all storefronts, windows, walls, fencing, roof, fascia, etc. without the prior written consent of Landlord. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord. All electrical signs shall be labeled as approved by Underwriter's Laboratory. Landlord may elect to provide, at Landlord's sole cost and expense, building standard suite and directory signage.
2. Tenant shall not place anything near the glass of any window, door, partition or wall, which may appear unsightly from outside the Premises.
3. The sidewalks, halls, passages, exits, entrances and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress from their respective Premises.
4. Tenant shall not alter any lock or install any new or additional locks or any bolts on any doors or window of the Premises without the written consent of the Landlord.
5. The toilet rooms, urinals, washbowls, and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant whose employees or invitees caused it.
6. Tenant shall not overload the floor of the Premises.
7. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors or vibrations, or interfere in any way with other tenants or those having business therein.
8. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord, without written consent of the Landlord.
9. Landlord shall have the right, without liability to Tenancy, to change the name and street address of Building of which the Premises are a part.
10. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent the same. This provision does not prevent or in any way limit Tenant from performing its governmental or proprietary functions as the City of Kirkland.
11. Tenant shall instruct Tenant's staff/employees to park in areas designated by Landlord as permitted or Tenant parking area.
12. No vending machine or machines of any description shall be installed, maintained or operated on the Premises without the written consent of the Landlord.
13. These Rules and Regulations may be amended or additional rules added from time to time, consistent with the Lease, which shall become effective upon delivery of written copies to the Tenants.
14. Tenant shall reimburse the Landlord for lost or damaged keys/access cards/garage remotes as follows: \$25 for each key and access card, \$100 for each garage remote.

Landlord

Tenant

EXHIBIT G – AGENCY DISCLOSURE

Landlord was represented by Brennan McClurg of First Western Properties, Inc.

Tenant was represented by Joe Steele of CBRE, Inc.

Commissions as according to Landlord's Listing Agreement with First Western Properties, Inc.

Landlord

Tenant

EXHIBIT H – FIRST RIGHT OF REFUSAL

First Right of Refusal to Purchase: if the Landlord decides to sell the property and puts it on the market or otherwise offer or make it available for sale at any time during the term of the lease, Tenant shall have the ongoing first right of refusal to purchase the property. If Landlord receives a bona fide offer once the property has been listed and put on the market or otherwise offered or made available for sale, Tenant shall have the right to match the terms of the offer to acquire the property within 30 days.

Landlord

Tenant