



# NOTICE OF COUNCIL MEETING

STUDY SESSION  
TELECONFERENCE (Open to the Public)  
Monday, July 22, 2024  
5:15 p.m.

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## TELECONFERENCE/ELECTRONIC PARTICIPATION PROCEDURES

***Members of the Aurora City Council will participate in the July 22, 2024 Study Session. Members of the public and media may participate remotely through the options listed below:***

### **View or listen live to the Study Session**

Live streamed in the Paul Tauer Aurora City Council Chamber  
and at [www.AuroraTV.org](http://www.AuroraTV.org) and [Youtube.com/TheAuroraChannel](https://Youtube.com/TheAuroraChannel)  
Cable Channels 8 and 880 in Aurora  
Call: 855.695.3475

### **Translation/Accessibility**

The City will provide closed captioning services on Cable Channels 8 and 880. If you need any other accommodation, please contact the Office of the City Clerk at (303) 739-7094. If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521 by Monday, July 22, 2024 at 9:00 a.m. (Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes en 303-739-7521 por el viernes anterior a la reunión del lunes.)

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For other information regarding public meetings, please contact the Office of the City Clerk at (303) 739-7094 or by email at [CityClerk@auroragov.org](mailto:CityClerk@auroragov.org) or visit [www.auroragov.org](http://www.auroragov.org)



## AGENDA

### Study Session of the Aurora City Council

Monday, July 22, 2024

5:15 p.m.

Aurora Room

15151 E. Alameda Parkway

Aurora, CO 80012

Pages

#### 1. ITEMS FROM THE MAYOR

1.a Mayor's Update

1.b Issue Update

#### 2. CONSENT CALENDAR

2.a Consideration to Appoint One (1) Member to the Aurora Commission for Older Adults 3

adee Rodriquez, City Clerk Tim Joyce, Assistant City Attorney

2.b Build Up Aurora Infrastructure Task Force (Resolution) 28

Sponsor: Dustin vonek, Mayor Pro Tem Curtis Gardner, Council Member

Laura Perry, Deputy City Manager, Senior Assistant City Attorney Michelle Gardner, Senior Assistant City Attorney

2.c 2024 IT Lease Purchase Authority (Ordinance) 34

Scott Newman, Chief Information Officer, Information Technology Hanosky Hernandez, Senior Assistant City Attorney

#### 3. ITEMS FROM THE POLICY COMMITTEES

#### 4. ITEMS FROM THE COUNCIL APPOINTEES

#### 5. ITEMS FROM THE CITY COUNCIL

**5.a 151 Potomac Street Greenhouse Lease Agreement (Resolution)**

42

Sponsor: Crystal Murillo, Council Member

Hector Reynoso, Real Property Services Manager, Public Works Michelle Gardner, Senior Assistant City Attorney

Outside Speaker: Caitlin Matthews, Food Systems and Policy Director, Food Justice Northwest Aurora

Estimated time: 20 mins

**6. CALL-UPS OF COUNCIL POLICY COMMITTEE ITEMS**

**. MISCELLANEOUS ITEMS**

**8. ITEMS REMOVED FROM THE AGENDA, IF ANY**



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Consideration to Appoint One (1) Member to the Aurora Commission for Older Adults
<b>Item Initiator:</b> Kadee Rodriguez, City Clerk
<b>Staff Source/Legal Source:</b> Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 1.2--Develop neighborhood and community relationships

### COUNCIL MEETING DATES:

**Study Session:** 7/22/2024

**Regular Meeting:** 8/12/2024

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

### Action Taken/Follow-up: *(Check all that apply)*



Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The Aurora Commission for Older Adults (ACFOA) advises the City Council and the director of Parks, Recreation and Open Space Department on such matters as shall pertain to the lives, standard of living and condition of improving the quality of life for older adults living in Aurora.

The ACFOA is made up of nine (9) members who are residents of Aurora and registered electors. Members serve a 3-year term and may serve up to two (2) terms. All eligible applications received within the last year are forwarded to the Board to be considered for interviews.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The Aurora Commission for Older Adults currently has three (3) vacancies. The Commission received three (3) applications and interviews were conducted on April 3, 2024.

Among the applicants were:

Barbara Becker

Pam Blackman

Ronnie Brown

Demetria Martinez

Karen Talley

Applicants Barbara Becker, Pam Blackman and Ronnie Brown were interviewed but later Pam Blackman and Ronnie Brown withdrew their applications.

Upon conducting interviews, the ACFOA respectfully recommends the appointment and reappointment of the following candidates:

Barbara Becker – 1<sup>st</sup> term beginning 2/1/2024 and ending on 1/31/2027

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

Revenue Impact

Budgeted Expenditure Impact

Non-Budgeted Expenditure Impact

Workload Impact

No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does Council wish to appoint Barbara Becker to the Aurora Commission for Older Adults?

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**LEGAL COMMENTS**

All boards and commissions shall be appointed by City Council. (City Charter, art III, sec. 3-11 and art. IX, sec. 9-1) The Aurora Commission for Older Adults shall consist of no less than seven and no greater than nine members, who shall be registered electors. The Commission shall consist of adult citizens, the majority of whom shall be 55 years of age or older and concerned with the needs of older adults with considerations given to their contribution and interest in older adults. No person may serve more than two consecutive terms of three years each. City employees holding the offices of City Manager, Director of Community Development and Director of Parks, Recreation and Open Space or their designees shall be ex officio nonvoting members of the commission. (Aurora, Colo Code § 2-812). (TJoyce)

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To: Mayor Coffman and Members of City Council

From: Jeannie Davis, Chairperson, Aurora Commission for Older Adults

Through: Brooke Bell, Director of Parks, Recreation and Open Space Department

Date: July 1, 2024

Subject: New Appointment to the Aurora Commission for Older Adults

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Board or Commission Name: Aurora Commission for Older Adults

Number of Vacancies: 3

### Interview Information

Date of Interview(s): April 3, 2024

Applicant Name(s): Barbara Becker, Pam Blackman, Ronnie Brown, Demetria Martinez, Karen Talley

Applicant(s) Interviewed: Barbara Becker, Pam Blackman, Ronnie Brown

### Recommendation

Applicants, Pam Blackman and Ronnie Brown were interviewed but later withdrew their applications.

### Suggested Appointment

Summary:

Ms. Barbara Becker applied for a first term to the Aurora Commission for Older Adults. An Aurora resident of over 40 years, she served on the Aurora Center for Active Adults Advisory Committee and is an active volunteer of the center. Barbara is a retired human resource professional and entrepreneur.

**The Aurora Commission for Older Adults strongly supports the appointment of Barbara Becker, as Member on the Aurora Commission for Older Adults.**

**Commission For Older Adults**

**Applicant Package - Ward To Be Determined**

Commission For Older Adults - Ward To Be Determined

**Term** 01 Feb 2024 - 31 Jan 2027

**Positions Available** 3

**Number of applicants in this package** 1

- Becker, Barbara

Received: 07/02/2024

Ward V Resident & Registered Voter

Arapahoe County

Vetted on: 07/03/2024

*Marcus Bond*

**Name:** Becker, Barbara

**Address:** [REDACTED]

**Email:** [REDACTED]

**Board Name:** Commission for Older Adults

**Date of Birth:**

[REDACTED]

**Home Phone Number:**

[REDACTED]

**Work Phone Number:**

[REDACTED]

**How long have you lived in Aurora?:**

38 years

**Are you registered to vote?:**

Yes

**Years of Education Completed:**

13

**Degree(s) Received:**

None

**College(s) Attended:**

Colorado State University

**Employer Name:**

Retired

**Employer Address:**

Retired

**Current Position:**

Retired

**Years with Current Employer:**

30

**Work Experience:**

HR Director - 30 years Owner of Ski shop - 12 years

**Certification(s):**

none

**How are you involved in your community?:**

Line Dance at ACAA Volunteer at ADAA

**List your interests and activities.:**

Line Dance Day Trips Volunteering Attending concerts and plays

**Do you presently serve in any other appointed position on a board, commission or committee?:**

No

**If yes, enter the board name and position:**

Was on the Senior Board at the ACAA, but Board was canceled due to Covid.

**Are you currently a member and seeking reappointment on the board you are applying for?:**

No

**Why do you desire this appointment?:**

Would like to volunteer because it sounds very interesting.

**How much time do you anticipate being able to spend on this appointment each month?:**

didn't state

**Do you have any conflicts of interest that should be disclosed?:**

No

**If yes, please explain:**

N/A

**Reference 1: Full Name, Phone Number and Address:**

Barb Schneller

**Reference 2: Full Name, Phone Number and Address:**

Laura Bandstra, [REDACTED]

**Reference 3: Full Name, Phone Number and Address:**

Diane Henderson [REDACTED]

**How did you hear about us?:**

Word of Mouth

**By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:**

Barbara Becker

**Time of Submission:** 07/03/24 12:37:52 PM

**Aurora Commission For Older Adults**

**Applicant Package - Ward III**

Aurora Commission For Older Adults - Ward III

**Term** 01 Feb 2024 - 31 Jan 2027

**Positions Available** 3

**Number of applicants in this package** 1

- Blackman, Pam

Received: 02/6/2024  
Ward III Resident & Registered Voter  
Arapahoe County  
Vetted on 2/7/2024

A handwritten signature in black ink, appearing to read "Pam Blackman". The signature is written in a cursive style with a large initial "P" and "B".

**Name:** Blackman, Pam

**Address:** [REDACTED]

**Email:** [REDACTED]

**Board Name:** Aurora Commission for Older Adults

**Date of Birth:**

[REDACTED]

**Home Phone Number:**

[REDACTED]

**Work Phone Number:**

[REDACTED]

**How long have you lived in Aurora?:**

30+ years

**Are you registered to vote?:**

Yes

**Years of Education Completed:**

16

**Degree(s) Received:**

Associates Degree in Electronics Technology Bachelor of Science Degree in Management Information Systems

**College(s) Attended:**

DeVry Institute of Technology Colorado Technical University

**Employer Name:**

Self Employed

**Employer Address:**

19137 E. Harvard Dr. Aurora, Colorado 80013

**Current Position:**

CEO | Operations Strategist

**Years with Current Employer:**

15

**Work Experience:**

Electronics Technician, Administrative Assistant, Executive Assistant, Chief of Staff, Online Business Manager, Director of Operations

**Certification(s):**

Online Business Manager; Director of Operations; Digital Marketing

**How are you involved in your community?:**

Currently I'm not involved in anything directly, but have been looking for opportunities that fit my schedule and that don't require a lot of physical effort. However, I do financially support an outreach that helps provide clothing, toiletries and food to those in need. My business also provides a portion of its profits to ending childhood hunger.

**List your interests and activities.:**



Interests: Studying scripture; animals; home improvement projects; an eclectic taste in music and other entertainment, to include family friendly Broadway shows and other live entertainment. I especially love the music of Yanni and Brian Culbertson. Activities: I love the work I do, so I do spend a lot of time working because it's also my creative outlet, as well. I am currently learning to "really" play chess. I'd like to get good enough to join a club within the next 6-months. I love spending time playing board games or poker with my family, as well.

**Do you presently serve in any other appointed position on a board, commission or committee?:**

No

**If yes, enter the board name and position:**

N/A

**Are you currently a member and seeking reappointment on the board you are applying for?:**

No

**Why do you desire this appointment?:**

Discovering that this commission exists was a revelation to me. I wasn't aware of it until I saw the posting on NextDoor today. I was already aware of the underlying needs that the commission addresses. Now, the realization that there's an organized effort that is focused on these issues makes me want to be a part of ensuring existing programs keep going, and helping to shape future programs. I've been blessed so far to not need any such services, but one day I might. Meantime, it would be a honor to be part of helping those who do need them now and in the future.

**How much time do you anticipate being able to spend on this appointment each month?:**

I believe I could contribute 10 - 15 hours per month, give or take, depending on the need. I'm fairly flexible.

**Do you have any conflicts of interest that should be disclosed?:**

No

**If yes, please explain:**

I don't believe I have any.

**Reference 1: Full Name, Phone Number and Address:**

Joelle Reams

**Reference 2: Full Name, Phone Number and Address:**

Keldie Jamieson

**Reference 3: Full Name, Phone Number and Address:**

Shelby Ketchen

**How did you hear about us?:**

Other

**By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:**

Pam Blackman

**Time of Submission:** 02/06/24 11:04:42 PM

## **Attachments**

- Copy of Capability Statement - 2023.pdf

NAICS Code: 541611  
Administrative Management & General  
Management Consulting Services  
SIC Code: 8742  
Management Consulting Services

# CAPABILITY STATEMENT

Your Strategic Partner in Scalable Growth & Smooth Operations



## Company Overview

Ops InSync, LLC specializes in crafting tailored strategic planning and business process improvement women-led small business leaders, with a keen emphasis on the human element to ensure that everything is working "insync" with your vision and goals.

## We're Called on To...

- Identify gaps and waste in business activities
- Improve leadership and team productivity
- Develop/improve a comprehensive set of documented business systems, policies, and standard operating procedures "SOP"
- Co-create the development and implementation of continuous improvement initiatives
- Integrate business systems with project initiatives
- Increase customer loyalty
- Increase team engagement and moral

## CORE COMPETENCIES

- Conducting Operations Analysis
- Guiding Operations & Business Scaling Strategies
- Training & Facilitation for Business Process Improvement
- Risk Assessment & Designing Contingency Plans
- Team Enablement

## DIFFERENTIATORS

- Highly Collaborative
- Servant Leadership
- Partners in Success
- Community Focused
- Innovation Conscious

opsinsync™

## Past Performance

- **Streamlined** local recruiting processes
- Designed processes to **save \$400K in additional licensing fees**
- **Saved \$10K** in event fees
- Resolved chargeback issues resulting in **saving \$5K in otherwise lost revenue**
- Recognized for superior leadership skills in training & supervising staff & volunteers
- Developed HR compliance processes, **saving the company \$20K in fines**
- Implemented security card processes which resulting in a **savings of \$1K in lost security card fees**

## Owner Biography



Pam Blackman, is the Founder, CEO and Operations Strategist at Ops InSync.

She brings over 30 years experience in improving business operations and has

been recognized for her ability to see gaps and fill them, see potential risks and save you from them, save money, and lead teams to becoming more effective and efficient.

### Strengths Finder

Connectedness, Intellection, Responsibility, Belief, Developer

Kolbe A Index | 6734

## Education & Professional Certifications

- Associates Degree in Technology
- Bachelor of Science | Management Information Systems.
- Certified Online Business Manager
- Certified Director of Operations

 Colorado Technical University



**Aurora Commission For Older Adults**

**Applicant Package - Ward III**

Aurora Commission For Older Adults - Ward III

**Term** 01 Feb 2024 - 31 Jan 2027

**Positions Available** 3

**Number of applicants in this package** 1

- Brown, Ronnie

Received: 02/15/2024  
Ward III Resident & Registered Voter  
Arapahoe County  
Vetted on 2/15/2024

A handwritten signature in black ink, appearing to read "C. Zapata", is written below the text.

**Name:** Brown, Ronnie

**Address:** [REDACTED]

**Email:** [REDACTED]

**Board Name:** Aurora Commission for Older Adults

[REDACTED]

**Home Phone Number:**

[REDACTED]

**Work Phone Number:**

[REDACTED]

**How long have you lived in Aurora?:**

20+ years

**Are you registered to vote?:**

Yes

**Years of Education Completed:**

20

**Degree(s) Received:**

BA - Communications MBA - Emphasis on Healthcare Administration

**College(s) Attended:**

University of Colorado at Denver

**Employer Name:**

City & County of Denver

**Employer Address:**

490 W. Colfax Avenue Denver, CO 80216

**Current Position:**

Jail Medical Administrator

**Years with Current Employer:**

4 months

**Work Experience:**

I worked in long-term care x20 years

**Certification(s):**

Colorado licensed nursing home administrator Colorado licensed assisted living operator

**How are you involved in your community?:**

I am registered to vote

**List your interests and activities.:**

I enjoy exercising, walking, running, weight training, and spending time with my family

**Do you presently serve in any other appointed position on a board, commission or committee?:**

No

**If yes, enter the board name and position:**

N/A

**Are you currently a member and seeking reappointment on the board you are applying for?:**

No

**Why do you desire this appointment?:**

I served older adults in my career x20 years and this past fall changed careers. I would like the opportunity to continue to serve and advocate for older adults in my community by serving as a member of this commission.

**How much time do you anticipate being able to spend on this appointment each month?:**

Unknown for sure but I would expect between 8-10 hours per month.

**Do you have any conflicts of interest that should be disclosed?:**

No

**If yes, please explain:**

N/A

**Reference 1: Full Name, Phone Number and Address:**

Jonna Hendrichs [REDACTED]

**Reference 2: Full Name, Phone Number and Address:**

Kelly Saracino [REDACTED]

**Reference 3: Full Name, Phone Number and Address:**

Cathi Muselman [REDACTED]

**How did you hear about us?:**

Other

**By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:**

Ronnie Brown

**Time of Submission:** 02/15/24 5:09:42 PM

**Attachments**

- Brown\_Ronnie\_Resume for Commission for OA.pdf

Ronnie Brown, MBA  
Aurora, CO 80011

**Education:**

Master of Business Administration (MBA) with Health Administration Emphasis, University of Colorado at Denver Executive Program, July 2009.

Bachelor of Arts, Communications, University of Colorado at Denver, May 2006.

**Experience:**

**City & County of Denver | Denver Sheriff Department-Denver, CO 10/2023-Present-Jail Medical Administrator**

- Working with HSA and Nurse Manager, as they direct duties and activities of all contracted health personnel to ensure compliance with provisions of operating agreement
- Prioritize, plan, organize, direct, and monitor contract compliance from Denver Health Hospital Authority through extensive review of UM and CQI Process
- Working with HAS and Nurse Manager to develop audit standards process for DHHA to include maintenance of contract files and contract preparation process
- Monitor financial information related to DHHA operating agreement, specifically sections pertaining to Denver Sheriff Department
- Audit DHHA files/records and processes to ensure compliance with all regulatory and accreditation standards
- Analyze data, developing, and preparing regular reports on contract status, for cost-benefit purposes and service improvements
- Resolve contract payment disputes, conferring with contractors and others concerning contract payments and compliance
- Serve as one of the DSD delegates on HER/EMR committee

**Cogir Senior Living-Denver, CO 10/2021-07/2023-Vice President of Operations**

- Regional leadership of 610 units (IL, AL, MC)
- Reduced agency spend from 150k/month to current trending of less than 2k/month by July 2023
- Strategic oversight of 1.5+ million-dollar renovation of two communities and involving 7 buildings
- Regional occupancy growth from 72% to 89%
- Developed and recommended annual capital and operational budgets
- Recruited, evaluated, and mentored a diverse senior management team, including vice president of sales and company executives
- Responsible for development and execution of regional strategic plan

### **Frontline Management – Lafayette, CO 08/2019-10/2021-Regional Director of Operations**

- Regional responsibility of 50 units (IL, AL, MC, SNF)
- Decreased agency utilization by 5
- Regional occupancy growth from 50 to 55
- Lowered controllable expenses by an average of 1% for each community
- Transitioned 3 communities through CHOW
- Clinical, Financial, Customer Service System Implementations
- Recruited, evaluated, and mentored senior management including human resources, clinical executives, business development, and organizational executives of 3 CCRCs located in SC, AL, and OH.
- In collaboration with business development team, developed regional business plans
- Contract initiation and negotiation
- Developed and recommended annual capital and operational budgets

### **Christian Living Communities – Clermont Park Denver, CO 06/2015- 08/2019-Executive Director**

- Responsible for day-to-day operations of 295 apartment Life Plan (CCRC) community and adult day program
- Supervision of 180 full-time employees including directors, managers, supervisors, clinical and non-clinical staff
- Resident satisfaction improvement from 92 to 95
- Reduced staff turnover of 41.03% in 2016 to 3.68% in 2018
- Identification and implementation of resident and team member technology designed to increase engagement and business operations
- National LeadingAge Finance Committee Member
- Member of organization committees and task forces, attended monthly board meetings
- Recommended community capital and operational budgets when complete 11M P&L
- Development of community and organizational policies

### **Balfour Senior Living – Lafayette, CO 04/2014-06/2015-Executive Director**

- Responsible for the day-to-day operation of a high-end, exceptional service-oriented boutique-style independent living community consisting of 190 apartments and cottages
- Active member of the company executive committee
- Provided leadership to managers of all community departments
- Active member of the community marketing team
- Oversight in entrepreneurial and innovative style of problem-solving and leading



**Commission For Older Adults**

**Applicant Package - Ward III**

Commission For Older Adults - Ward III

**Term** 01 Feb 2024 - 31 Jan 2027

**Positions Available** 3

**Number of applicants in this package** 1

- Martinez, Demetria

Received 2/17/2024  
Ward III & Registered Voter  
Vetted on 2/28/2024



**Name:** Martinez, Demetria

**Address:** [REDACTED]

**Email:** [REDACTED]

**Board Name:** Commission for Older Adults

**Date of Birth:**

[REDACTED]

**Home Phone Number:**

[REDACTED]

**Work Phone Number:**

[REDACTED]

**How long have you lived in Aurora?:**

8 Months

**Are you registered to vote?:**

Yes

**Years of Education Completed:**

20

**Degree(s) Received:**

BA Social Science

**College(s) Attended:**

Regis University

**Employer Name:**

DM Consulting

**Employer Address:**

NA

**Current Position:**

Owner

**Years with Current Employer:**

5 years

**Work Experience:**

See Resume

**Certification(s):**

See Resume

**How are you involved in your community?:**

Volunteer Education Advocate

**List your interests and activities.:**

Youth Veterans Older Adults

**Do you presently serve in any other appointed position on a board, commission or committee?:**

No

**If yes, enter the board name and position:**

NA

**Are you currently a member and seeking reappointment on the board you are applying for?:**

No

**Why do you desire this appointment?:**

To be engaged in the community and help inform policy and decision makers with a voice.

**How much time do you anticipate being able to spend on this appointment each month?:**

I'm flexible

**Do you have any conflicts of interest that should be disclosed?:**

No

**If yes, please explain:**

NA

**Reference 1: Full Name, Phone Number and Address:**

Robert Andrews [REDACTED]

**Reference 2: Full Name, Phone Number and Address:**

Allison Coombs [REDACTED]

**Reference 3: Full Name, Phone Number and Address:**

Abigail Hinga [REDACTED]

**How did you hear about us?:**

Other

**By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:**

Demetria Martinez

**Time of Submission:** 02/17/24 1:02:41 AM

**Attachments**

**Aurora Commission For Older Adults**

**Applicant Package - Ward III**

Aurora Commission For Older Adults - Ward III

**Term** 01 Feb 2024 - 31 Jan 2027

**Positions Available** 3

**Number of applicants in this package** 1

- Talley, Karen

Received: 02/16/2024  
Ward III Resident & Registered Voter  
Arapahoe County  
Vetted on 2/16/2024

A handwritten signature in black ink, appearing to read "C. B. Bapat" or similar, written in a cursive style.

**Name:** Talley, Karen

**Address:** [REDACTED]

**Email:** [REDACTED]

**Board Name:** Aurora Commission for Older Adults

**Date of Birth:**

[REDACTED]

**Home Phone Number:**

[REDACTED]

**Work Phone Number:**

[REDACTED]

**How long have you lived in Aurora?:**

42 years

**Are you registered to vote?:**

Yes

**Years of Education Completed:**

College

**Degree(s) Received:**

BA

**College(s) Attended:**

University of Colorado Aurora Community College

**Employer Name:**

NA

**Employer Address:**

NA

**Current Position:**

NA

**Years with Current Employer:**

NA

**Work Experience:**

On Attached Resume

**Certification(s):**

Paralegal

**How are you involved in your community?:**

I currently serve on my HOA board

**List your interests and activities.:**

Book club member for 20 years, gym, movies/theater/concerts, spending time with family and friends.

**Do you presently serve in any other appointed position on a board, commission or committee?:**

No

**If yes, enter the board name and position:**

NA

**Are you currently a member and seeking reappointment on the board you are applying for?:**

No

**Why do you desire this appointment?:**

I consider older adults to be terribly under represented in communities. This sector of the population lack necessary resources to live a healthy and full life. To access resources that are available involves navigating complex voice trees and websites. As a society, we should do much better to give more back to our senior population, who are the foundation of our country.

**How much time do you anticipate being able to spend on this appointment each month?:**

2-8 hours

**Do you have any conflicts of interest that should be disclosed?:**

No

**If yes, please explain:**

NA

**Reference 1: Full Name, Phone Number and Address:**

Monica Owens, [REDACTED] Aurora, CO 80012

**Reference 2: Full Name, Phone Number and Address:**

LaVonna Heath, [REDACTED] Denver, CO 80249

**Reference 3: Full Name, Phone Number and Address:**

Lisa Sterling, [REDACTED] Denver, CO 80249

**How did you hear about us?:**

Other

**By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:**

Karen Elaine Talley

**Time of Submission:** 02/15/24 8:23:35 PM

**Attachments**

- Karen's Resume.pdf



**PROFESSIONAL PROFILE:**

- Program Authority.
- Manage multiple tasks while working under pressure.
- Broad industry experience which includes Government, Healthcare, Finance and Legal.

**QUALIFICATIONS:**

- Excel in researching, problem solving and communication.
- Extremely organized.
- Strong people skills.
- Excellent written and verbal skills.
- Report generation and analysis.
- Process implementation.
- Provider contract execution.
- Data management.
- Working knowledge of State programs.
- Proficiency in most computer software and mainframe programs.
- Web design.
- Training.

**EDUCATION:**

- Bachelor of Arts- Communications
- ABA Paralegal Certificate-cum laude

**RELEVANT EXPERIENCE:**

**Worked with city and county governments.**

- Presentation of rules and program changes to Colorado Medical Service Board.
- Served on Aurora, Colorado Citizens Advisory Budget Commission.
- Served on Aurora, Colorado Human Relations Commission.

**Managed varied relationships.**

- Organized and facilitated various Stakeholder forums and conferences.
- Participated as speaker in outreach settings.

**Analysis, Design and Strategies**

- Financial and accounting auditing experience.
- Knowledge of budget issues.
- Drafted and reviewed contracts, amendments, and other contract related documents.
- Prepared written reports and recommendations to upper management.
- Drafted and published Colorado Indigent Care Program (CICP) Provider manual, and quarterly newsletters.



**Research, Compliance, and Communication**

- Researched legal issues, state and federal regulations, and policies.
- Ensured Provider's compliance with program policies, and state and federal regulations.

**WORK HISTORY:**

**2008-2020 Department of Healthcare Policy and Financing**

**IT Security Administrator (2015-2020)**

- Administration of Windows server infrastructure and related underlying systems.
  - Worked with Help Desk team in managing, provisioning, and configuring user access, group policy, and security settings.
  - Provided technical support for staff and external users.
  - Proactively monitored and reviewed system error logs and user-reported errors, and remediating issues.
  - Initiated and/or updated incident tickets with users and vendors; tracked assigned open ticket activity and ensured timely resolution.
  - Worked on new projects and technologies in support of business needs.
  - Briefed management and stakeholders on Windows servers and underlying systems.
  - Developed and provided training to other shared services team members.
- Other duties as assigned.

**Safety Net Programs and Grants Administrator (2008-2015)**

- Development of policies and implementation for the CICP and the Old Age Pension (OAP Health and Medical Program).
- Annually trained medical providers and other Stakeholders.
- Researched, analyzed, and drafted regulations, contracts, and provided oversight for programs managed.
- Monitored Provider applications and contract compliance.
- Reviewed and provided feedback on accuracy of information and took steps to correct any deficiencies.
- Liaison with providers, stakeholders, and clients, and facilitated positive resolution for client complaints.





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Build Up Aurora Infrastructure Task Force
<b>Item Initiator:</b> Laura Perry, Deputy City Manager
<b>Staff Source/Legal Source:</b> Laura Perry, Deputy City Manager / Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** 7/22/2024

**Regular Meeting:** 8/12/2024

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Dustin Zvonek, Mayor Pro Tem / Curtis Gardner, Council Member  
Laura Perry, Deputy City Manager, Senior Assistant City Attorney / Michelle Gardner, Senior Assistant City Attorney

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### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

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### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The City of Aurora is a growing city with growing critical capital needs to maintain, repair, build, and acquire new capital assets. The city is currently faced with aging infrastructure and inadequate funding to maintain assets and keep up with demands for **new services and facilities**. **The city's desired outcome is a well-funded capital improvement program that balances existing infrastructure, new projects, and ongoing capital maintenance.** A sound, multi-year capital planning and investment strategy is needed that identifies the city's most critical capital needs and new sustainable financial tools to address.

Under the sponsorship of Mayor Pro Tem Zvonek and Councilmember Curtis Gardner, an Infrastructure Task Force will be created to evaluate and develop a long-term 10-year strategic plan for infrastructure investment that aligns with the city's overall goals and objectives.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact
- Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Additional consultant services will be required to support the work of the task force including the City's financial advisor, engineering, and communications/public relations.

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council wish to approve the resolution creating a new Build Up Aurora Infrastructure Task Force?

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**LEGAL COMMENTS**

Pursuant to City Charter 3-9, the City Council of the City of Aurora has all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter. Pursuant to the City of Aurora’s City Council Rules of Order and Procedures Section B.2(a), Council members have authority to place items on the Study Session agenda and each item shall indicate the party requesting the item. Pursuant to City of Aurora’s City Council Rules of Order and Procedure Section D.2, Ad Hoc Committees may be formed, and appointments shall be made at City Council Study Sessions or Workshops with the support of the majority of Council Members in attendance. (M. Gardner)

RESOLUTION NO. R2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,  
COLORADO, CREATING THE BUILD UP AURORA INFRASTRUCTURE TASK FORCE  
COMMITTEE

WHEREAS, the City of Aurora (the City) is a growing city with growing critical capital needs to maintain, repair, build, and acquire new capital assets and

WHEREAS, the City is currently faced with aging infrastructure and inadequate funding to maintain assets and keep up with demands for new services and facilities and

WHEREAS, the City's desired outcome is a well-funded capital improvement program that balances existing infrastructure, new projects, and ongoing capital maintenance and

WHEREAS, a sound, multi-year capital planning and investment strategy is needed that identifies the City's most critical capital needs and new sustainable financial tools to address and

WHEREAS, under the co-sponsorship of Mayor Pro Tem Dustin Vonek and Councilmember Curtis Gardner, an infrastructure task force committee, to be called Build Up Aurora Infrastructure Task Force, shall be created to evaluate and develop a long-term 10-year strategic plan for infrastructure investment that aligns with the City's overall goals and objectives and

WHEREAS, the Build Up Aurora Infrastructure Task Force shall include the following assignments: 1) develop a short-term, mid-term, and long-term phased strategic plan for the efficient allocation of resources to support the City's capital improvement needs 2) establish criteria for prioritizing the City's infrastructure needs based on factors such as urgency, impact, feasibility, and alignment with strategic goals 3) foster effective communication and collaboration with internal and external stakeholders, including business and community groups, industry partners, and the public 4) engage with Aurora residents through a variety of methods to understand their infrastructure needs, preferences, and concerns, and incorporate their input into recommendations and, review funding options that support sustainable infrastructure development and ongoing capital maintenance and

WHEREAS, the Build Up Aurora Infrastructure Task Force will be co-chaired by two members of City Council, who shall be Dustin Vonek and Curtis Gardner, and may be comprised of 8 to 10 representatives from different sectors and disciplines appointed by City Council and

WHEREAS, the Build Up Aurora Infrastructure Task Force may create subcommittees that will be comprised of its representatives in smaller, more focused groups to address various City Departments' infrastructure needs and

WHEREAS, the Build Up Aurora Infrastructure Task Force may meet for one to two hours each month, or as deemed necessary, beginning in August 2024 and

WHEREAS, the work of the Build Up Aurora Infrastructure Task Force will be represented by City staff with support from consultants and

WHEREAS, public testimonies may be held throughout the process to inform discussion and to receive feedback on recommendations and

WHEREAS, pursuant to City Charter 3-9, the City Council of the City of Aurora has all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter and

WHEREAS, pursuant to the City of Aurora's City Council Rules of Order and Procedures Section B.2(a), Council members have authority to place items on the Study Session agenda and each item shall indicate the party requesting the item and

WHEREAS, pursuant to City of Aurora's City Council Rules of Order and Procedure Section D.2, Ad Hoc Committees may be formed, and appointments shall be made at City Council Study Sessions or Workshops with the support of the majority of Council Members in attendance and

WHEREAS, pursuant to City Charter 5-1, the City Council of the City of Aurora shall have the power to act by ordinance, resolution or motion and may adopt policies as it deems proper and advisable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The City Council of the City of Aurora expresses its support for and authorizes the creation of the Build Up Aurora Infrastructure Task Force through this resolution.

Section 2. The Mayor and City Clerk are hereby authorized to execute this resolution in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

MICHELLE COFFMAN, Mayor

ATTEST:

ADEE RODRIGUE, City Clerk

APPROVED AS TO FORM:

RLA

*Michelle Gardner*  
MICHELLE GARDNER, Sr. Assistant City Attorney



### City Council - Build Up Aurora Infrastructure Task Force

Sponsors: Mayor Pro Tem Dustin Zvonek and Councilmember Curtis Gardner

#### Purpose

The City of Aurora is a growing city with growing critical capital needs to maintain, repair, build, and acquire new capital assets. The city is currently faced with aging infrastructure and inadequate funding to maintain assets and keep up with demands for new services and facilities. The city’s desired outcome is a well-funded capital improvement program that balances existing infrastructure, new projects, and ongoing capital maintenance. A sound, multi-year capital planning and investment strategy is needed that identifies the city’s most critical capital needs and new sustainable financial tools to address.

#### Task Force

Under the sponsorship of Mayor Pro Tem Zvonek and Councilmember Curtis Gardner, an Infrastructure Task Force will be created to evaluate and develop a long-term 10-year strategic plan for infrastructure investment that aligns with the city’s overall goals and objectives. The committee will:

- Develop a short-term, mid-term, and long-term phased strategic plan for the efficient allocation of resources to support city capital improvement needs.
- Establish criteria for prioritizing city infrastructure needs based on factors such as urgency, impact, feasibility, and alignment with strategic goals.
- Foster effective communication and collaboration with internal and external stakeholders, including business and community groups, industry partners, and the public.
- Engage with Aurora residents through a variety of methods to understand their infrastructure needs, preferences, and concerns, and incorporate their input into recommendations.
- Review funding options that support sustainable infrastructure development and ongoing capital maintenance.

The Task Force will be co-chaired by two members of City Council and comprised of 8-10 representatives from different sectors and disciplines appointed by City Council. The work of the Task Force will be staffed by city staff with support from consultants.

#### Schedule

The Task Force will meet for 1-2 hours each month beginning in August 2024. Public testimonies may be held throughout the process to inform discussion and to receive feedback on recommendations.

Dates	Topics
August – December 2024	Task Force Orientation, Capital Needs Assessment, Public/Stakeholder Engagement Plan
January – March 2025	Public/Stakeholder Engagement (Phase 1)
April 2025	City Council Spring Workshop – Update Presentation
March – August 2025	Financial Capacity Evaluation and Capital Improvement Master Plan (CIMP) Update
September 2025 – March 2026	Capital Project Prioritization Process (Task Force Subcommittees)
April 2026	City Council Spring Workshop – Presentation of Task Force Recommendations
April – July 2026	Public/Stakeholder Engagement (Phase 2)
July – August 2026	City Council Process (Potential Ballot Referral)
August – November 2026	Campaign



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> 2024 IT Lease Purchase Authority (Ordinance)
<b>Item Initiator:</b> Scott Newman, Chief Information Officer, Information Technology
<b>Staff Source/Legal Source:</b> Scott Newman, Chief Information Officer, Information Technology / Hanosky Hernandez, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** 7/22/2024

**Regular Meeting:** 8/12/2024

**2<sup>nd</sup> Regular Meeting (if applicable):** 8/26/2024

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Scott Newman, Chief Information Officer, Information Technology / Hanosky Hernandez, Senior Assistant City Attorney

Scott Newman, Chief Information Officer, Information Technology / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The 2023 Ordinance was reviewed and adopted at the following meetings:

- Management and Finance – 06/27/2023
- Study Session – 08/07/2023
- First Reading – 08/14/2023
- Second Reading – 08/28/2023

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The Information Technology Department has the need to procure both tangible and intangible technology assets to support existing city operations, modernize existing capabilities, and develop and deploy new digital services for the community and city departments. Some of these procurements may utilize lease purchasing agreements. Working with the Finance Department, City Legal, and outside bond counsel, it was recommended an ordinance be established to authorize IT to enter such lease purchase agreements on an annual basis. By doing so, the ordinance clearly defines the authority granted to Information Technology to make lease purchases for technology. In addition, the ordinance will satisfy IRS requirements related to the utilization of tax-exempt financing on any equipment paid for, over time, through lease purchase or other borrowing alternatives.

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Any technology assets procured through lease purchase agreements should be funded through the IT Capital funding adopted and approved by City Council during the annual budget process. These funds may be booked against the following capital orgs:

- 37714 – SIS Networking
- 37721 – Telephone
- 37760 – Cybersecurity (911 related activities)

Additional capital orgs may be identified as part of the City Budget process.

**NON-BUDGETED EXPENDITURE IMPACT**



*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

All anticipated work will be programmed and scheduled against the overall IT Project Portfolio.

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**QUESTIONS FOR COUNCIL**

Does the Committee wish to advance this item to Study Session for further consideration?

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**LEGAL COMMENTS**

The City is authorized to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years. See, Sec. 31-15-801, C.R.S. & City Code Sec. 2-683. Any use of lease-purchase financing by the City shall be approved by ordinance. City Charter Art. 5-3. (Hernandez)

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ORDINANCE NO. 2024-

A BILL

FOR AN ORDINANCE AUTHORIZING THE CHIEF INFORMATION TECHNOLOGY OFFICER TO ACQUIRE CERTAIN TANGIBLE AND INTANGIBLE INFORMATION TECHNOLOGY PROPERTY, EITHER BY PURCHASE OR PURSUANT TO THE TERMS OF LEASE-PURCHASE AGREEMENTS TO BE ENTERED INTO BETWEEN THE CITY, AS LESSEE, AND LEASE ESTORS, ENDORS OR THE AURORA CAPITAL LEASING CORPORATION, EACH AS LESSOR, AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY

WHEREAS, the City of Aurora, Colorado, (the City), is a home rule municipality, organized and existing under and by virtue of Article , Section 6 of the Colorado Constitution and

WHEREAS, the City is authorized pursuant to Section 31-15-801 C.R.S., as amended, the City's home rule powers, and Section 2-683 of the Aurora City Code, to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years and

WHEREAS, The City Council, (the Council) has appropriated sufficient funds for the acquisition of information technology hardware, software, licenses, and related items for use in the City's information technology infrastructure and systems and

WHEREAS, the City's Chief Information Officer (the CIO) is charged with the responsibility to equip, maintain, and supervise the operations and provide for the security of the City's information technology assets and

WHEREAS, it is in the best interests of the City and its inhabitants to provide the CIO with sufficient authority and resources to carry out such responsibility in the most expeditious and efficient manner and

WHEREAS, information technology is a rapidly developing field in which new and improved hardware and software are constantly being developed, particularly for the purpose of improving operations or protecting against security risks and

WHEREAS, the Council intends to provide the CIO with all practicable means of improving and protecting the City's information technology assets and the data kept thereon, including, without limitation, the means to respond promptly to emergencies and

WHEREAS, because of the wide variety of information technology products, services, pricing and financing terms available, the responsibilities of the CIO include identifying which combinations of property and financing will best serve the needs of the City and

WHEREAS, the CIO is in the best position to evaluate the necessity and capabilities of information technology products, including whether advantageous financing is available for particular items and

WHEREAS, in order to provide for the information technology needs of the City, the Council hereby determines that it is necessary and in the best interests of the City and its citizens to authorize the CIO, on a case-by-case basis, to undertake either the purchase or lease-purchase financing of information technology hardware, software or any other need for use by the City, on whatever terms the CIO finds to be most advantageous to the City

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO.

Section 1. *Ratification of Actions.* All action heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council or the officers of the City, directed toward the acquisition of information technology property in the manner described herein are hereby ratified, approved and confirmed.

Section 2. *Information Technology needs.* The CIO is hereby authorized, between August 1, 2024 and August 1, 2025, to select, as needed, and arrange for the acquisition of any reasonably required information technology property, including all equipment, software, warranties, and service contracts accessory thereto and or associated therewith, and to finance its acquisition either (a) by purchase outright with appropriated funds, or (b) if the CIO certifies in writing that it is necessary or desirable to obtain lease-purchase financing and that the proposed rentals do not exceed a reasonable amount for comparable property, by entering into a lease-purchase agreement having the terms and made subject to the limitations provided in this Ordinance.

Section 3. *Maximum Amounts; Interest Rates; Terms.* The sum of (a) the total cost of information technology property purchased during the authorization period stated in this ordinance with appropriated cash and (b) the capital cost of all information technology property financed during such fiscal year with lease-purchase financing shall not exceed \$1,000,000.00. In the case of any lease-purchase agreement, the interest component of rental payments to be made by the City shall accrue at a rate not to exceed five percent (5%) per annum, and the term of any lease-purchase agreement entered into hereunder shall not exceed the lesser of the estimated useful life of the financed property or eighty-four (84) months. Rental payments may be made annually, semi-annually, or at any other convenient interval approved by the Director of Finance or the Treasurer. Any lease-purchase agreement proposed to be entered into shall, prior to its execution, be subject to review by the City Attorney, who may, but shall not be required to, obtain the services of outside bond counsel, and review and approval by the Director of Finance or the Treasurer or their respective delegates, in each case for consistency with this Ordinance.

Section 4. *Findings; Authorizations.* The Council hereby finds and determines, pursuant to the City's home rule powers and the laws of the State of Colorado, that the acquisition of the information technology property as authorized hereby is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its citizens and the Council hereby authorizes such acquisition.

Section 5. *Additional Documents.* The City Clerk is hereby authorized and directed to attest to all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor, the City Manager, the CIO, the Director of Finance and the Treasurer (collectively, the Authorized Officers ) are each authorized, upon the delivery of the CIO's certificate pursuant to Section 2 hereof and satisfaction of the other conditions provided in this Ordinance, to execute and deliver for and on behalf of the City the lease purchase agreements and any and all additional certificates, documents and other papers, including without limitation, any documents necessary to support the tax treatment of the interest component of rentals under any lease purchase agreement, and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance.

Section 6. *No General Obligation or Other Indebtedness.* The obligation of the City to make rental payments under each lease purchase agreement shall be subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. Such payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of each such lease purchase agreement. No provision of this Ordinance or any transaction hereunder shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year.

Section . *Expression of Need.* The City hereby declares its current and anticipated need for the information technology property. It is hereby declared to be the present intention and expectation of the Council that each lease purchase agreement authorized hereunder will be renewed annually until title to all of the property leased thereby is acquired by the City but this declaration shall not be construed as contractually obligating or otherwise binding the City.

Section 8. *Reasonable Rentals.* The Council hereby determines and declares that, after execution and delivery of each lease purchase agreement, provided such lease purchase agreement is entered into within the maximum amount, interest accrual and other terms authorized by this Ordinance, the rental payments due thereunder will represent the fair value of the use of the property leased thereby and the purchase price, as defined therein, will represent, as of any date upon which the City may exercise its option to purchase such property, the fair purchase price thereof. The Council further hereby determines and declares that, after the execution and delivery of each lease purchase agreement in compliance with this Ordinance, the rental payments due thereunder will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the lease or to exercise its option to purchase the property subject to the lease. In making such determinations, the Council has given consideration to the cost of acquiring and installing the property, the uses and purposes for which the property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and use of the property pursuant to the terms and provisions of each lease purchase agreement, the City's option to purchase the property, the special expertise of the CIO expected to be exercised in selecting and financing such property, and the expected eventual vesting of title to, or other indicia of ownership of, the property in the City. The Council hereby determines and declares that, after execution and delivery of each lease purchase agreement, the maximum duration of the portion of



ATTEST:

ADEE RODRIGUE ,  
City Clerk

APPROVED AS TO FORM:

*Hanosky Hernandez* *HK*  
HANOSKY HERNANDEZ ,  
Sr. Assistant City Attorney



# CITY OF AURORA

## Council Agenda Item Continuation Page

<b>Item Title:</b> CONTINUATION: 151 Potomac Street – Greenhouse Lease Agreement
<b>Item Initiator:</b> Hector Reynoso, Real Property Services Manager
<b>Staff Source:</b> Hector Reynoso, Real Property Services Manager
<b>Legal Source:</b> Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> Caitlin Matthews, Executive Director, Food Justice NW Aurora / Jenna Smith, Farm & Food Systems Advisor, AgroEco Solutions
<b>Date of Change:</b> 7/8/2024

### COUNCIL MEETING DATES:

**Study Session:** 8/21/2023 7/22/2024

**Regular Meeting:** 8/12/2024

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### ITEM SUMMARY *(Brief description of changes or updates with documents included.)*

The 2024 updated lease agreement attached, which includes Section 1.1, 3.1, 3.2, 4.1.1, and Section 4.1.2, as well as Section 8, Exhibit B, C, Exhibit D, and E. Item #24 has been adjusted at the request of the city council. The lease has been changed from a multi-tenant lease to a single-tenant lease. Also, the updated resolution is attached to reflect these changes. Staff is requesting a waiver of reconsideration so that renovations can be completed by the end of 2024, and greenhouse operations can commence in January 2025.

## COMMERCIAL LEASE

### 1. PARTIES; FUNDAMENTAL LEASE PROVISIONS.

1.1 Names. This Lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between City of Aurora, CO, a home rule municipal corporation of the counties of Adams, Arapahoe, and Douglas, with a principal address of 15151 E. Alameda Pkwy. Suite 3200, Aurora, CO 80012 ("Landlord" or "City"), and Food Justice NW Aurora ("FJNWA"), a Colorado non-profit corporation, and the Barton Institute for Community Action, a Colorado non-profit corporation as the fiscal sponsor of FJNWA, with a principal address of 1114 W 7<sup>th</sup> Avenue, Suite 215, Denver, CO 80204 ("Lessee").

1.2 Fundamental Lease Provisions. The following constitute an integral part of this Lease, and each reference in this Lease to the Fundamental Lease Provisions shall mean the provisions set forth in this Paragraph 1.2. In the event of any conflict between the Fundamental Lease Provisions and the remainder of the Lease, the Lease shall control.

1.2.1 Lease Date: \_\_\_\_\_

1.2.2 Address of Landlord: 15151 E. Alameda Pkwy, Suite 3200, Aurora, CO 80012

1.2.3 Address of Lessee: 1114 W. 7<sup>th</sup> Avenue, Suite 215, Denver, CO 80204

1.2.4 Property:

- 151 N Potomac Street, as identified on Exhibit A, together with approximately 2.685 acres of land, building, greenhouse, and any and all other improvements thereon, hereinafter referred to as "Property".

1.2.5 Rentable Area: 2.685 acres of land, building, greenhouse, and any and all other improvements thereon

Hours of Operation The ordinary business hours of the Property shall be from 6:00 A.M. to 6:00 P.M. MT, Monday through Friday of each week, and from 8:00 A.M. to 2:00 P.M. MT every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day. Landlord may restrict access to and from the Property outside the ordinary business hours of the Property for reasons of Property security. Lessee shall have the right to enter the Property at any time



without notice in the event of an emergency. If Lessee exercises this right, Lessee shall notify Landlord within 12-hours. In the event that an educational programming event or a plant distribution event would need to vary from ordinary business hours in order to be accessible to participants (e.g., to host a workshop on a weekday evening or Saturday afternoon, or to host a plant sale including Saturday afternoon hours or on a Sunday), the Lessee shall request permission in writing from the Landlord. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessees of the Property.

1.2.6 Lease Term: 3 Years from the Lease Date (as defined above) and terminating no later than 12/31/2027, and any approved extensions thereof.

1.2.7 Lease Rent: US\$1 per month

1.2.8 Additional Rent: Annual Operating Budget and Performance Metrics

1.2.9 Security Deposit: \$N/A

## 2. PROPERTY AND DEMISE.

2.1 Property. On and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases to Lessee and Lessee rents from Landlord for and in consideration of the Base Rent, and other good and valuable consideration, the receipt of which is hereby acknowledged, the land, buildings, greenhouse, and all improvements located on the property being more particularly described and depicted on Exhibit A and commonly referred to as 151 North Potomac Street, Aurora, CO 80011-8696 ("Property"). The area of the Property for all purposes under this Lease is stipulated to be 2.685 acres of land, more or less, together with all buildings and improvements thereon.

2.2 Nonexclusive and Reserved Rights. Lessee is granted the right to the nonexclusive use of the common corridors, driveways, and other public or common areas of the Property; however, the manner in which the public and common areas are maintained shall be at the sole reasonable discretion of Landlord and use thereof shall be subject to such rules, regulations and restrictions as Landlord may impose from time to time. Landlord reserves the right to make alterations or additions or to change the location of elements of the Property, and to use the roof, exterior walls and the area above and beneath the Property, together with the right to install, use, store, keep, maintain and replace equipment, machinery, pipes, conduits and wiring through the Property, in a manner and in locations which do not unreasonably interfere with Lessee's use of the Property.

2.3 Condition of Property. Except as otherwise specifically provided, Lessee shall accept the Property in an "as is" condition on the date the Term commences and Landlord shall have

no obligation to improve, alter, remodel or otherwise modify the Property prior to or after Lessee's occupancy.

2.4 Parking. During the Term of this Lease, Lessee shall only be entitled to such use of parking spaces in the parking areas located in or adjacent to the Property, and absent any written agreement to the contrary, parking for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at reasonable rates and upon other conditions as may be established from time to time by Landlord or Landlord's operator of the parking areas. Parking rates shall be hourly, weekly, or monthly, or such other rate system as Landlord deems advisable, and Lessee acknowledges that its customers, invitees, and licensees may be charged at such rate. Lessee acknowledges that its employees shall not be entitled to park in such parking areas located in and about the Property which may from time to time be designated for visitors of the Property or otherwise reserved. Landlord may also designate areas for Landlord's employee parking either within the parking areas located in and about the Property, or in other areas reasonably close thereto. Landlord shall have the right to change such designated parking areas from time to time. Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the suitability of the parking areas, or as to the availability of parking spaces, for the conduct of Lessee's business.

2.5 Access. During the term of this Lease, Lessee shall only be entitled to such use of common areas and access drives located in or adjacent to the Property, and absent any written agreement to the contrary, access for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at times and upon other conditions as may be established from time to time by Landlord.

### 3. TERM AND EXTENSION TERM.

3.1 Term. The term of this Lease ("Term") shall be for a period of three (3) consecutive years commencing on the Lease Date and shall terminate no later than 12/31/2027 as shown in Section 1.2 Fundamental Lease Provisions (the "Commencement Date").

#### 3.2 Extension Term.

3.2.1 180-days prior to Termination of this Lease, Landlord or Lessee may offer to renew the Term of this Lease for one (1) additional five (5) consecutive-year Term (the "Extension Term"), under the same terms and conditions of this Lease.

3.2.2 The Extension Term may be approved by the Aurora City Manager, to be eligible for consideration of such Extension Term to be approved by the Aurora City Manager, Lessee must satisfy the following requirements:

- Lessee must be in compliance with all requirements of this Lease; and,

- The Lessee must provide evidence to the Landlord during the current Term that its occupation and use of the Property is viable, and serves, and will continue to serve a public or charitable purpose. This evidence, at a minimum, requires providing to the Landlord the documents and reports identified as “Additional Rent” in Paragraph 4, Rent. The Landlord may request additional documentation during the course of the Lease to assist its evaluation of the public or charitable purpose use.

4. RENT.

4.1 Base Rent. Lessee shall pay to Landlord as “Base Rent” for the Property, in advance, without deduction, setoff, prior notice or demand, the sum of One (\$1) United States Dollars (US\$1) per month, receipt is hereby acknowledged, which shall be subject to adjustment as provided in Paragraph 4.3. The first month's Base Rent shall be paid on the Commencement Date. The Base Rent for the second calendar month and each calendar month thereafter during the Term shall be paid on the first day of each such calendar month. The Base Rent shall be paid to Landlord at the address set forth in Paragraph 1.2 or such other address as shall be designated in writing from time to time by Landlord. The Base Rent shall include the requirements described in this Paragraph 4, each “Additional Rent”.

4.1.1 Annual Operating Budget. In addition to Base Rent, Lessee shall provide to Landlord an annual operating budget as detailed in the table below (“Additional Rent”).

<b>Due Date</b>	<b>Annual Operating Budget for previous year</b>
February 15 <sup>th</sup> of each lease year	Annual Operating Budget Report to include: <ul style="list-style-type: none"> <li>• Revenue and expense details associated with all property operations.</li> <li>• Business summary report that details participating agencies, organizations, and donor groups.</li> </ul>

4.1.2 Performance Metrics. In addition to Base Rent, Lessee shall provide to Landlord performance metrics identified on Exhibit C, attached hereto and made a part hereof, prior to February 15<sup>th</sup> of each lease year (“Additional Rent”).

4.2 Proration. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent payable for the first calendar month of the Term shall be prorated upon the basis which the number of days of the Term in the first month bears to the total number of days in such month. If the Term ends on a day other than the last day of a calendar month, the Base Rent payable for the last calendar month of the Term shall be prorated on the basis which the number of days of the Term in the

last calendar month bears to the total number of days in such month.

4.3 CPI Increase. On each Adjustment Date specified in the Fundamental Lease Provisions, the Base Rent then payable by Lessee (the Base Rent described in Paragraph 4.1 as theretofore adjusted pursuant to this Paragraph) shall be adjusted, upward only, by the percentage that the "Index" (as defined below) in effect as of such Adjustment Date has increased over the Index in effect as of the immediately preceding Adjustment Date or, with respect to the first Adjustment Date, in effect as of the Commencement Date. The term "Index" means the "Consumer Price Index" designated in the Fundamental Lease Provisions, as issued by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency, or any other measure hereafter employed by said Bureau or agency in lieu of such Index that measures the consumer's cost of living in such metropolitan area. If the Index is hereafter converted to a standard reference base different from that which is shown in the Fundamental Lease Provisions or is otherwise revised, the determination of the percentage increase hereunder shall be made either with the use of such conversion factor, formula, or table converting the Index as may be published by said Bureau or any successor agency or, in the event that no such conversion factor, formula, or table is published, then by Landlord using such other index as is then generally recognized and accepted for similar determination of purchasing power.

4.4 Notice of Increase. Landlord shall determine the increase in Base Rent within ninety (90) days after each Adjustment Date and give Lessee written notice indicating the adjusted Base Rent and how it was computed. Prior to Lessee's receipt of such notice, Lessee shall continue paying Base Rent at the rate in effect immediately prior to such Adjustment Date. Within ten (10) days after receipt of such notice, Lessee shall pay to Landlord the difference between the adjusted Base Rent and the Base Rent theretofore paid by Lessee between such Adjustment Date and the date such notice of increase is received by Lessee, and Lessee shall thereafter continue paying Base Rent at the rate specified in such notice, and in the time and manner provided in Paragraph 4.1, until Lessee receives a new notice of increase in the Base Rent. Landlord's failure to notify Lessee of an increase in Base Rent within ninety (90) days after each Adjustment Date shall not prevent Landlord from thereafter making such adjustment on a retroactive basis. All references in this Lease to "Base Rent" shall mean the Base Rent specified in Paragraph 4.1 as adjusted from time to time pursuant to Paragraph 4.3.

4.5 Payments and Late Charge. Any amounts payable under this Lease shall be paid in lawful money of the United States of America. Any amount of Base Rent or Lessee's Share of Operating Costs not paid within ten (10) days after it is due shall be subject to a late charge of ten percent (10%) of the amount unpaid. Landlord's right to assess a late charge shall not be construed as granting Lessee a grace period within which to make payments. Any amount due to Landlord that is not paid when due shall bear interest from the date due until paid at the maximum legal rate permitted under Colorado law. Lessee's failure to perform any monetary obligations under this Lease shall have the same consequences as Lessee's failure to pay rent.

4.6 Triple Net Lease. It is the purpose and intent of the Landlord and Lessee that all costs directly or indirectly attributable to the Property shall be the obligation of the Lessee. By way of illustration and not limitation Lessee shall pay for heat, water, gas, electrical, phone, computer lines or services, lighting, sewer, trash removal, operating costs, and required insurance coverages hereunder.

5. SECURITY DEPOSIT. No Security Deposit is being collected or is required. Both parties acknowledge and agree that the mutual covenants and promises made herein as of the execution date of this Lease are sufficient consideration to bind such parties.

6. PROPERTY OPERATING COSTS.

6.1 Lessee's Obligation. Lessee shall pay all of the Property Operating Costs, including but not limited to usage of water service to irrigate portions of the Property.

6.2 Operating Costs. The term "Property Operating Costs" shall include all items in Subparagraphs 6.2.1 and 6.2.2.

6.2.1 All direct costs of ownership, operation, maintenance, and management of the use on the Property. All utilities, including water, gas, heat, light, power, telecommunications, trash service, and other utilities of every kind generated by the use of the Property directly from the utility providers from the Lease Date. By way of illustration but not limitation, operating expenses shall include the costs or charges for the following items: heat, light, water, sewer, power and steam, irrigation, waste disposal, janitorial services, security, fire protection, window cleaning, air conditioning, landscaping, materials and supplies, leasing commissions, equipment and tools, service agreements on equipment, insurance, licenses, permits and inspections, wages and salaries, employee benefits and payroll taxes, accounting and legal expenses, management fees, Property office rent or rental value, and the cost of contesting the validity or applicability of any governmental enactments which may affect the operation or maintenance of the Property or operating expenses. Property Operating Costs shall not include interest expense, advertising costs, depreciation on the Property, or the cost of capital expenditures; provided, however, that in the event Landlord makes capital improvements which have the effect of reducing operating expenses, or which are required by governmental orders, rules, codes, regulations, ordinances, and laws, Landlord may amortize its investment in said improvements as an operating expense in accordance with standard accounting practices provided that as to voluntary capital improvements reducing operating expenses such amortization is not at a rate greater than the anticipated savings in the operating expenses.

6.2.2 All real property taxes on the Property, the land on which the Property is situated, and the various estates in the Property, and all, if any, of the real property taxes on the land, and improvements and common areas on the Property. All personal property taxes levied on property used in the operation of the Property. All taxes of every kind and nature

whatsoever levied and assessed in lieu of or in substitution for existing or additional real or personal property taxes on the Property, land, or personal property other than taxes covered by Paragraph 10, any charge upon Landlord's business of leasing the Property or other portions of the Property or parking facilities and the cost to Landlord of contesting the amount or validity or applicability of any of the aforementioned taxes. Net recoveries through protest, appeals or other actions taken by Landlord in its discretion, after deduction of all costs and expenses, including counsel and other fees, shall be deducted from direct taxes for the year of receipt.

6.3 Other Definitions. The term "Base Year" means the calendar year in which this Lease commences. The term "Subsequent Year" means any calendar year during the Term after the Base Year.

6.4 Payment of Operating Costs.

6.4.1 Lessee shall pay all Property Operating Costs each month during the Term of this Lease. During the Base Year and any Subsequent Year, Lessee shall be responsible for all utilities, including water, gas, heat, light, power, telecommunications, trash service, and other utilities of every kind generated by the operation of the Property directly from the utility providers from the effective date of this Lease. Landlord may elect to pay for utilities and bill them back to the Lessee, who is still responsible to pay the Landlord for all related costs as "Additional Rent". Lessee must pay the full amount billed for water and utilities by the due date designated by the provider or the date required by the Landlord if the Landlord is including the billed amount as part of the rent.

6.4.2 If the Term commences on a date other than January 1 or ends on a date other than December 31, the Property Operating Costs for such first or last calendar year of the Term shall be prorated based on what the number of days in the Term in that year bears to 365 shall be paid at the time in the Subsequent Year, or in the calendar year immediately following the year in which the Term ends, that such amount is calculated.

7. CONSTRUCTION OF PROPERTY.

7.1 Renovations, improvements, alterations, or additions are to be made by Landlord and Lessee to complete the Property for occupancy by Lessee (the "Lessee Improvements"), the provisions of the Work Agreement attached to this Lease as Exhibit B shall govern with regard to the completion of all such Lessee Improvements. Except as specifically set forth in the attached Work Agreement, Landlord has no obligation and has made no promise to alter, remodel, decorate, paint, or otherwise improve or renovate the Property or any part thereof.

8. USES.

8.1 Authorized. The Lessee shall operate the Property for the purpose of operating a “Greenhouse” for the cultivation of annual and/or perennial plants that bear fruits, vegetables, flowers; cultivation of native and/or waterwise plants; plant sales on the Property; research and educational purposes including workshops or classes; and associated incidental public or charitable uses related to the foregoing activities. "Incidental Uses" may include other activities routinely and usually associated with cultivating plants that complement or support the primary functions and any activity necessary to support the keeping of the covenants, agreements, and conditions of this Lease. In the context of this Lease “Incidental Uses” shall never be activities requiring expanded hours of operation, or additional City permits, or the use of noise amplification devices of any nature whatsoever.

8.1.1 Lessee may install a storage shed on the Property with Landlord’s prior written consent. Landlord may, in Landlord’s sole and absolute discretion (but shall in no event be obligated to), grant additional storage within the Property.

8.1.2 Lessee may install a “Compost Area” for composting purposes on the Property with Landlord’s prior written consent. Landlord may, in Landlord’s sole and absolute discretion (but shall in no event be obligated to), grant additional space for composting within the Leased Property.

8.1.3 The permitted use shall include limitations on hours of operation as set forth in the Fundamental Lease Provisions of this Lease and Exhibit D, Rules and Regulations, attached hereto and made a part hereof by this reference.

## 8.2 Prohibited Uses.

8.2.1 Any use except as specifically permitted in this section is prohibited unless approved in writing by the Landlord.

8.2.2 By way of clarification but not limitation it shall be noted that smoking of any form, including but without limitation vaping, within any portion of the Property is strictly forbidden.

8.2.3 Overnight occupancy of the Property or any portion thereof is also strictly forbidden. Further it is strictly forbidden for the parking lot on the Property to be used for any occupancy, including camping

8.2.4 Cannabis. Lessee agrees that the Property shall not be used for the use, growing, producing, processing, storing (short or long term), distributing, transporting, or selling of cannabis, cannabis derivatives, hemp or any cannabis containing substances (“Cannabis”), or any office uses related to the same, nor shall Lessee permit, allow or suffer, any of Lessee’s officers, employees, agents, servants, licensees, sublessees, concessionaires, contractors and invitees to bring onto the Property, any Cannabis. Without

limiting the foregoing, the prohibitions in this paragraph shall apply to all Cannabis, whether such Cannabis is legal for any purpose whatsoever under state or federal law or both. Notwithstanding anything to the contrary, any failure by Lessee to comply with each of the terms, covenants, conditions and provisions of this paragraph shall automatically and without the requirement of any notice be a default that is not subject to cure, and Lessee agrees that upon the occurrence of any such default, Landlord may elect, in its sole discretion, to exercise all of its rights and remedies under this Lease, at law or in equity with respect to such default.

8.2.5 Lessee shall not use or permit the Property or any part thereof to be used for any purpose other than the purpose expressly authorized herein.

8.3 Suitability. Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Property or with respect to the suitability of either for the conduct of Lessee's business, nor has Landlord agreed to undertake any modification, alteration, or improvement to the Property except as provided in the Work Agreement. Except as otherwise expressly provided in the Work Agreement, the taking of possession of the Property by Lessee shall conclusively establish that the Property were at such time in satisfactory condition.

8.4 Insurance. Lessee shall not do or allow anything to be done in or about the Property, nor shall Lessee bring or allow anything to be brought into the Property, which would in any way increase the rate of any fire insurance or other insurance upon the Property or its contents, cause a cancellation of said insurance, or otherwise affect said insurance in any manner.

8.5 Laws. Lessee shall not do or suffer anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance, or other governmental rule, regulation, or requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, any law, statute, ordinance, or other governmental rule, regulation, or requirement of the United States, the State of Colorado, or the City of Aurora. Lessee shall, at its sole cost and expense, promptly comply with all said governmental measures and also with the requirements of any board of fire underwriters or other similar body now or hereafter constituted to deal with the condition, use, or occupancy of the Property, excluding structural changes not related to or affected by Lessee's alterations, additions, or improvements.

8.6 Nuisance. Lessee shall not place or permit to be placed on any floor a load exceeding the floor load which such floor was designed to carry. Lessee also shall not do or suffer anything to be done in or about the Property which would in any way obstruct or interfere with the rights of other occupants, nor shall Lessee use or suffer the Property to be used for any immoral, unlawful, or objectionable purposes. In no event shall Lessee cause or permit any nuisance in or about the Property, and no loudspeakers or similar devices shall be used without the prior written approval of Landlord. Lessee shall not commit or suffer to be committed any waste in or upon the Property. The provisions of this Paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of any Lessee or occupant of the Property.



8.7 Rules and Regulations. Lessee shall faithfully comply with the Rules and Regulations for the Property, a copy of which is attached to this Lease as Exhibit D and incorporated by this reference, together with all modifications and additions thereto adopted by Landlord from time to time. If there is any conflict between the Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible to Lessee for the nonperformance of any of the Rules and Regulations by or otherwise with respect to the acts or omissions of any other Lessees or occupants of the Property.

## 9. SERVICES AND UTILITIES.

9.1 Services by Landlord. Landlord shall be under no obligation to provide heating, electrical, water, sewer, gas, or other utility service to the Property, but if Landlord elects to provide such services at Lessee's request, Lessee shall pay to Landlord the cost of such services as determined solely by Landlord based upon Landlord's reasonable estimates and cost, plus a reasonable charge (not to exceed ten percent (10%) of the cost of such services) for Landlord's additional overhead expense. If Lessee elects to have additional janitorial services or any other service, Lessee shall pay the cost of such extra services. Landlord and Lessee shall maintain the lobbies, hallways, stairs, public restrooms, elevators, if any, common areas, and landscaping in a clean and orderly manner and in a good state of repair. Lessee shall not have any right to offset or reduce rent for Lessee's refusal to accept any service provided by Landlord.

9.2 Property Security. Landlord may provide only such security for the Property and/or parking area as Landlord deems necessary, which shall not include any special security measures because of the presence of Lessee or Lessee's business. Landlord shall have no responsibility to prevent and shall not be liable to Lessee for losses due to theft, burglary, or vandalism, or for damages done by unauthorized persons gaining access to the Property. Nothing herein shall limit Lessee's ability to install security cameras or engage security services for the Property at Lessee's sole cost and expense and upon written consent of the Landlord.

9.3 Keys and Locks. Landlord shall furnish Lessee, free of charge, with two keys for the Property, which shall not be duplicated or shared. Additional keys will be furnished at a charge by Landlord equal to the cost, plus fifteen percent (15%) on an order signed by Lessee or Lessee's authorized representative. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Property. Upon termination of this Lease, Lessee shall surrender to Landlord all keys to the Property and give to Landlord the combination to all locks for safes, safe cabinets, and vault doors, if any, in the Property.

9.4 Interruption in Service. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of services and utilities. However, Landlord shall not be in default under this Lease or liable for any damages directly or indirectly arising from, nor shall the rent be abated or Lessee's performance affected by reason of, any failure to provide or any reduction in any of the above services or utilities if such failure or reduction is caused by the making of repairs or improvements to the Property, the installation of equipment, force

majeure, acts of government, acts of God or the elements, labor disturbances of any character, or any other accidents or conditions whatsoever beyond the reasonable control of Landlord, or rationing or restrictions on the use of said services and utilities due to energy shortages or other causes, whether or not any of the above result from acts or omissions of Landlord. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state, or local governmental bodies or utility suppliers in reducing energy or other resources consumption.

9.5 Additional Rent. Any sums payable under this Section 9 shall be considered Additional Rent and may be added to any installment of rent thereafter becoming due, and Landlord shall have the same remedies for a default in payment of any such sum as for a default in the payment of the Base Rent.

9.6 Lessee's Obligation. Lessee shall, prior to delinquency, pay for all other materials and services not expressly required to be provided by Landlord which may be reasonably furnished to or used in, on, or about the Property during the Term.

## 10. TAXES PAYABLE BY LESSEE.

10.1 Lessee shall pay before delinquency any and all taxes levied or assessed and which become payable by Lessee (or directly or indirectly by Landlord) during the Term (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources, capital stock taxes, and estate and inheritance taxes), whether or not now customary or within the contemplation of the parties hereto, which are based upon, measured by, or otherwise calculated with respect to: (a) the gross or net rental income of Landlord under this Lease, including, without limitation, any gross receipts tax levied by any taxing authority, or any other gross income tax or excise tax levied by any taxing authority with respect to the receipt of the rental payable hereunder; (b) the value of Lessee's equipment, furniture, fixtures, or other personal property located in the Property; (c) the possession, lease, operation, management, maintenance, alteration, repair, use, or occupancy by Lessee of the Property or any portion thereof; (d) the value of any leasehold improvements, alterations, or additions made in or to the Property, regardless of whether title to such improvements, alterations, or additions shall be vested in Lessee or Landlord; or (e) this transaction or any document to which Lessee is a party creating or transferring an interest or an estate in the Property.

## 11. ALTERATIONS.

11.1 Landlord's Consent Required. Lessee shall not make or permit to be made any alterations, additions, or improvements to the Property or any part thereof without obtaining Landlord's prior written consent. When applying for such consent, Lessee shall, if required by Landlord, furnish complete plans and specifications for such alterations, additions, or improvements. All alterations, additions, or improvements to the Property shall be performed by contractors selected and supervised by Landlord for Lessee's account and at Lessee's sole

cost and expense. Within ten (10) days after receipt of a written statement from Landlord, Lessee shall reimburse Landlord for all costs arising in connection with Landlord's review of plans and specifications and supervision of contractors. Landlord shall have the right to require that any contractor performing alterations, improvements, or additions to the Property shall, prior to commencement of any work, provide Landlord with a performance bond and labor and materials payment bond in the amount of the contract price for the work, naming Landlord and Lessee (and any other persons designated by Landlord) as co-obligees. All alterations, additions, fixtures, and improvements, including without limitation all improvements made pursuant to Section 7, whether temporary or permanent in character, made in or upon the Property either by Landlord or Lessee, shall at once belong to Landlord and become part of the Property and shall remain on the Property without compensation of any kind to Lessee. Lessee shall carry insurance as required by Section 15 covering any improvements, alterations, or additions to the Property made by Lessee under the provisions of this Section 11, it being understood and agreed that none of such alterations, additions, or improvements shall be insured by Landlord nor shall Landlord be required under any provision for reconstruction to reinstall any such alterations, additions, or improvements. Movable furniture and equipment which are removable without material damage to the Property or the Property shall remain the property of Lessee.

11.2 Removal at Landlord's Option. Notwithstanding any other provision contained in this Lease, Lessee agrees that it shall, upon Landlord's written request made prior to or within thirty (30) days following the expiration or termination of this Lease, at Lessee's sole cost and expense, promptly remove any alterations, additions, fixtures, or Lessee Improvements designated by Landlord to be removed and repair any damage to the Property resulting from such removal. Landlord may, in connection with any such removal which might in Landlord's judgment involve damages to the Property, require that such removal be performed by a bonded contractor or other person for whom a bond satisfactory to Landlord has been furnished covering the cost of repairing the anticipated damage.

11.3 Lessee's Sign. Lessee shall not place or permit to be placed in or upon the Property where visible from outside the Property or any part of the Property any signs, notices, drapes, shutters, blinds or window coatings, or displays of any type, without the prior written consent of Landlord. Landlord shall consent to the location at the cost of Lessee of a standard sign on or near the entrance of the Property.

11.4 Landlord's Sign. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof and exterior of the Property and in any area of the Property such signs, notices, displays, and similar items as Landlord deems appropriate in the proper operation of the Property.

## 12. MAINTENANCE AND REPAIRS.

12.1 Lessee is responsible for all maintenance of fixtures. Lessee is obligated at all times to maintain fixtures in good working order.

- 12.2 Except for damage caused by Lessee's negligence, repair of the foundation, exterior walls, and roof shall be the responsibility of Landlord.
- 12.3 Landlord is responsible for all repair and maintenance of gutters for draining rainwater from the roof.
- 12.4 Lessee, at Lessee's sole expense, is responsible for all repairs, upkeep, and maintenance of heating, cooling, ventilation equipment and life safety systems which exclusively serve or are within the Property. Lessee, at its own expense, must provide a semi-annual HVAC maintenance program and keep and make all records available to the Landlord. The HVAC maintenance inspections and filter changes shall be conducted in the months of April and October. Failure to maintain and promptly repair any damage to these items shall be considered in default of this Lease.
- 12.5 All other repairs or maintenance to the Property shall be made by Lessee, or by Landlord at Lessee's expense. Lessee agrees to maintain and keep in good repair the Property including all improvements, fixtures, and equipment located at any time therein, but not limited to, floors, walls, plumbing, electrical, interior and exterior lighting, wiring and fittings, cooling system, heating fixtures, sewer pipes, bathrooms, fire safety systems, water and gas pipes. Lessee shall keep the interior and exterior of the Property painted and clean.
- 12.6 Lessee shall be responsible for all snow removal from the Property, sidewalks and related parking areas specific to the Property. In general, it is understood, unless specifically stated otherwise, Lessee shall be responsible for all interior repairs, maintenance and improvements and Landlord shall be responsible for exterior and base building items only, including subsurface water, sewer and gas service lines. Tenant will use best efforts to use service providers from Landlord's Contract List, included hereto as Exhibit E. This list may be updated by Landlord from time to time.
- 12.7 Lessee shall be responsible for repair, maintenance, and replacement of any windows or doors in the Property.
- 12.8 Lessee shall comply with all of the rules required by the Landlord, including maintaining cleanliness and snow removal of the Property.
- 12.9 Property in good order. Lessee, at Lessee's sole cost and expense, shall maintain the Property in good order, condition and repair including, as applicable, the interior surfaces of the ceilings, walls and floors, all doors, interior windows, and all plumbing pipes, valves and fixtures, electrical wiring, panels, switches, and all other fixtures and equipment installed for the use of the Property by Lessee. Lessee expressly waives the benefits of any statute, ordinance or judicial decision now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Property

in good order, condition and repair. Lessee shall immediately notify Landlord in the event Lessee is made aware of any dangerous conditions on or surrounding the Property. If Lessee fails to keep and maintain the Property, including the parking lot adjacent thereto, in good order and repair, Landlord may restore the Property to such good order and condition without liability to Lessee, and upon completion thereof, Lessee will pay to Landlord the cost of such restoration and repair, plus a 15% fee.

12.10 Surrender of Property. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Property in the same condition as received, except for ordinary wear and tear and damage by fire, earthquake, or acts of God or the elements not caused by the wrongful act or omission of Lessee or Lessee's agents.

12.11 Excepted Damage. Except for any damage caused by reasonable use, Lessee shall repair any damage to the Property caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, movable partitions, or permanent improvements or additions, including without limitation thereto repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Lessee's sole cost and expense. Lessee shall indemnify Landlord against any loss or liability resulting from delay by Lessee in so surrendering the Property, including without limitation any claims made by any succeeding Lessee founded on such delay.

12.12 Landlord's right to maintain the Property. In the event Lessee fails to maintain the Property in good order, condition, and repair, Landlord shall give Lessee notice to do such acts as are reasonably required to so maintain the Property. In the event Lessee fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right, but no obligation, to do such acts and expend such funds at the expense of Lessee as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Lessee promptly after demand with interest at the maximum rate permitted by law from the date of such work. Landlord shall have no liability to Lessee for any damage, inconvenience, or interference with the use of the Property by Lessee as a result of performing any such work.

12.13 Compliance With Law. Landlord and Lessee shall each do all acts required to comply with all applicable laws, ordinances, regulations, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

12.14 Environmental Law. Lessee agrees to comply at all times with federal, state and local rules, regulations, statutes, ordinances and directives that may now or hereafter be applicable to the Property and that are related to hazardous or toxic materials pollution control and environmental matters including: (a) any laws and regulations governing water use, groundwater, wetlands and watersheds associated with the Property; (b) any pesticides, fertilizer or chemical record-keeping and reporting laws and regulations; (c) any pesticide, fertilizer or chemical applicator licensing laws and regulations; (d) the Worker Protection Standard for Agricultural Pesticides. The Lessee

further agrees to be in strict compliance with all manufacturers' label instructions, use requirements and precautionary statements and warnings. The Lessee will use the utmost care in the handling and application of any pesticides, fertilizers and chemicals to protect all persons upon the Property and the environment, and will dispose of all pesticide, fertilizer and chemical containers only in a lawful manner and will not dump, bury or burn said containers on the Property.

13. LIENS. Lessee shall keep the Property, the Property, and any common areas and facilities serving the Property free from any liens arising out of work performed, materials furnished, or obligations incurred by Lessee, and shall indemnify, hold harmless, and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. In the event that Lessee shall not, within twenty (20) days following imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided in this Lease and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorney fees and costs, shall be payable to Landlord by Lessee on demand with interest at the maximum rate permitted by law from the date such sums are paid or expenses incurred by Landlord. Landlord shall have the right at all times to post and keep posted on the Property any notices permitted or required by law, including but not limited to C.R.S. § 38-22-105(2), or which Landlord shall deem proper for the protection of Landlord and the Property, and any other party having an interest therein, from mechanics' and materialmen's liens, and Lessee shall give to Landlord at least ten (10) business days' prior written notice of the expected date of commencement of any work relating to alterations, additions or improvements in or to the Property.

#### 14. INDEMNITY.

14.1 Indemnity. Lessee shall and does hereby indemnify, hold harmless, and defend Landlord against any and all third-party claims of liability for any injury or damage to any person or property whatsoever (a) occurring in, on, or about the Property or any part thereof; and (b) occurring in, on, or about any facilities (including, without prejudice to the generality of the term "facilities," elevators, stairways, passageways, hallways, and parking areas), the use of which Lessee may have in conjunction with other Lessees of the Property, when such injury or damage is caused in part or in whole by the act, negligence, fault, or omission of any duty with respect to the same by Lessee, its agents, contractors, employees, invitees, or customers. Lessee shall and does hereby further indemnify, hold harmless, and defend Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, invitees, and employees, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In case any action

or proceeding be brought against Landlord by reason of any such claim, Lessee, upon notice from Landlord, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord, provided, however, that Lessee shall not be liable for damage or injury occasioned by the active negligence or intentional acts of Landlord and its agents or employees unless covered by insurance Lessee is required to provide. Lessee, 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 Property from any cause except that caused by the negligence or intentional acts of Landlord and its agents or employees.

14.2 Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Lessee, its employees, invitees, or customers, or any other person in or about the Property, caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of the Property, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, heating, air conditioning, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Property or upon other portions of the Property, of which the Property are a part, or from other sources. Landlord shall not be liable for any damages arising from any act or omission by Lessee.

15. INSURANCE: During the term of this Lease, Lessee, at its sole cost and expense, shall procure and maintain the following insurance coverages:

a. Commercial General Liability Insurance: Lessee shall maintain a Commercial General Liability insurance policy with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million (\$2,000,000) general aggregate. Coverage shall include claims for personal injury (including bodily injury and death), property damage (including loss of use), personal and advertising injury and contractual liability. The City shall be named as an additional insured by endorsement and the policy shall provide for a waiver of subrogation in favor of the City.

b. Commercial Property Insurance: Lessee shall maintain commercial property insurance covering damage to its property arising out of perils including, but not limited to fire, wind, hail, water intrusion or flooding, theft and vandalism. The property coverage shall be in an amount equivalent to the replacement cost of Lessee 's furniture, improvements, fixtures, equipment and other personal property removable by Licensee.

c. Workers' Compensation and Employers' Liability Insurance: The Lessee shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Lessee shall maintain Employers' Liability Insurance with minimum limits of \$100,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$100,000 bodily injury disease aggregate.

If Licensee does not have employees, Lessee will attach a written statement to this Lease acknowledging that it has no employees and is not required to have Workers' Compensation insurance per Colorado law.

d. In lieu of the coverages set forth in paragraphs a and b, the City will accept a small business insurance policy which provides similar limits and coverages upon review by the City Risk Manager.

e. Lessee's insurance policies shall be the primary insurance as to all claims thereunder and provide that any insurance carried by the City is excess and is non-contributing with any of Lessee's insurance. Lessee's insurance shall be issued by an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or which is otherwise acceptable to the City.

f. Upon execution of this Lease, Lessee shall deliver to the City a certificate of insurance with all requisite endorsements required herein. Lessee must provide at least thirty (30) days' written notice to the City before any such insurance policy or policies can be canceled or materially changed. The Lessee shall provide the City annual updated Certificates of Insurance verification from the insurance carrier.

g. Lessee shall notify the City in writing of any injury or potential claim or lawsuit filed in a court of competent jurisdiction arising from its use of the Property. If the Property suffers physical damage and/or the Lessee's improvements are damaged by fire, flood, or other natural hazard, and the damage will not interfere substantially with Lessee's use of the Property, the City shall immediately undertake repairs to the building and restore it to substantially the same condition.

15.1 Landlord's Insurance. Landlord shall at all times maintain a commercial property insurance policy for the Property under a blanket policy covering perils including, but not limited to: fire, flood, water intrusion, hail and wind damage, vandalism and malicious mischief. Landlord agrees that its coverage will remain during the term of this Lease. Coverage shall provide for the full replacement cost of the Property less the City's deductible.

15.2 Subrogation Waiver. Landlord and Lessee each hereby waive any and all rights of recovery against the other or against the officers, partners, employees, agents, and representatives of the other, on account of loss or damage to such waiving party or its property, or the property of others under its control, to the extent that such loss or damage is under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier(s) that the foregoing mutual waiver of subrogation is contained in this Lease.



The waivers set forth herein shall be required to the extent the same are available from each party's insurer without additional premium; if an extra charge is incurred to obtain such waiver, it shall be paid by the party in whose favor the waiver runs within fifteen (15) days after written notice from the other party.

#### 16. ASSIGNMENT AND SUBLETTING.

16.1 Landlord's Consent Required. Lessee shall not sell, assign, mortgage, pledge, hypothecate, encumber, or otherwise transfer this Lease or any interest therein, and shall not sublet the Property or any part thereof, or suffer or permit the Property or any part thereof to be occupied by any third person (the agents, employees, invitees, and customers of Lessee excepted), without the prior written consent of Landlord in each instance and any attempt to do so without such consent shall be voidable and, at Landlord's election, shall constitute a noncurable default under this Lease.

16.2 Involuntary Assignment. No interest of Lessee in this Lease shall be assignable by operation of law, including, without limitation, the transfer of this Lease by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment: (a) if Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Lessee is the bankrupt; (b) if a writ of attachment or execution is levied on this Lease; (c) if, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Property. An involuntary assignment shall constitute a default by Lessee and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Lessee.

#### 17. SALE OF PROPERTY OR PROPERTY.

17.1 Each conveyance by Landlord or its successors in interest of Landlord's interest in the Property or the Property prior to the expiration or termination of this Lease shall be subject to this Lease and shall relieve the grantor of all further liability or obligations as Landlord, except for such liability for obligations accruing prior to the date of such conveyance. If any Security Deposit has been given to Landlord, Landlord shall deliver such Security Deposit to Landlord's successor in interest and thereupon be released of all further liability with regard thereto, without the requirement of any notice thereof to Lessee. Lessee agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise.

#### 18. ENTRY BY LANDLORD.

18.1 Upon twenty-four (24) hours' notice, or in an emergency without notice, Landlord and its authorized representatives shall have the right to enter the Property: (a) to inspect

the Property; (b) to supply any service provided to Lessee hereunder; (c) to show the Property to prospective brokers, agents, purchasers, lenders, or lessees; (d) to post notices of nonresponsibility; (e) to alter, improve, or repair the Property and any other portion of the Property; and (f) to erect scaffolding and other necessary structures, where required by the work to be performed, all without reduction of rent. Lessee hereby waives any claim for damages for any injury to or interference with Lessee's business or quiet enjoyment of the Property or any other loss occasioned by such entry. Landlord shall at all times have a key to unlock all doors in and about the Property, excluding Lessee's vaults and safes, and Landlord shall have the right to use any means which Landlord deems proper to open said doors in an emergency, and any such entry to the Property shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into the Property or a detainer of the Property or an eviction of Lessee from any portion of the Property.

#### 19. INSOLVENCY OR BANKRUPTCY.

19.1 Acts of Default. Without limitation, the following events shall constitute a default under this Lease: (a) if Lessee shall admit in writing its inability to pay its debts as they mature; (b) if Lessee shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; (c) if Lessee shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; (d) if Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent; (e) if Lessee shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other similar relief for itself under any present or future applicable federal, state, or other statute or law relative to bankruptcy, insolvency, or other relief for debtors; (f) if a court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Lessee seeking any relief described in the preceding clause (e) and (i) Lessee acquiesces in the entry of such order, judgment or decree (the term "acquiesce" as used in this Paragraph 19.1 shall include, without limitation, Lessee's failure to file a petition or motion to vacate or discharge any order, judgment, or decree within ten (10) days after entry or such order, judgment, or decree), or (ii) such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive, from the date of entry thereof; (g) if Lessee shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of Lessee or all or any substantial part of Lessee's properties or its interest in the Property; (h) if any trustee, receiver, conservator, or liquidator of Lessee or of all or any substantial part of its property or its interest in the Property shall be appointed without the consent or acquiescence of Lessee and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; or (i) if this Lease or any estate of Lessee hereunder shall be levied upon under any attachment or execution and such attachment or execution shall remain unvacated and unstayed for an aggregate of ten (10) days, whether or not consecutive.

19.2 Rights and Obligations Under the Bankruptcy Code. Upon the filing of a petition by or

against Lessee under the United States Bankruptcy Code, Lessee, as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Lessee under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Property the sum required under Section 4, and all other charges otherwise due pursuant to this Lease; (c) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter of the Bankruptcy Code; (d) to give Landlord at least forty-five (45) days' prior written notice of any abandonment of the Property, any such abandonment to be deemed a rejection of this Lease; (e) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (f) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (g) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

## 20. TERMINATION AND DEFAULT BY LESSEE.

- 20.1 Acts Constituting Defaults. In addition to the events specified as a default under Paragraph 19.1 or elsewhere in this Lease, the failure of Lessee to perform each covenant made under this Lease, and any of the following events shall be considered to be a default under this Lease:
- 20.1.1 Failure to pay rent, including any charges deemed Additional Rent, other fees related to the operation of the business and Property when due, when such default has not been cured within fifteen (15) days of receipt of written notice of such default.
- 20.1.2 Vacation or abandonment of the Property by Lessee. "Vacation" or "abandonment" in this instance shall mean non-occupancy of the Leased Property by Lessee for a period of thirty (30) contiguous days.
- 20.1.3 Violation of any other covenant, agreement, term, or condition of this Lease, if Lessee fails to remedy the same within fifteen (15) days after Lessor gives Lessee notice of such violation. Notice shall be given at Lessee's last known address by USPS first-class mail. Any subsequent violations of a covenant, term, or condition which has once been subject to remedy shall not be subject to remedy a second time. Recurring violations of a term or condition are cause for immediate termination of this Lease. In the event that the Lessor forbears in pursuing termination for such violations it is not a waiver of Lessor's right to pursue termination if the violation continues or reoccurs. However, Landlord shall not commence any action to terminate Lessee's right of possession as a consequence of a default until the ten (10) days period of

grace, has elapsed; provided that such period of grace shall run concurrently with and not be in addition to any period during which Lessee may cure such default following the delivery of notice pursuant to C.R.S. §§ 13-40-101, *et seq.*

- 20.1.4 The filing of petition in bankruptcy by or against Lessee.
- 20.1.5 Insolvency of Lessee or an assignment by Lessee for the benefit of creditors.
- 20.1.6 Failure to pay any material utility bills, or costs, or fees.
- 20.1.7 Failure to meet performance metrics defined in Exhibit C, Table 1, attached hereto and made a part hereof as designated and approved by the Lessor.
- 20.1.8 Violation of any operating or signage rules or regulations or rules set down by the Lessor.
- 20.1.9 Political activity or activism as defined in Exhibit D on the Property.
- 20.1.10 Failure to provide Annual operating budget to Landlord in accordance with Section 4.1.1.

20.1.11 Lessee shall have a period of fifteen (15) days from the date of written notice from Landlord within which to cure any other default under this Lease which is capable of being cured; provided, however, that with respect to any curable default which cannot reasonably be cured within fifteen (15) days, the default shall not be deemed to be uncured if Lessee commences to cure within five (5) days from Landlord's notice and thereafter prosecutes diligently and continuously to completion all acts required to cure the default.

20.1.12 There shall be no period of grace with respect to any default by Lessee which is not capable of being cured. Landlord and Lessee stipulate that the following defaults are not capable of being cured by Lessee: (a) any event specified as a default under Paragraph 19.1; (b) any unauthorized sale, assignment, mortgage, pledge, hypothecation, encumbrance, or other transfer of this Lease or any interest herein, or any unauthorized subletting of all or any portion of the Property; (c) the commission of waste by Lessee; (d) the failure of Lessee to pay rent or any other monetary obligation of Lessee hereunder on the due date thereof where such failure occurs on more than three (3) consecutive occasions or more than six (6) occasions during any twelve (12) month period; and (e) any other default which is recognized under Colorado law as being incurable.

20.2 Landlord's Remedies. If Lessee fails to cure a default, or in the event of a default which is not capable of being cured by Lessee, Landlord shall have the following rights and remedies in addition to any other rights and remedies available to Landlord at law or in equity:

20.2.1 The right to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as Landlord does not terminate Lessee's right to possession. Acts of maintenance or preservation, efforts to relet the Property, or the *ex parte* appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Lessee's right to possession;

20.2.2 The right to terminate this Lease by giving notice to Lessee in accordance with applicable law;

20.2.3 The right and power, as attorney-in-fact for Lessee, to enter the Property and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee, and to sell such property and apply the proceeds therefrom. Landlord, as attorney-in-fact for Lessee, may from time to time sublet the Property or any part thereof for such term or terms (which may extend beyond the Term of this Lease) and at such rent and such other terms as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Property. Upon each such subletting, (a) Lessee shall be immediately liable to pay to Landlord, in addition to indebtedness other than rent due hereunder, the cost of such subletting and such alterations and repairs incurred by Landlord and the amount, if any, by which the rent hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount agreed to be paid as rent for the Property for such period; or (b) at the option of Landlord, rents received from such subletting shall be applied first to payment of any indebtedness other than rent due hereunder from Lessee to Landlord; second, to payment of any costs of such subletting and of such alterations and repairs; third, to 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 becomes due hereunder. If Lessee has been credited with any rent to be received by such subletting under option (a) and such rent shall not be promptly paid to Landlord by the sublessee(s), or if such rentals received from such subletting under option (b) during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. For all purposes set forth in this Subparagraph 20.2.3, Landlord is hereby irrevocably appointed attorney-in-fact for Lessee, with power of substitution. No taking possession of the Property by Landlord, as attorney-in-fact for Lessee, shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach; and

20.2.4 The right to have a receiver appointed for Lessee, upon *ex parte* application by Landlord, to take possession of the Property and to apply any rental collected from the Property and to exercise all other rights and remedies granted to Landlord as attorney-in-fact for Lessee pursuant to Subparagraph 20.2.3.

20.3 Landlord's Right to Cure Default. All covenants and agreements to be performed by Lessee under the terms of this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any reduction of rent. If Lessee shall be in default of its obligations under this Lease to pay any sum of money other than rental or to perform any other act hereunder, and if such default is not cured within the applicable grace period (if any) provided in Paragraph 20.1, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Lessee's part without waiving its rights based upon any default of Lessee and without releasing Lessee from any of its obligations. All sums so paid by Landlord and all incidental costs, together with interest thereon at the maximum legal rate of interest under Colorado law from the date of such payment or the incurrance of such cost by Landlord, whichever occurs first, shall be paid to Landlord on demand. In the event of nonpayment by Lessee, Landlord shall have, in addition to any other rights or remedies hereunder, the same rights and remedies as in the case of default by Lessee for nonpayment of rent.

20.4 Security Interest Hereby Created. As additional security for the Lessee's payment of all rent and other sums due or to become due hereunder, Lessee hereby grants to Landlord a security interest in and to all of the personal property of Lessee situated on the Property. Lessee shall execute such documents as the Landlord may reasonably require to evidence Landlord's security interest in such personal property. If Lessee is in default under this Lease, such personal property shall not be removed from the Property (except to the extent such property is replaced with an item of equal or greater value) without the prior written consent of Landlord. It is intended by the parties hereto that this instrument shall have the effect of a security agreement and financing statement covering such personal property under the Uniform Commercial Code of the State of Colorado, as amended from time to time, and may be filed or recorded as such; upon the occurrence of an event of default set forth herein, Landlord may exercise any rights of a secured party under said Uniform Commercial Code, including the right to take possession of such personal property and (after ten (10) days' notice to those parties as may be required by statute to be notified, which ten (10) day period is hereby determined to be commercially reasonable) to sell the same for the best price that can be obtained at public or private sale, and out of the money derived therefrom pay the amount due Landlord and all costs arising out of the execution of the provisions of this Section, paying the surplus, if any, to Lessee. If such personal property, or any portion thereof, shall be offered at a public sale, Landlord may become the purchaser thereof.

## 21. DEFAULT BY LANDLORD.

21.1 Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Lessee to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if it commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion.

## 21.2 DAMAGE AND DESTRUCTION.

21.3 Total Destruction. If the Property are totally destroyed or in Landlord's judgment the Property cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, this Lease shall be terminated effective as of the date of the damage.

21.4 Landlord's Obligations. Any restoration by Landlord pursuant to this Lease shall be commenced as soon as reasonably possible after the date of damage and prosecuted diligently to completion at the earliest possible date. Landlord shall not be required to carry insurance of any kind on Lessee's property and shall not be required to repair any injury or damage thereto by fire or other causes, or to make any restoration or replacement of any paneling, decorations, partitions, ceilings, floor covering, office fixtures, or any other improvements or property installed in the Property by or at the direct or indirect expense of Lessee, and Lessee shall be required to restore or replace same in the event of damage. Lessee shall have no claim against Landlord for any loss suffered by reason of any such damage, destruction, repair, or restoration. Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no obligation to repair, reconstruct, or restore the Property with respect to damage or destruction as described in this Section 21 occurring during the Term of this Lease.

21.5 Waiver by Lessee. Lessee shall have no right to terminate this Lease as a result of any law, statute, ordinance, judicial decision, or governmental rule or regulation now or hereafter in effect pertaining to the damage and destruction of the Property, except as expressly provided herein.

21.6 Landlord's Decision Not to Restore. If the premises or the Property are damaged under circumstances where Landlord would be required under this Lease to restore such damage, Landlord may decide not to so restore the damage and may instead elect to terminate this Lease if Landlord, in the exercise of its sole discretion, determines either (a) that the purpose for which the premises or the Property were used prior to such damage or destruction is not the highest and best use for the premises, the Property or the underlying real property, or (b) in the case of damage affecting more than twenty-five percent (25%) of the gross floor area of the Property (whether or not the premises are located within such affected area), that the Property should not be restored or reconstructed in its present configuration.

## 22. CONDEMNATION.

22.1 If all or any part of the Property are taken for public or quasi-public use by the right of eminent domain or otherwise, by a taking in the nature of inverse condemnation, with or without litigation, or are transferred by agreement in lieu thereof (any of the foregoing being referred to herein as a "taking"), either Landlord or Lessee may, by written notice given to the other within thirty (30) days of receipt of notice of such taking, elect to terminate this Lease as of the date possession is transferred pursuant to the taking; provided, however, that before Lessee may terminate this Lease for a taking, such taking shall be of such an extent and nature as to substantially impede Lessee's use of the Property. If any part of the Property other than

the Property shall be taken, Landlord may elect to terminate this Lease.

23. HOLDING OVER.

23.1 In the event Lessee requires to end production at the Termination or expiration of the Term of this Lease, then holding over without the written consent of Landlord shall be a tenancy from month to month. The terms, covenants and conditions of such tenancy shall be the same as provided herein, except that the Base Rent shall be the greater of (a) two (2) times the Base Rent in effect on the date of such expiration, subject to adjustment as provided in Paragraph 4.3, or (b) the fair market rent of the Property as established by Landlord. Such holding over may be terminated at any time by Landlord or Lessee upon ten (10) days' written notice. Acceptance by Landlord of rent after such expiration shall not result in any other tenancy or any renewal of the Term of this Lease, and the provisions of this Paragraph are in addition to and do not affect Landlord's right of reentry or other rights provided under this Lease or by applicable law. In no circumstance shall holding over exceed six (6) consecutive months.

24. LIGHT, AIR AND VIEW.

24.1 No diminution of light, air, or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Lessee to any reduction of rent under this Lease, result in any liability of Landlord to Lessee, or in any other way affect this Lease.

25. WAIVER.

25.1 If either Landlord or Lessee waives the performance of any term, covenant, or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant, or condition itself or a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such rent. Failure by Landlord to enforce any of the terms, covenants, or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Lessee. Waiver by Landlord of any term, covenant, or condition contained in this Lease may only be made by a written document signed by Landlord.

26. ATTORNEY FEES.

26.1 In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant, or condition of this Lease on the part of Landlord, or if the services of an attorney are employed for the purpose of pursuing such matters (whether or not an action is commenced), Landlord shall be entitled to recover its reasonable attorney fees together with all allowable costs.

27. NOTICES.

27.1 Form and Delivery of Notice. Any notice required or permitted under this Lease shall



be in writing and shall be delivered either personally or by depositing same in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the intended recipient at such party's address set forth in the Fundamental Lease Provisions, or at such other address as such party has theretofore specified by written notice delivered in accordance with this Paragraph.

If to Lessee:

Food Justice NW Aurora  
c/o Caitlin Matthews, Executive Director  
1114 W 7<sup>th</sup> Avenue, Suite 215  
Denver, CO 80204

If to the Landlord:

City of Aurora  
c/o Real Property Services Manager  
15151 E. Alameda Pkwy., Suite 3200  
Aurora, CO 80012  
Phone: 303-739-7300  
Email: [publicworks@auroragov.org](mailto:publicworks@auroragov.org)

With a copy to:

City of Aurora  
c/o City Attorney's Office  
15151 E. Alameda Pkwy, Suite 5300  
Aurora, CO 80012

**27.2 Sufficiency of Notice.** Any notice delivered in person shall be effective on the date of delivery. Any notice delivered by mail shall be deemed delivered and effective on the earlier of the third day following deposit thereof in the United States mail or on the delivery date shown on the return receipt prepared in connection therewith.

## **28. MERGER.**

Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Lessee under this Lease, there shall never be a merger of the estates of Landlord and Lessee under this Lease, but instead the separate estates, rights, duties, and obligations of Landlord and Lessee, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

## **29. DEFINED TERMS AND HEADINGS.**

29.1 The words "Landlord" and "Lessee" as used herein shall include the plural as well as the singular. Words used in neuter gender include the feminine and masculine, where applicable. If there is more than one Lessee, the obligations imposed under this Lease upon Lessee shall be joint and several. The headings and titles to the

Sections and Paragraphs of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of the Lease.

**30. TIME AND APPLICABLE LAW.**

Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of Colorado, without regard to its conflict of laws principles. Each reference in this Lease to a specific statute shall include any successor to such statute.

**31. AGENTS FOR LANDLORD AND LESSEE.**

31.1 Landlord. Landlord may act in any matter provided for herein by its Real Property Services Manager and any other person who may from time to time be designated in writing by Landlord to act in its behalf.

31.2 Lessee. Lessee shall designate in writing one or more persons to act on Lessee's behalf in any matter provided for herein and may from time to time change such designation. In the absence of any such designation, the person or persons executing this Lease shall be deemed to be authorized to act on behalf of Lessee in any matter provided for herein.

31.2.1 If Lessee is a corporation, each individual executing this Lease on behalf of Lessee represents and warrants that Lessee is qualified to do business in Colorado and that such individual is duly authorized to execute and deliver this Lease on behalf of Lessee and shall deliver appropriate certification to that effect if requested.

31.2.2 If Lessee is a partnership, joint venture, or other unincorporated association, each individual executing this Lease on behalf of Lessee represents that this Lease is binding on Lessee. Furthermore, Lessee agrees that the execution of any written consent hereunder, or any written modification or termination of this Lease, by any general partner of Lessee or any other authorized agent of Lessee, shall be binding on Lessee.

**32. ENTIRE AGREEMENT.**

32.1 This Lease, together with its exhibits (all of which are incorporated herein by this reference), contains all of the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

**33. SEVERABILITY.**

33.1 If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected

thereby and shall be enforced to the greatest extent permitted by law.

**34. NAME OF PROPERTY.**

34.1 Lessee shall not use the name of the Property for any purpose other than the address of the business to be conducted by Lessee in the Property. Lessee shall not use any picture of the Property in its advertising, stationery, or in any other manner so as to imply that the entire Property is leased by Lessee. Landlord expressly reserves the right at any time to change the name or street address of the Property without in any manner being liable to Lessee therefor.

**35. GUARANTEE.**

35.1 If Lessee's obligations under this Lease shall have been guaranteed, any such guarantee shall be deemed a material part of the consideration for Landlord's execution of this Lease. If the guarantor under any such guarantee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes or is the subject of any proceeding under the Bankruptcy Act or other similar law for the protection of creditors (or, if the guarantor is a partnership or consists of more than one person or entity, if any partner of the partnership or such other person or entity is or becomes bankrupt or insolvent, institutes any such proceeding, or makes an assignment for the benefit of creditors), then Landlord shall have the option to terminate this Lease upon thirty (30) days' written notice unless Lessee, within such thirty (30) day period, provides Landlord with either (a) a substitute or additional guarantor satisfactory to Landlord and any Mortgagee, or (b) adequate assurance of the performance of each and every obligation of Lessee hereunder, satisfactory to Landlord and such Mortgagee; provided, however, that no such termination of this Lease shall become effective without the prior written consent of such Mortgagee.

**36. RECORDABILITY OF LEASE.**

36.1 If requested at any time by Landlord, Lessee shall execute (a) a short form of this Lease in recordable form which may, at Landlord's option, be placed of record; and (b) a memorandum of this Lease on such form as may be agreed to by the parties hereto. This Lease may be recorded by Landlord and within Landlord's sole discretion.

**37. CONSTRUCTION.**

37.1 All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease shall be used to interpret the Lease. All rights and remedies of Landlord and Lessee shall, except as otherwise expressly provided, be cumulative and nonexclusive of any other remedy at law or in equity.

**38. QUIET ENJOYMENT.**

38.1 So long as Lessee is not in default under this Lease, Lessee shall have quiet enjoyment of the Property for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

**39. EXECUTION BY LANDLORD.**

39.1 The submission of this document for examination and negotiation does



**LESSEE:**

**Food Justice NW Aurora, a Colorado non-profit corporation**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Caitlin Matthews, Executive Director

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Caitlin Matthews, Executive Director, an authorized representative of Food Justice NW Aurora, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**LANDLORD:**

**CITY OF AURORA**

By \_\_\_\_\_  
Mike Coffman, Mayor

ATTEST FOR LANDLORD:

By \_\_\_\_\_  
Kadee Rodriguez, City Clerk

STATE OF COLORADO     }  
                                          } ss.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Mike Coffman, Mayor of the City of Aurora.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM FOR LANDLORD:

REVIEWED FOR LANDLORD:

By: \_\_\_\_\_  
Michelle Gardner  
Senior Assistant City Attorney

By: \_\_\_\_\_  
Hector Reynoso  
Real Property Services Manager

By: \_\_\_\_\_  
Brian C. Green, Deputy Director of Parks  
Recreation & Open Space

**EXHIBITS:**

- Exhibit A: Survey of Property
- Exhibit B: Work Agreement for Lessee Improvements
- Exhibit C: Performance Metrics
- Exhibit D: Rules and Regulations
- Exhibit E: List of Preferred Contractors

**EXHIBIT A  
SURVEY OF PROPERTY**

**EXHIBIT B  
WORK AGREEMENT**

A. Lessee Improvements on Property.

1. Greenhouse Food Production Program. Lessee shall construct, operate, and maintain and Use the Property in accordance with the Lease, at its sole cost and expense.

2. Lessee Improvement Allowance for Greenhouse Renovations. From and after the Lease Date, Lessee may, at Lessee's cost and expense, make improvements and renovations to the Property as detailed in Table 1 below (the "Renovations"). Landlord shall provide an allowance (the "Renovation Allowance") to Lessee in an amount not to exceed \$250,000.00 (the "Maximum Renovation Allowance Amount"), which Renovation Allowance may be applied toward the costs of installing and completing the Renovations. Landlord will reimburse Lessee in increments of up to \$25,000 up to the amount of the Maximum Renovation Allowance Amount within thirty (30) calendar days after Landlord has received from Lessee copies of Lessee's paid invoices related to the Renovations, and final and unconditional original lien waivers from any contractors, subcontractors, suppliers, materialmen and other parties who performed labor at, or supplied materials to, the Property in connection with the Renovations. In the event the costs of installing and completing the Renovations exceed the Maximum Renovation Allowance Amount, Lessee will be responsible for such excess costs at its sole cost and expense. In the event Lessee elects not to complete the Renovations, or if the costs of installing and completing the Renovations are less than the Maximum Renovation Allowance Amount, Lessee shall not be entitled to use or apply any unused portions of the Renovation Allowance.

TABLE 1		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE
001	APPROVAL SHOP DRAWINGS.	\$9,000.00
002	GREENHOUSE MFG STRUCTURE & MATERIAL (1)	\$25,000.00
003	GREENHOUSE MFG STRUCTURE & MATERIAL (2)	\$25,000.00
004	GREENHOUSE MFG STRUCTURE & MATERIAL (3)	\$25,000.00
005	COOLING SYSTEMS, HAF, AND EXHAUST FANS	\$24,000.00
006	PURCHASED GLAZING COMPONENTS	\$15,000.00
007	GREENHOUSE ENVIRONMENTAL CONTROLS MATERIALS	\$9,500.00
008	UNIT HEATERS, STACKS, AND HANGING KITS	\$9,000.00
009	DOORS	\$5,000.00



010	FREIGHT	\$17,000.00
011	GREENHOUSE INSTALLATION LABOR (1)	\$25,000.00
012	GREENHOUSE INSTALLATION LABOR (2)	\$25,000.00
013	GREENHOUSE INSTALLATION LABOR (3)	\$25,000.00
013	GREENHOUSE INSTALLATION LABOR (4)	\$11,500.00
	TOTAL	\$250,000.00

The Lessee improvements necessary to construct, operate, and maintain the greenhouses shall consist of the following. Table 2 (collectively "Lessee Improvements"). Phases of Renovation and Scheduled Value for the share of costs constituting Lessee Improvements.

TABLE 2		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE
001	GREENHOUSE MFG STRUCTURE & MATERIAL (4)	\$3,000.00
002	WASTE DISPOSAL	\$1,000.00
003	EXTERIOR VENT DRIVE SYSTEM	\$3,000.00
004	SMALL GREENHOUSE DEMO & SEALING – LABOR & MATERIALS	\$22,500.00
005	RUST REMOVAL & SEALING - LABOR & MATERIALS	\$4,000.00
006	CONCRETE REPAIR AND ADD'L CONCRETE - LABOR & MATERIALS	\$3,000.00
007	ELECTRICAL PANEL, WIRING, CONDUIT – LABOR & MATERIALS	\$12,000.00
008	UPGRADES FOR AMERICANS WITH DISABILITIES ACT COMPLIANCE – LABOR & MATERIALS	\$47,000.00
009	INTERIOR PAINT – LABOR & MATERIALS	\$2,000.00
010	PERMITTING & INSPECTION	\$2,500.00

		TOTAL	\$100,000.00

3. At no expense to Landlord, Lessee may install additional Lessee improvements to include electrical and plumbing work to complete connections for renovated greenhouse systems (e.g., power wiring, low voltage control wiring and conduit, plumbing, and utility hook ups), concrete work to repair cracks in the greenhouse floor slabs, concrete work to improve the front entrance and back entrance to the administrative building to comply with ADA accessibility requirements, and renovation of one bathroom in the administrative building to comply with ADA accessibility requirements.

4. The trade fixtures necessary to construct, operate, and maintain the Property shall consist of the following: irrigation system and hoses, horizontal air flow fans, locking storage cabinets, worktables, germination chamber, shelving, and other fixtures to be identified (collectively "Trade Fixtures").

5. Personal property, fixtures, and equipment necessary to construct, operate, and maintain the greenhouses shall consist of the following items which are already in the Property: TO BE INPUT PRIOR TO MOVE-IN (collectively "Landlord Fixtures")

6. Landlord has no obligation to make improvements on the Property or Landlord's real property to accommodate the greenhouse or any operations related thereto. Lessee may be required to improve interior access within Property to accommodate its use.

7. Removable Lessee Improvements. Lessee may make minor improvements of a temporary or removable nature that do not damage or otherwise cause destruction of the Property at Lessee's expense. Landlord agrees to let the Lessee remove such improvements, even though they are legally fixtures, at any time this Lease is in effect or within ten (10) days thereafter so long as Lessee is not in default of any of the terms contained in this Lease, provided Lessee leaves in good condition that property from which such improvements are removed or replaced.

8. No Additional Compensation for Lessee Improvements. Lessee shall have no right to compensation for any Lessee Improvements, Trade Fixtures, or other improvements that are not removed upon expiration or earlier termination of this Lease, except as mutually agreed in writing before their installation.

- A. Lessee Improvements. Title to the Lessee Improvements remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Lessee Improvements shall become the sole ownership of the Landlord.
- B. Trade Fixtures. Title to Trade Fixtures remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Trade Fixtures shall become personal property of the Lessee and removed in accordance with this lease.
- C. Landlord Fixtures. Title to Landlord Property remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Landlord Personal Property shall become personal property of the Lessee and removed in accordance with this lease.
- B. Repair of Landlord Property. In the event that any damage occurs to Landlord's real or personal property, including without limitation any underground or above ground utilities, caused by and in the course of any activity undertaken by Lessee under this Lease, Lessee shall facilitate the repair of such damage to return Landlord's real or personal property to substantially the same condition as it existed prior to such damage, at Lessee's sole expense.
- C. Improvements Off Leased Property. Lessee shall be responsible for installation, construction, reconstruction, modification, and removing improvements to access roads, improving and constructing other items to City of Aurora standards that are necessary or useful in Lessee's use of the Property.

**EXHIBIT C**  
**PERFORMANCE METRICS**

<u>PERFORMANCE METRIC</u>	<u>Current Year - GOAL</u>	<u>Current Year – ACTUAL</u>	<u>Next Year - PROJECTED</u>
Quantity and variety of plants cultivated in greenhouses (may include annual food-producing plants, perennial food-producing plants, and/or native or water-wise plants)			
Quantity of plants sold or distributed through each distribution channel (including direct to community, farmer contract grows, and institutional customers)			
Number of educational classes, workshops, and/or site visits and number of participants			
List of local grower partners and brief description of collaboration or partnership			
List of partner organizations and brief description of collaboration or partnership			

**EXHIBIT D**  
**RULES AND REGULATIONS**

The rules and regulations set forth in this Exhibit shall be and hereby are made a part of the Lease to which they are attached. Whenever the term "Lessee" is used in these rules and regulations, it shall be deemed to include Lessee, its employees or agents, and any other persons permitted by Lessee to occupy or enter the Property. The following rules and regulations may from time to time be modified by Landlord in Landlord's sole discretion. If there is any conflict between these Rules and Regulations and the provisions of the Lease, the provisions of the Lease shall prevail.

1. **OBSTRUCTION.** The sidewalks, entries, passages, corridors, halls, lobbies, stairways, elevators (if any), and other common areas or facilities of the Property shall be controlled by Landlord and shall not be obstructed by Lessee or used for any purpose other than ingress or egress to and from the Property. Lessee shall not place any item in any of such locations, whether or not any such item constitutes an obstruction, without the prior written consent of Landlord. Landlord shall have the right to remove any obstruction or any such item without notice to Lessee and at the expense of Lessee.

2. **ORDINARY BUSINESS HOURS.** The ordinary business hours of the Property shall be from 6:00 A.M. to 6:00 P.M. MT, Monday through Friday of each week, and from 8:00 A.M. to 2:00 P.M. MT every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day. In the event that educational programming event or plant distribution event would need to vary from ordinary business hours in order to be accessible to participants (e.g., to host a workshop on a weekday evening or Saturday afternoon, or to host a plant sale including Saturday afternoon hours or on a Sunday), the Lessee shall request permission in writing from the Landlord. Lessee shall have the right to enter the Property at any time without notice in the event of an emergency. If Lessee exercises this right, it shall notify Landlord within 12-hours.

3. **DELIVERIES.** Lessee shall ensure that all deliveries of supplies to the Property shall be made only upon the area designated by Landlord for deliveries and only during the ordinary business hours of the Property. If any person delivering supplies to Lessee damages any part of the Property, Lessee shall pay to Landlord upon demand the amount required to repair such damage.

4. **MOVING.** Furniture and equipment shall be moved in or out of the Property only upon prior notice to and with the approval of Landlord and only upon the areas designated by Landlord for deliveries and then only during such hours and in such manner as may be prescribed by Landlord. Landlord shall have the right to approve or disapprove the movers or moving company employed by Lessee and Lessee shall cause such movers to use only the loading facilities and elevator designated by Landlord. If Lessee's movers damage any part of the Property, Lessee shall pay to Landlord upon demand the amount required to

repair such damage.

5. HEAVY ARTICLES. No safe or article, the weight of which may, in the reasonable opinion of Landlord, constitute a hazard or damage to the Property or its equipment, shall be moved into the Property. Safes and other heavy equipment, the weight of which will not constitute a hazard or damage the Property or its equipment shall be moved into, from, or about the Property only upon prior notice to and with the approval of Landlord and only during such hours and in such manner as shall be prescribed by Landlord, and Landlord shall have the right to designate the location of such articles in the Property.

6. NUISANCE. Lessee shall not do or permit anything to be done on the Property or in the Property or bring or keep anything therein which would in any way constitute a nuisance or waste, or obstruct or interfere with the rights of Landlord, or in any way injure or annoy them, or conflict with the laws relating to fire, or with any regulations of the fire department, or with any insurance policy upon the Property or any part thereof, or conflict with any of the laws, codes, rules, or ordinances of any governmental authority having jurisdiction over the Property.

7. PROPERTY SECURITY. Landlord may restrict access to and from the Property and the Property outside the ordinary business hours of the Property for reasons of Property security. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessees of the Property.

8. PASS KEY. The Real Property Services Manager may at all times keep a pass key to the Property, and he and other agents of the Landlord shall at all times be allowed admittance to the Property.

9. LOCKS AND KEYS FOR PROPERTY. No additional lock or locks shall be placed by Lessee on any door in the Property and no existing lock shall be changed unless written consent of Landlord shall first have been obtained. Two (2) keys to the Property and to the toilet rooms if locked by Landlord will be furnished by Landlord, and Lessee shall not have any duplicate key made. At the termination of this tenancy Lessee shall promptly return to Landlord all keys to offices and toilet rooms.

10. USE OF WATER FIXTURES. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to the same from misuse on the part of Lessee or its guests or employees shall be paid for by Lessee. No person shall waste water in any manner.

11. NO ANIMALS; EXCESSIVE NOISE. With the exception of seeing-eye dogs for the blind or assistance dogs, no animals shall be allowed in the offices, halls, corridors, and elevators (if any) of the Property. No person shall disturb the occupants of this or adjoining Property or space by the use of any radio or musical instrument or by the making of loud or improper noises.

12. BICYCLES. Bicycles or other vehicles shall not be permitted anywhere inside or on the sidewalks outside of the Property, except in those areas designated by Landlord for bicycle parking.

13. TRASH. Lessee shall not allow anything to be placed on the outside of the Property, nor shall anything be thrown by Lessee out of the windows or doors, or down the corridors, elevator shafts, or ventilating ducts or shafts of the Property. All trash shall be placed in receptacles provided by Lessee on the Property or in any receptacles provided by Landlord for the Property.

14. WINDOWS. Except as necessary to operate the Greenhouse, no window shades, blinds, screens, or draperies will be attached or detached by Lessee and no awnings shall be placed over the windows without Landlord's prior written consent. Lessee agrees to abide by Landlord's rules with respect to maintaining uniform curtains, draperies, and linings at all windows and hallways so that the Property will present a uniform exterior appearance. Lessee will use its best efforts to have all curtains, draperies, and blinds closed at the end of each day in order to help conserve energy. Except in case of fire or other emergency, Lessee shall not open any outside window because the opening of windows interferes with the proper functioning of the Property heating and air conditioning systems.

15. HAZARDOUS OPERATIONS AND ITEMS. Lessee shall not install or operate any steam or gas engine or boiler or carry on any mechanical business on the Property without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion. The use of oil, gasoline, noxious gas, flammable or combustible liquids, or material for heating, lighting, or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Property. Lessee shall not use any method of heating, cooling, or air conditioning of the Property other than that supplied by Landlord.

16. HOURS FOR REPAIRS, MAINTENANCE AND ALTERATIONS. Any repairs, maintenance, and alterations required or permitted to be done by Lessee under the Lease shall be done only during the ordinary business hours of the Property unless Landlord shall have first consented to such work being done outside of such times. If Lessee desires to have such work done by Landlord's employees on Saturday, Sundays, holidays, or weekdays outside of ordinary business hours, Lessee shall pay the extra cost of such labor.

17. NO DEFACING OF PROPERTY. Except as permitted by Landlord, Lessee shall not mark upon, paint signs upon, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions, or floors of the Property or of the Property, and any defacement, damage, or injury caused by Lessee shall be paid for by Lessee.

18. CHAIR PADS. During the entire term of this lease, Lessee shall, at its expense, install and maintain under all chairs a chair pad or carpet casters to protect the carpeting.

19. SOLICITATION; FOOD AND BEVERAGES. Landlord reserves the right to restrict, control, or prohibit canvassing, soliciting, and peddling within the Property. Lessee shall not grant any concessions, licenses, or permission for the sale or taking of orders for food, beverages, services, or merchandise in the Property, nor install nor permit the installation or use of any machine or equipment for dispensing food, beverages, services, or merchandise, nor permit the preparation, serving, distribution, or delivery of food, beverages, services, or merchandise without the prior written approval of Landlord and in compliance with arrangements prescribed by Landlord. No cooking shall be done or permitted by any Lessee in the Property.

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

21. ELECTRICIANS. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes, and other office equipment affixed to the Property shall be subject to the approval of Landlord.

22. LANDLORD CONTROL OF PUBLIC AREAS. Landlord shall have the right to control and operate the public portions of the Property, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Lessee, in such manner as it deems best for the benefit of the Landlord.

23. AFFIXED OBJECTS. Landlord shall approve in writing the method of attachment of any objects affixed to walls, ceilings, or doors.

24. POLITICAL ACTIVITY AND POLITICAL ACTIVISM. Lessee, its employees, contractors, and subcontractors shall not engage in political activities while on the Property or using resources on the Property or using resources from the Property. While on the Property, Lessee also should not make representations that may be construed as political advocacy on behalf of itself or Landlord, or that could reasonably be viewed as having the Lessee or Landlord's endorsement. Lessee cannot produce or distribute materials—pro or con—on any candidate, ballot question or ballot issue while on the Property or using Landlord's equipment. Lessee may not urge votes for or against any candidate, ballot question or ballot issue while on the Property. Campaigning materials displayed on the Property to the general public, or to other employees are not allowed. Lessee must comply with federal law: "Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office." Nothing in these Rules and Regulations shall be construed as prohibiting the Lessee from expending organizational funds, making contributions, or using organizational time to support or oppose a ballot question or ballot issue off-Property. On Lessee's own time off-Property, Lessee shall be free to endorse issues as they wish, as long as they do not use



Landlord resources or state or imply that the Landlord endorses Lessee's views. Nothing in these Rules and Regulations shall be construed as prohibiting the Lessee's employees from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any candidate, ballot question or ballot issue off-Property. On an employee's own time off-Property, employees shall be free to endorse candidates and issues as they wish, as long as they do not use Landlord resources or state or imply that the Landlord endorses employee's views.

RESOLUTION NO. R2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
FOR THE LEASE AGREEMENT BETWEEN THE CITY OF AURORA AND FOOD  
JUSTICE NORTHWEST AURORA REGARDING OPERATION OF THE CITY-OWNED  
GREENHOUSE PROPERTY AT 151 POTOMAC STREET

WHEREAS, in 2022, Aurora City Council earmarked 350,000 to be used for needed capital repairs to three greenhouses on City-owned property located at 151 Potomac Street ( Greenhouse Property ) and

WHEREAS, on April 12, 2023, City of Aurora staff solicited a request for proposals, to include a business plan, operations plan, and financial model, from qualified for-profit and or nonprofit businesses for the purpose of providing food production and programming in the Greenhouse Property and

WHEREAS, City staff notified Denver Urban Gardens, Food Justice NW Aurora, Tri-County Health Department, and posted the RFP on the City's website, multiple listing service (MLS), and LoopNet CoStar which also syndicated the listing to other partner websites and

WHEREAS, proposals were due on May 10, 2023, and the City received one proposal from Food Justice NW Aurora (FJNWA) and

WHEREAS, based on the evaluation criteria, FJNWA is a qualified nonprofit business that can provide food production and programming at the Greenhouse Property and

WHEREAS, initially, FJNWA will be awarded a License and Option to Lease which will allow them to have access to the Greenhouse Property and to proceed with due diligence activities, including hiring employees, while the City completes capital repairs to the Greenhouse Property and

WHEREAS, upon completion of capital repairs, FJNWA will have the option to enter into a lease agreement for an initial three-year term with an option to extend for an additional five-year term, to be approved by Council at a Regular Session meeting and

WHEREAS, capital repairs will cost up to 250,000 and there is no additional cost to the City for operating or maintaining the Greenhouse Property and

WHEREAS, FJNWA will be responsible for all operating costs, utilities, janitorial services, and maintenance of the Greenhouse Property and

WHEREAS, the City desires to enter into the Commercial Lease with FJNWA according to the terms and provisions stated in the Commercial Lease presented to City Council and

WHEREAS, pursuant to Colorado Revised Statute 31-15-101(d), the City has the authority to acquire, hold, lease, and dispose of property, both real and personal and

WHEREAS, pursuant to City Code Section 2-31, the Mayor, upon authorization by a majority vote of the members of City Council voting thereon, shall execute all conveyances of any

interest in real property owned by the City, including leases provided, however, that the City shall not sell or convey any lands granted to, or purchased for use and used by the City for park purposes, without a majority vote of the City's registered electors at a special or regular municipal election and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Commercial Lease for the City-owned property at 151 Potomac Street to FJNWA for an initial three-year term with the option to extend an additional five years and

WHEREAS, City Council supports City staff moving forward with capital repairs to the one greenhouse on the City-owned property located at 151 Potomac Street with the funds earmarked by Council for such purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Commercial Lease between the City and Food Justice Northwest Aurora for Operation of the City-owned property at 151 Potomac Street is hereby approved.

Section 2. The use of \$250,000 in earmarked funds to be used for capital repairs to the City-owned greenhouse located at 151 Potomac Street is hereby approved.

Section 3. The Mayor or his designee, City Clerk, and City Manager, are hereby authorized to execute and deliver the Lease Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

MICHELLE COFFMAN, Mayor

ATTEST:

ADEE RODRIGUE, City Clerk

APPROVED AS TO FORM:

*Michelle Gardner*  
MICHELLE GARDNER, Sr. Assistant City Attorney



# CITY OF AURORA

## Late Submission Approval for Agenda Item

<b>Item Title:</b> 151 Potomac Street – Greenhouse Lease Agreement
<b>Item Initiator:</b> Hector Reynoso, Real Property Services Manager
<b>Staff Source/Legal Source:</b> Hector Reynoso, Real Property Services Manager
<b>Outside Speaker:</b> Caitlin Matthews, Executive Director, Food Justice NW Aurora Jenna Smith, Farm & Food Systems Advisor, AgroEco Solutions
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

- There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date
- The delay will result in an adverse financial impact to the city
- The item is related to a disaster and must be addressed before the next available meeting

**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 7/22/2024  
**Regular Meeting:** 8/12/2024

**EXPLANATION:** *(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)*

This item is already on the 7/22/2024 Study Session Agenda and staff only requires to update the backup information.

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

**Hector Reynoso**  
 Agenda Item Initiator Name

*Hector Reynoso*                      7/10/2024  
 Agenda Item Initiator Signature                      Date

**Laura Perry**  
 Late Submission Approver Name (Council Appointee or DCM)

*[Signature]*                                              7/11/2024  
 Late Submission Approver Signature                      Date



# 151 Potomac Greenhouses

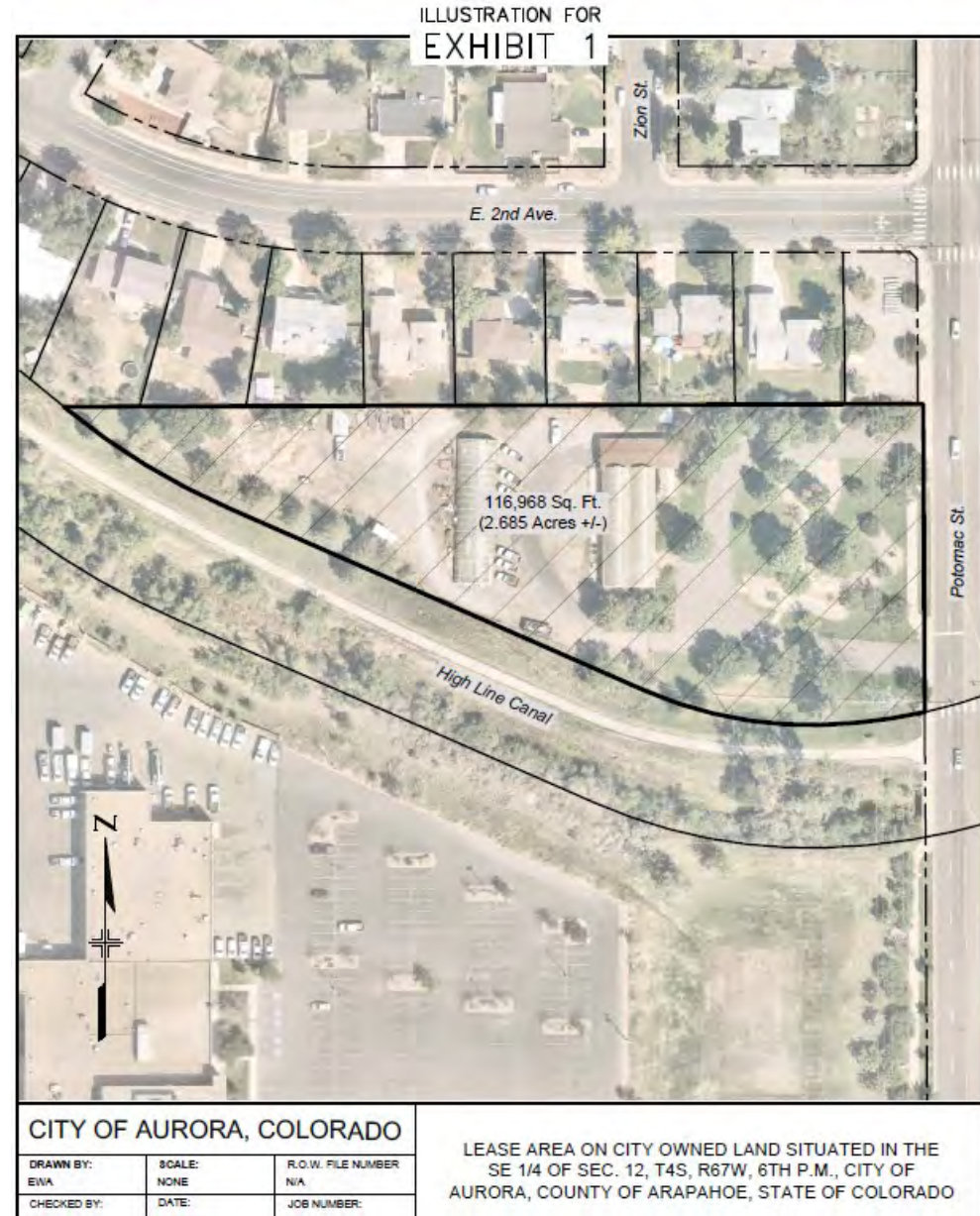
**Sponsor: Councilmember Crystal Murillo**

**Study Session  
July 22, 2024**



# Overview

- 151 POTOMAC STREET
- Total rentable area ~116,968 sq. ft. Or 2.685 Acres
- High level of deferred maintenance
- Greenhouses were used for seasonal growing by PROS staff until the standalone greenhouse collapsed due to a snow event
- Capital maintenance necessary to renovate major systems and components



# Process

- **Fall 2021 City Council Budget Workshop**
  - \$350K earmarked for capital maintenance of greenhouses
  - Additional information requested regarding proposed business plan for greenhouse
- **April 2023 – Real Property issued RFP**
  - RFP solicitation on the city’s website, multiple listing services, and LoopNet.
- **May 2023: Received one proposal from Food Justice NW Aurora (FJNWA)**
  - Proposal was evaluated based on criteria identified in RFP
  - FJNWA was top-ranked proposal
- FJNWA engaged Prospiant, a greenhouse renovation company, to provide a construction estimate for capital repairs to the greenhouse which came in at approx. \$250k
  - If Council is supportive of the lease, then a Tenant Improvement Allowance (TIA) in an amount not to exceed \$250k would be negotiated into the final lease agreement which is subject to city council approval FJNWA will be responsible for obtaining permits and approvals necessary to construct the capital renovations as well as manage the contractor. The City would reimburse FJNWA in increments of \$25k upon inspection and acceptance of the work.





# 151 Potomac Greenhouse

- Since August 21, 2023 Study Session, due to total destruction of the standalone greenhouse from a winter snowstorm the terms of the lease have changed as follows:
  - Multiple tenant to single tenant (PROS staff are relocating to Central Facility)
  - Only require \$250k in capital renovations to the remaining greenhouse
  - 3-year initial term with potential for 5-year extension
- Exterior, structural, HVAC, electrical, plumbing all require capital renovations
- To be leased as-is, where-is, with all faults
- Tenant will be required to maintain, repair, or otherwise modify the property after city capital renovations completed





# PROPOSAL DETAILS

Lease Term	3-year Initial Term, w/Option to Extend additional 5 years
Rental Rate	\$1/Month
<b>Successful Respondent</b>	<b>Food Justice NW Aurora (FJNWA)</b>
Financial detail	FJNWA is a community-based organization whose mission is to promote and advance an integrated, vibrant local food system with a nonprofit status through fiscal sponsorship by The Barton Institute for Community Action (Barton Institute). The Barton Institute is a nonprofit organization that was established in 2019. As part of this fiscal sponsor relationship, Barton Institute files taxes to encompass FJNWA's financials. Therefore, FJNWA provides Barton Institute W-9
Proposed operational business plan	Operations to commence in January 2025 in Greenhouse 1, subject to completion of renovations in 2024 to the Greenhouse.
Maintenance of Greenhouses	FJNWA to assume all responsibility for maintaining the Greenhouse upon completion of city renovations.
Partner agencies	Denver Urban Gardens, Project Worthmore, Aurora Economic Opportunity Coalition, Delaney Farms, Pickens Technical College, Georgia Green Project, Village Exchange Center (Village Farm), Aurora Seed Farm, Rebel Marketplace/Urban Symbiosis, and local farmers, Barton Institute for Community Action
Incentives for City	<ul style="list-style-type: none"><li>• City will receive an allocation of 500 sq. ft. in the Greenhouse for PROS and other city programs to use, co-branding plant sales, and co-branding programming occurring onsite.</li><li>• Surplus plant starts that are not sold would be donated to community and school garden programs in the neighborhood.</li></ul>



# CULTIVATE AURORA: A COMMUNITY GREENHOUSE PROJECT

Presented to Aurora City Council on July 22, 2024  
by Caitlin Matthews, Food Justice NW Aurora,  
and Jenna Smith, AgroEco Solutions

## THE OPPORTUNITY

- Innovative partnership between the City of Aurora and FJNWA to reactivate vital and valuable infrastructure
- Opportunity for Aurora to demonstrate leadership and innovation in food projects
- City of Aurora's investment in the greenhouse leverages significant additional funding





## CULTIVATE AURORA VISION

- Grow food-producing plant starts and perennials for Aurora's residents, farms, and organizations
- Provide education and training about urban agriculture and food production to Aurora's residents
- Create year-round and seasonal jobs and offer work force training





## CULTIVATE AURORA MODEL

To reactivate the City of Aurora greenhouse and to launch and sustain a nonprofit greenhouse program, we developed:

- Business plan
- Operations plan
- Financial model



## PARTNERSHIPS AND COLLABORATION

Collaborators on the GH Vision:

Project Worthmore (Delaney Farm)

Denver Urban Gardens

Village Exchange Center (Village Farm)

Urban Symbiosis

Aurora Seed Farm

a georgia green project

Pickens Technical College

Partners engage in various ways...

- Program advisory partner
- Technical advisory partner
- Sales and distribution partner
- Educational programming partner
- Customer of greenhouse products





## BENEFITS TO AURORA COMMUNITY

- Create new jobs
- Increase local food production
  - Increase access to fresh food
- Educate more community growers





## SALES AND DISTRIBUTION CHANNELS

- Direct to Aurora community
  - Farmer contract grows
- Organizational and institutional partners

The greenhouses are critical infrastructure for the local food economy





# PROSPIANT

FJNWA's partner for GH renovation

- Prospiant (formerly Nexus and Rough Brothers) has over 100 years of combined experience in the greenhouse industry
- Full service company whose capabilities include manufacturing, design, construction, structural engineering, and project management
- Market segments consist of commercial, institutional, retail, and vegetable
- Considered the leading business within the agtech industry, known for quality and integrity
- Wide customer base and with repeat business
- Clients in Colorado include Denver Botanic Gardens, CSU Extension, US Department of Agriculture, Pickens Technical College, and Dahlia Campus for Health and Well-Being



## Prospiant's past renovation projects







Prospiant's past renovation projects





BEFORE





AFTER





BEFORE





AFTER





## OUR COMMITMENT

- \$100K of capital improvements in addition to the City of Aurora's investment in renovations
- ADA accessibility in the greenhouse, administrative building, and parking areas
- Assume full responsibility for start-up, operations, programming, and maintenance costs





## LEVERAGING THE CITY'S INVESTMENT

- Secured funding for greenhouse operations through 2026
  - \$325K for start-up year (2024)
  - ~\$200K for each year of operations (2025 and 2026)
- Multi-year grants from the Colorado Health Foundation, Colorado Department of Public Health and Environment, and The Denver Foundation (Transforming Safety)
- Grants from Centura Health and the Big Green DAO
- Capital grant from Gates Family Foundation





THANK YOU FOR YOUR CONSIDERATION.

Caitlin Matthews | [caitlin@foodjusticenwaurora.org](mailto:caitlin@foodjusticenwaurora.org)

Image credits: Prospiant, Caitlin Matthews, Bailey Vianello, Unsplash (Jael Rodriguez, Zoe Schaffer), Pexels (Zen Chung)

# QUESTION FOR COUNCIL

- Does City Council support moving forward with a lease to FJNWA for the greenhouses at 151 Potomac Street for a 3-year Initial Term, with Option to Extend additional 5 years?
- Does City Council support staff moving forward with city capital repairs to the Greenhouses in the amount of \$250K?



RESOLUTION NO. R2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
FOR THE LEASE AGREEMENT BETWEEN THE CITY OF AURORA AND FOOD  
JUSTICE NORTHWEST AURORA REGARDING OPERATION OF THE CITY-OWNED  
GREENHOUSES AT 151 POTOMAC STREET

WHEREAS, in 2022, Aurora City Council earmarked 350,000 to be used for needed capital repairs to three greenhouses on City-owned property located at 151 Potomac Street ( Greenhouses ) and

WHEREAS, on April 12, 2023, City of Aurora staff solicited a request for proposals, to include a business plan, operations plan, and financial model, from qualified for-profit and or nonprofit businesses for the purpose of providing food production and programming in the Greenhouses and

WHEREAS, City staff notified Denver Urban Gardens, Food Justice NW Aurora, Tri-County Health Department, and posted the RFP on the City's website, multiple listing service (MLS), and LoopNet CoStar which also syndicated the listing to other partner websites and

WHEREAS, proposals were due on May 10, 2023, and the City received one proposal from Food Justice NW Aurora (FJNWA) and

WHEREAS, based on the evaluation criteria, FJNWA is a qualified nonprofit business that can provide food production and programming at the Greenhouses and

WHEREAS, initially, FJNWA will be awarded a License and Option to Lease which will allow them to have access to the Greenhouses and to proceed with due diligence activities, including hiring employees, while the City completes capital repairs to the Greenhouses and

WHEREAS, upon completion of capital repairs, FJNWA will have the option to enter into a lease agreement for an initial three-year term with an option to extend for an additional five-year term, with the additional five-year term to be administratively approved and

WHEREAS, capital repairs will cost up to 350,000 and there is no additional cost to the City for operating or maintaining the Greenhouses and

WHEREAS, FJNWA will be responsible for all operating costs, utilities, janitorial services, and maintenance of the Greenhouses and

WHEREAS, the City desires to enter into the Commercial Lease with FJNWA according to the terms and provisions stated in the Commercial Lease presented to City Council and

WHEREAS, pursuant to Colorado Revised Statute 31-15-101(d), the City has the authority to acquire, hold, lease, and dispose of property, both real and personal and

WHEREAS, pursuant to City Code Section 2-31, the Mayor, upon authorization by a majority vote of the members of City Council voting thereon, shall execute all conveyances of any

interest in real property owned by the City, including leases provided, however, that the City shall not sell or convey any lands granted to, or purchased for use and used by the City for park purposes, without a majority vote of the City's registered electors at a special or regular municipal election and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Commercial Lease for the City-owned greenhouses at 151 Potomac Street to FJNWA for an initial five-year term with the option to extend an additional five years and

WHEREAS, City Council supports City staff moving forward with capital repairs to the three City-owned greenhouses located at 151 Potomac Street with the funds earmarked by Council for such purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Commercial Lease between the City and Food Justice Northwest Aurora for Operation of up to three City-owned greenhouses at 151 Potomac Street is hereby approved.

Section 2. The use of earmarked funds to be used for capital repairs to the three City-owned greenhouses at 151 Potomac Street for the Commercial Lease is hereby approved.

Section 3. The Mayor or his designee, City Clerk, and City Manager, are hereby authorized to execute and deliver the Lease Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

Section 5. This resolution shall take effect immediately without reconsideration.

RESOLVED AND PASSED this        day of        , 2024.

MICHELLE COFFMAN, Mayor

ATTEST:

ADEE RODRIGUE , City Clerk

APPROVED AS TO FORM:

*Michelle Gardner*  
MICHELLE GARDNER, Sr. Assistant City Attorney



# CITY OF AURORA

## Council Agenda Item Continuation Page

<b>Item Title:</b> CONTINUATION: 151 Potomac Street – Greenhouse Lease Agreement
<b>Item Initiator:</b> Hector Reynoso, Real Property Services Manager, Public Works
<b>Staff Source:</b> Hector Reynoso, Real Property Services Manager, Public Works
<b>Legal Source:</b> Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> Caitlin Matthews, Executive Director, Food Justice NW Aurora / Jenna Smith, Farm & Food Systems Advisor, AgroEco Solutions
<b>Date of Change:</b> 9/11/2023

### COUNCIL MEETING DATES:

**Study Session:** 8/21/2023

**Regular Meeting:** 9/11/2023

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### ITEM SUMMARY *(Brief description of changes or updates with documents included.)*

Updated lease agreement attached that includes Section 4.1.1, Section 4.1.2, Section 8, Exhibit C, and Exhibit D Item #24 at the request of city council. Updated resolution attached to reflect changes. Staff is requesting a waiver of reconsideration so that renovations can be completed by end of 2023 and greenhouse operations can commence in January 2024.

## COMMERCIAL LEASE

### 1. PARTIES; FUNDAMENTAL LEASE PROVISIONS.

1.1 Names. This Lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between City of Aurora, CO, a home rule municipal corporation of the counties of Adams, Arapahoe, and Douglas, with a principal address of 15151 E. Alameda Pkwy. Suite 3200, Aurora, CO 80012 ("Landlord"), and Food Justice NW Aurora, a Colorado non-profit organization, with a principal address of 1521 Dayton Street, Aurora, CO 80010, acting by and through the fiscal sponsorship of the Aurora Economic Opportunity Coalition, with a principal address of 1521 Dayton Street, Aurora, CO 80010. ("Lessee").

1.2 Fundamental Lease Provisions. The following constitute an integral part of this Lease, and each reference in this Lease to the Fundamental Lease Provisions shall mean the provisions set forth in this Paragraph 1.2. In the event of any conflict between the Fundamental Lease Provisions and the remainder of the Lease, the Lease shall control.

1.2.1 Lease Date: \_\_\_\_\_

1.2.2 Address of Landlord: 15151 E. Alameda Pkwy, Suite 3200, Aurora, CO 80012

1.2.3 Address of Lessee: 1521 Dayton Street, Aurora, CO 80010

1.2.4 Premises:

- Greenhouse 1, depicted on Exhibit A, containing approx. 3,300 Square Feet (3,600 square feet)
- Greenhouse 2, depicted on Exhibit A, containing approx. 4,000 Square Feet (4,100 square feet)
- 20x20 Pad Site for storage
- 10x20 Compost Area

1.2.5 Rentable Area: 7,700 square feet

1.2.6 Total Rentable Area: 7,700 square feet

1.2.7 Property: 151 N. Potomac Street, Aurora, CO 80011 ("Property")

1.2.8 Ordinary Business Hours: The ordinary business hours of the Premises shall be from 6:00 A.M. to 6:00 P.M., Monday through Friday of each week, and

from 8:00 A.M. to 2:00 P.M. every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day. Landlord may restrict access to and from the Premises and the Property outside the ordinary business hours of the Property for reasons of Property security. Lessee shall have the right to enter the Premises at any time without notice in the event of an emergency. If Lessee exercises this right, Lessee shall notify Landlord within 12-hours. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessees of the Property.

1.2.9 Lease Term: 3 Years and terminating no later than 12/31/2027

1.2.10 Base Rent: \$1 per month

1.2.11 Additional Rent: Annual operating budget and Performance Metrics

1.2.12 Security Deposit: \$N/A

1.2.13 Landlord's Cost Stop: \$0/year

1.2.14 Lessee's Share: 100%

## 2. PREMISES.

2.1 Premises. On and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases to Lessee and Lessee rents from Landlord the premises located at Greenhouse 1, Greenhouse 2, and Greenhouse 3 as depicted in Exhibit A to this Lease ("Premises"). The area of the Premises for all purposes under this Lease is stipulated to be 7,700 square feet of rentable area. If the Landlord moves operations out of the "Administrative Building" or "Common Areas" as labeled and depicted on Exhibit A, then Lessee will have the option of including the entire Property as part of the Premises upon written Landlord approval. Lessee shall have the right to use the bathrooms in common areas.

2.2 Property. The Premises are a portion of the property identified in the Fundamental Lease Provisions ("Property"). The area of the Property for all purposes under this Lease is stipulated to be 116,970 square feet, more or less.

2.3 Nonexclusive and Reserved Rights. Lessee is granted the right to the nonexclusive use of the common corridors, driveways, and other public or common areas of the Property; however, the manner in which the public and common areas are maintained shall be at the sole reasonable discretion of Landlord and use thereof shall be subject to such rules,



regulations and restrictions as Landlord may impose from time to time. Landlord reserves the right to make alterations or additions or to change the location of elements of the Property, and to use the roof, exterior walls and the area above and beneath the Premises, together with the right to install, use, store, keep, maintain and replace equipment, machinery, pipes, conduits and wiring through the Premises, which serve other parts of the Property, in a manner and in locations which do not unreasonably interfere with Lessee's use of the Premises. Landlord reserves exclusive rights to the offices located within the Administration Building and storage lockers in the Common Areas. Lessee is granted the right to the nonexclusive use of the microwave, refrigerator, and desk that is located in the Common Areas.

2.4 Condition of Premises. Except as otherwise specifically provided, Lessee shall accept the Premises in an "as is" condition on the date the Term commences and Landlord shall have no obligation to improve, alter, remodel or otherwise modify the Premises prior to or after Lessee's occupancy.

2.5 Parking. During the term of this Lease, Lessee shall only be entitled to such use of parking spaces in the parking areas located in or adjacent to the Premises as shown on Exhibit A, and absent any written agreement to the contrary, parking for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at rates and upon other conditions as may be established from time to time by Landlord or Landlord's operator of the parking areas. Parking rates shall be hourly, weekly, or monthly, or such other rate system as Landlord deems advisable, and Lessee acknowledges that its customers, invitees, and licensees may be charged at such rate. Lessee acknowledges that its employees shall not be entitled to park in such parking areas located in and about the Property which may from time to time be designated for visitors of the Property or otherwise reserved. Landlord may also designate areas for employee parking either within the parking areas located in and about the Property, or in other areas reasonably close thereto. Landlord shall have the right to change such designated parking areas from time to time. Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the suitability of the parking areas, or as to the availability of parking spaces, for the conduct of Lessee's business.

2.6 Access. During the term of this Lease, Lessee shall only be entitled to such use of Common Areas and access drives located in or adjacent to the Premises as shown on Exhibit A, and absent any written agreement to the contrary, access for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at times and upon other conditions as may be established from time to time by Landlord.

### 3. TERM AND EXTENSION TERM.

3.1 Term. The term of this Lease ("Term") shall be for a period of three (3) consecutive years and shall terminate no later than December 31, 2027. The Term shall commence on the Lease Date shown in Section 1.2 Fundamental Lease Provisions (the "Commencement

Date").

3.2 Extension Term.

3.2.1 180-days prior to December 31, 2027, Landlord, may at its sole discretion, offer to renew the Term of this Lease for one (1) additional five (5) consecutive-year Term (the "Extension Term"), under the same terms and conditions of this Lease; or, 180-days prior to December 31, 2027, Lessee, may submit a written request that the Landlord consider renewing the Term of this Lease for one (1) additional five (5) year Term (the "Extension Term"), under the same terms and conditions of this Lease.

3.2.2 The Extension Term may be approved by the Aurora City Manager, to be eligible for consideration of such Extension Term to be approved by the Aurora City Manager, Lessee must satisfy the following requirements:

- Lessee must be in compliance with all requirements of this Lease; and,
- The Lessee must provide evidence to the Landlord during the current Lease Term that its occupation and use of the Leased Property is viable, and serves, and will continue to serve a public purpose. This evidence, at a minimum, requires providing to the Landlord the documents and reports identified as "Additional Rent" in Paragraph 4, Rent. The Landlord may request additional documentation during the course of the Lease to assist its evaluation of the public purpose use.

4. RENT.

4.1 Base Rent. Lessee shall pay to Landlord as Base Rent for the Premises, in advance, without deduction, setoff, prior notice or demand, the sum of One (\$1) Dollars (\$1) per month, which shall be subject to adjustment as provided in Paragraph 4.3. The first month's Base Rent shall be paid on the Commencement Date. The Base Rent for the second calendar month and each calendar month thereafter during the Term shall be paid on the first day of each such calendar month. The Base Rent shall be paid to Landlord at the address set forth in Paragraph 1.2 or such other address as shall be designated in writing from time to time by Landlord. The Base Rent shall include the requirements described in this Paragraph 4, each "Additional Rent".

4.1.1 Annual Operating Budget. In addition to Base Rent, Lessee shall provide to Landlord an annual operating budget as detailed in the table below ("Additional Rent").

<b>Due Date</b>	<b>Annual Operating Budget for previous year</b>
February 15 <sup>th</sup> of	Annual Operating Budget Report to include:

each lease year	<ul style="list-style-type: none"> <li>• Revenue and expense details associated with all property operations.</li> <li>• Business summary report that details participating agencies, organizations, and donor groups.</li> </ul>
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4.1.2 Performance Metrics. In addition to Base Rent, Lessee shall provide to Landlord performance metrics identified on Exhibit C, attached hereto and made a part hereof, prior to February 15<sup>th</sup> of each lease year ("Additional Rent").

4.2 Proration. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent payable for the first calendar month of the Term shall be prorated upon the basis which the number of days of the Term in the first month bears to the total number of days in such month. If the Term ends on a day other than the last day of a calendar month, the Base Rent payable for the last calendar month of the Term shall be prorated on the basis which the number of days of the Term in the last calendar month bears to the total number of days in such month.

4.3 CPI Increase. On each Adjustment Date specified in the Fundamental Lease Provisions, the Base Rent then payable by Lessee (the Base Rent described in Paragraph 4.1 as theretofore adjusted pursuant to this Paragraph) shall be adjusted, upward only, by the percentage that the "Index" (as defined below) in effect as of such Adjustment Date has increased over the Index in effect as of the immediately preceding Adjustment Date or, with respect to the first Adjustment Date, in effect as of the Commencement Date. The term "Index" means the "Consumer Price Index" designated in the Fundamental Lease Provisions, as issued by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency, or any other measure hereafter employed by said Bureau or agency in lieu of such Index that measures the consumer's cost of living in such metropolitan area. If the Index is hereafter converted to a standard reference base different from that which is shown in the Fundamental Lease Provisions or is otherwise revised, the determination of the percentage increase hereunder shall be made either with the use of such conversion factor, formula, or table converting the Index as may be published by said Bureau or any successor agency or, in the event that no such conversion factor, formula, or table is published, then by Landlord using such other index as is then generally recognized and accepted for similar determination of purchasing power.

4.4 Notice of Increase. Landlord shall determine the increase in Base Rent within ninety (90) days after each Adjustment Date and give Lessee written notice indicating the adjusted Base Rent and how it was computed. Prior to Lessee's receipt of such notice, Lessee shall continue paying Base Rent at the rate in effect immediately prior to such Adjustment Date. Within ten (10) days after receipt of such notice, Lessee shall pay to Landlord the difference between the adjusted Base Rent and the Base Rent theretofore paid by Lessee between such Adjustment Date and the date such notice of increase is

received by Lessee, and Lessee shall thereafter continue paying Base Rent at the rate specified in such notice, and in the time and manner provided in Paragraph 4.1, until Lessee receives a new notice of increase in the Base Rent. Landlord's failure to notify Lessee of an increase in Base Rent within ninety (90) days after each Adjustment Date shall not prevent Landlord from thereafter making such adjustment on a retroactive basis. All references in this Lease to "Base Rent" shall mean the Base Rent specified in Paragraph 4.1 as adjusted from time to time pursuant to Paragraph 4.3.

4.5 Payments and Late Charge. Any amounts payable under this Lease shall be paid in lawful money of the United States of America. Any amount of Base Rent or Lessee's Share of Operating Costs not paid within ten (10) days after it is due shall be subject to a late charge of ten percent (10%) of the amount unpaid. Landlord's right to assess a late charge shall not be construed as granting Lessee a grace period within which to make payments. Any amount due to Landlord that is not paid when due shall bear interest from the date due until paid at the maximum legal rate permitted under Colorado law. Lessee's failure to perform any monetary obligations under this Lease shall have the same consequences as Lessee's failure to pay rent.

4.6 Triple Net Lease. It is the purpose and intent of the Landlord and Lessee that all costs directly or indirectly attributable to the Premises shall be the obligation of the Lessee. By way of illustration and not limitation Lessee shall pay for heat, water, gas, electrical, phone, computer lines or services, lighting, sewer, trash removal, operating costs, and insurance.

5. SECURITY DEPOSIT. No Security Deposit is being collected or is required.

6. PROPERTY OPERATING COSTS.

6.1 Lessee's Obligation. Lessee shall pay all of the Property Operating Costs. The Landlord's Parks, Recreation and Open Space Department ("PROS") may require usage of water service to irrigate portions of the Property. PROS shall reimburse Lessee for its pro-rata share of gallons of water used as reasonably determined by the Landlord.

6.2 Operating Costs. The term "Property Operating Costs" shall include all items in Subparagraphs 6.2.1 and 6.2.2.

6.2.1 All direct costs of ownership, operation, maintenance, and management of the Property, including the Property's share of such costs for common areas and parking facilities serving the Property, all as determined by generally accepted accounting practices. The Premise's share of the costs of parking facilities and common areas shared with other buildings on the Property shall be based on Landlord's reasonable allocations among the buildings using such facilities and areas based on use by each building. All utilities, including water, gas, heat, light, power, telecommunications, trash service, and other utilities of every kind generated by the use of the Premises directly from the utility

providers from the effective date of this Lease. By way of illustration but not limitation, operating expenses shall include the costs or charges for the following items: heat, light, water, sewer, power and steam, waste disposal, janitorial services, security, fire protection, window cleaning, air conditioning, landscaping, materials and supplies, leasing commissions, equipment and tools, service agreements on equipment, insurance, licenses, permits and inspections, wages and salaries, employee benefits and payroll taxes, accounting and legal expenses, management fees, Property office rent or rental value, and the cost of contesting the validity or applicability of any governmental enactments which may affect the operation or maintenance of the Property or operating expenses. Management fees shall not exceed four percent (4%) of the gross rents. Property Operating Costs shall not include interest expense, advertising costs, depreciation on the Property, or the cost of capital expenditures; provided, however, that in the event Landlord makes capital improvements which have the effect of reducing operating expenses, or which are required by governmental orders, rules, codes, regulations, ordinances, and laws, Landlord may amortize its investment in said improvements as an operating expense in accordance with standard accounting practices provided that as to voluntary capital improvements reducing operating expenses such amortization is not at a rate greater than the anticipated savings in the operating expenses.

6.2.2 All real property taxes on the Property, the land on which the Property is situated, and the various estates in the Property, and a share of the real property taxes on the land, and improvements comprising the parking facilities and common areas shared with other buildings on the Property based on Landlord's reasonable allocation among the buildings using such facilities and areas based on the use. All personal property taxes levied on property used in the operation of the Property. All taxes of every kind and nature whatsoever levied and assessed in lieu of or in substitution for existing or additional real or personal property taxes on the Property, land, or personal property other than taxes covered by Paragraph 10, any charge upon Landlord's business of leasing the Premises or other portions of the Property or parking facilities and the cost to Landlord of contesting the amount or validity or applicability of any of the aforementioned taxes. Net recoveries through protest, appeals or other actions taken by Landlord in its discretion, after deduction of all costs and expenses, including counsel and other fees, shall be deducted from direct taxes for the year of receipt.

6.3 Other Definitions. The term "Base Year" means the calendar year in which this Lease commences. The term "Subsequent Year" means any calendar year during the Term after the Base Year.

#### 6.4 Payment of Operating Costs.

6.4.1 Lessee shall pay all Property Operating Costs each month during the Term of this Lease. During the Base Year and any Subsequent Year, Lessee shall be responsible for all utilities, including water, gas, heat, light, power, telecommunications, trash service, and other utilities of every kind generated by the operation of the Premises

directly from the utility providers from the effective date of this Lease. Landlord may elect to pay for utilities and bill them back to the Lessee, who is still responsible to pay the Landlord for all related costs as "Additional Rent". Lessee must pay the full amount billed for water and utilities by the due date designated by the provider or the date required by the Landlord if the Landlord is including the billed amount as part of the rent.

6.4.2 If the Term commences on a date other than January 1 or ends on a date other than December 31, the Property Operating Costs and Landlord's Cost Stop for such first or last calendar year of the Term shall be prorated based on what the number of days in the Term in that year bears to 365 and any amounts owed or to be credited pursuant to Subparagraph 6.4.2 shall be paid at the time in the Subsequent Year, or in the calendar year immediately following the year in which the Term ends, that such amount is calculated pursuant to Subparagraph 6.4.2.

6.5 Adjustment of Lessee's Share. In the event the rentable square footage of the Premises and/or the total rentable square footage of the Property is changed, Lessee's Share shall be appropriately adjusted so that it at all times reflects the proportion which the rentable square footage of the Premises bears to the total rentable square footage of the Property.

## 7. CONSTRUCTION OF PREMISES.

7.1 If the Premises are being leased on an "as is" basis without any improvements, alterations, or additions required to be made thereto by Landlord or Lessee, the remaining provisions of this Section 7 shall not apply. Renovations, improvements, alterations, or additions are to be made by Landlord and Lessee to complete the Premises for occupancy by Lessee (the "Lessee Improvements"), the provisions of the Work Agreement attached to this Lease as Exhibit B shall govern with regard to the completion of all such Lessee Improvements. Except as specifically set forth in the attached Work Agreement, Landlord has no obligation and has made no promise to alter, remodel, decorate, paint, or otherwise improve or renovate the Premises or any part thereof.

## 8. USES.

8.1 Authorized. The Lessee shall operate the Premises for the purpose of operating a "Green House" for the cultivation of annual and/or perennial plants that bear fruits, vegetables, flowers; cultivation of native and/or waterwise plants; plant sales on the Property and Premises; research and educational purposes including workshops or classes; and associated incidental uses. "Incidental Uses" may include other activities routinely and usually associated with cultivating plants that complement or support the primary functions and any activity necessary to support the keeping of the covenants, agreements, and conditions of this Lease. In the context of this Lease "Incidental Uses" shall never be activities requiring expanded hours of operation, or additional City permits, or the use of noise amplification devices of any nature whatsoever.

8.1.1 With Landlord's prior written consent, Lessee may install a storage shed within a 20x20 area depicted and labeled on **Exhibit A** as "Storage Area". Landlord may, in Landlord's sole and absolute discretion (but shall in no event be obligated to), grant additional storage within the Leased Premises.

8.1.2 With Landlord's prior written consent, Lessee may use the 10x20 area depicted and labeled on **Exhibit A** as "Compost Area" for composting purposes. Landlord may, in Landlord's sole and absolute discretion (but shall in no event be obligated to), grant additional space for composting within the Leased Premises.

8.1.3 The permitted use shall include limitations on hours of operation as set forth in the Fundamental Lease Provisions of this Lease and Exhibit D, Rules and Regulations, attached hereto and made a part hereof by this reference.

## 8.2 Prohibited Uses.

8.2.1 Any use except as specifically permitted in this section is prohibited unless approved in writing by the Landlord.

8.2.2 By way of clarification but not limitation it shall be noted that smoking of any form, including but without limitation vaping, within any portion of the Green House is strictly forbidden. Further it is strictly forbidden for the parking lot on the Leased Premises or Landlord's Property to be used for any occupancy, including camping.

8.2.3 Overnight occupancy of the Leased Premises or any portion of Landlord's Property is also strictly forbidden.

8.2.4 Cannabis. Lessee agrees that the Leased Premises shall not be used for the use, growing, producing, processing, storing (short or long term), distributing, transporting, or selling of cannabis, cannabis derivatives, hemp or any cannabis containing substances ("Cannabis"), or any office uses related to the same, nor shall Lessee permit, allow or suffer, any of Lessee's officers, employees, agents, servants, licensees, sublessees, concessionaires, contractors and invitees to bring onto the Leased Premises, any Cannabis. Without limiting the foregoing, the prohibitions in this paragraph shall apply to all Cannabis, whether such Cannabis is legal for any purpose whatsoever under state or federal law or both. Notwithstanding anything to the contrary, any failure by Lessee to comply with each of the terms, covenants, conditions and provisions of this paragraph shall automatically and without the requirement of any notice be a default that is not subject to cure, and Lessee agrees that upon the occurrence of any such default, Landlord may elect, in its sole discretion, to exercise all of its rights and remedies under this Lease, at law or in equity with respect to such default.

8.2.5 Lessee shall not use or permit the Premises or any part thereof to be used for any purpose other than the purpose expressly authorized herein.

8.3 Suitability. Lessee acknowledges that neither Landlord nor any agent of Landlord

has made any representation or warranty with respect to the Premises or the Property or with respect to the suitability of either for the conduct of Lessee's business, nor has Landlord agreed to undertake any modification, alteration, or improvement to the Premises except as provided in the Work Agreement. Except as otherwise expressly provided in the Work Agreement, the taking of possession of the Premises by Lessee shall conclusively establish that the Premises and the Property were at such time in satisfactory condition.

8.4 Insurance. Lessee shall not do or suffer anything to be done in or about the Premises, nor shall Lessee bring or allow anything to be brought into the Premises, which would in any way increase the rate of any fire insurance or other insurance upon the Property or its contents, cause a cancellation of said insurance, or otherwise affect said insurance in any manner.

8.5 Laws. Lessee shall not do or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance, or other governmental rule, regulation, or requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, any law, statute, ordinance, or other governmental rule, regulation, or requirement of the United States, the State of Colorado, or the City and County of Denver. Lessee shall, at its sole cost and expense, promptly comply with all said governmental measures and also with the requirements of any board of fire underwriters or other similar body now or hereafter constituted to deal with the condition, use, or occupancy of the Premises, excluding structural changes not related to or affected by Lessee's alterations, additions, or improvements.

8.6 Nuisance. Lessee shall not place or permit to be placed on any floor a load exceeding the floor load which such floor was designed to carry. Lessee also shall not do or suffer anything to be done in or about the Premises which would in any way obstruct or interfere with the rights of other occupants, nor shall Lessee use or suffer the Premises to be used for any immoral, unlawful, or objectionable purposes. In no event shall Lessee cause or permit any nuisance in or about the Premises, and no loudspeakers or similar devices shall be used without the prior written approval of Landlord. Lessee shall not commit or suffer to be committed any waste in or upon the Premises. The provisions of this Paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of any Lessee or occupant of the Property.

8.7 Rules and Regulations. Lessee shall faithfully comply with the Rules and Regulations for the Property, a copy of which is attached to this Lease as Exhibit D and incorporated by this reference, together with all modifications and additions thereto adopted by Landlord from time to time. If there is any conflict between the Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible to Lessee for the nonperformance of any of the Rules and Regulations by or otherwise with respect to the acts or omissions of any other Lessees or occupants of the Property.

## 9. SERVICES AND UTILITIES.



9.1 Services by Landlord. Landlord shall be under no obligation to provide heating, electrical, water, sewer, gas, or other utility service to the Premises, but if Landlord elects to provide such services at Lessee's request, Lessee shall pay to Landlord the cost of such services as determined solely by Landlord based upon Landlord's reasonable estimates and cost, plus a reasonable charge (not to exceed ten percent (10%) of the cost of such services) for Landlord's additional overhead expense. If Lessee elects to have additional janitorial services or any other service, Lessee shall pay the cost of such extra services. Landlord and Lessee shall maintain the lobbies, hallways, stairs, public restrooms, elevators if any, common areas, and landscaping in a clean and orderly manner and in a good state of repair. Lessee shall not have any right to offset or reduce rent for Lessee's refusal to accept any service provided by Landlord.

9.2 Additional Heating and Air Conditioning. Landlord shall be under no obligation to provide additional or after-hours heating or air conditioning, but if Landlord elects to provide such services at Lessee's request, Lessee shall pay to Landlord the cost of such services as determined solely by Landlord based upon Landlord's reasonable estimates and cost, plus a reasonable charge (not to exceed ten percent (10%) of the cost of such services) for Landlord's additional overhead expense. Lessee shall keep all shades, blinds, or draperies closed when necessary because of the sun's position and at all times cooperate fully with Landlord and abide by all the regulations and requirements which Landlord may prescribe from time to time for the proper functioning and protection of the heating, ventilating, and air conditioning systems. Whenever heat-generating machines or equipment or lighting other than Property Standard lights are used in the Premises by Lessee which affect the temperature otherwise maintained by the air conditioning system, Landlord shall have the right to install any machinery and equipment which Landlord deems necessary to restore the temperature balance in any affected part of the Property, including but not limited to modifications to the Property's air conditioning system or installation of supplementary air conditioning units. The cost thereof, including installation and any additional costs of operation and maintenance occasioned thereby shall be paid by Lessee to Landlord upon demand.

9.3 Special Apparatus. Lessee shall not, except with the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion, either: (a) use any apparatus or device in the Premises; or (b) connect with electric current (except through existing electrical outlets in the Premises) or water pipes any device or apparatus for the purpose of using electrical current or water, except as may be provided in the Work Agreement. If Landlord consents to the use and/or connection of any such apparatus or device, Landlord shall have the right to install meters and similar monitoring devices to measure the amount of utilities consumed by such apparatus or devices and Lessee shall pay for the cost of all work and materials required for the installation, maintenance, and use of such meters and monitoring devices. If Landlord elects not to install a special meter or monitoring device, then Landlord shall determine the amount of additional utilities and resources consumed by such apparatus or device based upon Landlord's reasonable estimates and best judgment. Lessee shall pay to Landlord promptly upon demand the cost

of any excess use of utilities and resources based on the rates charged by the local public utility company or other supplier furnishing same, plus any additional expense incurred by Landlord in keeping account of the foregoing and administering the same.

9.4 Property Security. Landlord shall provide only such security for the Property and/or parking area as Landlord deems necessary, which shall not include any special security measures because of the presence of Lessee or Lessee's business. Landlord shall have no responsibility to prevent and shall not be liable to Lessee for losses due to theft, burglary, or vandalism, or for damages done by unauthorized persons gaining access to the Property, the parking area, or the Premises. Nothing herein shall limit Lessee's ability to install security cameras or engage security services for the Property or the Premises at Lessee's sole cost and expense and upon written consent of the Landlord.

9.5 Keys and Locks. Landlord shall furnish Lessee, free of charge, with two keys for each corridor door entering the Premises, which shall not be duplicated or shared. Additional keys will be furnished at a charge by Landlord equal to the cost plus fifteen percent (15%) on an order signed by Lessee or Lessee's authorized representative. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises. Upon termination of this Lease, Lessee shall surrender to Landlord all keys to the Premises and give to Landlord the combination to all locks for safes, safe cabinets, and vault doors, if any, in the Premises.

9.6 Interruption in Service. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of services and utilities. However, Landlord shall not be in default under this Lease or liable for any damages directly or indirectly arising from, nor shall the rent be abated or Lessee's performance affected by reason of, any failure to provide or any reduction in any of the above services or utilities if such failure or reduction is caused by the making of repairs or improvements to the Premises or to the Property, the installation of equipment, force majeure, acts of government, acts of God or the elements, labor disturbances of any character, or any other accidents or conditions whatsoever beyond the reasonable control of Landlord, or rationing or restrictions on the use of said services and utilities due to energy shortages or other causes, whether or not any of the above result from acts or omissions of Landlord. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state, or local governmental bodies or utility suppliers in reducing energy or other resources consumption. The failure of Landlord to provide the utilities and services specified in this Section 9 shall not constitute a constructive or other eviction of Lessee.

9.7 Additional Rent. Any sums payable under this Section 9 shall be considered additional rent and may be added to any installment of rent thereafter becoming due, and Landlord shall have the same remedies for a default in payment of any such sum as for a default in the payment of rent.

9.8 Lessee's Obligation. Lessee shall, prior to delinquency, pay for all other materials

and services not expressly required to be provided by Landlord which may be furnished to or used in, on, or about the Premises during the Term.

#### 10. TAXES PAYABLE BY LESSEE.

10.1 Lessee shall pay before delinquency any and all taxes levied or assessed and which become payable by Lessee (or directly or indirectly by Landlord) during the Term (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources, capital stock taxes, and estate and inheritance taxes), whether or not now customary or within the contemplation of the parties hereto, which are based upon, measured by, or otherwise calculated with respect to: (a) the gross or net rental income of Landlord under this Lease, including, without limitation, any gross receipts tax levied by any taxing authority, or any other gross income tax or excise tax levied by any taxing authority with respect to the receipt of the rental payable hereunder; (b) the value of Lessee's equipment, furniture, fixtures, or other personal property located in the Premises; (c) the possession, lease, operation, management, maintenance, alteration, repair, use, or occupancy by Lessee of the Premises or any portion thereof; (d) the value of any leasehold improvements, alterations, or additions made in or to the Premises, regardless of whether title to such improvements, alterations, or additions shall be vested in Lessee or Landlord; or (e) this transaction or any document to which Lessee is a party creating or transferring an interest or an estate in the Premises.

#### 11. ALTERATIONS.

11.1 Landlord's Consent Required. Lessee shall not make or permit to be made any alterations, additions, or improvements to the Premises or any part thereof without obtaining Landlord's prior written consent. When applying for such consent, Lessee shall, if required by Landlord, furnish complete plans and specifications for such alterations, additions, or improvements. All alterations, additions, or improvements to the Premises shall be performed by contractors selected and supervised by Landlord for Lessee's account and at Lessee's sole cost and expense. Within ten (10) days after receipt of a written statement from Landlord, Lessee shall reimburse Landlord for all costs arising in connection with Landlord's review of plans and specifications and supervision of contractors. Landlord shall have the right to require that any contractor performing alterations, improvements, or additions to the Premises shall, prior to commencement of any work, provide Landlord with a performance bond and labor and materials payment bond in the amount of the contract price for the work, naming Landlord and Lessee (and any other persons designated by Landlord) as co-obligees. All alterations, additions, fixtures, and improvements, including without limitation all improvements made pursuant to Section 7, whether temporary or permanent in character, made in or upon the Premises either by Landlord or Lessee, shall at once belong to Landlord and become part of the Premises and shall remain on the Premises without compensation of any kind to Lessee. Lessee shall carry insurance as required by Section 15 covering any improvements, alterations, or additions to the Premises made by Lessee under the provisions of this Section 11, it being understood and agreed that none of such alterations, additions, or improvements shall be insured by Landlord nor

shall Landlord be required under any provision for reconstruction to reinstall any such alterations, additions, or improvements. Movable furniture and equipment which are removable without material damage to the Property or the Premises shall remain the property of Lessee.

11.2 Removal at Landlord's Option. Notwithstanding any other provision contained in this Lease, Lessee agrees that it shall, upon Landlord's written request made prior to or within thirty (30) days following the expiration or termination of this Lease, at Lessee's sole cost and expense, promptly remove any alterations, additions, fixtures, or Lessee Improvements designated by Landlord to be removed and repair any damage to the Premises resulting from such removal. Landlord may, in connection with any such removal which might in Landlord's judgment involve damages to the Premises, require that such removal be performed by a bonded contractor or other person for whom a bond satisfactory to Landlord has been furnished covering the cost of repairing the anticipated damage.

11.3 Premises. Lessee shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Property any signs, notices, drapes, shutters, blinds or window coatings, or displays of any type, without the prior written consent of Landlord. Landlord shall consent to the location at the cost of Lessee of a Property standard sign on or near the entrance of the Premises and shall include Lessee in the Property directories located in the Property.

11.4 Property. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof and exterior of the Property and in any area of the Property not leased to Lessee such signs, notices, displays, and similar items as Landlord deems appropriate in the proper operation of the Property.

## 12. MAINTENANCE AND REPAIRS.

12.1 Landlord's Obligations. Landlord shall maintain in good order, condition, and repair the structural portions of the Property, including the exterior walls, underflooring and roof, the basic heating, ventilating, air conditioning, plumbing, electrical, and fire detection and security systems (if now or hereafter installed in the Property), and all other portions of the Premises not the obligation of Lessee. However, if any such maintenance and repair becomes necessary in whole or in part because of wrongful acts or omissions by Lessee or Lessee's employees, agents, invitees, and customers, or because of a breaking and entering, the entire cost thereof shall be paid for by Lessee upon demand. Landlord shall not be liable to Lessee, and rent shall not be abated, for any failure by Landlord to maintain and repair areas which are being used in connection with construction of improvements, or for any failure to make any repairs or perform any maintenance unless such failure shall continue for an unreasonable time after written notice of the need therefor is given to Landlord by Lessee. Landlord shall also not be liable under any circumstances for loss of profits or for injury to or interference with Lessee's business arising from or in connection with the making of or the failure of Landlord to make any repairs, maintenance, alterations, or improvements in or to any portion of the Property or in or to fixtures, appurtenances

and equipment thereon.

12.2 Lessee's Obligations. Lessee shall be responsible for all maintenance of fixtures. Lessee is obligated at all times to maintain fixtures to at least the condition found upon execution of the Lease.

12.3 Premises in good order. Lessee, at Lessee's sole cost and expense, shall maintain the Premises in good order, condition and repair including the interior surfaces of the ceilings, walls and floors, all doors, interior windows, and all plumbing pipes, valves and fixtures, electrical wiring, panels, switches, and all other fixtures and equipment installed for the use of the Premises by Lessee. Lessee expressly waives the benefits of any statute, ordinance or judicial decision now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair. Lessee shall immediately notify Landlord in the event Lessee is made aware of any dangerous conditions on or surrounding the Premises.

12.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Premises in the same condition as received, except for ordinary wear and tear and damage by fire, earthquake, or acts of God or the elements not caused by the wrongful act or omission of Lessee or Lessee's agents.

12.5 Excepted Damage. Except for any damage caused by reasonable use, Lessee shall repair any damage to the Premises or the Property caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, movable partitions, or permanent improvements or additions, including without limitation thereto repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Lessee's sole cost and expense. Lessee shall indemnify Landlord against any loss or liability resulting from delay by Lessee in so surrendering the Premises, including without limitation any claims made by any succeeding Lessee founded on such delay.

12.6 Landlord's right to maintain the Premises. In the event Lessee fails to maintain the Premises in good order, condition, and repair, Landlord shall give Lessee notice to do such acts as are reasonably required to so maintain the Premises. In the event Lessee fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right, but no obligation, to do such acts and expend such funds at the expense of Lessee as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Lessee promptly after demand with interest at the maximum rate permitted by law from the date of such work. Landlord shall have no liability to Lessee for any damage, inconvenience, or interference with the use of the Premises by Lessee as a result of performing any such work.

12.7 Compliance With Law. Landlord and Lessee shall each do all acts required to

comply with all applicable laws, ordinances, regulations, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

12.8 Environmental Law. Lessee agrees to comply at all times with federal, state and local rules, regulations, statutes, ordinances and directives that may now or hereafter be applicable to the Premises and that are related to hazardous or toxic materials pollution control and environmental matters including: (a) any laws and regulations governing water use, groundwater, wetlands and watersheds associated with the Premises; (b) any pesticides, fertilizer or chemical record-keeping and reporting laws and regulations; (c) any pesticide, fertilizer or chemical applicator licensing laws and regulations; (d) the Worker Protection Standard for Agricultural Pesticides. The Lessee further agrees to be in strict compliance with all manufacturers' label instructions, use requirements and precautionary statements and warnings. The Lessee will use the utmost care in the handling and application of any pesticides, fertilizers and chemicals to protect all persons upon the Premises and the environment, and will dispose of all pesticide, fertilizer and chemical containers only in a lawful manner and will not dump, bury or burn said containers on the Premises.

13. LIENS. Lessee shall keep the Premises, the Property, and any common areas and facilities serving the Property free from any liens arising out of work performed, materials furnished, or obligations incurred by Lessee, and shall indemnify, hold harmless, and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. In the event that Lessee shall not, within twenty (20) days following imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided in this Lease and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorney fees and costs, shall be payable to Landlord by Lessee on demand with interest at the maximum rate permitted by law from the date such sums are paid or expenses incurred by Landlord. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, including but not limited to C.R.S. § 38-22-105(2), or which Landlord shall deem proper for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, and Lessee shall give to Landlord at least ten (10) business days' prior written notice of the expected date of commencement of any work relating to alterations, additions or improvements in or to the Premises.

14. INDEMNITY.

14.1 Indemnity. Lessee shall and does hereby indemnify, hold harmless, and defend Landlord against any and all claims of liability for any injury or damage to any person or property whatsoever (a) occurring in, on, or about the Premises or any part thereof; and

(b) occurring in, on, or about any facilities (including, without prejudice to the generality of the term "facilities," elevators, stairways, passageways, hallways, and parking areas), the use of which Lessee may have in conjunction with other Lessees of the Property, when such injury or damage is caused in part or in whole by the act, negligence, fault, or omission of any duty with respect to the same by Lessee, its agents, contractors, employees, invitees, or customers. Lessee shall and does hereby further indemnify, hold harmless, and defend Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, invitees, and employees, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such claim, Lessee, upon notice from Landlord, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord, provided, however, that Lessee shall not be liable for damage or injury occasioned by the active negligence or intentional acts of Landlord and its agents or employees unless covered by insurance Lessee is required to provide. Lessee, 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 except that caused by the negligence or intentional acts of Landlord and its agents or employees.

14.2 Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Lessee, its employees, invitees, or customers, or 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, heating, air conditioning, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Property, of which the Premises are a part, or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other Lessee of the Property.

15. INSURANCE: During the term of this Lease, Lessee, at its sole cost and expense, shall procure and maintain the following insurance coverages:

a. Commercial General Liability Insurance: Lessee shall maintain a Commercial General Liability insurance policy with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million (\$2,000,000) general aggregate. Coverage shall include claims for personal injury (including bodily injury and death), property damage (including loss of use), personal and advertising injury and contractual liability. The City shall be named as an additional insured by endorsement and the policy shall provide for a waiver of subrogation in favor of the City.

b. Commercial Property Insurance: Lessee shall maintain commercial property

insurance covering damage to its property arising out of perils including, but not limited to fire, wind, hail, water intrusion or flooding, theft and vandalism. The property coverage shall be in an amount equivalent to the replacement cost of Lessee 's furniture, improvements, fixtures, equipment and other personal property removable by Licensee.

c. Workers' Compensation and Employers' Liability Insurance. The Lessee shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Lessee shall maintain Employers' Liability Insurance with minimum limits of \$100,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$100,000 bodily injury disease aggregate.

If Licensee does not have employees, Lessee will attach a written statement to this Lease acknowledging that it has no employees and is not required to have Workers' Compensation insurance per Colorado law.

d. In lieu of the coverages set forth in paragraphs a and b, the City will accept a small business insurance policy which provides similar limits and coverages upon review by the City Risk Manager.

e. Lessee's insurance policies shall be the primary insurance as to all claims thereunder and provide that any insurance carried by the City is excess and is non-contributing with any of Lessee's insurance. Lessee 's insurance shall be issued by an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or which is otherwise acceptable to the City.

f. Upon execution of this Lease, Lessee shall deliver to the City a certificate of insurance with all requisite endorsements required herein. Lessee must provide at least thirty (30) days' written notice to the City before any such insurance policy or policies can be canceled or materially changed. The Lessee shall provide the City annual updated Certificates of Insurance verification from the insurance carrier.

g. Lessee shall notify the City in writing of any injury or potential claim arising from its use of the premises. If the Premises suffers physical damage and/or the Lessee's improvements are damaged by fire, flood, or other natural hazard, and the damage will not interfere substantially with Lessee 's use of the Premises, the City shall immediately undertake repairs to the building and restore it to substantially the same condition.

h. Adjustment. Every three (3) years during the Term, or whenever Lessee materially improves or alters the Premises, Landlord and Lessee shall mutually agree to increases in Lessee's insurance policy limits for the insurance to be carried by Lessee as set forth in this Section 15. If Landlord and Lessee cannot mutually agree upon the amounts of said increases within thirty (30) days after notice from



Landlord, then all insurance policy limits as set forth in this Section shall be adjusted for increases in the cost of living in the same manner as is set forth in Paragraph 4.3 for the adjustment of the Base Rent.

15.1 Landlord's Insurance. Landlord shall at all times maintain a commercial property insurance policy for the Premises under a blanket policy covering perils including, but not limited to: fire, flood, water intrusion, hail and wind damage, vandalism and malicious mischief. Landlord agrees that its coverage will remain during the term of this Lease. Coverage shall provide for the full replacement cost of the Premises less the City's deductible.

15.2 Subrogation Waiver. Landlord and Lessee each hereby waive any and all rights of recovery against the other or against the officers, partners, employees, agents, and representatives of the other, on account of loss or damage to such waiving party or its property, or the property of others under its control, to the extent that such loss or damage is under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier(s) that the foregoing mutual waiver of subrogation is contained in this Lease. The waivers set forth herein shall be required to the extent the same are available from each party's insurer without additional premium; if an extra charge is incurred to obtain such waiver, it shall be paid by the party in whose favor the waiver runs within fifteen (15) days after written notice from the other party.

## 16. ASSIGNMENT AND SUBLETTING.

16.1 Landlord's Consent Required. Lessee shall not sell, assign, mortgage, pledge, hypothecate, encumber, or otherwise transfer this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or suffer or permit the Premises or any part thereof to be occupied by any third person (the agents, employees, invitees, and customers of Lessee excepted), without the prior written consent of Landlord in each instance and any attempt to do so without such consent shall be voidable and, at Landlord's election, shall constitute a noncurable default under this Lease. Subject to the terms and conditions contained in this Section, Landlord shall not unreasonably withhold its consent to a transfer of this Lease or a subletting of the Premises.

16.2 Lessee's Application. If Lessee desires at any time to transfer this Lease (which transfer shall in no event be for less than Lessee's entire interest in this Lease) or to sublet the Premises or any portion thereof, Lessee shall submit to Landlord at least sixty (60) days prior to the proposed effective date of the transfer or sublease ("Proposed Effective Date"), in writing: (a) a notice of intent to transfer or sublease, setting forth the Proposed Effective

Date, which shall be not less than sixty (60) nor more than ninety (90) days after the sending of such notice; (b) the name of the proposed sublessee or transferee; (c) the nature of the proposed sublessee's or transferee's business to be carried on in the Premises; (d) the terms and provisions of the proposed sublease or transfer; (e) such certified financial information as Landlord may request concerning the proposed sublessee or transferee, including recent financial statements and bank references; and (f) evidence satisfactory to Landlord that the proposed sublessee or transferee will immediately occupy and thereafter use the affected portion of the Premises for the entire term of the sublease or, in the case of a transfer, for the unexpired portion of the Term.

16.3 Landlord's Option to Recapture. Landlord hereby reserves the option, to be exercised by giving notice to Lessee within thirty (30) days after receipt of Lessee's notice of intent to transfer or sublease (it being understood and agreed that no revocation or withdrawal by Lessee of such notice of intent to transfer or sublease shall affect Landlord's option), to recapture the portion of the Premises described in Lessee's notice for the remainder of the Term and to terminate this Lease with respect to such recaptured Premises. The effective date of such recapture and termination shall be as specified in Landlord's notice of exercise of its recapture option, but shall not be less than thirty (30) days nor more than sixty (60) days after the delivery of such notice. The option to recapture reserved to Landlord hereunder shall also arise in the event Lessee shall, voluntarily or involuntarily, sell, assign, mortgage, pledge, encumber, or otherwise transfer this Lease or any interest herein, or sublet the Premises or any portion thereof, or suffer or permit the Premises to be occupied by any third person (the agents, employees, invitees, and customers of Lessee excepted), without first obtaining the written consent of Landlord; and in such event the recapture option shall apply to the entire Premises and be exercisable by Landlord at any time after the occurrence of the event for which Landlord's consent was required but not obtained by Lessee. If this Lease is terminated pursuant to Landlord's recapture option with respect to only a portion of the Premises, the Base Rent required under this Lease and Lessee's Share shall be adjusted proportionately based on the rentable square footage retained by Lessee and the rentable square footage leased by Lessee hereunder immediately prior to such recapture and cancellation, and Landlord and Lessee shall thereupon execute an amendment of this Lease in accordance therewith. If Landlord so recaptures a portion of the Premises, it shall construct and erect at its sole cost such partitions as may be required to sever the space retained by Lessee from the space recaptured by Landlord; provided, however, that such partitions shall be furnished to Property Standard only. Landlord may, without limitation, lease the recaptured portion of the Premises to the proposed sublessee or transferee, on the same or different terms as were proposed by Lessee, without liability to Lessee.

16.4 Approval/Disapproval Procedure. If Landlord disapproves the proposed transfer or sublease it shall notify Lessee in writing thereof and shall specify the reason(s) therefor; provided, however, that in the event of any dispute between Landlord and Lessee regarding the reasonableness of Landlord's disapproval of the proposed transfer or sublease, Landlord shall not be limited to the reason(s) specified in such notice in justifying its disapproval. If Landlord approves the proposed transfer or sublease, it shall notify Lessee in writing thereof

and Lessee shall, prior to the Proposed Effective Date, submit to Landlord all executed originals of the transfer or sublease agreement for execution by Landlord on the signature pages thereof after the words "The foregoing is hereby consented to." Provided such transfer or sublease agreement is in accordance with the terms approved by Landlord, Landlord shall execute each original as described above and shall retain one original for its file and return the others to Lessee; and no purported transfer or sublease shall be deemed effective as against Landlord and no proposed transferee or sublessee shall take occupancy unless such document is so executed by Landlord.

16.5 Required Provisions. All transfer or sublease agreements shall (a) contain such terms as are described in Lessee's notice under Paragraph 16.2 above or as otherwise agreed by Landlord, (b) prohibit further assignments, transfers, or subleases, (c) impose the same obligations and conditions on the transferee or sublessee as are imposed on Lessee by this Lease (except as to rent and term or as otherwise agreed by Landlord), (d) be expressly subject and subordinate to each and every provision of this Lease, (e) have a term that expires on or before the expiration of the Term of this Lease, and (f) provide that Lessee and/or transferee or sublessee shall pay Landlord the amount of any additional costs or expenses incurred by Landlord for repairs, maintenance, or otherwise as a result of any change in the nature of occupancy caused by the transfer or sublease.

16.6 Transfer or Sublease Profit. Any sums or other economic consideration received by Lessee directly or indirectly in connection with any transfer or sublease hereunder (except to the extent of transfer or sublease commissions paid by Lessee to a licensed broker at prevailing rates for comparable space and transferee or sublessee leasehold improvement costs incurred by Lessee), whether described as rental or otherwise which exceed, in the aggregate, the total sums which Lessee is obligated to pay Landlord hereunder (prorated in the case of any sublease of less than all the Premises to reflect obligations allocable to that portion of the Premises sublet) shall be payable to Landlord as additional rent under this Lease. Within fifteen (15) days after written request therefor by Landlord, Lessee shall certify to Landlord the amount of all such sums or other economic consideration received and all such commissions and improvement costs incurred or expected to be received or incurred.

16.7 No Release of Lessee. No consent of Landlord to any transfer or subletting by Lessee shall relieve Lessee of the obligations to be performed by Lessee under this Lease, whether occurring before or after such consent, transfer, or subletting. The consent by Landlord to any transfer or subletting shall not relieve Lessee from the obligation to obtain Landlord's express prior written consent to any other transfer or subletting. The acceptance by Landlord of payment from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any transfer or sublease, or to be a release of Lessee from any obligation under this Lease. If this Lease is assigned or transferred, or if the Premises or any part thereof are sublet or occupied by any person other than Lessee, Landlord may, after default by Lessee, collect the rent from any such assignee, transferee, sublessee, or occupant and apply the net amount collected to the rent

reserved herein, and no such action by Landlord shall be deemed a consent to such assignment, transfer, sublease, or occupancy.

16.8 Assumption of Obligations. Each transferee of Lessee shall assume all obligations of Lessee under this Lease and shall be and remain liable jointly and severally with Lessee for the payment of the rent and the performance of all the terms, covenants, conditions, and agreements herein contained on Lessee's part to be performed for the term of this Lease. No transfer shall be binding on Landlord unless the transferee or Lessee delivers to Landlord a counterpart of the instrument of transfer in recordable form which contains a covenant of assumption by the transferee satisfactory in substance and form to Landlord, consistent with the above requirements. The failure or refusal of the transferee to execute such instrument of assumption shall not release or discharge the transferee from its liability to Landlord hereunder. Landlord shall have no obligation whatsoever to perform any duty to or respond to any request from any sublessee, it being the obligation of Lessee to administer the terms of its subleases.

16.9 Deemed Transfers. If Lessee is a privately held corporation, or is an unincorporated association or partnership, the transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate from the date of execution of this Lease in excess of fifty percent (50%) shall be deemed an assignment or transfer within the meaning and provisions of this Section. However, nothing in this Section shall prohibit Lessee from assigning this Lease or subletting the Premises or part thereof to wholly-owned subsidiaries or affiliates of the Lessee, provided Lessee gives Landlord at least thirty (30) days' prior written notice of any such subletting or assignment.

16.10 Involuntary Assignment. No interest of Lessee in this Lease shall be assignable by operation of law, including, without limitation, the transfer of this Lease by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment: (a) if Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Lessee is the bankrupt; (b) if a writ of attachment or execution is levied on this Lease; (c) if, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Lessee and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Lessee.

16.11 Assignment of Sublease Rents. Lessee immediately and irrevocably assigns to Landlord, as security for Lessee's obligations under this Lease, all rent from any subletting of all or any part of the Premises, and Landlord, as assignee and as attorney-in- fact for Lessee for purposes hereof, or a receiver for Lessee appointed on Landlord's *ex parte* application, may collect such rents and apply same toward Lessee's obligations under this Lease; except that, until the occurrence of an event of default by Lessee, Lessee shall have the right and license to collect such rents.

## 17. SALE OF PREMISES OR PROPERTY.

17.1 Each conveyance by Landlord or its successors in interest of Landlord's interest in the Property or the Premises prior to the expiration or termination of this Lease shall be subject to this Lease and shall relieve the grantor of all further liability or obligations as Landlord, except for such liability for obligations accruing prior to the date of such conveyance. If any Security Deposit has been given to Landlord, Landlord shall deliver such Security Deposit to Landlord's successor in interest and thereupon be released of all further liability with regard thereto, without the requirement of any notice thereof to Lessee. Lessee agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise.

## 18. ENTRY BY LANDLORD.

18.1 Upon twenty-four (24) hours' notice, or in an emergency without notice, Landlord and its authorized representatives shall have the right to enter the Premises: (a) to inspect the Premises; (b) to supply any service provided to Lessee hereunder; (c) to show the Premises to prospective brokers, agents, purchasers, lenders, or lessees; (d) to post notices of nonresponsibility; (e) to alter, improve, or repair the Premises and any other portion of the Property; and (f) to erect scaffolding and other necessary structures, where required by the work to be performed, all without reduction of rent. Lessee hereby waives any claim for damages for any injury to or interference with Lessee's business or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have a key to unlock all doors in and about the Premises, excluding Lessee's vaults and safes, and Landlord shall have the right to use any means which Landlord deems proper to open said doors in an emergency, and any such entry to the Premises shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction of Lessee from any portion of the Premises.

## 19. INSOLVENCY OR BANKRUPTCY.

19.1 Acts of Default. Without limitation, the following events shall constitute a default under this Lease: (a) if Lessee shall admit in writing its inability to pay its debts as they mature; (b) if Lessee shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; (c) if Lessee shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; (d) if Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent; (e) if Lessee shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other similar relief for itself under any present or future applicable federal, state, or other statute or law relative to bankruptcy, insolvency, or other relief for debtors; (f) if a court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Lessee seeking any relief described in the preceding clause (e) and (i)

Lessee acquiesces in the entry of such order, judgment or decree (the term "acquiesce" as used in this Paragraph 19.1 shall include, without limitation, Lessee's failure to file a petition or motion to vacate or discharge any order, judgment, or decree within ten (10) days after entry of such order, judgment, or decree), or (ii) such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive, from the date of entry thereof; (g) if Lessee shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of Lessee or all or any substantial part of Lessee's properties or its interest in the Premises; (h) if any trustee, receiver, conservator, or liquidator of Lessee or of all or any substantial part of its property or its interest in the Premises shall be appointed without the consent or acquiescence of Lessee and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; or (i) if this Lease or any estate of Lessee hereunder shall be levied upon under any attachment or execution and such attachment or execution shall remain unvacated and unstayed for an aggregate of ten (10) days, whether or not consecutive.

19.2 Rights and Obligations Under the Bankruptcy Code. Upon the filing of a petition by or against Lessee under the United States Bankruptcy Code, Lessee, as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Lessee under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises the sum required under Section 4, and all other charges otherwise due pursuant to this Lease; (c) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter of the Bankruptcy Code; (d) to give Landlord at least forty-five (45) days' prior written notice of any abandonment of the Premises, any such abandonment to be deemed a rejection of this Lease; (e) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (f) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (g) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

## 20. TERMINATION AND DEFAULT BY LESSEE.

20.1 Acts Constituting Defaults. In addition to the events specified as a default under Paragraph 19.1 or elsewhere in this Lease, the failure of Lessee to perform each covenant made under this Lease, and any of the following events shall be considered to be a default under this Lease:

- 20.1.1 Failure to pay rent, including any charges deemed Additional Rent, other fees related to the operation of the business and Leased Property when due, when such default has not been cured within ten (10) days of the due

date.

- 20.1.2 Vacation or abandonment of the Leased Premises by Lessee. "Vacation" or "abandonment" in this instance shall mean non-occupancy of the Leased Premises by Lessee for a period of 30 contiguous days.
- 20.1.3 Violation of any other covenant, agreement, term, or condition of this Lease, if Lessee fails to remedy the same within ten (10) days after Lessor gives Lessee notice of such violation. Notice shall be given at Lessee's last known address by USPS first-class mail. Any subsequent violations of a covenant, term, or condition which has once been subject to remedy shall not be subject to remedy a second time. Recurring violations of a term or condition are cause for immediate termination of this Lease. In the event that the Lessor forbears in pursuing termination for such violations it is not a waiver of Lessor's right to pursue termination if the violation continues or reoccurs. However, Landlord shall not commence any action to terminate Lessee's right of possession as a consequence of a default until the ten (10) days period of grace, has elapsed; provided that such period of grace shall run concurrently with and not be in addition to any period during which Lessee may cure such default following the delivery of notice pursuant to C.R.S. §§ 13-40-101, *et seq.*
- 20.1.4 The filing of petition in bankruptcy by or against Lessee.
- 20.1.5 Insolvency of Lessee or an assignment by Lessee for the benefit of creditors.
- 20.1.6 Failure to pay any utility bills, costs, or fees.
- 20.1.7 Failure to meet performance metrics defined in Exhibit C, Table 1, attached hereto and made a part hereof as designated and approved by the Lessor.
- 20.1.8 Violation of any operating or signage rules or regulations or rules set down by the Lessor.
- 20.1.9 Political activity or activism on the Property and Premises.
- 20.1.10 Failure to provide Annual operating budget to Landlord in accordance with Section 4.1.1.

20.1.11 Subject to the limitation expressed in Subparagraph 20.1.3, Lessee shall have a period of three (3) days from the date of written notice from Landlord within which to cure any default in the payment of any monetary obligations of Lessee under this Lease.

20.1.12 Lessee shall have a period of fifteen (15) days from the date of written notice from Landlord within which to cure any other default under this Lease which is capable of being cured; provided, however, that with respect to any curable default which cannot reasonably be cured within fifteen (15) days, the default shall not be deemed to be uncured if Lessee commences to cure within five (5) days from Landlord's notice and thereafter prosecutes diligently and continuously to completion all acts required to cure the default.

20.1.13 There shall be no period of grace with respect to any default by Lessee which is not capable of being cured. Landlord and Lessee stipulate that the following defaults are not capable of being cured by Lessee: (a) any event specified as a default under Paragraph 19.1; (b) any unauthorized sale, assignment, mortgage, pledge, hypothecation, encumbrance, or other transfer of this Lease or any interest herein, or any unauthorized subletting of all or any portion of the Premises; (c) the commission of waste by Lessee; (d) the failure of Lessee to pay rent or any other monetary obligation of Lessee hereunder on the due date thereof where such failure occurs on more than three (3) consecutive occasions or more than six (6) occasions during any twelve (12) month period; and (e) any other default which is recognized under Colorado law as being incurable.

20.2 Landlord's Remedies. If Lessee fails to cure a default, or in the event of a default which is not capable of being cured by Lessee, Landlord shall have the following rights and remedies in addition to any other rights and remedies available to Landlord at law or in equity:

20.2.1 The right to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as Landlord does not terminate Lessee's right to possession. Acts of maintenance or preservation, efforts to relet the Premises, or the *ex parte* appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Lessee's right to possession;

20.2.2 The right to terminate this Lease by giving notice to Lessee in accordance with applicable law;

20.2.3 The right and power, as attorney-in-fact for Lessee, to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee, and to sell such property and apply the proceeds therefrom. Landlord, as attorney-in-fact for Lessee, may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term of this Lease) and at such rent and such other terms as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, (a) Lessee shall be immediately liable to pay to Landlord, in addition to indebtedness other than rent due hereunder, the cost of such subletting and such alterations and repairs incurred by Landlord and the amount, if any, by



which the rent hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount agreed to be paid as rent for the Premises for such period; or (b) at the option of Landlord, rents received from such subletting shall be applied first to payment of any indebtedness other than rent due hereunder from Lessee to Landlord; second, to payment of any costs of such subletting and of such alterations and repairs; third, to 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 becomes due hereunder. If Lessee has been credited with any rent to be received by such subletting under option (a) and such rent shall not be promptly paid to Landlord by the sublessee(s), or if such rentals received from such subletting under option (b) during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. For all purposes set forth in this Subparagraph 20.2.3, Landlord is hereby irrevocably appointed attorney-in-fact for Lessee, with power of substitution. No taking possession of the Premises by Landlord, as attorney-in-fact for Lessee, shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach; and

20.2.4 The right to have a receiver appointed for Lessee, upon *ex parte* application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord as attorney-in-fact for Lessee pursuant to Subparagraph 20.2.3.

20.3 Landlord's Right to Cure Default. All covenants and agreements to be performed by Lessee under the terms of this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any reduction of rent. If Lessee shall be in default of its obligations under this Lease to pay any sum of money other than rental or to perform any other act hereunder, and if such default is not cured within the applicable grace period (if any) provided in Paragraph 20.1, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Lessee's part without waiving its rights based upon any default of Lessee and without releasing Lessee from any of its obligations. All sums so paid by Landlord and all incidental costs, together with interest thereon at the maximum legal rate of interest under Colorado law from the date of such payment or the incurrence of such cost by Landlord, whichever occurs first, shall be paid to Landlord on demand. In the event of nonpayment by Lessee, Landlord shall have, in addition to any other rights or remedies hereunder, the same rights and remedies as in the case of default by Lessee for nonpayment of rent.

20.4 Security Interest Hereby Created. As additional security for the Lessee's payment of all rent and other sums due or to become due hereunder, Lessee hereby grants to Landlord a security interest in and to all of the personal property of Lessee situated on the Premises. Lessee shall execute such documents as the Landlord may reasonably require to evidence Landlord's security interest in such personal property. If Lessee is in default under this Lease, such personal property shall not be removed from the Premises (except to the

extent such property is replaced with an item of equal or greater value) without the prior written consent of Landlord. It is intended by the parties hereto that this instrument shall have the effect of a security agreement and financing statement covering such personal property under the Uniform Commercial Code of the State of Colorado, as amended from time to time, and may be filed or recorded as such; upon the occurrence of an event of default set forth herein, Landlord may exercise any rights of a secured party under said Uniform Commercial Code, including the right to take possession of such personal property and (after ten (10) days' notice to those parties as may be required by statute to be notified, which ten (10) day period is hereby determined to be commercially reasonable) to sell the same for the best price that can be obtained at public or private sale, and out of the money derived therefrom pay the amount due Landlord and all costs arising out of the execution of the provisions of this Section, paying the surplus, if any, to Lessee. If such personal property, or any portion thereof, shall be offered at a public sale, Landlord may become the purchaser thereof.

## 21. DEFAULT BY LANDLORD.

21.1 Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Lessee to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if it commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Lessee agrees to give any Mortgagee a copy, by registered mail, of any notice of default served upon Landlord, provided that prior to such notice Lessee has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such Mortgagee. Lessee further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then any such Mortgagee shall have an additional forty-five (45) days within which to cure such default on the part of the Landlord, or, if such default cannot be cured within that time, then such additional time as may be necessary if within that forty-five (45) day period the Mortgagee has commenced and is pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so pursued. If Lessee recovers any judgment against Landlord for a default by Landlord of this Lease, the judgment shall be satisfied only out of the interest of Landlord in the Property and neither Landlord nor any of its partners, officers, employees, or agents shall be personally liable for any such default or for any deficiency.

## 22. DAMAGE AND DESTRUCTION.

22.1 Partial Damage- Insured. Except as otherwise provided in Paragraph 22.6, if the Premises or the Property are damaged by a risk covered under fire and extended coverage insurance insuring Landlord, then Landlord shall restore such damage provided insurance proceeds are made available to Landlord to pay eighty percent (80%) or more of the cost of

restoration, and provided such restoration by Landlord can be completed within eight (8) months after the commencement of work in the opinion of a licensed architect or engineer appointed by Landlord. In such event this Lease shall continue in full force and effect, except that Lessee shall, so long as the damage is not due to the act or omission of Lessee, be entitled to an equitable reduction of Base Rent and Lessee's Share of Property Operating Costs while such restoration takes place, such reduction to be based upon the extent to which the damage or restoration efforts materially interfere with Lessee's use of the Premises.

22.2 Partial Damage - Uninsured. If the Premises or the Property are damaged by a risk not covered by fire and extended coverage insurance insuring Landlord or if the insurance proceeds available to Landlord are less than eighty percent (80%) of the cost of restoration, or if the restoration cannot be completed within eight (8) months after the commencement of work in the opinion of the licensed architect or engineer appointed by Landlord, then Landlord shall have the option either to (a) repair or restore such damage, this Lease continuing in full force and effect, with the Base Rent and Lessee's Share of Property Operating Costs to be equitably reduced as provided in Paragraph 22.1, or (b) give notice to Lessee at any time within ninety (90) days after such damage terminating this Lease as of a date to be specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after giving such notice. If such notice is given, this Lease shall expire and any interest of Lessee in the Premises shall terminate on the date specified in such notice. The Base Rent and Lessee's Share of Operating Costs during the period prior to the termination shall be reduced as provided in Paragraph 22.1 and paid up through the date of termination.

22.3 Total Destruction. If the Premises are totally destroyed or in Landlord's judgment the Premises cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, this Lease shall be terminated effective as of the date of the damage.

22.4 Landlord's Obligations. Any restoration by Landlord pursuant to Paragraphs 22.1 or 22.2 shall be commenced as soon as reasonably possible after the date of damage and prosecuted diligently to completion at the earliest possible date. Landlord shall not be required to carry insurance of any kind on Lessee's property and shall not be required to repair any injury or damage thereto by fire or other causes, or to make any restoration or replacement of any paneling, decorations, partitions, ceilings, floor covering, office fixtures, or any other improvements or property installed in the Premises by or at the direct or indirect expense of Lessee, and Lessee shall be required to restore or replace same in the event of damage. Lessee shall have no claim against Landlord for any loss suffered by reason of any such damage, destruction, repair, or restoration. Notwithstanding anything to the contrary contained in this Section 22, Landlord shall have no obligation to repair, reconstruct, or restore the Premises with respect to damage or destruction as described in this Section 22 occurring during the last twelve (12) months of the Term.

22.5 Waiver by Lessee. Lessee shall have no right to terminate this Lease as a result of

any law, statute, ordinance, judicial decision, or governmental rule or regulation now or hereafter in effect pertaining to the damage and destruction of the Premises or the Property, except as expressly provided herein.

22.6 Landlord's Decision Not to Restore. If the Premises or the Property are damaged under circumstances where Landlord would be required under Paragraph 22.1 to restore such damage, Landlord may decide not to so restore the damage and may instead elect to terminate this Lease if Landlord, in the exercise of its sole discretion, determines either (a) that the purpose for which the Premises or the Property were used prior to such damage or destruction is not the highest and best use for the Premises, the Property or the underlying real property, or (b) in the case of damage affecting more than twenty-five percent (25%) of the gross floor area of the Property (whether or not the Premises are located within such affected area), that the Property should not be restored or reconstructed in its present configuration.

### 23. CONDEMNATION.

23.1 If all or any part of the Premises are taken for public or quasi-public use by the right of eminent domain or otherwise, by a taking in the nature of inverse condemnation, with or without litigation, or are transferred by agreement in lieu thereof (any of the foregoing being referred to herein as a "taking"), either Landlord or Lessee may, by written notice given to the other within thirty (30) days of receipt of notice of such taking, elect to terminate this Lease as of the date possession is transferred pursuant to the taking; provided, however, that before Lessee may terminate this Lease for a taking, such taking shall be of such an extent and nature as to substantially impede Lessee's use of the Premises. If any part of the Property other than the Premises shall be taken, Landlord may elect to terminate this Lease. If the portion so taken includes the parking areas available to Lessee, and if replacement parking is not provided, then for a period of thirty (30) days after Landlord notifies Lessee that such replacement parking cannot be provided, Lessee shall have the right to terminate this Lease, effective at a time specified by Lessee not to exceed one hundred eighty (180) days from the date of the notice. No award for any partial or entire taking shall be apportioned, and Lessee hereby assigns to Landlord any and all rights of Lessee to any portion of the award; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Lessee to assign to Landlord any award made to Lessee for taking of personal property belonging to Lessee. In the event of a partial taking which does not result in a termination of this Lease, Base Rent and Lessee's Share of Operating Costs shall be reduced in proportion to what the area of the Premises taken bears to the area of the Premises immediately prior to the taking. No temporary taking of the Premises or any part of the Property shall terminate this Lease, except at Landlord's election, or give Lessee any right to any abatement of Base Rent or Operating Costs, except that Base Rent and Operating Costs shall be reduced in accordance with Paragraph 22.1 during that portion of any temporary taking lasting more than thirty (30) days.

### 24. HOLDING OVER.

24.1 Any holding over after the expiration of the term of this Lease without the written

consent of Landlord shall be a tenancy from month to month. The terms, covenants and conditions of such tenancy shall be the same as provided herein, except that the Base Rent shall be the greater of (a) two (2) times the Base Rent in effect on the date of such expiration, subject to adjustment as provided in Paragraph 4.3, or (b) the fair market rent of the Premises as established by Landlord. Such holding over may be terminated at any time by Landlord or Lessee upon ten (10) days' written notice. Acceptance by Landlord of rent after such expiration shall not result in any other tenancy or any renewal of the Term of this Lease, and the provisions of this Paragraph are in addition to and do not affect Landlord's right of reentry or other rights provided under this Lease or by applicable law.

25. ESTOPPEL CERTIFICATES.

25.1 Within twenty-one (21) days following any written request which Landlord or Lessee may make from time to time, Lessee or Landlord, without any charge therefor, shall execute, acknowledge, and deliver to the other a statement certifying: (a) the Commencement Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Lessee except as specified in the statement; and (e) such other matters requested by Landlord or Lessee. Landlord and Lessee intend that any statement delivered pursuant to this Paragraph may be relied upon by a mortgagee, beneficiary, purchaser, or prospective purchaser of the Property or any interest therein. If Landlord elects to sell the Property or to obtain loans secured by liens on the Property, Lessee, promptly after demand, shall provide to any such purchaser or lender financial statements of Lessee reasonably required by the purchaser or lender. The financial statements so provided shall be kept confidential as to any parties other than the purchaser or lender.

26. SUBORDINATION AND ATTORNMENT.

26.1 Subordination. Upon the written request of Landlord or any Mortgagee, Lessee will in writing subordinate its rights under this Lease to the lien of any mortgage or deed of trust now or hereafter in force against the Premises, the Property, or the underlying land, and to all advances made or hereafter to be made upon the security thereof, and to all extensions, modifications, and renewals thereunder. Lessee shall also, upon Landlord's request, subordinate its rights under this Lease to any ground or underlying lease which may now exist or hereafter be executed affecting the Property and/or the underlying land. Lessee shall have the right to condition its subordination upon the execution and delivery of an attornment and nondisturbance agreement, as described in Paragraph 26.2, between the Mortgagee or the lessor under any such ground or underlying lease and Lessee. Lessee shall not subordinate its rights hereunder to any lien other than that of a first mortgage or first deed of trust, except with the prior written consent of the Mortgagee holding such first mortgage or deed of trust.

26.2 Attornment. Upon the written request of the Landlord or any Mortgagee or any lessor under a ground or underlying lease, Lessee shall attorn to any such Mortgagee or lessor, provided such Mortgagee or lessor agrees that if Lessee is not in default under this Lease, Lessee's possession of the Premises in accordance with the terms of this Lease shall not be disturbed. Such agreement shall provide, among other things, (a) that this Lease shall remain in full force and effect, (b) that Lessee pay rent to said Mortgagee or lessor from the date of said attornment, (c) that said Mortgagee or lessor shall not be responsible to Lessee under this Lease except for obligations accruing subsequent to the date of such attornment, and (d) that Lessee, in the event of a foreclosure or a deed in lieu thereof or a termination of the ground or underlying lease, will enter into a new lease with the Mortgagee, lessor, or other person having or acquiring title on the same terms and conditions as this Lease and for the balance of the Term.

26.3 Nonmaterial Amendments. If any lender should require as a condition of loans secured by a lien on the Premises, the Property, or the land underlying the Property any modification of this Lease, Lessee will approve and execute any such modifications promptly after request, provided no such modification shall relate to the rent payable hereunder, the length of the Term, or otherwise materially change the rights or obligations of Landlord or Lessee.

## 27. LIGHT, AIR AND VIEW.

27.1 No diminution of light, air, or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Lessee to any reduction of rent under this Lease, result in any liability of Landlord to Lessee, or in any other way affect this Lease.

## 28. WAIVER.

28.1 If either Landlord or Lessee waives the performance of any term, covenant, or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant, or condition itself or a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such rent. Failure by Landlord to enforce any of the terms, covenants, or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Lessee. Waiver by Landlord of any term, covenant, or condition contained in this Lease may only be made by a written document signed by Landlord.

## 29. ATTORNEY FEES.

29.1 In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant, or condition of this Lease on the part of Landlord, or if the services of an attorney are employed for the purpose of pursuing such matters (whether or not an action is commenced), Landlord shall be entitled to recover its reasonable attorney fees together with all allowable costs.

### 30. NOTICES.

30.1 Form and Delivery of Notice. Any notice required or permitted under this Lease shall be in writing and shall be delivered either personally or by depositing same in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the intended recipient at such party's address set forth in the Fundamental Lease Provisions, or at such other address as such party has theretofore specified by written notice delivered in accordance with this Paragraph.

30.2 Sufficiency of Notice. Any notice delivered in person shall be effective on the date of delivery. Any notice delivered by mail in the manner specified in Paragraph 30.1 shall be deemed delivered and effective on the earlier of the third day following deposit thereof in the United States mail or on the delivery date shown on the return receipt prepared in connection therewith.

### 31. MERGER.

31.1 Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Lessee under this Lease, there shall never be a merger of the estates of Landlord and Lessee under this Lease, but instead the separate estates, rights, duties, and obligations of Landlord and Lessee, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

### 32. SUBSTITUTED PREMISES.

32.1 Landlord reserves the right at any time, upon not less than ninety (90) days' prior written notice to Lessee, to substitute for the Premises a comparable area within the Property having a substantially equivalent rentable area as the Premises, and thereupon such other area shall be deemed to be the Premises covered by this Lease. If the substituted area is smaller or larger than the Premises, the Base Rent, Security Deposit, and Lessee's Share of Property Operating Costs specified in this Lease shall be adjusted proportionately. The expense of moving Lessee, its property, and equipment to the substitute premises and of improving said substitute premises to a condition similar to the then-current condition of the Premises hereunder shall be borne by Landlord.

### 33. DEFINED TERMS AND HEADINGS.

33.1 The words "Landlord" and "Lessee" as used herein shall include the plural as well as the singular. Words used in neuter gender include the feminine and masculine, where applicable. If there is more than one Lessee, the obligations imposed under this Lease upon Lessee shall be joint and several. The headings and titles to the Sections and Paragraphs of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of the Lease.

34. TIME AND APPLICABLE LAW.

34.1 Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of Colorado. Each reference in this Lease to a specific statute shall include any successor to such statute.

35. SUCCESSORS AND ASSIGNS.

35.1 Subject to the provisions of Section 16 hereof and the limitation expressed below, the terms, covenants, and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the parties hereto. However, the obligations imposed on Landlord under this Lease shall be binding upon Landlord's successors and assigns only during their respective periods of ownership of the Premises.

36. AGENTS FOR LANDLORD AND LESSEE.

36.1 Landlord. Landlord may act in any matter provided for herein by its Real Property Services Manager and any other person who may from time to time be designated in writing by Landlord to act in its behalf.

36.2 Lessee. Lessee shall designate in writing one or more persons to act on Lessee's behalf in any matter provided for herein and may from time to time change such designation. In the absence of any such designation, the person or persons executing this Lease shall be deemed to be authorized to act on behalf of Lessee in any matter provided for herein.

36.2.1 If Lessee is a corporation, each individual executing this Lease on behalf of Lessee represents and warrants that Lessee is qualified to do business in Colorado and that such individual is duly authorized to execute and deliver this Lease on behalf of Lessee and shall deliver appropriate certification to that effect if requested.

36.2.2 If Lessee is a partnership, joint venture, or other unincorporated association, each individual executing this Lease on behalf of Lessee represents that this Lease is binding on Lessee. Furthermore, Lessee agrees that the execution of any written consent hereunder, or any written modification or termination of this Lease, by any general partner of Lessee or any other authorized agent of Lessee, shall be binding on Lessee.

37. ENTIRE AGREEMENT.

37.1 This Lease, together with its exhibits (all of which are incorporated herein by this reference), contains all of the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this



Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

38. SEVERABILITY.

38.1 If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

39. BROKERS.

39.1 Lessee shall hold Landlord harmless from all damages (including attorney fees and costs) resulting from any claims that may be asserted against Landlord by any broker, finder, or other person with whom Lessee has or purportedly has dealt, except for the Broker(s) identified in the Fundamental Lease Provisions.

40. NAME OF PROPERTY.

40.1 Lessee shall not use the name of the Property for any purpose other than the address of the business to be conducted by Lessee in the Premises. Lessee shall not use any picture of the Property in its advertising, stationery, or in any other manner so as to imply that the entire Property is leased by Lessee. Landlord expressly reserves the right at any time to change the name or street address of the Property without in any manner being liable to Lessee therefor.

41. GUARANTEE.

41.1 If Lessee's obligations under this Lease shall have been guaranteed, any such guarantee shall be deemed a material part of the consideration for Landlord's execution of this Lease. If the guarantor under any such guarantee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes or is the subject of any proceeding under the Bankruptcy Act or other similar law for the protection of creditors (or, if the guarantor is a partnership or consists of more than one person or entity, if any partner of the partnership or such other person or entity is or becomes bankrupt or insolvent, institutes any such proceeding, or makes an assignment for the benefit of creditors), then Landlord shall have the option to terminate this Lease upon thirty (30) days' written notice unless Lessee, within such thirty (30) day period, provides Landlord with either (a) a substitute or additional guarantor satisfactory to Landlord and any Mortgagee, or (b) adequate assurance of the performance of each and every obligation of Lessee hereunder, satisfactory to Landlord and such Mortgagee; provided, however, that no such termination of this Lease shall become effective without the prior written consent of such Mortgagee.

42. RECORDABILITY OF LEASE.

42.1 If requested at any time by Landlord, Lessee shall execute (a) a short form of this Lease in recordable form which may, at Landlord's option, be placed of record; and (b) a memorandum of this Lease on such form as may be prescribed by the Colorado Department of Revenue, or any other appropriate form, which memorandum may, at Landlord's option, be filed with said Department so that Landlord may avail itself of the provisions of statutes such as C.R.S. §§ 39-22-604, 39-26-117, and 39-26-205. Lessee agrees that in no event shall this Lease or a short form hereof be recorded without Landlord's express prior written consent, which consent Landlord may withhold in its sole discretion.

43. CONSTRUCTION.

43.1 All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease shall be used to interpret the Lease. All rights and remedies of Landlord and Lessee shall, except as otherwise expressly provided, be cumulative and nonexclusive of any other remedy at law or in equity.

44. QUIET ENJOYMENT.

44.1 So long as Lessee is not in default under this Lease, Lessee shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

45. EXECUTION BY LANDLORD.

45.1 The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises. This document becomes effective and binding only upon execution and delivery hereof by Lessee and by Landlord. No act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

46. FEASIBILITY OF LOCATION.

46.1 LESSEE ACKNOWLEDGES THAT LESSEE HAS MADE ITS OWN INDEPENDENT INVESTIGATION AND EVALUATION OF THE FEASIBILITY OF THE LOCATION OF THE PREMISES AND THE PROPERTY FOR THE OPERATION OF LESSEE'S BUSINESS. LESSEE FURTHER ACKNOWLEDGES THAT, IN EXECUTING THIS LEASE, LESSEE IS NOT IN ANY WAY RELYING UPON ANY STATEMENTS OR REPRESENTATIONS BY LANDLORD, OR BY LANDLORD'S AGENTS, REPRESENTATIVES, OR EMPLOYEES, CONCERNING POSSIBLE VOLUME OF BUSINESS, TRAFFIC IN THE PROPERTY, FUTURE EXPANSION OR CHANGES IN THE CONFIGURATION OF THE PROPERTY OR THE PROPERTY'S COMMON AREAS, FUTURE LESSEES IN THE PROPERTY, OR ANY OTHER MATTERS OR COMMITMENTS RELATING TO THE PREMISES OR THE PROPERTY WHICH ARE NOT SPECIFICALLY DESCRIBED IN THIS LEASE.

IN WITNESS WHEREOF the parties have executed this Lease on the date first above written.

LESSEE:

Food Justice NW Aurora, a Colorado non-profit organization

By: \_\_\_\_\_  
Caitlin Matthews, Food Systems and Policy Director at Food Justice NW Aurora

Aurora Economic Opportunity Coalition, Inc., a Colorado non-profit organization as the fiscal sponsor of Food Justice NW Aurora

By: \_\_\_\_\_  
Mathews Alvarez, Executive Director at Aurora Economic Opportunity Coalition

ATTEST:

CITY OF AURORA

By \_\_\_\_\_  
Kadee Rodriguez, City Clerk

By \_\_\_\_\_  
Mike Coffman, Mayor

APPROVED AS TO FORM:

REVIEWED BY:

By: \_\_\_\_\_  
Michelle Gardner  
Senior Assistant City Attorney

By: \_\_\_\_\_  
Hector Reynoso  
Real Property Services Manager

By: \_\_\_\_\_  
Brooke Bell  
Director of Parks Recreation &  
Open Space

STATE OF COLORADO     }  
                                          } ss.  
COUNTY OF \_\_\_\_\_}

The foregoing instrument was acknowledged before me this \_day of \_\_\_\_\_,  
2023, by Mike Coffman, Mayor of the City of Aurora.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBITS:

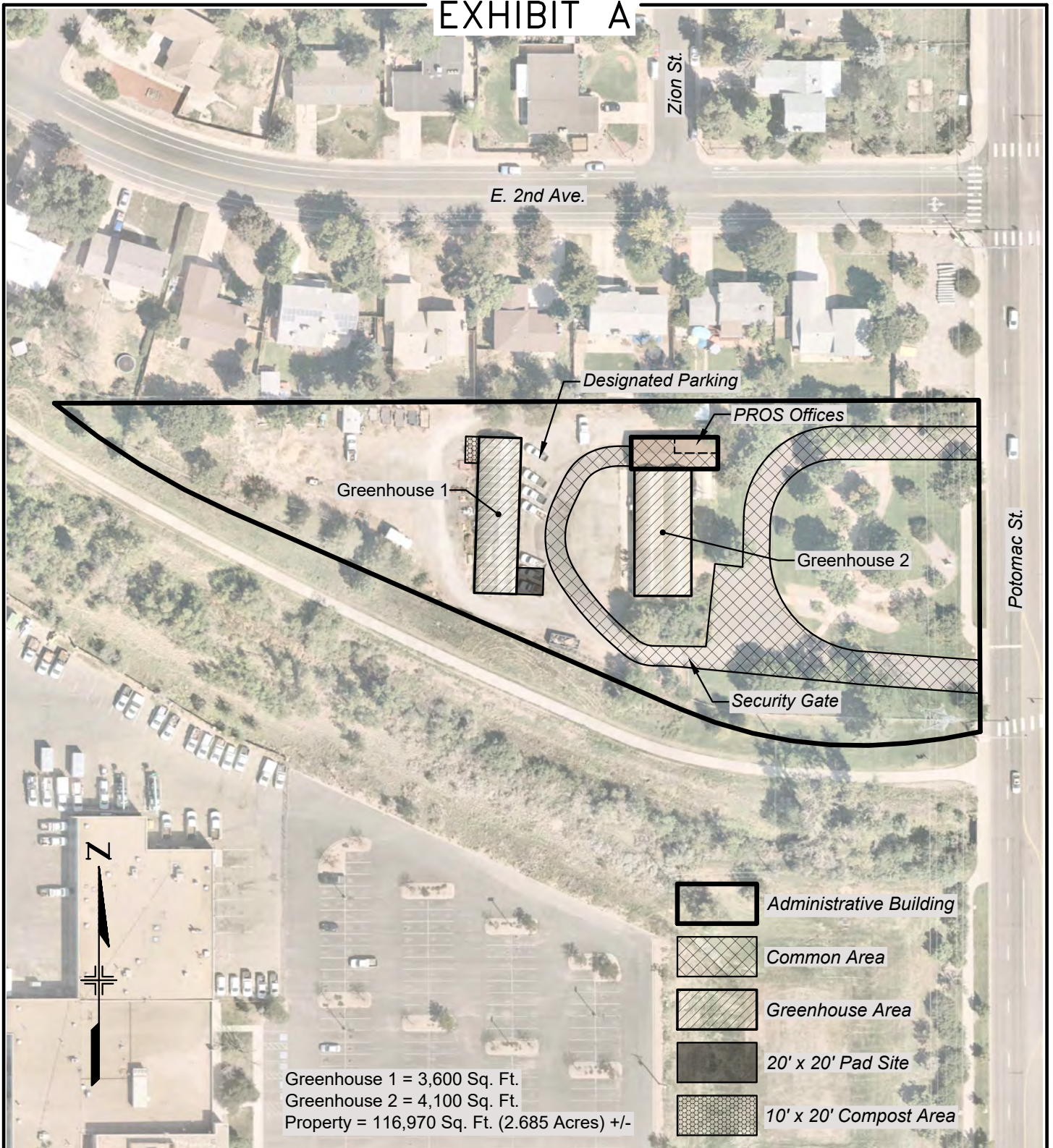
Exhibit A: Survey of Premises

Exhibit B: Work Agreement for Lessee Improvements

Exhibit C: Performance Metrics

Exhibit D: Rules and Regulations

# EXHIBIT A



## CITY OF AURORA, COLORADO

<b>DRAWN BY:</b> EWA	<b>SCALE:</b> NONE	<b>R.O.W. FILE NUMBER</b> N/A
<b>CHECKED BY:</b> HR	<b>DATE:</b> 8/31/2023	<b>JOB NUMBER:</b> N/A

LEASE AREAS ON CITY OWNED LAND SITUATED IN THE  
 SE 1/4 OF SEC. 12, T4S, R67W, 6TH P.M., CITY OF  
 AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO

**EXHIBIT B  
WORK AGREEMENT**

A. Lessee Improvements on Premises.

1. Greenhouse Food Production Program. Lessee shall construct, operate, and maintain approximately two (2) greenhouses totaling 7,700 square feet at its sole cost and expense.

2. Lessee Improvement Allowance for Greenhouse Renovations. From and after the Effective Date, Lessee may, at Lessee’s cost and expense, make improvements and renovations to the Premises as detailed in Table 1 below (the “Renovations”). Landlord shall provide an allowance (the “Renovation Allowance”) to Lessee in an amount not to exceed \$350,000.00 (the “Maximum Renovation Allowance Amount”), which Renovation Allowance may be applied toward the costs of installing and completing the Renovations. Landlord will reimburse Lessee in increments of \$30,000 up to the amount of the Maximum Renovation Allowance Amount within 30 calendar days after Landlord has received from Lessee copies of Lessee’s paid invoices related to the Renovations, and final and unconditional original lien waivers from any contractors, subcontractors, suppliers, materialmen and other parties who performed labor at, or supplied materials to, the Premises in connection with the Renovations. In the event the costs of installing and completing the Renovations exceed the Maximum Renovation Allowance Amount, Lessee will be responsible for such excess costs at its sole cost and expense. In the event Lessee elects not to complete the Renovations, or if the costs of installing and completing the Renovations are less than the Maximum Renovation Allowance Amount, Lessee shall not be entitled to use or apply any unused portions of the Renovation Allowance.

TABLE 1		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE
001	APPROVAL SHOP DRAWINGS.	\$12,000.00
002	GREENHOUSE MFG STRUCTURE & MATERIAL	\$26,000.00
003	COOLING SYSTEMS, HAF, AND EXHAUST FANS	\$39,850.00
004	PURCHASED GLAZING COMPONENTS	\$21,075.00
005	EXTERIOR VENT DRIVE SYSTEM	\$9,500.00
006	GREENHOUSE ENVIRONMENTAL CONTROLS MATERIALS	\$44,250.00

007	UNIT HEATERS, STACKS, AND HANGING KITS	\$9,000.00
008	FREIGHT	\$22,055.00
009	GREENHOUSE 1 INSTALLATION LABOR	\$69,270.00
010	GREENHOUSE 2 INSTALLATION LABOR -	\$74,500.00
011	GREENHOUSE 3 LABOR -DEMO, SEALING, & MAT'LS	\$22,500.00
		\$350,000.00

The Lessee improvements necessary to construct, operate, and maintain the greenhouses shall consist of the following. Table 2 (collectively "Lessee Improvements"). Phases of Renovation and Scheduled Value for the share of costs constituting Lessee Improvements

TABLE 2		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE
001	APPROVAL SHOP DWGS.	\$1,750.00
002	GREENHOUSE MFG STRUCTURE & MATERIAL	\$3,500.00
003	COOLING SYSTEMS, HAF, AND EXHAUST FANS	\$5,200.00
004	PURCHASED GLAZING COMPONENTS	\$3,500.00
005	'EXTERIOR VENT DRIVE SYSTEM	\$2,400.00
006	GREENHOUSE ENVIRONMENTAL CONTROLS MATERIALS	\$5,500.00
007	UNIT HEATERS, STACKS, AND HANGING KITS	\$1,500.00
008	FREIGHT	\$3,200.00
009	GREENHOUSE 1 INSTALLATION LABOR	\$8,500.00
010	GREENHOUSE 2 INSTALLATION LABOR -	\$10,828.00



			\$45,878.00

Additional Lessee improvements may include electrical and plumbing work to complete connections for renovated greenhouse systems (e.g., power wiring, low voltage control wiring and conduit, plumbing, and utility hook ups), concrete work to repair cracks in the greenhouse floor slabs, concrete work to improve the front entrance and back entrance to the administrative building to comply with ADA accessibility requirements, and renovation of one bathroom in the administrative building to comply with ADA accessibility requirements.

3. The trade fixtures necessary to construct, operate, and maintain the greenhouses shall consist of the following: irrigation system and hoses, horizontal air flow fans, locking storage cabinets, work tables, germination chamber, shelving, and other fixtures to be identified (collectively "Trade Fixtures").

4. Personal property, fixtures, and equipment necessary to construct, operate, and maintain the greenhouses shall consist of the following items which are already in Greenhouse 1: whiteboard, work table, work bench, locking storage cabinet, refrigerator, mobile Port-A-Cool unit (collectively "Landlord Fixtures")

5. Landlord has no obligation to make improvements on the Premises or Landlord's real property to accommodate the greenhouse or any operations related thereto. Lessee may be required to improve interior access within Premises to accommodate its use.

6. Removable Lessee Improvements. Lessee may make minor improvements of a temporary or removable nature that do not damage or otherwise cause destruction of the Premises at Lessee's expense. Landlord agrees to let the Lessee remove such improvements, even though they are legally fixtures, at any time this Lease is in effect or within ten (10) days thereafter so long as Lessee is not in default of any of the terms contained in this Lease, provided Lessee leaves in good condition that property from which such improvements are removed or replaced.

7. No Additional Compensation for Lessee Improvements. Lessee shall have no right to compensation for any Lessee Improvements or other improvements that are not removed upon expiration or earlier termination of this Lease, except as mutually agreed in writing before their installation.

- A. Lessee Improvements. Title to the Lessee Improvements remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Lessee Improvements shall become the sole ownership of the Landlord.
- B. Trade Fixtures. Title to Trade Fixtures remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Trade Fixtures shall become personal property of the Lessee and removed in accordance with this lease.
- C. Landlord Fixtures. Title to Landlord Property remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Landlord Personal Property shall become personal property of the Lessee and removed in accordance with this lease.
- B. Repair of Landlord Property. In the event that any damage occurs to Landlord's real or personal property, including without limitation any underground or above ground utilities, caused by and in the course of any activity undertaken by Lessee under this Lease, Lessee shall facilitate the repair of such damage to return Landlord's real or personal property to substantially the same condition as it existed prior to such damage, at Lessee's sole expense.
- C. Improvements Off Leased Premises. Lessee shall be responsible for installation, construction, reconstruction, modification, and removing improvements to access roads, improving and constructing other items to city of Aurora standards that are necessary or useful in Lessee's use of the Premises.

**EXHIBIT C**  
**PERFORMANCE METRICS**

<u>PERFORMANCE METRIC</u>	<u>Current Year - GOAL</u>	<u>Current Year - ACTUAL</u>	<u>Next Year - PROJECTED</u>
Quantity and variety of plants cultivated in greenhouses (may include annual food-producing plants, perennial food-producing plants, and/or native or water-wise plants)			
Quantity of plants sold or distributed through each distribution channel (including direct to community, farmer contract grows, and institutional customers)			
Number of educational classes, workshops, and/or site visits and number of participants			
List of local grower partners and brief description of collaboration or partnership			
List of partner organizations and brief description of collaboration or partnership			

**EXHIBIT D**  
**RULES AND REGULATIONS**

The rules and regulations set forth in this Exhibit shall be and hereby are made a part of the Lease to which they are attached. Whenever the term "Lessee" is used in these rules and regulations, it shall be deemed to include Lessee, its employees or agents, and any other persons permitted by Lessee to occupy or enter the Property. The following rules and regulations may from time to time be modified by Landlord in Landlord's sole discretion. If there is any conflict between these Rules and Regulations and the provisions of the Lease, the provisions of the Lease shall prevail.

1. OBSTRUCTION. The sidewalks, entries, passages, corridors, halls, lobbies, stairways, elevators (if any), and other common areas or facilities of the Property shall be controlled by Landlord and shall not be obstructed by Lessee or used for any purpose other than ingress or egress to and from the Premises. Lessee shall not place any item in any of such locations, whether or not any such item constitutes an obstruction, without the prior written consent of Landlord. Landlord shall have the right to remove any obstruction or any such item without notice to Lessee and at the expense of Lessee.

2. ORDINARY BUSINESS HOURS. The ordinary business hours of the Property shall be from 6:00 A.M. to 6:00 P.M., Monday through Friday of each week, and from 8:00 A.M. to 2:00 P.M. every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day. In the event that educational programming event or plant distribution event would need to vary from ordinary business hours in order to be accessible to participants (e.g., to host a workshop on a weekday evening or Saturday afternoon, or to host a plant sale including Saturday afternoon hours or on a Sunday), the Lessee shall request permission in writing from the Landlord. Lessee shall have the right to enter the Premises at any time without notice in the event of an emergency. If Lessee exercises this right, it shall notify Landlord within 12-hours.

3. DELIVERIES. Lessee shall ensure that all deliveries of supplies to the Premises shall be made only upon the area designated by Landlord for deliveries and only during the ordinary business hours of the Property. If any person delivering supplies to Lessee damages any part of the Property, Lessee shall pay to Landlord upon demand the amount required to repair such damage.

4. MOVING. Furniture and equipment shall be moved in or out of the Property only upon prior notice to and with the approval of Landlord and only upon the areas designated by Landlord for deliveries and then only during such hours and in such manner as may be prescribed by Landlord. Landlord shall have the right to approve or disapprove the movers or moving company employed by Lessee and Lessee shall cause such movers to use only the loading facilities and elevator designated by Landlord. If Lessee's movers damage any part of the Property, Lessee shall pay to Landlord upon demand the amount required to repair such damage.

5. **HEAVY ARTICLES.** No safe or article, the weight of which may, in the reasonable opinion of Landlord, constitute a hazard or damage to the Property or its equipment, shall be moved into the Premises. Safes and other heavy equipment, the weight of which will not constitute a hazard or damage the Property or its equipment shall be moved into, from, or about the Property only upon prior notice to and with the approval of Landlord and only during such hours and in such manner as shall be prescribed by Landlord, and Landlord shall have the right to designate the location of such articles in the Premises.

6. **NUISANCE.** Lessee shall not do or permit anything to be done on the Premises or in the Property or bring or keep anything therein which would in any way constitute a nuisance or waste, or obstruct or interfere with the rights of Landlord, or in any way injure or annoy them, or conflict with the laws relating to fire, or with any regulations of the fire department, or with any insurance policy upon the Property or any part thereof, or conflict with any of the laws, codes, rules, or ordinances of any governmental authority having jurisdiction over the Property.

7. **PROPERTY SECURITY.** Landlord may restrict access to and from the Premises and the Property outside the ordinary business hours of the Property for reasons of Property security. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessees of the Property.

8. **PASS KEY.** The Real Property Services Manager may at all times keep a pass key to the Premises, and he and other agents of the Landlord shall at all times be allowed admittance to the Premises.

9. **LOCKS AND KEYS FOR PREMISES.** No additional lock or locks shall be placed by Lessee on any door in the Property and no existing lock shall be changed unless written consent of Landlord shall first have been obtained. Two (2) keys to the Premises and to the toilet rooms if locked by Landlord will be furnished by Landlord, and Lessee shall not have any duplicate key made. At the termination of this tenancy Lessee shall promptly return to Landlord all keys to offices and toilet rooms.

10. **USE OF WATER FIXTURES.** Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to the same from misuse on the part of Lessee or its guests or employees shall be paid for by Lessee. No person shall waste water in any manner.

11. **NO ANIMALS; EXCESSIVE NOISE.** With the exception of seeing-eye dogs for the blind or assistance dogs, no animals shall be allowed in the offices, halls, corridors, and elevators (if any) of the Property. No person shall disturb the occupants of this or adjoining Property or space by the use of any radio or musical instrument or by the making of loud or improper noises.

12. **BICYCLES.** Bicycles or other vehicles shall not be permitted anywhere inside or on the

sidewalks outside of the Property, except in those areas designated by Landlord for bicycle parking.

13. TRASH. Lessee shall not allow anything to be placed on the outside of the Property, nor shall anything be thrown by Lessee out of the windows or doors, or down the corridors, elevator shafts, or ventilating ducts or shafts of the Property. All trash shall be placed in receptacles provided by Lessee on the Premises or in any receptacles provided by Landlord for the Property.

14. WINDOWS. Except as necessary to operate the Greenhouse, no window shades, blinds, screens, or draperies will be attached or detached by Lessee and no awnings shall be placed over the windows without Landlord's prior written consent. Lessee agrees to abide by Landlord's rules with respect to maintaining uniform curtains, draperies, and linings at all windows and hallways so that the Property will present a uniform exterior appearance. Lessee will use its best efforts to have all curtains, draperies, and blinds closed at the end of each day in order to help conserve energy. Except in case of fire or other emergency, Lessee shall not open any outside window because the opening of windows interferes with the proper functioning of the Property heating and air conditioning systems.

15. HAZARDOUS OPERATIONS AND ITEMS. Lessee shall not install or operate any steam or gas engine or boiler or carry on any mechanical business on the Premises without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion. The use of oil, gasoline, noxious gas, flammable or combustible liquids, or material for heating, lighting, or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Property. Lessee shall not use any method of heating, cooling, or air conditioning of the Premises other than that supplied by Landlord.

16. HOURS FOR REPAIRS, MAINTENANCE AND ALTERATIONS. Any repairs, maintenance, and alterations required or permitted to be done by Lessee under the Lease shall be done only during the ordinary business hours of the Property unless Landlord shall have first consented to such work being done outside of such times. If Lessee desires to have such work done by Landlord's employees on Saturday, Sundays, holidays, or weekdays outside of ordinary business hours, Lessee shall pay the extra cost of such labor.

17. NO DEFACING OF PREMISES. Except as permitted by Landlord, Lessee shall not mark upon, paint signs upon, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions, or floors of the Premises or of the Property, and any defacement, damage, or injury caused by Lessee shall be paid for by Lessee.

18. CHAIR PADS. During the entire term of this lease, Lessee shall, at its expense, install and maintain under all chairs a chair pad or carpet casters to protect the carpeting.

19. SOLICITATION; FOOD AND BEVERAGES. Landlord reserves the right to restrict,

control, or prohibit canvassing, soliciting, and peddling within the Property. Lessee shall not grant any concessions, licenses, or permission for the sale or taking of orders for food, beverages, services, or merchandise in the Property, nor install nor permit the installation or use of any machine or equipment for dispensing food, beverages, services, or merchandise, nor permit the preparation, serving, distribution, or delivery of food, beverages, services, or merchandise without the prior written approval of Landlord and in compliance with arrangements prescribed by Landlord. No cooking shall be done or permitted by any Lessee in the Property.

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

21. ELECTRICIANS. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes, and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

22. LANDLORD CONTROL OF PUBLIC AREAS. Landlord shall have the right to control and operate the public portions of the Property, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Lessee, in such manner as it deems best for the benefit of the Landlord.

23. AFFIXED OBJECTS. Landlord shall approve in writing the method of attachment of any objects affixed to walls, ceilings, or doors.

24. POLITICAL ACTIVITY AND POLITICAL ACTIVISM. Lessee, its employees, contractors, and subcontractors shall not engage in political activities while on the Property or using resources on the Property or using resources from the Property. While on the Property, Lessee also should not make representations that may be construed as political advocacy on behalf of itself or Landlord, or that could reasonably be viewed as having the Lessee or Landlord's endorsement. Lessee cannot produce or distribute materials—pro or con—on any candidate, ballot question or ballot issue while on the Property or using Landlord's equipment. Lessee may not urge votes for or against any candidate, ballot question or ballot issue while on the Property. Campaigning materials displayed on the Property to the general public, or to other employees are not allowed. Lessee must comply with federal law: "Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office." Nothing in these Rules and Regulations shall be construed as prohibiting the Lessee from expending organizational funds, making contributions, or using organizational time to support or oppose a ballot question or ballot issue off-Property. On Lessee's own time off-Property, Lessee shall be free to endorse issues as they wish, as long as they do not use



Landlord resources or state or imply that the Landlord endorses Lessee's views. Nothing in these Rules and Regulations shall be construed as prohibiting the Lessee's employees from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any candidate, ballot question or ballot issue off-Property. On an employee's own time off-Property, employees shall be free to endorse candidates and issues as they wish, as long as they do not use Landlord resources or state or imply that the Landlord endorses employee's views.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> 151 Potomac Street – Greenhouse Lease Agreement (Resolution)
<b>Item Initiator:</b> Hector Reynoso, Real Property Services Manager, Public Works
<b>Staff Source/Legal Source:</b> Hector Reynoso, Real Property Services Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> Caitlin Matthews, Food Systems and Policy Director, Food Justice Northwest Aurora
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** 8/21/2023

**Regular Meeting:** N/A

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR THE LEASE AGREEMENT BETWEEN THE CITY OF AURORA AND FOOD JUSTICE NORTHWEST AURORA REGARDING OPERATION OF THE CITY-OWNED GREENHOUSES AT 151 POTOMAC STREET

Sponsor: Crystal Murillo, Council Member

Hector Reynoso, Real Property Services Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney

Outside Speaker: Caitlin Matthews, Food Systems and Policy Director, Food Justice Northwest Aurora

Estimated Time: 30 Mins

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item as proposed at Study Session
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
Reason for waiver is described in the Item Details field above.

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

### Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

N/A

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

In 2022, under the sponsorship of Councilmember Crystal Murillo, City Council earmarked \$350,000 to complete needed capital repairs to three greenhouses located at 151 Potomac Street, depicted on Exhibit A to the lease agreement and identified as Greenhouse 1, Greenhouse 2, and Greenhouse 3 (hereinafter collectively referred to as the "Greenhouses"). **City Council earmarked** this funding subject to the receipt of additional information regarding a proposed user and their associated business plan. City staff issued a Request for Proposals (RFP) to determine if there is a viable partnership, or single party, that can effectively operate the Greenhouses with no financial support from the City. The successful respondent was informed of the need for Council approval to release funds and is aware that they will be required to assume all responsibility for costs associated with the operation of the Greenhouses and maintenance of those facilities.

On April 12, 2023, City staff solicited the RFP, including a business plan, operations plan, and financial model, from qualified for-profit and/or nonprofit businesses for the purpose of providing food production and programming in the Greenhouses. City staff notified Denver Urban Gardens, Food Justice NW Aurora, Tri-County Health Department, and posted the RFP on the **City's website, multiple listing service (MLS)**, and LoopNet/CoStar which also syndicated the listing to other partner websites.

Proposals were due on May 10, 2023, and the City received one proposal from Food Justice NW Aurora (FJNWA). Based on the evaluation criteria (which included: experience, approach to address food desert issues in Aurora, amount of food production, timing, business plan, operations plan, and financial solvency), FJNWA is a qualified nonprofit business that can provide food production and programming at the Greenhouses. Initially, FJNWA will be awarded a License and Option to Lease which will allow them to have access to the Greenhouses and to proceed with due diligence activities, including hiring employees, while the City completes capital repairs to the Greenhouses. Upon completion of capital repairs, FJNWA will have the option to enter into a lease agreement. The final lease terms will be memorialized in a lease agreement that is approved by Aurora City Council at a Regular Session meeting. If City Council endorses moving forward with the lease, the final lease will be brought forward **for Council's consideration on June 26, 2023** with the latest approval needed being July 31, 2023. Beyond the \$350,000 for capital repairs, there is no cost to the City for operating or maintaining the Greenhouses. FJNWA will be responsible for all utilities, janitorial services, and maintenance of the Greenhouses.

Proposed lease terms with FJNWA are:

- Short-term License and Option to Lease Agreement, through 2023, to allow for City to complete renovations and FJNWA to perform due diligence activities (which includes hiring a full-time Greenhouse Manager).
- Initial lease term of five years, with option to extend for an additional five-year term.
- Lease rental rate of \$1/month.
- Tenant/Lessee shall be responsible for all operating costs and facility maintenance expenses.
- After the City repairs are completed, FJNWA has set aside up to an additional \$70,000 for improvements to the Greenhouses to support their business operations.

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## FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

Revenue Impact

Budgeted Expenditure Impact

Non-Budgeted Expenditure Impact

Workload Impact

No Fiscal Impact

## REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

\$350,000

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

\$350,000 from an org 25753

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

- Does City Council support moving forward the resolution for the lease of City-owned greenhouses at 151 Potomac Street to FJNWA for an initial five-year term with the option to extend for an additional five years?
- Does City Council support City staff moving forward with capital repairs to the City-owned greenhouses at 151 Potomac Street with the use of earmarked funds?

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**LEGAL COMMENTS**

Pursuant to Colorado Revised Statute Section 31-15-101(d), the City of Aurora has the authority to acquire, hold, lease, and dispose of property, both real and personal. Pursuant to City Code Section 2-31(1), the Mayor, upon authorization by a majority vote of the members of City Council voting thereon, shall execute all conveyances of any interest in real property by the City; provided, however, that the City shall not sell or convey any lands granted to, or purchased for use and used by the City for park purposes, without a majority vote of the City's registered electors at a special or regular municipal election. For leases of City-owned property, the Manager of Real Property Services follows BPM 4-14.VII.A.5, and places the lease documents on a City Council agenda for Council action and will initiate the recording process upon Council approval. (M. Gardner)

RESOLUTION NO. R2023-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
FOR THE LEASE AGREEMENT BETWEEN THE CITY OF AURORA AND FOOD  
JUSTICE NORTHWEST AURORA REGARDING OPERATION OF THE CITY-OWNED  
GREENHOUSES AT 151 POTOMAC STREET

WHEREAS, in 2022, Aurora City Council earmarked 350,000 to be used for needed capital repairs to three greenhouses on City-owned property located at 151 Potomac Street ( Greenhouses ) and

WHEREAS, on April 12, 2023, City of Aurora staff solicited a request for proposals, to include a business plan, operations plan, and financial model, from qualified for-profit and or nonprofit businesses for the purpose of providing food production and programming in the Greenhouses and

WHEREAS, City staff notified Denver Urban Gardens, Food Justice NW Aurora, Tri-County Health Department, and posted the RFP on the City's website, multiple listing service (MLS), and LoopNet CoStar which also syndicated the listing to other partner websites and

WHEREAS, proposals were due on May 10, 2023, and the City received one proposal from Food Justice NW Aurora (FJNWA) and

WHEREAS, based on the evaluation criteria, FJNWA is a qualified nonprofit business that can provide food production and programming at the Greenhouses and

WHEREAS, initially, FJNWA will be awarded a License and Option to Lease which will allow them to have access to the Greenhouses and to proceed with due diligence activities, including hiring employees, while the City completes capital repairs to the Greenhouses and

WHEREAS, upon completion of capital repairs, FJNWA will have the option to enter into a lease agreement for an initial five-year term with an option to extend for an additional five-year term, to be approved by Council at a Regular Session meeting and

WHEREAS, capital repairs will cost up to 350,000 and there is no additional cost to the City for operating or maintaining the Greenhouses and

WHEREAS, FJNWA will be responsible for all operating costs, utilities, janitorial services, and maintenance of the Greenhouses and

WHEREAS, the City desires to enter into the Commercial Lease with FJNWA according to the terms and provisions stated in the Commercial Lease presented to City Council and

WHEREAS, pursuant to Colorado Revised Statute 31-15-101(d), the City has the authority to acquire, hold, lease, and dispose of property, both real and personal and

WHEREAS, pursuant to City Code Section 2-31, the Mayor, upon authorization by a majority vote of the members of City Council voting thereon, shall execute all conveyances of any

interest in real property owned by the City, including leases provided, however, that the City shall not sell or convey any lands granted to, or purchased for use and used by the City for park purposes, without a majority vote of the City's registered electors at a special or regular municipal election and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Commercial Lease for the City-owned greenhouses at 151 Potomac Street to FJNWA for an initial five-year term with the option to extend an additional five years and

WHEREAS, City Council supports City staff moving forward with capital repairs to the three City-owned greenhouses located at 151 Potomac Street with the funds earmarked by Council for such purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Commercial Lease between the City and Food Justice Northwest Aurora for Operation of the City-owned Greenhouses at 151 Potomac Street is hereby approved.

Section 2. The use of earmarked funds to be used for capital repairs to the three City-owned greenhouses located at 151 Potomac Street is hereby approved.

Section 3. The Mayor or his designee, City Clerk, and City Manager, are hereby authorized to execute and deliver the Lease Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this            day of            , 2023.

MICHELLE COFFMAN, Mayor

ATTEST:

ADEE RODRIGUE , City Clerk

APPROVED AS TO FORM:

*Michelle Gardner*  
MICHELLE GARDNER, Sr. Assistant City Attorney

**COMMERCIAL LEASE**  
**(151 Potomac Street Greenhouses)**

1. PARTIES FUNDAMENTAL LEASE PROVISIONS.

1.1 Names. This Lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ ( Landlord ), and \_\_\_\_\_ ( Lessee ).

1.2 Fundamental Lease Provisions. The following constitute an integral part of this Lease, and each reference in this Lease to the Fundamental Lease Provisions shall mean the provisions set forth in this Paragraph 1.2. In the event of any conflict between the Fundamental Lease Provisions and the remainder of the Lease, the Lease shall control.

Lease Date:   1  2  3    
Address of Landlord: 15151 E. Alameda Pkwy, Suite 3200, Aurora, CO 80012  
Address of Lessee: 1234 Main Street, Aurora, CO

Premises:

Greenhouse: 1, depicted on Exhibit A, containing approx. 3,600 Square Feet  
Greenhouse: 2, depicted on Exhibit A, containing approx. 4,000 Square Feet  
Greenhouse: 3, depicted on Exhibit A, containing approx. 400 Square Feet  
Rentable Area: 8,000 square feet  
Total Rentable Area: 8,000 square feet  
Property Address: 151 N. Potomac Street, Aurora, CO 80011

Ordinary Business Hours:

The ordinary business hours of the Property shall be from 6:00 A.M. to 6:00 P.M., Monday through Friday of each week, and from 8:00 A.M. to 2:00 P.M. every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day. Landlord may restrict access to and from the Premises and the Property outside the ordinary business hours of the Property for reasons of Property security. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessee.

Lease Term:

\_\_\_\_\_ Years \_\_\_\_\_ Months

Projected Lease Commencement Date:

\_\_\_\_\_

Base Rent:

  1   per month

Adjustment Dates:   N A  

Consumer Price Index:   N A



(Base Year: 2023)

Security Deposit: \_\_\_\_\_

Landlord's Cost Stop: 0 rentable square foot year

Lessee's Share: 100

## 2. PREMISES.

2.1 Premises. On and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases to Lessee and Lessee rents from Landlord the premises located at Greenhouse 1, Greenhouse 2, and Greenhouse 3 as depicted in Exhibit A to this Lease ( Premises ). The area of the Premises for all purposes under this Lease is stipulated to be \_\_\_\_\_square feet of rentable area.

2.2 Property. The Premises are a portion of the Property identified in the Fundamental Lease Provisions ( Property ). The area of the Property for all purposes under this Lease is stipulated to be 8,000 square feet of rentable area.

2.3 Nonexclusive and Reserved Rights. Lessee is granted the right to the nonexclusive use of the common corridors, driveways, and other public or common areas of the Property however, the manner in which the public and common areas are maintained shall be at the sole reasonable discretion of Landlord and use thereof shall be subject to such rules, regulations and restrictions as Landlord may impose from time to time. Landlord reserves the right to make alterations or additions or to change the location of elements of the Property, and to use the roof, exterior walls and the area above and beneath the Premises, together with the right to install, use, store, keep, maintain and replace equipment, machinery, pipes, conduits and wiring through the Premises, which serve other parts of the Property, in a manner and in locations which do not unreasonably interfere with Lessee's use of the Premises.

2.4 Condition of Premises. Except as otherwise specifically provided, Lessee shall accept the Premises in an as is condition on the date the Term commences and Landlord shall have no obligation to improve, alter, remodel or otherwise modify the Premises prior to or after Lessee's occupancy.

2.5 Parking. During the term of this Lease, Lessee shall only be entitled to such use of parking spaces in the parking areas located in or adjacent to the Premises as shown on Exhibit A, and absent any written agreement to the contrary, parking for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at rates and upon other conditions as may be established from time to time by Landlord or Landlord's operator of the parking areas. Parking rates shall be hourly, weekly, or monthly, or such other rate system as Landlord deems advisable, and Lessee acknowledges that its customers, invitees, and licensees may be charged at such rate. Lessee acknowledges that its employees shall not be entitled to park in such parking areas located in and about the Property which may from time to time be designated for visitors of the Property or otherwise reserved. Landlord may also designate areas for employee parking either

within the parking areas located in and about the Property, or in other areas reasonably close thereto. Landlord shall have the right to change such designated parking areas from time to time. Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the suitability of the parking areas, or as to the availability of parking spaces, for the conduct of Lessee's business.

2.6 Access. During the term of this Lease, Lessee shall only be entitled to such use of paved access drives located in or adjacent to the Premises labeled "Common Area" as shown on Exhibit A, and absent any written agreement to the contrary, access for Lessee and its employees, agents, customers, invitees, and licensees shall be on a first-come, first-serve basis, at times and upon other conditions as may be established from time to time by Landlord.

### 3. TERM.

3.1 The term of this Lease (the "Term") shall be for a period of \_\_\_\_\_ (\_\_\_\_\_) years and \_\_\_\_\_ (\_\_\_\_\_) months. The Term shall commence on the earlier of (a) the date Lessee occupies any part of the Premises, or (b) seven (7) days after Landlord has notified Lessee in writing that Landlord's work in the Premises is substantially completed, whichever shall occur first (the "Commencement Date").

### 4. HOLDING OVER.

4.1 Any holding over after the expiration of the term of this Lease without the written consent of Landlord shall be a tenancy from month to month. The terms, covenants and conditions of such tenancy shall be the same as provided herein, except that the Base Rent shall be the greater of (a) two (2) times the Base Rent in effect on the date of such expiration, subject to adjustment as provided in this Lease, or (b) the fair market rent of the Premises as established by Landlord. Such holding over may be terminated at any time by Landlord or Lessee upon ten (10) days' written notice. Acceptance by Landlord of rent after such expiration shall not result in any other tenancy or any renewal of the Term of this Lease, and the provisions of this Paragraph are in addition to and do not affect Landlord's right of reentry or other rights provided under this Lease or by applicable law.

### 5. RENT.

5.1 Base Rent. Lessee shall pay to Landlord as Base Rent for the Premises, in advance, without deduction, setoff, prior notice or demand, the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) per month, which shall be subject to adjustment as provided in Paragraph 4.3. The first month's Base Rent shall be paid on the Commencement Date. The Base Rent for the second calendar month and each calendar month thereafter during the Term shall be paid on the first day of each such calendar month. The Base Rent shall be paid to Landlord at the address set forth in Paragraph 1.2 or such other address as shall be designated in writing from time to time by Landlord.

5.2 Proration. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent payable for the first calendar month of the Term shall be prorated upon the

basis which the number of days of the Term in the first month bears to the total number of days in such month. If the Term ends on a day other than the last day of a calendar month, the Base Rent payable for the last calendar month of the Term shall be prorated on the basis which the number of days of the Term in the last calendar month bears to the total number of days in such month.

5.3 CPI Increase. On each Adjustment Date specified in the Fundamental Lease Provisions, the Base Rent then payable by Lessee (the Base Rent described in Paragraph 4.1 as theretofore adjusted pursuant to this Paragraph) shall be adjusted, upward only, by the percentage that the Index (as defined below) in effect as of such Adjustment Date has increased over the Index in effect as of the immediately preceding Adjustment Date or, with respect to the first Adjustment Date, in effect as of the Commencement Date. The term Index means the Consumer Price Index designated in the Fundamental Lease Provisions, as issued by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency, or any other measure hereafter employed by said Bureau or agency in lieu of such Index that measures the consumer's cost of living in such metropolitan area. If the Index is hereafter converted to a standard reference base different from that which is shown in the Fundamental Lease Provisions or is otherwise revised, the determination of the percentage increase hereunder shall be made either with the use of such conversion factor, formula, or table converting the Index as may be published by said Bureau or any successor agency or, in the event that no such conversion factor, formula, or table is published, then by Landlord using such other index as is then generally recognized and accepted for similar determination of purchasing power.

5.4 Notice of Increase. Landlord shall determine the increase in Base Rent within ninety (90) days after each Adjustment Date and give Lessee written notice indicating the adjusted Base Rent and how it was computed. Prior to Lessee's receipt of such notice, Lessee shall continue paying Base Rent at the rate in effect immediately prior to such Adjustment Date. Within ten (10) days after receipt of such notice, Lessee shall pay to Landlord the difference between the adjusted Base Rent and the Base Rent theretofore paid by Lessee between such Adjustment Date and the date such notice of increase is received by Lessee, and Lessee shall thereafter continue paying Base Rent at the rate specified in such notice, and in the time and manner provided in Paragraph 4.1, until Lessee receives a new notice of increase in the Base Rent. Landlord's failure to notify Lessee of an increase in Base Rent within ninety (90) days after each Adjustment Date shall not prevent Landlord from thereafter making such adjustment on a retroactive basis. All references in this Lease to Base Rent shall mean the Base Rent specified in Paragraph 4.1 as adjusted from time to time pursuant to Paragraph 4.3.

5.5 Payments and Late Charge. Any amounts payable under this Lease shall be paid in lawful money of the United States of America. Any amount of Base Rent or Lessee's Share of Operating Costs not paid within ten (10) days after it is due shall be subject to a late charge of ten percent (10%) of the amount unpaid. Landlord's right to assess a late charge shall not be construed as granting Lessee a grace period within which to make payments. Any amount due to Landlord that is not paid when due shall bear interest from the date due until paid at the maximum legal rate permitted under Colorado law. Lessee's failure to perform any monetary obligations under this Lease shall have the same consequences as Lessee's failure to pay rent.

5.6 Triple Net Lease. It is the purpose and intent of the Landlord and Lessee that all costs directly or indirectly attributable to the Premises shall be the obligation of the Lessee. By way of

illustration and not limitation Lessee shall pay for heat, water, gas, electrical, phone, computer lines or services, lighting, sewer, trash removal, operating costs, and insurance.

## 6. SECURITY DEPOSIT.

6.1 Upon Lessee's execution of this Lease, Lessee shall deposit with Landlord the sum of \_\_\_\_\_ Dollars ( \_\_\_\_\_ ), (the Security Deposit ), which shall be held by Landlord as security for the faithful performance by Lessee of all of the terms, covenants, and conditions of this Lease, it being expressly understood and agreed that the Security Deposit is not an advance deposit for rent or a measure of Landlord's damages in case of Lessee's default. The Security Deposit may be retained, used, or applied by Landlord to remedy any default by Lessee, to repair damage caused by Lessee to any part of the Premises or the Property, and to clean the Premises upon expiration or earlier termination of this Lease, as well as to reimburse Landlord for any amount which Landlord may spend by reason of Lessee's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Lessee's default. If any portion of the Security Deposit is so used or applied, Lessee shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount required hereunder, and Lessee's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Lessee shall not be entitled to interest on such deposit. Lessee may not elect to apply any portion of said Security Deposit toward payment of Base Rent or any other amounts payable by Lessee under this Lease, although Landlord may elect to do so in the event Lessee is in default or is insolvent. If Lessee shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Lessee at Lessee's last known address (or, at Landlord's option, to the last assignee of Lessee's interest hereunder) after the Term has ended and the Premises have been vacated by Lessee.

## . PROPERTY OPERATING COSTS.

.1 Lessee's Obligation. Lessee shall pay to Landlord Lessee's Share of the excess of Property Operating Costs over Landlord's Cost Stop ( Lessee's Share ). Such payments shall be calculated by Landlord and paid by Lessee at the times and in the manner provided in this Section 6.

.2 Operating Costs. The term Property Operating Costs shall include all items in Subparagraphs 6.2.1 and 6.2.2.

.2.1 All direct costs of ownership, operation, maintenance, and management of the Property, including the Property's share of such costs for common areas and parking facilities serving the Property, all as determined by generally accepted accounting practices. The Premise's share of the costs of parking facilities and common areas shared with other buildings on the Property shall be based on Landlord's reasonable allocations among the buildings using such facilities and areas based on use by each building. By way of illustration but not limitation, operating expenses shall include the costs or charges for the following items: heat, light, water, sewer, power and steam, waste disposal, janitorial services, security, fire protection, window cleaning, air conditioning, landscaping, materials and supplies, leasing commissions, equipment and tools, service agreements on equipment, insurance, licenses, permits and inspections, wages and salaries, employee benefits and payroll taxes, accounting and legal expenses, management fees, Property office rent or rental

value, and the cost of contesting the validity or applicability of any governmental enactments which may affect the operation or maintenance of the Property or operating expenses. Management fees shall not exceed four percent (4 %) of the gross rents. Property Operating Costs shall not include interest expense, advertising costs, depreciation on the Property, or the cost of capital expenditures provided, however, that in the event Landlord makes capital improvements which have the effect of reducing operating expenses, or which are required by governmental orders, rules, codes, regulations, ordinances, and laws, Landlord may amortize its investment in said improvements as an operating expense in accordance with standard accounting practices provided that as to voluntary capital improvements reducing operating expenses such amortization is not at a rate greater than the anticipated savings in the operating expenses.

.2.2 All real property taxes on the Property, the land on which the Property is situated, and the various estates in the Property, and a share of the real property taxes on the land, and improvements comprising the parking facilities and common areas shared with other buildings on the Property based on Landlord's reasonable allocation among the buildings using such facilities and areas based on the use. All personal property taxes levied on property used in the operation of the Property. All taxes of every kind and nature whatsoever levied and assessed in lieu of or in substitution for existing or additional real or personal property taxes on the Property, land, or personal property other than taxes covered by Paragraph 10, any charge upon Landlord's business of leasing the Premises or other portions of the Property or parking facilities and the cost to Landlord of contesting the amount or validity or applicability of any of the aforementioned taxes. Net recoveries through protest, appeals or other actions taken by Landlord in its discretion, after deduction of all costs and expenses, including counsel and other fees, shall be deducted from direct taxes for the year of receipt.

.3 Other Definitions. The term "Base Year" means the calendar year in which this Lease commences. The term "Subsequent Year" means any calendar year during the Term after the Base Year.

.3.1 The term "Lessee's Share" means the proportion which the rentable square footage of the Premises bears to the total rentable square footage of the Property, as set forth in the Fundamental Lease Provisions.

.4 Payment of Lessee's Share of Operating Costs.

.4.1 Lessee shall pay Lessee's Share of the estimated Property Operating Costs on the first day of each month during the Term. During the Base Year and any Subsequent Year, Landlord shall submit to Lessee, prior to the Commencement Date as to the Base Year and before January 1 of each Subsequent Year or as soon thereafter as Landlord has sufficient data, a reasonably detailed statement showing the estimated Property Operating Costs for the then-current year. The determination of the estimated Property Operating Costs shall be made by Landlord based upon experience with actual costs and projections. If Lessee's Share of the estimated Property Operating Costs exceeds Landlord's Cost Stop, then at the first monthly rent payment date following the submittal of such statement and at each subsequent monthly rent payment date thereafter during the calendar year, Lessee shall pay to Landlord an amount equal to one-twelfth (1/12) of the excess of the sum of the estimated Property Operating Costs multiplied by Lessee's Share, over one-twelfth (1/12) of Landlord's Cost Stop. If Landlord does not submit said statement for the Base Year to Lessee until after the Commencement Date,

Lessee shall pay at the monthly rent payment date next following the submittal of such statement, any amounts theretofore accrued from the Commencement Date (equaling one-twelfth (1/12) of such excess for each month of the Term which has then elapsed). If Landlord does not submit said statement to Lessee prior to January 1 of any Subsequent Year, Lessee shall continue to pay Lessee's Share of the Property Operating Costs at the then-existing rate until such statement is submitted and, thereafter, at the monthly rent payment date next following the submittal of such statement Lessee shall pay Lessee's Share of the Property Operating Costs based on the rate set forth in such statement plus, if the new rate is greater than the old rate, the difference accrued from January 1 of such Subsequent Year. Landlord may revise such estimated Property Operating Costs at the end of any calendar quarter.

.4.2 On or before March 31 of each Subsequent Year or as soon thereafter as Landlord has sufficient data, Landlord shall submit to Lessee a reasonably detailed statement showing the actual Property Operating Costs paid or incurred by Landlord during the previous calendar year. If Lessee's Share of such actual Property Operating Costs is less than the amount of Lessee's Share of the estimated Property Operating Costs for such previous year theretofore paid by Lessee, then Landlord shall credit the amount of such difference against the next Property Operating Costs payments coming due provided, however, that Lessee shall not be entitled to a credit for any amount calculated to be less than Landlord's Cost Stop. If Lessee's Share of such actual Property Operating Costs is more than the amount of Lessee's Share of the estimated Property Operating Costs for such previous year theretofore paid by Lessee, Lessee shall pay to Landlord the full amount of such difference at the monthly rent payment date next following the submittal of such statement to Lessee.

.4.3 If the Term commences on a date other than January 1 or ends on a date other than December 31, the Property Operating Costs and Landlord's Cost Stop for such first or last calendar year of the Term shall be prorated based on what the number of days in the Term in that year bears to 365 and any amounts owed or to be credited pursuant to Subparagraph 6.4.2 shall be paid at the time in the Subsequent Year, or in the calendar year immediately following the year in which the Term ends, that such amount is calculated pursuant to Subparagraph 6.4.2.

.5 Adjustment of Lessee's Share. In the event the rentable square footage of the Premises and or the total rentable square footage of the Property is changed, Lessee's Share shall be appropriately adjusted so that it at all times reflects the proportion which the rentable square footage of the Premises bears to the total rentable square footage of the Property.

## 8. CONSTRUCTION OF PREMISES.

8.1 If the Premises are being leased on an as is basis without any improvements, alterations, or additions required to be made thereto by Landlord or Lessee, the remaining provisions of this Section shall not apply. However, if any improvements, alterations, or additions are to be made by Landlord or Lessee to complete the Premises for occupancy by Lessee (the Lessee Improvements), the provisions of the Work Agreement attached to this Lease as Exhibit B shall govern with regard to the completion of all such Lessee Improvements. Except as specifically set forth in the attached Work Agreement, Landlord has no obligation and has made no promise to alter, remodel, decorate, paint, or otherwise improve the Premises or any part thereof. To the extent Landlord is required to perform

any Lessee Improvements pursuant to the Work Agreement ( Landlord s Work ), Landlord shall use reasonable diligence to complete such Landlord s Work in a timely manner.

## 9. USES.

9.1 Authorized. The Lessee shall operate the Premises for the purpose of operating a Green House for the production of fruits, vegetables, flowers, research and educational purposes, and associated incidental uses. Incidental Uses may include other activities routinely and usually associated with Green House use that complement or support the primary functions and any activity necessary to support the keeping of the covenants, agreements, and conditions of this Lease. In the context of this Lease Incidental Uses shall never be activities requiring expanded hours of operation, or additional City permits, or the use of noise amplification devices of any nature whatsoever.

9.1.1 With Landlord's prior written consent, Lessee may install a storage shed within a 20x20 area depicted and labeled on **Exhibit A** as Storage Area . Landlord may, in Landlord's sole and absolute discretion (but shall in no event be obligated to), grant additional storage within the Leased Premises.

9.1.2 The permitted use shall include limitations on hours of operation as set forth in the Fundamental Lease Provisions of this Lease and Exhibit D, Rules and Regulations, attached hereto and made a part hereof by this reference.

## 9.2 Prohibited Uses.

9.2.1 Any use except as specifically permitted in this section is prohibited unless approved in writing by the Landlord.

9.2.2 By way of clarification but not limitation it shall be noted that smoking of any form, including but without limitation vaping, within any portion of the Green House is strictly forbidden. Further it is strictly forbidden for the parking lot on the Leased Premises or Landlord's Property to be used for any occupancy, including camping.

9.2.3 Overnight occupancy of the Leased Premises or any portion of Landlord's Property is also strictly forbidden.

9.2.4 Cannabis. Lessee agrees that the Leased Premises shall not be used for the use, growing, producing, processing, storing (short or long term), distributing, transporting, or selling of cannabis, cannabis derivatives, hemp or any cannabis containing substances ( Cannabis ), or any office uses related to the same, nor shall Lessee permit, allow or suffer, any of Lessee's officers, employees, agents, servants, licensees, sublessees, concessionaires, contractors and invitees to bring onto the Leased Premises, any Cannabis. Without limiting the foregoing, the prohibitions in this paragraph shall apply to all Cannabis, whether such Cannabis is legal for any purpose whatsoever under state or federal law or both. Notwithstanding anything to the contrary, any failure by Lessee to comply with each of the terms, covenants, conditions and provisions of this paragraph shall automatically and without the requirement of any notice be a default that is not subject to cure, and Lessee agrees that upon the occurrence of any such default, Landlord may elect, in its sole discretion, to exercise all of its rights and remedies under this Lease, at law or in equity with respect to such default.

9.2.5 Lessee shall not use or permit the Premises or any part thereof to be used for any



purpose other than the purpose expressly authorized herein.

9.3 Suitability. Lessee acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the Property or with respect to the suitability of either for the conduct of Lessee's business, nor has Landlord agreed to undertake any modification, alteration, or improvement to the Premises except as provided in the Work Agreement. Except as otherwise expressly provided in the Work Agreement, the taking of possession of the Premises by Lessee shall conclusively establish that the Premises and the Property were at such time in satisfactory condition.

9.4 Insurance. Lessee shall not do or suffer anything to be done in or about the Premises, nor shall Lessee bring or allow anything to be brought into the Premises, which would in any way increase the rate of any fire insurance or other insurance upon the Property or its contents, cause a cancellation of said insurance, or otherwise affect said insurance in any manner.

9.5 Laws. Lessee shall not do or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance, or other governmental rule, regulation, or requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, any law, statute, ordinance, or other governmental rule, regulation, or requirement of the United States, the State of Colorado, or the City and County of Denver. Lessee shall, at its sole cost and expense, promptly comply with all said governmental measures and also with the requirements of any board of fire underwriters or other similar body now or hereafter constituted to deal with the condition, use, or occupancy of the Premises, excluding structural changes not related to or affected by Lessee's alterations, additions, or improvements.

9.6 Nuisance. Lessee shall not place or permit to be placed on any floor a load exceeding the floor load which such floor was designed to carry. Lessee also shall not do or suffer anything to be done in or about the Premises which would in any way obstruct or interfere with the rights of other occupants, nor shall Lessee use or suffer the Premises to be used for any immoral, unlawful, or objectionable purposes. In no event shall Lessee cause or permit any nuisance in or about the Premises, and no loudspeakers or similar devices shall be used without the prior written approval of Landlord. Lessee shall not commit or suffer to be committed any waste in or upon the Premises. The provisions of this Paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Property.

9. Rules and Regulations. Lessee shall faithfully comply with the Rules and Regulations for the Property, a copy of which is attached to this Lease as Exhibit C and incorporated by this reference, together with all modifications and additions thereto adopted by Landlord from time to time. If there is any conflict between the Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible to Lessee for the nonperformance of any of the Rules and Regulations by or otherwise with respect to the acts or omissions of any other Lessees or occupants of the Property.

## 10. SERVICES AND UTILITIES.

10.1 Services by Landlord. Landlord shall be under no obligation to provide heating, electrical, water, sewer, gas, or other utility service to the Premises, but if Landlord elects to provide such

services at Lessee's request, Lessee shall pay to Landlord the cost of such services as determined solely by Landlord based upon Landlord's reasonable estimates and cost, plus a reasonable charge (not to exceed ten percent (10%) of the cost of such services) for Landlord's additional overhead expense. If Lessee elects to have additional janitorial services or any other service, Lessee shall pay the cost of such extra services. Landlord and Lessee shall maintain the lobbies, hallways, stairs, public restrooms, elevators if any, common areas, and landscaping in a clean and orderly manner and in a good state of repair. Lessee shall not have any right to offset or reduce rent for Lessee's refusal to accept any service provided by Landlord.

10.2 Additional Heating and Air Conditioning. Landlord shall be under no obligation to provide additional or after-hours heating or air conditioning, but if Landlord elects to provide such services at Lessee's request, Lessee shall pay to Landlord the cost of such services as determined solely by Landlord based upon Landlord's reasonable estimates and cost, plus a reasonable charge (not to exceed ten percent (10%) of the cost of such services) for Landlord's additional overhead expense. Lessee shall keep all shades, blinds, or draperies closed when necessary because of the sun's position and at all times cooperate fully with Landlord and abide by all the regulations and requirements which Landlord may prescribe from time to time for the proper functioning and protection of the heating, ventilating, and air conditioning systems. Whenever heat-generating machines or equipment or lighting other than Property Standard lights are used in the Premises by Lessee which affect the temperature otherwise maintained by the air conditioning system, Landlord shall have the right to install any machinery and equipment which Landlord deems necessary to restore the temperature balance in any affected part of the Property, including but not limited to modifications to the Property's air conditioning system or installation of supplementary air conditioning units. The cost thereof, including installation and any additional costs of operation and maintenance occasioned thereby shall be paid by Lessee to Landlord upon demand.

10.3 Special Apparatus. Lessee shall not, except with the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion, either: (a) use any apparatus or device in the Premises, including but not limited to electronic data processing machines, punch card machines, and machines requiring excess lighting or using current in excess of 5 kilowatts per hour at rated capacity or 120 volts single-phase (except standard office photocopy machines) which will in any way increase the amount of cooling or ventilation or electricity or water beyond that usually furnished or supplied for use of the Premises for \_\_\_\_\_ purposes or (b) connect with electric current (except through existing electrical outlets in the Premises) or water pipes any device or apparatus for the purpose of using electrical current or water, except as may be provided in the Work Agreement. If Landlord consents to the use and or connection of any such apparatus or device, Landlord shall have the right to install meters and similar monitoring devices to measure the amount of utilities consumed by such apparatus or devices and Lessee shall pay for the cost of all work and materials required for the installation, maintenance, and use of such meters and monitoring devices. If Landlord elects not to install a special meter or monitoring device, then Landlord shall determine the amount of additional utilities and resources consumed by such apparatus or device based upon Landlord's reasonable estimates and best judgment. Lessee shall pay to Landlord promptly upon demand the cost of any excess use of utilities and resources based on the rates charged by the local public utility company or other supplier furnishing same, plus any additional expense incurred by Landlord in keeping account of the foregoing and administering the same.

10.4 Property Security. Landlord shall provide only such security for the Property and or parking

area as Landlord deems necessary, which shall not include any special security measures because of the presence of Lessee or Lessee's business. Landlord shall have no responsibility to prevent and shall not be liable to Lessee for losses due to theft, burglary, or vandalism, or for damages done by unauthorized persons gaining access to the Property, the parking area, or the Premises.

10.5 Keys and Locks. Landlord shall furnish Lessee, free of charge, with two keys for each corridor door entering the Premises. Additional keys will be furnished at a charge by Landlord equal to the cost plus fifteen percent (15%) on an order signed by Lessee or Lessee's authorized representative. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises. Upon termination of this Lease, Lessee shall surrender to Landlord all keys to the Premises and give to Landlord the combination to all locks for safes, safe cabinets, and vault doors, if any, in the Premises.

10.6 Interruption in Service. Landlord shall use reasonable efforts to remedy any interruption in the furnishing of services and utilities. However, Landlord shall not be in default under this Lease or liable for any damages directly or indirectly arising from, nor shall the rent be abated or Lessee's performance affected by reason of, any failure to provide or any reduction in any of the above services or utilities if such failure or reduction is caused by the making of repairs or improvements to the Premises or to the Property, the installation of equipment, force majeure, acts of government, acts of God or the elements, labor disturbances of any character, or any other accidents or conditions whatsoever beyond the reasonable control of Landlord, or rationing or restrictions on the use of said services and utilities due to energy shortages or other causes, whether or not any of the above result from acts or omissions of Landlord. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state, or local governmental bodies or utility suppliers in reducing energy or other resources consumption. The failure of Landlord to provide the utilities and services specified in this Section 9 shall not constitute a constructive or other eviction of Lessee.

10. Additional Rent. Any sums payable under this Section 9 shall be considered additional rent and may be added to any installment of rent thereafter becoming due, and Landlord shall have the same remedies for a default in payment of any such sum as for a default in the payment of rent.

10.8 Lessee's Obligation. Lessee shall, prior to delinquency, pay for all other materials and services not expressly required to be provided by Landlord which may be furnished to or used in, on, or about the Premises during the Term.

## 11. TAXES PAYABLE BY LESSEE.

11.1 Lessee shall pay before delinquency any and all taxes levied or assessed and which become payable by Lessee (or directly or indirectly by Landlord) during the Term (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources, capital stock taxes, and estate and inheritance taxes), whether or not now customary or within the contemplation of the parties hereto, which are based upon, measured by, or otherwise calculated with respect to: (a) the gross or net rental income of Landlord under this Lease, including, without limitation, any gross receipts tax levied by any taxing authority, or any other gross income tax or excise tax levied by any taxing authority with respect to the receipt of the rental payable hereunder (b) the value of Lessee's equipment, furniture, fixtures, or other personal property located in the

Premises (c) the possession, lease, operation, management, maintenance, alteration, repair, use, or occupancy by Lessee of the Premises or any portion thereof (d) the value of any leasehold improvements, alterations, or additions made in or to the Premises, regardless of whether title to such improvements, alterations, or additions shall be vested in Lessee or Landlord or (e) this transaction or any document to which Lessee is a party creating or transferring an interest or an estate in the Premises.

## 12. ALTERATIONS.

12.1 Landlord's Consent Required. Lessee shall not make or permit to be made any alterations, additions, or improvements to the Premises or any part thereof without obtaining Landlord's prior written consent. When applying for such consent, Lessee shall, if required by Landlord, furnish complete plans and specifications for such alterations, additions, or improvements. All alterations, additions, or improvements to the Premises shall be performed by contractors selected and supervised by Landlord for Lessee's account and at Lessee's sole cost and expense. Within ten (10) days after receipt of a written statement from Landlord, Lessee shall reimburse Landlord for all costs arising in connection with Landlord's review of plans and specifications and supervision of contractors. Landlord shall have the right to require that any contractor performing alterations, improvements, or additions to the Premises shall, prior to commencement of any work, provide Landlord with a performance bond and labor and materials payment bond in the amount of the contract price for the work, naming Landlord and Lessee (and any other persons designated by Landlord) as co-obligees. All alterations, additions, fixtures, and improvements, including without limitation all improvements made pursuant to Section , whether temporary or permanent in character, made in or upon the Premises either by Landlord or Lessee, shall at once belong to Landlord and become part of the Premises and shall remain on the Premises without compensation of any kind to Lessee. Lessee shall carry insurance as required by Section 15 covering any improvements, alterations, or additions to the Premises made by Lessee under the provisions of this Section 11, it being understood and agreed that none of such alterations, additions, or improvements shall be insured by Landlord nor shall Landlord be required under any provision for reconstruction to reinstall any such alterations, additions, or improvements. Movable furniture and equipment which are removable without material damage to the Property or the Premises shall remain the property of Lessee.

12.2 Removal at Landlord's Option. Notwithstanding any other provision contained in this Lease, Lessee agrees that it shall, upon Landlord's written request made prior to or within thirty (30) days following the expiration or termination of this Lease, at Lessee's sole cost and expense, promptly remove any alterations, additions, fixtures, or Lessee Improvements designated by Landlord to be removed and repair any damage to the Premises resulting from such removal. Landlord may, in connection with any such removal which might in Landlord's judgment involve damages to the Premises, require that such removal be performed by a bonded contractor or other person for whom a bond satisfactory to Landlord has been furnished covering the cost of repairing the anticipated damage.

12.3 Premises. Lessee shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Property any signs, notices, drapes, shutters, blinds or window coatings, or displays of any type, without the prior written consent of Landlord. Landlord shall consent to the location at the cost of Lessee of a Property standard sign on or near the entrance of the Premises and shall include Lessee in the Property directories located in the Property.

12.4 Property. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof and exterior of the Property and in any area of the Property not leased to Lessee such signs, notices, displays, and similar items as Landlord deems appropriate in the proper operation of the Property.

### 13. MAINTENANCE AND REPAIRS.

13.1 Landlord's Obligations. Landlord shall maintain in good order, condition, and repair the structural portions of the Property, including the exterior walls, underflooring and roof, the basic heating, ventilating, air conditioning, plumbing, electrical, and fire detection and security systems (if now or hereafter installed in the Property), and all other portions of the Premises not the obligation of Lessee or any other tenant in the Property. However, if any such maintenance and repair becomes necessary in whole or in part because of wrongful acts or omissions by Lessee or Lessee's employees, agents, invitees, and customers, or because of a breaking and entering, the entire cost thereof shall be paid for by Lessee upon demand. Landlord shall not be liable to Lessee, and rent shall not be abated, for any failure by Landlord to maintain and repair areas which are being used in connection with construction of improvements, or for any failure to make any repairs or perform any maintenance unless such failure shall continue for an unreasonable time after written notice of the need therefor is given to Landlord by Lessee. Landlord shall also not be liable under any circumstances for loss of profits or for injury to or interference with Lessee's business arising from or in connection with the making of or the failure of Landlord to make any repairs, maintenance, alterations, or improvements in or to any portion of the Property or in or to fixtures, appurtenances and equipment thereon.

#### 13.2 Lessee's Obligations.

13.2.1 Lessee, at Lessee's sole cost and expense, shall maintain the Premises in good order, condition and repair including the interior surfaces of the ceilings, walls and floors, all doors, interior windows, and all plumbing pipes, valves and fixtures, electrical wiring, panels, switches, and all other fixtures and equipment installed for the use of the Premises by Lessee. Lessee expressly waives the benefits of any statute, ordinance or judicial decision now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair. Lessee shall immediately notify Landlord in the event Lessee is made aware of any dangerous conditions on or surrounding the Premises.

13.2.2 Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Premises in the same condition as received, except for ordinary wear and tear and damage by fire, earthquake, or acts of God or the elements not caused by the wrongful act or omission of Lessee or Lessee's agents.

13.2.3 Except for any damage caused by reasonable use, Lessee shall repair any damage to the Premises or the Property caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, movable partitions, or permanent improvements or additions, including without limitation

thereto repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Lessee's sole cost and expense. Lessee shall indemnify Landlord against any loss or liability resulting from delay by Lessee in so surrendering the Premises, including without limitation any claims made by any succeeding tenant founded on such delay.

13.2.4 In the event Lessee fails to maintain the Premises in good order, condition, and repair, Landlord shall give Lessee notice to do such acts as are reasonably required to so maintain the Premises. In the event Lessee fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right, but no obligation, to do such acts and expend such funds at the expense of Lessee as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Lessee promptly after demand with interest at the maximum rate permitted by law from the date of such work. Landlord shall have no liability to Lessee for any damage, inconvenience, or interference with the use of the Premises by Lessee as a result of performing any such work.

13.3 Compliance With Law. Landlord and Lessee shall each do all acts required to comply with all applicable laws, ordinances, regulations, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

13.4 Environmental Law. Lessee agrees to comply at all times with federal, state and local rules, regulations, statutes, ordinances and directives that may now or hereafter be applicable to the Premises and that are related to hazardous or toxic materials pollution control and environmental matters including: (a) any laws and regulations governing water use, groundwater, wetlands and watersheds associated with the Premises (b) any pesticides, fertilizer or chemical record-keeping and reporting laws and regulations (c) any pesticide, fertilizer or chemical applicator licensing laws and regulations (d) the Worker Protection Standard for Agricultural Pesticides. The Lessee further agrees to be in strict compliance with all manufacturers' label instructions, use requirements and precautionary statements and warnings. The Lessee will use the utmost care in the handling and application of any pesticides, fertilizers and chemicals to protect all persons upon the Premises and the environment, and will dispose of all pesticide, fertilizer and chemical containers only in a lawful manner and will not dump, bury or burn said containers on the Premises.

14. LIENS. Lessee shall keep the Premises, the Property, and any common areas and facilities serving the Property free from any liens arising out of work performed, materials furnished, or obligations incurred by Lessee, and shall indemnify, hold harmless, and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. In the event that Lessee shall not, within twenty (20) days following imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided in this Lease and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorney fees and costs, shall be payable to Landlord by Lessee on demand with interest at the maximum rate permitted by law

from the date such sums are paid or expenses incurred by Landlord. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, including but not limited to C.R.S. 38-22-105(2), or which Landlord shall deem proper for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics and materialmen's liens, and Lessee shall give to Landlord at least ten (10) business days prior written notice of the expected date of commencement of any work relating to alterations, additions or improvements in or to the Premises.

## 15. INDEMNITY.

15.1 Indemnity. Lessee shall and does hereby indemnify, hold harmless, and defend Landlord against any and all claims of liability for any injury or damage to any person or property whatsoever (a) occurring in, on, or about the Premises or any part thereof and (b) occurring in, on, or about any facilities (including, without prejudice to the generality of the term facilities, elevators, stairways, passageways, hallways, and parking areas), the use of which Lessee may have in conjunction with other Lessees of the Property, when such injury or damage is caused in part or in whole by the act, negligence, fault, or omission of any duty with respect to the same by Lessee, its agents, contractors, employees, invitees, or customers. Lessee shall and does hereby further indemnify, hold harmless, and defend Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, invitees, and employees, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such claim, Lessee, upon notice from Landlord, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord, provided, however, that Lessee shall not be liable for damage or injury occasioned by the active negligence or intentional acts of Landlord and its agents or employees unless covered by insurance Lessee is required to provide. Lessee, 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 except that caused by the negligence or intentional acts of Landlord and its agents or employees.

15.2 Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Lessee, its employees, invitees, or customers, or 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, heating, air conditioning, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Property, of which the Premises are a part, or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Property.

## 16. INSURANCE.

16.1 General. All insurance required to be carried by Lessee hereunder shall be issued by responsible insurance companies acceptable to Landlord and the holder of any mortgage or deed of trust secured by any portion of the Premises (hereinafter referred to as a Mortgagee). All policies of insurance provided for herein shall be issued by insurance companies licensed to do business in



the State of Colorado, with general policy holder's rating of not less than A and a financial rating of not less than Class as rated in the most current available Best's Insurance Reports. Each policy shall name Landlord and at Landlord's request any Mortgagee as an additional insured, as their respective interests may appear, and a duplicate original of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord by Lessee at least ten (10) days prior to Lessee's occupancy in the Premises. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give Landlord thirty (30) days written notice in advance of any cancellation or lapse of or any change in such insurance. All public liability, property damage, and other casualty insurance policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Lessee shall furnish Landlord with renewals or binders of any such policy at least thirty (30) days prior to the expiration thereof. If Lessee does not procure and maintain such insurance, Landlord may (but shall not be required to) obtain such insurance on Lessee's behalf and charge Lessee the premiums therefor which shall be payable upon demand, and no such action by Landlord shall constitute a waiver of Lessee's default hereunder. Lessee may carry such insurance under a blanket policy, provided such blanket policy expressly affords the coverage required by this Lease by a Landlord's protective liability endorsement or otherwise.

16.2 Casualty Insurance. At all times during the Term, Lessee shall maintain in effect policies of casualty insurance covering (a) all improvements in, on, or to the Premises (including all Property Standard Work and Property Non-Standard Work and any alterations, additions, or improvements as may be made by Lessee), and (b) trade fixtures, merchandise, and other personal property from time to time in, on, or upon the Premises, in an amount of not less than ninety percent (90%) of their actual replacement cost from time to time during the Term, providing protection against any peril included within the classification Fire and Extended Coverage together with insurance against sprinkler damage, vandalism, and malicious mischief, including cost of debris removal and demotion. Replacement cost for purposes hereof shall be determined by mutual agreement, or failing such agreement by an accredited appraiser selected by Landlord, with the cost of such appraisal to be borne by Lessee. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth in Section 22, the proceeds under clause (a) above shall be paid to Landlord, and the proceeds under clause (b) above shall be paid to Lessee.

16.3 Liability Insurance. Lessee shall at all times during the Term at its own cost and expense obtain and continue in force workers' compensation insurance and bodily injury liability and property damage liability insurance adequate to protect Landlord against liability for injury to or death of any person in connection with the activities of Lessee in, on or about the Premises or with the use, operation, or condition of the Premises. Such insurance at all times shall be in an amount of not less than Two Million Dollars (2,000,000) for injuries to persons in one accident, not less than One Million Dollars (1,000,000) for injury to any one person and not less than Five Hundred Thousand Dollars (500,000) with respect to damage to property. The limits of such insurance shall not, however, limit the liability of Lessee hereunder. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Lessee.

16.4 Adjustment. Every three (3) years during the Term, or whenever Lessee materially

improves or alters the Premises, Landlord and Lessee shall mutually agree to increases in Lessee's insurance policy limits for the insurance to be carried by Lessee as set forth in this Section 15. If Landlord and Lessee cannot mutually agree upon the amounts of said increases within thirty (30) days after notice from Landlord, then all insurance policy limits as set forth in this Section shall be adjusted for increases in the cost of living in the same manner as is set forth in Paragraph 4.3 for the adjustment of the Base Rent.

16.5 Landlord's Insurance. Landlord shall at all times from and after substantial completion of the Premises maintain in effect a policy or policies of insurance covering the Property in an amount not less than eighty percent (80%) of full replacement cost (exclusive of the cost of excavations, foundations, and footings and Lessee Improvements) from time to time during the Term, providing protection against any peril generally included in the classification Fire and Extended Coverage, together with insurance against sprinkler damage, vandalism, and malicious mischief. Landlord's obligation to carry the insurance provided for herein may be brought within the coverage of any so-called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance and that the Property is specifically named as a property insured under such policy.

16.6 Subrogation Waiver. Landlord and Lessee each hereby waive any and all rights of recovery against the other or against the officers, partners, employees, agents, and representatives of the other, on account of loss or damage to such waiving party or its property, or the property of others under its control, to the extent that such loss or damage is under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier(s) that the foregoing mutual waiver of subrogation is contained in this Lease. The waivers set forth herein shall be required to the extent the same are available from each party's insurer without additional premium. If an extra charge is incurred to obtain such waiver, it shall be paid by the party in whose favor the waiver runs within fifteen (15) days after written notice from the other party.

16. Crop Insurance. Lessee shall shall not (delete one) procure and maintain crop insurance at a level equal to the planted crop value amount. The insurance policies or certificates of coverage shall be deposited with the owner on or before the Lease Commencement Date.

## 1 . ASSIGNMENT AND SUBLETTING.

1 .1 Landlord's Consent Required. Lessee shall not sell, assign, mortgage, pledge, hypothecate, encumber, or otherwise transfer this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or suffer or permit the Premises or any part thereof to be occupied by any third person (the agents, employees, invitees, and customers of Lessee excepted), without the prior written consent of Landlord, through Landlord's designee, in each instance and any attempt to do so without such consent shall be voidable and, at Landlord's election, shall constitute a noncurable default under this Lease. Subject to the terms and conditions contained in this Section, Landlord shall not unreasonably withhold its consent to a transfer of this Lease or a subletting of the Premises.

1 .2 Lessee's Application. If Lessee desires at any time to transfer this Lease (which transfer

shall in no event be for less than Lessee's entire interest in this Lease) or to sublet the Premises or any portion thereof, Lessee shall submit to Landlord at least sixty (60) days prior to the proposed effective date of the transfer or sublease ( Proposed Effective Date ), in writing: (a) a notice of intent to transfer or sublease, setting forth the Proposed Effective Date, which shall be not less than sixty (60) nor more than ninety (90) days after the sending of such notice (b) the name of the proposed sublessee or transferee (c) the nature of the proposed sublessee's or transferee's business to be carried on in the Premises (d) the terms and provisions of the proposed sublease or transfer (e) such certified financial information as Landlord may request concerning the proposed sublessee or transferee, including recent financial statements and bank references and (f) evidence satisfactory to Landlord that the proposed sublessee or transferee will immediately occupy and thereafter use the affected portion of the Premises for the entire term of the sublease or, in the case of a transfer, for the unexpired portion of the Term.

1 .3 Landlord's Option to Recapture. Landlord hereby reserves the option, to be exercised by giving notice to Lessee within thirty (30) days after receipt of Lessee's notice of intent to transfer or sublease (it being understood and agreed that no revocation or withdrawal by Lessee of such notice of intent to transfer or sublease shall affect Landlord's option), to recapture the portion of the Premises described in Lessee's notice for the remainder of the Term and to terminate this Lease with respect to such recaptured Premises. The effective date of such recapture and termination shall be as specified in Landlord's notice of exercise of its recapture option, but shall not be less than thirty (30) days nor more than sixty (60) days after the delivery of such notice. The option to recapture reserved to Landlord hereunder shall also arise in the event Lessee shall, voluntarily or involuntarily, sell, assign, mortgage, pledge, encumber, or otherwise transfer this Lease or any interest herein, or sublet the Premises or any portion thereof, or suffer or permit the Premises to be occupied by any third person (the agents, employees, invitees, and customers of Lessee excepted), without first obtaining the written consent of Landlord and in such event the recapture option shall apply to the entire Premises and be exercisable by Landlord at any time after the occurrence of the event for which Landlord's consent was required but not obtained by Lessee. If this Lease is terminated pursuant to Landlord's recapture option with respect to only a portion of the Premises, the Base Rent required under this Lease and Lessee's Share shall be adjusted proportionately based on the rentable square footage retained by Lessee and the rentable square footage leased by Lessee hereunder immediately prior to such recapture and cancellation, and Landlord and Lessee shall thereupon execute an amendment of this Lease in accordance therewith. If Landlord so recaptures a portion of the Premises, it shall construct and erect at its sole cost such partitions as may be required to sever the space retained by Lessee from the space recaptured by Landlord provided, however, that such partitions shall be furnished to Property Standard only. Landlord may, without limitation, lease the recaptured portion of the Premises to the proposed sublessee or transferee, on the same or different terms as were proposed by Lessee, without liability to Lessee.

1 .4 Approval/Disapproval Procedure. Approval or disapproval by Landlord shall be made by the Director of Parks, Recreation, and Open Space Department or their designee. If Landlord disapproves the proposed transfer or sublease it shall notify Lessee in writing thereof and shall specify the reason(s) therefor provided, however, that in the event of any dispute between Landlord and Lessee regarding the reasonableness of Landlord's disapproval of the proposed transfer or sublease, Landlord shall not be limited to the reason(s) specified in such notice in justifying its disapproval. If Landlord approves the proposed transfer or sublease, it shall notify Lessee in writing thereof and Lessee shall, prior to the Proposed Effective Date, submit to Landlord all executed originals of the transfer or sublease agreement for execution by Landlord on the signature pages thereof after the words "The foregoing

is hereby consented to. Provided such transfer or sublease agreement is in accordance with the terms approved by Landlord, Landlord shall execute each original as described above and shall retain one original for its file and return the others to Lessee and no purported transfer or sublease shall be deemed effective as against Landlord and no proposed transferee or sublessee shall take occupancy unless such document is so executed by Landlord.

1 .5 Required Provisions. All transfer or sublease agreements shall (a) contain such terms as are described in Lessee's notice under Paragraph 16.2 above or as otherwise agreed by Landlord, (b) prohibit further assignments, transfers, or subleases, (c) impose the same obligations and conditions on the transferee or sublessee as are imposed on Lessee by this Lease (except as to rent and term or as otherwise agreed by Landlord), (d) be expressly subject and subordinate to each and every provision of this Lease, (e) have a term that expires on or before the expiration of the Term of this Lease, and (f) provide that Lessee and or transferee or sublessee shall pay Landlord the amount of any additional costs or expenses incurred by Landlord for repairs, maintenance, or otherwise as a result of any change in the nature of occupancy caused by the transfer or sublease.

1 .6 Transfer or Sublease Profit. Any sums or other economic consideration received by Lessee directly or indirectly in connection with any transfer or sublease hereunder (except to the extent of transfer or sublease commissions paid by Lessee to a licensed broker at prevailing rates for comparable space and transferee or sublessee leasehold improvement costs incurred by Lessee), whether described as rental or otherwise which exceed, in the aggregate, the total sums which Lessee is obligated to pay Landlord hereunder (prorated in the case of any sublease of less than all the Premises to reflect obligations allocable to that portion of the Premises sublet) shall be payable to Landlord as additional rent under this Lease. Within fifteen (15) days after written request therefor by Landlord, Lessee shall certify to Landlord the amount of all such sums or other economic consideration received and all such commissions and improvement costs incurred or expected to be received or incurred.

1 . No Release of Lessee. No consent of Landlord to any transfer or subletting by Lessee shall relieve Lessee of the obligations to be performed by Lessee under this Lease, whether occurring before or after such consent, transfer, or subletting. The consent by Landlord to any transfer or subletting shall not relieve Lessee from the obligation to obtain Landlord's express prior written consent to any other transfer or subletting. The acceptance by Landlord of payment from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any transfer or sublease, or to be a release of Lessee from any obligation under this Lease. If this Lease is assigned or transferred, or if the Premises or any part thereof are sublet or occupied by any person other than Lessee, Landlord may, after default by Lessee, collect the rent from any such assignee, transferee, sublessee, or occupant and apply the net amount collected to the rent reserved herein, and no such action by Landlord shall be deemed a consent to such assignment, transfer, sublease, or occupancy.

1 .8 Assumption of Obligations. Each transferee of Lessee shall assume all obligations of Lessee under this Lease and shall be and remain liable jointly and severally with Lessee for the payment of the rent and the performance of all the terms, covenants, conditions, and agreements herein contained on Lessee's part to be performed for the term of this Lease. No transfer shall be binding on Landlord unless the transferee or Lessee delivers to Landlord a counterpart of the instrument of transfer in recordable form which contains a covenant of assumption by the transferee

satisfactory in substance and form to Landlord, consistent with the above requirements. The failure or refusal of the transferee to execute such instrument of assumption shall not release or discharge the transferee from its liability to Landlord hereunder. Landlord shall have no obligation whatsoever to perform any duty to or respond to any request from any sublessee, it being the obligation of Lessee to administer the terms of its subleases.

1 .9 Deemed Transfers. If Lessee is a privately held corporation, or is an unincorporated association or partnership, the transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate from the date of execution of this Lease in excess of fifty percent (50 %) shall be deemed an assignment or transfer within the meaning and provisions of this Section. However, nothing in this Section shall prohibit Lessee from assigning this Lease or subletting the Premises or part thereof to wholly-owned subsidiaries or affiliates of the Lessee, provided Lessee gives Landlord at least thirty (30) days prior written notice of any such subletting or assignment.

1 .10 Involuntary Assignment. No interest of Lessee in this Lease shall be assignable by operation of law, including, without limitation, the transfer of this Lease by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment: (a) if Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Lessee is the bankrupt (b) if a writ of attachment or execution is levied on this Lease (c) if, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Lessee and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Lessee.

1 .11 Assignment of Sublease Rents. Lessee immediately and irrevocably assigns to Landlord, as security for Lessee's obligations under this Lease, all rent from any subletting of all or any part of the Premises, and Landlord, as assignee and as attorney-in- fact for Lessee for purposes hereof, or a receiver for Lessee appointed on Landlord's *ex parte* application, may collect such rents and apply same toward Lessee's obligations under this Lease except that, until the occurrence of an event of default by Lessee, Lessee shall have the right and license to collect such rents.

## 18. SALE OF PREMISES OR PROPERTY.

18.1 Each conveyance by Landlord or its successors in interest of Landlord's interest in the Property or the Premises prior to the expiration or termination of this Lease shall be subject to this Lease and shall relieve the grantor of all further liability or obligations as Landlord, except for such liability for obligations accruing prior to the date of such conveyance. If any Security Deposit has been given to Landlord, Landlord shall deliver such Security Deposit to Landlord's successor in interest and thereupon be released of all further liability with regard thereto, without the requirement of any notice thereof to Lessee. Lessee agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise.

## 19. ENTRY BY LANDLORD.

19.1 Upon twenty-four (24) hours notice, or in an emergency without notice, Landlord and its authorized representatives shall have the right to enter the Premises: (a) to inspect the

Premises (b) to supply any service provided to Lessee hereunder (c) to show the Premises to prospective brokers, agents, purchasers, lenders, or lessees (d) to post notices of nonresponsibility (e) to alter, improve, or repair the Premises and any other portion of the Property and (f) to erect scaffolding and other necessary structures, where required by the work to be performed, all without reduction of rent. Lessee hereby waives any claim for damages for any injury to or interference with Lessee's business or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have a key to unlock all doors in and about the Premises, excluding Lessee's vaults and safes, and Landlord shall have the right to use any means which Landlord deems proper to open said doors in an emergency, and any such entry to the Premises shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction of Lessee from any portion of the Premises.

## 20. INSOLVENCY OR BANKRUPTCY.

20.1 Acts of Default. Without limitation, the following events shall constitute a default under this Lease: (a) if Lessee shall admit in writing its inability to pay its debts as they mature (b) if Lessee shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors (c) if Lessee shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations (d) if Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent (e) if Lessee shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other similar relief for itself under any present or future applicable federal, state, or other statute or law relative to bankruptcy, insolvency, or other relief for debtors (f) if a court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Lessee seeking any relief described in the preceding clause (e) and (i) Lessee acquiesces in the entry of such order, judgment or decree (the term acquiesce as used in this Paragraph 19.1 shall include, without limitation, Lessee's failure to file a petition or motion to vacate or discharge any order, judgment, or decree within ten (10) days after entry of such order, judgment, or decree), or (ii) such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive, from the date of entry thereof (g) if Lessee shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of Lessee or all or any substantial part of Lessee's properties or its interest in the Premises (h) if any trustee, receiver, conservator, or liquidator of Lessee or of all or any substantial part of its property or its interest in the Premises shall be appointed without the consent or acquiescence of Lessee and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive or (i) if this Lease or any estate of Lessee hereunder shall be levied upon under any attachment or execution and such attachment or execution shall remain unvacated and unstayed for an aggregate of ten (10) days, whether or not consecutive.

20.2 Rights and Obligations Under the Bankruptcy Code. Upon the filing of a petition by or against Lessee under the United States Bankruptcy Code, Lessee, as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Lessee under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises the sum required under Section 4, and all other charges otherwise due pursuant to this Lease (c) to reject or assume this Lease within sixty (60) days

of the filing of such petition under Chapter of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter of the Bankruptcy Code (d) to give Landlord at least forty-five (45) days prior written notice of any abandonment of the Premises, any such abandonment to be deemed a rejection of this Lease (e) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code (f) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above and (g) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

## 21. DEFAULT BY LESSEE.

21.1 Acts Constituting Defaults. In addition to the events specified as a default under Paragraph 19.1 or elsewhere in this Lease, the failure of Lessee to perform each covenant made under this Lease, including any abandonment of the Premises by Lessee, shall constitute a default hereunder. However, Landlord shall not commence any action to terminate Lessee's right of possession as a consequence of a default until the period of grace with respect thereto, if any, has elapsed provided that such period of grace shall run concurrently with and not be in addition to any period during which Lessee may cure such default following the delivery of notice pursuant to C.R.S. 13-40-101, *et seq.*

21.1.1 Subject to the limitation expressed in Subparagraph 20.1.3, Lessee shall have a period of three (3) days from the date of written notice from Landlord within which to cure any default in the payment of any monetary obligations of Lessee under this Lease.

21.1.2 Lessee shall have a period of fifteen (15) days from the date of written notice from Landlord within which to cure any other default under this Lease which is capable of being cured provided, however, that with respect to any curable default which cannot reasonably be cured within fifteen (15) days, the default shall not be deemed to be uncured if Lessee commences to cure within five (5) days from Landlord's notice and thereafter prosecutes diligently and continuously to completion all acts required to cure the default.

21.1.3 There shall be no period of grace with respect to any default by Lessee which is not capable of being cured. Landlord and Lessee stipulate that the following defaults are not capable of being cured by Lessee: (a) any event specified as a default under Paragraph 19.1 (b) any unauthorized sale, assignment, mortgage, pledge, hypothecation, encumbrance, or other transfer of this Lease or any interest herein, or any unauthorized subletting of all or any portion of the Premises (c) the commission of waste by Lessee (d) the failure of Lessee to pay rent or any other monetary obligation of Lessee hereunder on the due date thereof where such failure occurs on more than three (3) consecutive occasions or more than six (6) occasions during any twelve (12) month period and (e) any other default which is recognized under Colorado law as being incurable.

21.2 Landlord's Remedies. If Lessee fails to cure a default, or in the event of a default which is not capable of being cured by Lessee, Landlord shall have the following rights and remedies in addition to any other rights and remedies available to Landlord at law or in equity:

21.2.1 The right to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as



Landlord does not terminate Lessee's right to possession. Acts of maintenance or preservation, efforts to relet the Premises, or the *ex parte* appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Lessee's right to possession

21.2.2 The right to terminate this Lease by giving notice to Lessee in accordance with applicable law

21.2.3 The right and power, as attorney-in-fact for Lessee, to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee, and to sell such property and apply the proceeds therefrom. Landlord, as attorney-in-fact for Lessee, may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term of this Lease) and at such rent and such other terms as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, (a) Lessee shall be immediately liable to pay to Landlord, in addition to indebtedness other than rent due hereunder, the cost of such subletting and such alterations and repairs incurred by Landlord and the amount, if any, by which the rent hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount agreed to be paid as rent for the Premises for such period or (b) at the option of Landlord, rents received from such subletting shall be applied first to payment of any indebtedness other than rent due hereunder from Lessee to Landlord second, to payment of any costs of such subletting and of such alterations and repairs third, to 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 becomes due hereunder. If Lessee has been credited with any rent to be received by such subletting under option (a) and such rent shall not be promptly paid to Landlord by the sublessee(s), or if such rentals received from such subletting under option (b) during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. For all purposes set forth in this Subparagraph 20.2.3, Landlord is hereby irrevocably appointed attorney-in-fact for Lessee, with power of substitution. No taking possession of the Premises by Landlord, as attorney-in-fact for Lessee, shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach and

21.2.4 The right to have a receiver appointed for Lessee, upon *ex parte* application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord as attorney-in-fact for Lessee pursuant to Subparagraph 20.2.3.

21.3 Landlord's Right to Cure Default. All covenants and agreements to be performed by Lessee under the terms of this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any reduction of rent. If Lessee shall be in default of its obligations under this Lease to pay any sum of money other than rental or to perform any other act hereunder, and if such default is not cured within the applicable grace period (if any) provided in Paragraph 20.1, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Lessee's part without waiving its rights based upon any default of Lessee and without releasing Lessee from any of its obligations. All sums so paid by Landlord and all incidental costs, together with interest thereon at the maximum legal rate of interest under Colorado law from the date of such payment or the incurrence of such cost

by Landlord, whichever occurs first, shall be paid to Landlord on demand. In the event of nonpayment by Lessee, Landlord shall have, in addition to any other rights or remedies hereunder, the same rights and remedies as in the case of default by Lessee for nonpayment of rent.

21.4 Security Interest Hereby Created. As additional security for the Lessee's payment of all rent and other sums due or to become due hereunder, Lessee hereby grants to Landlord a security interest in and to all of the personal property of Lessee situated on the Premises. Lessee shall execute such documents as the Landlord may reasonably require to evidence Landlord's security interest in such personal property. If Lessee is in default under this Lease, such personal property shall not be removed from the Premises (except to the extent such property is replaced with an item of equal or greater value) without the prior written consent of Landlord. It is intended by the parties hereto that this instrument shall have the effect of a security agreement and financing statement covering such personal property under the Uniform Commercial Code of the State of Colorado, as amended from time to time, and may be filed or recorded as such upon the occurrence of an event of default set forth herein, Landlord may exercise any rights of a secured party under said Uniform Commercial Code, including the right to take possession of such personal property and (after ten (10) days' notice to those parties as may be required by statute to be notified, which ten (10) day period is hereby determined to be commercially reasonable) to sell the same for the best price that can be obtained at public or private sale, and out of the money derived therefrom pay the amount due Landlord and all costs arising out of the execution of the provisions of this Section, paying the surplus, if any, to Lessee. If such personal property, or any portion thereof, shall be offered at a public sale, Landlord may become the purchaser thereof.

## 22. DEFAULT BY LANDLORD.

22.1 Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Lessee to Landlord specifying such failure provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if it commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Lessee agrees to give any Mortgagee a copy, by registered mail, of any notice of default served upon Landlord, provided that prior to such notice Lessee has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such Mortgagee. Lessee further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then any such Mortgagee shall have an additional forty-five (45) days within which to cure such default on the part of the Landlord, or, if such default cannot be cured within that time, then such additional time as may be necessary if within that forty-five (45) day period the Mortgagee has commenced and is pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so pursued. If Lessee recovers any judgment against Landlord for a default by Landlord of this Lease, the judgment shall be satisfied only out of the interest of Landlord in the Property and neither Landlord nor any of its partners, officers, employees, or agents shall be personally liable for any such default or for any deficiency.

## 23. DAMAGE AND DESTRUCTION.

23.1 Partial Damage- Insured. Except as otherwise provided in Paragraph 22.6, if the Premises or the Property are damaged by a risk covered under fire and extended coverage insurance insuring Landlord, then Landlord shall restore such damage provided insurance proceeds are made available to Landlord to pay eighty percent (80 %) or more of the cost of restoration, and provided such restoration by Landlord can be completed within eight (8) months after the commencement of work in the opinion of a licensed architect or engineer appointed by Landlord. In such event this Lease shall continue in full force and effect, except that Lessee shall, so long as the damage is not due to the act or omission of Lessee, be entitled to an equitable reduction of Base Rent and Lessee's Share of Property Operating Costs while such restoration takes place, such reduction to be based upon the extent to which the damage or restoration efforts materially interfere with Lessee's use of the Premises.

23.2 Partial Damage - Uninsured. If the Premises or the Property are damaged by a risk not covered by fire and extended coverage insurance insuring Landlord or if the insurance proceeds available to Landlord are less than eighty percent (80 %) of the cost of restoration, or if the restoration cannot be completed within eight (8) months after the commencement of work in the opinion of the licensed architect or engineer appointed by Landlord, then Landlord shall have the option either to (a) repair or restore such damage, this Lease continuing in full force and effect, with the Base Rent and Lessee's Share of Property Operating Costs to be equitably reduced as provided in Paragraph 22.1, or (b) give notice to Lessee at any time within ninety (90) days after such damage terminating this Lease as of a date to be specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after giving such notice. If such notice is given, this Lease shall expire and any interest of Lessee in the Premises shall terminate on the date specified in such notice. The Base Rent and Lessee's Share of Operating Costs during the period prior to the termination shall be reduced as provided in Paragraph 22.1 and paid up through the date of termination.

23.3 Total Destruction. If the Premises are totally destroyed or in Landlord's judgment the Premises cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, this Lease shall be terminated effective as of the date of the damage.

23.4 Landlord's Obligations. Any restoration by Landlord pursuant to Paragraphs 22.1 or 22.2 shall be commenced as soon as reasonably possible after the date of damage and prosecuted diligently to completion at the earliest possible date. Landlord shall not be required to carry insurance of any kind on Lessee's property and shall not be required to repair any injury or damage thereto by fire or other causes, or to make any restoration or replacement of any paneling, decorations, partitions, ceilings, floor covering, office fixtures, or any other improvements or property installed in the Premises by or at the direct or indirect expense of Lessee, and Lessee shall be required to restore or replace same in the event of damage. Lessee shall have no claim against Landlord for any loss suffered by reason of any such damage, destruction, repair, or restoration. Notwithstanding anything to the contrary contained in this Section 22, Landlord shall have no obligation to repair, reconstruct, or restore the Premises with respect to damage or destruction as described in this Section 22 occurring during the last twelve (12) months of the Term.

23.5 Waiver by Lessee. Lessee shall have no right to terminate this Lease as a result of any law, statute, ordinance, judicial decision, or governmental rule or regulation now or hereafter in effect pertaining to the damage and destruction of the Premises or the Property, except as expressly provided

herein.

23.6 Landlord's Decision Not to Restore. If the Premises or the Property are damaged under circumstances where Landlord would be required under Paragraph 22.1 to restore such damage, Landlord may decide not to so restore the damage and may instead elect to terminate this Lease if Landlord, in the exercise of its sole discretion, determines either (a) that the purpose for which the Premises or the Property were used prior to such damage or destruction is not the highest and best use for the Premises, the Property or the underlying real property, or (b) in the case of damage affecting more than twenty-five percent (25 %) of the gross floor area of the Property (whether or not the Premises are located within such affected area), that the Property should not be restored or reconstructed in its present configuration.

#### 24. CONDEMNATION.

24.1 If all or any part of the Premises are taken for public or quasi-public use by the right of eminent domain or otherwise, by a taking in the nature of inverse condemnation, with or without litigation, or are transferred by agreement in lieu thereof (any of the foregoing being referred to herein as a taking ), either Landlord or Lessee may, by written notice given to the other within thirty (30) days of receipt of notice of such taking, elect to terminate this Lease as of the date possession is transferred pursuant to the taking provided, however, that before Lessee may terminate this Lease for a taking, such taking shall be of such an extent and nature as to substantially impede Lessee's use of the Premises. If any part of the Property other than the Premises shall be taken, Landlord may elect to terminate this Lease. If the portion so taken includes the parking areas available to Lessee, and if replacement parking is not provided, then for a period of thirty (30) days after Landlord notifies Lessee that such replacement parking cannot be provided, Lessee shall have the right to terminate this Lease, effective at a time specified by Lessee not to exceed one hundred eighty (180) days from the date of the notice. No award for any partial or entire taking shall be apportioned, and Lessee hereby assigns to Landlord any and all rights of Lessee to any portion of the award provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Lessee to assign to Landlord any award made to Lessee for taking of personal property belonging to Lessee. In the event of a partial taking which does not result in a termination of this Lease, Base Rent and Lessee's Share of Operating Costs shall be reduced in proportion to what the area of the Premises taken bears to the area of the Premises immediately prior to the taking. No temporary taking of the Premises or any part of the Property shall terminate this Lease, except at Landlord's election, or give Lessee any right to any abatement of Base Rent or Operating Costs, except that Base Rent and Operating Costs shall be reduced in accordance with Paragraph 22.1 during that portion of any temporary taking lasting more than thirty (30) days.

25. ESTOPPEL CERTIFICATES. Within twenty-one (21) days following any written request which Landlord or Lessee may make from time to time, Lessee or Landlord, without any charge therefor, shall execute, acknowledge, and deliver to the other a statement certifying: (a) the Commencement Date of this Lease (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications) (c) the date to which the rent and other sums payable under this Lease have been paid (d) the fact that there are no current defaults under this Lease by either Landlord or Lessee except as specified in the statement and (e) such other matters requested by Landlord or Lessee. Landlord and Lessee intend that any statement delivered

pursuant to this Paragraph may be relied upon by a mortgagee, beneficiary, purchaser, or prospective purchaser of the Property or any interest therein. If Landlord elects to sell the Property or to obtain loans secured by liens on the Property, Lessee, promptly after demand, shall provide to any such purchaser or lender financial statements of Lessee reasonably required by the purchaser or lender. The financial statements so provided shall be kept confidential as to any parties other than the purchaser or lender.

## 26. SUBORDINATION AND ATTORNMENT.

26.1 Subordination. Upon the written request of Landlord or any Mortgagee, Lessee will in writing subordinate its rights under this Lease to the lien of any mortgage or deed of trust now or hereafter in force against the Premises, the Property, or the underlying land, and to all advances made or hereafter to be made upon the security thereof, and to all extensions, modifications, and renewals thereunder. Lessee shall also, upon Landlord's request, subordinate its rights under this Lease to any ground or underlying lease which may now exist or hereafter be executed affecting the Property and or the underlying land. Lessee shall have the right to condition its subordination upon the execution and delivery of an attornment and nondisturbance agreement, as described in Paragraph 26.2, between the Mortgagee or the lessor under any such ground or underlying lease and Lessee. Lessee shall not subordinate its rights hereunder to any lien other than that of a first mortgage or first deed of trust, except with the prior written consent of the Mortgagee holding such first mortgage or deed of trust.

26.2 Attornment. Upon the written request of the Landlord or any Mortgagee or any lessor under a ground or underlying lease, Lessee shall attorn to any such Mortgagee or lessor, provided such Mortgagee or lessor agrees that if Lessee is not in default under this Lease, Lessee's possession of the Premises in accordance with the terms of this Lease shall not be disturbed. Such agreement shall provide, among other things, (a) that this Lease shall remain in full force and effect, (b) that Lessee pay rent to said Mortgagee or lessor from the date of said attornment, (c) that said Mortgagee or lessor shall not be responsible to Lessee under this Lease except for obligations accruing subsequent to the date of such attornment, and (d) that Lessee, in the event of a foreclosure or a deed in lieu thereof or a termination of the ground or underlying lease, will enter into a new lease with the Mortgagee, lessor, or other person having or acquiring title on the same terms and conditions as this Lease and for the balance of the Term.

26.3 Nonmaterial Amendments. If any lender should require as a condition of loans secured by a lien on the Premises, the Property, or the land underlying the Property any modification of this Lease, Lessee will approve and execute any such modifications promptly after request, provided no such modification shall relate to the rent payable hereunder, the length of the Term, or otherwise materially change the rights or obligations of Landlord or Lessee.

27. LIGHT, AIR AND VIEW. No diminution of light, air, or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Lessee to any reduction of rent under this Lease, result in any liability of Landlord to Lessee, or in any other way affect this Lease.

28. WAIVER. If either Landlord or Lessee waives the performance of any term, covenant, or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant, or condition itself or a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. Furthermore, the acceptance of rent by Landlord shall not

constitute a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such rent. Failure by Landlord to enforce any of the terms, covenants, or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Lessee. Waiver by Landlord of any term, covenant, or condition contained in this Lease may only be made by a written document signed by Landlord.

29. ATTORNEY FEES. In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant, or condition of this Lease on the part of Landlord, or if the services of an attorney are employed for the purpose of pursuing such matters (whether or not an action is commenced), Landlord shall be entitled to recover its reasonable attorney fees together with all allowable costs.

30. NOTICES.

1. Form and Delivery of Notice. Any notice required or permitted under this Lease shall be in writing and shall be delivered either personally or by depositing same in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the intended recipient at such party's address set forth in the Fundamental Lease Provisions, or at such other address as such party has theretofore specified by written notice delivered in accordance with this Paragraph.

If to Lessee:

address

If to the Landlord:

City of Aurora  
c/o Real Property Services Manager  
15151 E. Alameda Pkwy., Suite 3200  
Aurora, CO 80012  
Phone: 303- 39- 300  
Email: [hreynoso@auroragov.org](mailto:hreynoso@auroragov.org) or [publicworks@auroragov.org](mailto:publicworks@auroragov.org)

With a copy to:

City of Aurora  
City Attorney's Office  
15151 E. Alameda Pkwy, Suite 5300  
Aurora, CO 80012.

30.1 Sufficiency of Notice. Any notice delivered in person shall be effective on the date of delivery. Any notice delivered by mail in the manner specified in Paragraph 30.1 shall be deemed delivered and effective on the earlier of the third day following deposit thereof in the United States mail or on the delivery date shown on the return receipt prepared in connection therewith.

31. MERGER. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Lessee under this Lease, there shall never be a merger of the

estates of Landlord and Lessee under this Lease, but instead the separate estates, rights, duties, and obligations of Landlord and Lessee, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

32. SUBSTITUTED PREMISES. Landlord reserves the right at any time, upon not less than ninety (90) days prior written notice to Lessee, to substitute for the Premises a comparable area within the Property having a substantially equivalent rentable area as the Premises, and thereupon such other area shall be deemed to be the Premises covered by this Lease. If the substituted area is smaller or larger than the Premises, the Base Rent, Security Deposit, and Lessee's Share of Property Operating Costs specified in this Lease shall be adjusted proportionately. The expense of moving Lessee, its property, and equipment to the substitute premises and of improving said substitute premises to a condition similar to the then-current condition of the Premises hereunder shall be borne by Landlord.

33. DEFINED TERMS AND HEADINGS. The words Landlord and Lessee as used herein shall include the plural as well as the singular. Words used in neuter gender include the feminine and masculine, where applicable. If there is more than one Lessee, the obligations imposed under this Lease upon Lessee shall be joint and several. The headings and titles to the Sections and Paragraphs of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of the Lease.

34. TIME AND APPLICABLE LAW. Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of Colorado. Each reference in this Lease to a specific statute shall include any successor to such statute.

35. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 16 hereof and the limitation expressed below, the terms, covenants, and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the parties hereto. However, the obligations imposed on Landlord under this Lease shall be binding upon Landlord's successors and assigns only during their respective periods of ownership of the Premises.

36. AGENTS FOR LANDLORD AND LESSEE.

36.1 Landlord. Landlord may act in any matter provided for herein by its Real Property Services Manager and any other person who may from time to time be designated in writing by Landlord to act in its behalf.

36.2 Lessee. Lessee shall designate in writing one or more persons to act on Lessee's behalf in any matter provided for herein and may from time to time change such designation. In the absence of any such designation, the person or persons executing this Lease shall be deemed to be authorized to act on behalf of Lessee in any matter provided for herein.



36.2.1 If Lessee is a corporation, each individual executing this Lease on behalf of Lessee represents and warrants that Lessee is qualified to do business in Colorado and that such individual is duly authorized to execute and deliver this Lease on behalf of Lessee and shall deliver appropriate certification to that effect if requested.

36.2.2 If Lessee is a partnership, joint venture, or other unincorporated association, each individual executing this Lease on behalf of Lessee represents that this Lease is binding on Lessee. Furthermore, Lessee agrees that the execution of any written consent hereunder, or any written modification or termination of this Lease, by any general partner of Lessee or any other authorized agent of Lessee, shall be binding on Lessee.

3. ENTIRE AGREEMENT. This Lease, together with its exhibits (all of which are incorporated herein by this reference), contains all of the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

38. SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

39. BROKERS. Lessee shall hold Landlord harmless from all damages (including attorney fees and costs) resulting from any claims that may be asserted against Landlord by any broker, finder, or other person with whom Lessee has or purportedly has dealt, except for the Broker(s) identified in the Fundamental Lease Provisions.

40. NAME OF PROPERTY. Lessee shall not use the name of the Property for any purpose other than the address of the business to be conducted by Lessee in the Premises. Lessee shall not use any picture of the Property in its advertising, stationery, or in any other manner so as to imply that the entire Property is leased by Lessee. Landlord expressly reserves the right at any time to change the name or street address of the Property without in any manner being liable to Lessee therefor.

41. GUARANTEE. If Lessee's obligations under this Lease shall have been guaranteed, any such guarantee shall be deemed a material part of the consideration for Landlord's execution of this Lease. If the guarantor under any such guarantee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes or is the subject of any proceeding under the Bankruptcy Act or other similar law for the protection of creditors (or, if the guarantor is a partnership or consists of more than one person or entity, if any partner of the partnership or such other person or entity is or becomes bankrupt or insolvent, institutes any such proceeding, or makes an assignment for the benefit of creditors), then Landlord shall have the option to terminate this Lease upon thirty (30) days' written notice unless Lessee, within such thirty (30) day period, provides Landlord with either (a) a substitute or additional guarantor satisfactory to Landlord and any Mortgagee, or (b) adequate assurance of the performance of each and every obligation of Lessee hereunder, satisfactory to

Landlord and such Mortgagee provided, however, that no such termination of this Lease shall become effective without the prior written consent of such Mortgagee.

42. RECORDABILITY OF LEASE. If requested at any time by Landlord, Lessee shall execute (a) a short form of this Lease in recordable form which may, at Landlord's option, be placed of record and (b) a memorandum of this Lease on such form as may be prescribed by the Colorado Department of Revenue, or any other appropriate form, which memorandum may, at Landlord's option, be filed with said Department so that Landlord may avail itself of the provisions of statutes such as C.R.S. 39-22-604, 39-26-111, and 39-26-205. Lessee agrees that in no event shall this Lease or a short form hereof be recorded without Landlord's express prior written consent, which consent Landlord may withhold in its sole discretion.

43. CONSTRUCTION. All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease shall be used to interpret the Lease. All rights and remedies of Landlord and Lessee shall, except as otherwise expressly provided, be cumulative and nonexclusive of any other remedy at law or in equity.

44. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, Lessee shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

45. EXECUTION BY LANDLORD. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises. This document becomes effective and binding only upon execution and delivery hereof by Lessee and by Landlord. No act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

46. FEASIBILITY OF LOCATION. LESSEE ACKNOWLEDGES THAT LESSEE HAS MADE ITS OWN INDEPENDENT INVESTIGATION AND EVALUATION OF THE FEASIBILITY OF THE LOCATION OF THE PREMISES AND THE PROPERTY FOR THE OPERATION OF LESSEE'S BUSINESS. LESSEE FURTHER ACKNOWLEDGES THAT, IN EXECUTING THIS LEASE, LESSEE IS NOT IN ANY WAY RELYING UPON ANY STATEMENTS OR REPRESENTATIONS BY LANDLORD, OR BY LANDLORD'S AGENTS, REPRESENTATIVES, OR EMPLOYEES, CONCERNING POSSIBLE VOLUME OF BUSINESS, TRAFFIC IN THE PROPERTY, FUTURE EXPANSION OR CHANGES IN THE CONFIGURATION OF THE PROPERTY OR THE PROPERTY'S COMMON AREAS, FUTURE LESSEES IN THE PROPERTY, OR ANY OTHER MATTERS OR COMMITMENTS RELATING TO THE PREMISES OR THE PROPERTY WHICH ARE NOT SPECIFICALLY DESCRIBED IN THIS LEASE.

IN WITNESS WHEREOF the parties have executed this Lease on the date first above

written.

LANDLORD:

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LESSEE:

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E HIBITS:

- Exhibit A: Survey of Premises (not attached)
- Exhibit B: Work Agreement for Lessee Improvements
- Exhibit C: Description of Crops
- Exhibit D: Rules and Regulations

# ILLUSTRATION FOR EXHIBIT A



## CITY OF AURORA, COLORADO

<b>DRAWN BY:</b> EWA	<b>SCALE:</b> NONE	<b>R.O.W. FILE NUMBER</b> N/A
<b>CHECKED BY:</b> HR	<b>DATE:</b> 3/29/2023	<b>JOB NUMBER:</b> N/A

LEASE AREAS ON CITY OWNED LAND SITUATED IN THE SE 1/4 OF SEC. 12, T4S, R67W, 6TH P.M., CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO



E HIBIT B  
WORK AGREEMENT FOR LESSEE IMPROVEMENTS

A. Lessee Improvements on Premises.

1. Greenhouse Food Production Program. Lessee shall construct, operate, and maintain approximately three (3) \_\_\_\_\_ square feet Greenhouses at its sole cost and expense. The improvements necessary to construct, operate, and maintain the greenhouses shall consist of (for example: hi-low(s), rack(s), coder(s), dock(s), conveyor(s), potting machine(s), transplanter(s), pump(s), etc.) and all improvements and connections required to operate a greenhouse, including (for example: three (3) phase extensions and power box(es) a \_\_\_\_\_ square-foot structure to house electrical and maintenance equipment security fencing and gating, with cameras, enclosing the Premises and safety signage (collectively Lessee Improvements ). Landlord has no obligation to make improvements on the Premises or Landlord's real property to accommodate the greenhouse or any operations related thereto. Lessee may be required to improve interior access within Premises to accommodate its use.

2. Removable Lessee Improvements. Lessee may make minor improvements of a temporary or removable nature that do not damage or otherwise cause destruction of the Premises at Lessee's expense. Landlord agrees to let the Lessee remove such improvements, even though they are legally fixtures, at any time this Lease is in effect or within \_\_\_\_\_ days thereafter so long as Lessee is not in default of any of the terms contained in this Lease, provided Lessee leaves in good condition that property from which such improvements are removed or replaced.

3. No Additional Compensation for Lessee Improvements. Lessee shall have no right to compensation for any Lessee Improvements or other improvements that are not removed upon expiration or earlier termination of this Lease, except as mutually agreed in writing before their installation.

A. Lessee Improvements. Title to the Lessee Improvements remains with Lessee during the term of this Lease and any extensions thereof. Upon expiration of this Lease, title to the Lessee Improvements shall be designated in accordance with this lease.

B. Repair of Landlord Property. In the event that any damage occurs to Landlord's real or personal property, including without limitation any underground or above ground utilities, caused by and in the course of any activity undertaken by Lessee under this Lease, Lessee shall facilitate the repair of such damage to return Landlord's real or personal property to substantially the same condition as it existed prior to such damage, at Lessee's sole expense.

C. Improvements Off Leased Premises. Lessee shall be responsible for installation, construction, reconstruction, modification, and removing improvements to access roads, improving and constructing other items to city of Aurora standards that are necessary or useful in Lessee's use of the Premises.

E HIBIT C  
Description of Crops

(Example) 125,000 cilantros in Greenhouse 1, Section A

(Example) 125,000 broccolis in Greenhouse 2, Section A

REPEAT OR MODIFY AS NECESSARY

EXHIBIT D  
RULES AND REGULATIONS

The rules and regulations set forth in this Exhibit shall be and hereby are made a part of the Lease to which they are attached. Whenever the term Lessee is used in these rules and regulations, it shall be deemed to include Lessee, its employees or agents, and any other persons permitted by Lessee to occupy or enter the Property. The following rules and regulations may from time to time be modified by Landlord in Landlord's sole discretion. If there is any conflict between these Rules and Regulations and the provisions of the Lease, the provisions of the Lease shall prevail.

1. OBSTRUCTION. The sidewalks, entries, passages, corridors, halls, lobbies, stairways, elevators (if any), and other common areas or facilities of the Property shall be controlled by Landlord and shall not be obstructed by Lessee or used for any purpose other than ingress or egress to and from the Premises. Lessee shall not place any item in any of such locations, whether or not any such item constitutes an obstruction, without the prior written consent of Landlord. Landlord shall have the right to remove any obstruction or any such item without notice to Lessee and at the expense of Lessee.

2. ORDINARY BUSINESS HOURS. The ordinary business hours of the Property shall be from 6:00 A.M. to 6:00 P.M., Monday through Friday of each week, and from 8:00 A.M. to 2:00 P.M. every Saturday, excluding the legal holidays of New Year's Day, Martin Luther King, Jr Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day and the Friday after, and Christmas Day.

3. DELIVERIES. Lessee shall ensure that all deliveries of supplies to the Premises shall be made only upon the area designated by Landlord for deliveries and only during the ordinary business hours of the Property. If any person delivering supplies to Lessee damages any part of the Property, Lessee shall pay to Landlord upon demand the amount required to repair such damage.

4. MOVING. Furniture and equipment shall be moved in or out of the Property only upon prior notice to and with the approval of Landlord and only upon the areas designated by Landlord for deliveries and then only during such hours and in such manner as may be prescribed by Landlord. Landlord shall have the right to approve or disapprove the movers or moving company employed by Lessee and Lessee shall cause such movers to use only the loading facilities and elevator designated by Landlord. If Lessee's movers damage any part of the Property, Lessee shall pay to Landlord upon demand the amount required to repair such damage.

5. HEAVY ARTICLES. No safe or article, the weight of which may, in the reasonable opinion of Landlord, constitute a hazard or damage to the Property or its equipment, shall be moved into the Premises. Safes and other heavy equipment, the weight of which will not constitute a hazard or damage the Property or its equipment shall be moved into, from, or about the Property only upon prior notice to and with the approval of Landlord and only during such hours and in such manner as shall be prescribed by Landlord, and Landlord shall have the right to designate the location of such articles in the Premises.

6. NUISANCE. Lessee shall not do or permit anything to be done on the Premises or in the Property or bring or keep anything therein which would in any way constitute a nuisance or waste, or obstruct or interfere with the rights of Landlord, or in any way injure or annoy them, or conflict with the laws relating to fire, or with any regulations of the fire department, or with any insurance policy upon the Property or any part thereof, or conflict with any of the laws, codes, rules, or ordinances of any governmental authority having jurisdiction over the Property.

7. PROPERTY SECURITY. Landlord may restrict access to and from the Premises and the Property outside the ordinary business hours of the Property for reasons of Property security. Landlord may require identification of persons entering and leaving the Property and, for this purpose, may issue Property passes to Lessees of the Property.

8. PASS KEY. The Real Property Services Manager may at all times keep a pass key to the Premises, and he and other agents of the Landlord shall at all times be allowed admittance to the Premises.

9. LOCKS AND KEYS FOR PREMISES. No additional lock or locks shall be placed by Lessee on any door in the Property and no existing lock shall be changed unless written consent of Landlord shall first have been obtained. Two (2) keys to the Premises and to the toilet rooms if locked by Landlord will be furnished by Landlord, and Lessee shall not have any duplicate key made. At the termination of this tenancy Lessee shall promptly return to Landlord all keys to offices and toilet rooms.

10. USE OF WATER FIXTURES. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to the same from misuse on the part of Lessee or its guests or employees shall be paid for by Lessee. No person shall waste water in any manner.

11. NO ANIMALS EXCESSIVE NOISE. With the exception of seeing-eye dogs for the blind or assistance dogs, no animals shall be allowed in the offices, halls, corridors, and elevators (if any) of the Property. No person shall disturb the occupants of this or adjoining Property or space by the use of any radio or musical instrument or by the making of loud or improper noises.

12. BICYCLES. Bicycles or other vehicles shall not be permitted anywhere inside or on the sidewalks outside of the Property, except in those areas designated by Landlord for bicycle parking.

13. TRASH. Lessee shall not allow anything to be placed on the outside of the Property, nor shall anything be thrown by Lessee out of the windows or doors, or down the corridors, elevator shafts, or ventilating ducts or shafts of the Property. All trash shall be placed in receptacles provided by Lessee on the Premises or in any receptacles provided by Landlord for the Property.

14. WINDOWS. Except as necessary to operate the Greenhouse, no window shades, blinds, screens, or draperies will be attached or detached by Lessee and no awnings shall be placed over the windows without Landlord's prior written consent. Lessee agrees to abide by Landlord's rules with respect to maintaining uniform curtains, draperies, and linings at all windows and hallways so that the Property will present a uniform exterior appearance. Lessee will use its best efforts to have all curtains, draperies, and blinds closed at the end of each day in order to help conserve energy. Except



in case of fire or other emergency, Lessee shall not open any outside window because the opening of windows interferes with the proper functioning of the Property heating and air conditioning systems.

15. **HAZARDOUS OPERATIONS AND ITEMS.** Lessee shall not install or operate any steam or gas engine or boiler or carry on any mechanical business on the Premises without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion. The use of oil, gasoline, noxious gas, flammable or combustible liquids, or material for heating, lighting, or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Property. Lessee shall not use any method of heating, cooling, or air conditioning of the Premises other than that supplied by Landlord.

16. **HOURS FOR REPAIRS, MAINTENANCE AND ALTERATIONS.** Any repairs, maintenance, and alterations required or permitted to be done by Lessee under the Lease shall be done only during the ordinary business hours of the Property unless Landlord shall have first consented to such work being done outside of such times. If Lessee desires to have such work done by Landlord's employees on Saturday, Sundays, holidays, or weekdays outside of ordinary business hours, Lessee shall pay the extra cost of such labor.

17. **NO DEFACING OF PREMISES.** Except as permitted by Landlord, Lessee shall not mark upon, paint signs upon, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions, or floors of the Premises or of the Property, and any defacement, damage, or injury caused by Lessee shall be paid for by Lessee.

18. **CHAIR PADS.** During the entire term of this lease, Lessee shall, at its expense, install and maintain under all chairs a chair pad or carpet casters to protect the carpeting.

19. **SOLICITATION FOOD AND BEVERAGES.** Landlord reserves the right to restrict, control, or prohibit canvassing, soliciting, and peddling within the Property. Lessee shall not grant any concessions, licenses, or permission for the sale or taking of orders for food, beverages, services, or merchandise in the Property, nor install nor permit the installation or use of any machine or equipment for dispensing food, beverages, services, or merchandise, nor permit the preparation, serving, distribution, or delivery of food, beverages, services, or merchandise without the prior written approval of Landlord and in compliance with arrangements prescribed by Landlord. No cooking shall be done or permitted by any Lessee in the Property.

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

21. **ELECTRICIANS.** Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes, and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

22. **LANDLORD CONTROL OF PUBLIC AREAS.** Landlord shall have the right to control and operate the public portions of the Property, and the public facilities, and heating and air conditioning,

as well as facilities furnished for the common use of the Lessee, in such manner as it deems best for the benefit of the Landlord.

23. AFFIXED OBJECTS. Landlord shall approve in writing the method of attachment of any objects affixed to walls, ceilings, or doors.



# 151 Potomac Greenhouses

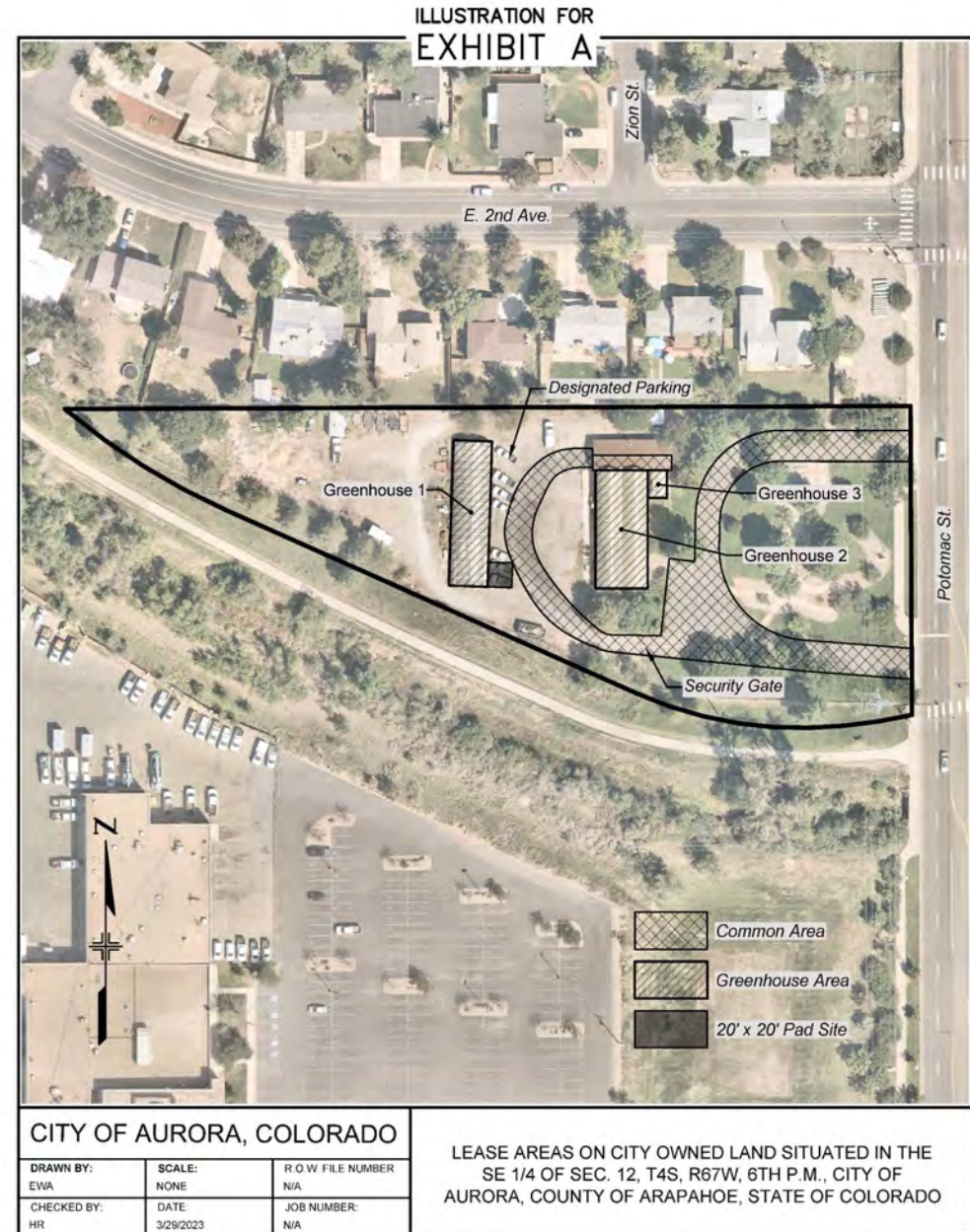
**Sponsor: Councilmember Crystal  
Murillo**

**Study Session  
August 21, 2023**



# OVERVIEW

- 151 POTOMAC STREET
  - Greenhouse 1
  - Greenhouse 2
  - Greenhouse 3 – not a part
- Total rentable area ~7,600 sq. ft.
- High level of deferred maintenance
- Currently used for seasonal growing by PROS staff
- Capital maintenance necessary to renovate major systems and components





# 151 Potomac Greenhouse 1

- Approximately 3,600 square feet
- All personal property will be removed
- Exterior, structural, HVAC, electrical, plumbing all require capital renovations
- All greenhouses to be leased as-is, where-is, with all faults
- Tenant will be required to maintain, repair, or otherwise modify the buildings after city capital renovations completed





# 151 Potomac Greenhouse 2

- Approximately 4,000 square feet
- All personal property will be removed
- Exterior, structural, HVAC, electrical, plumbing all require capital renovations
- All greenhouses to be leased as-is, where-is, with all faults
- Tenant will be required to maintain, repair, or otherwise modify the buildings after city capital renovations completed





# 151 Potomac Greenhouse 3 *NOT PART OF LEASE*

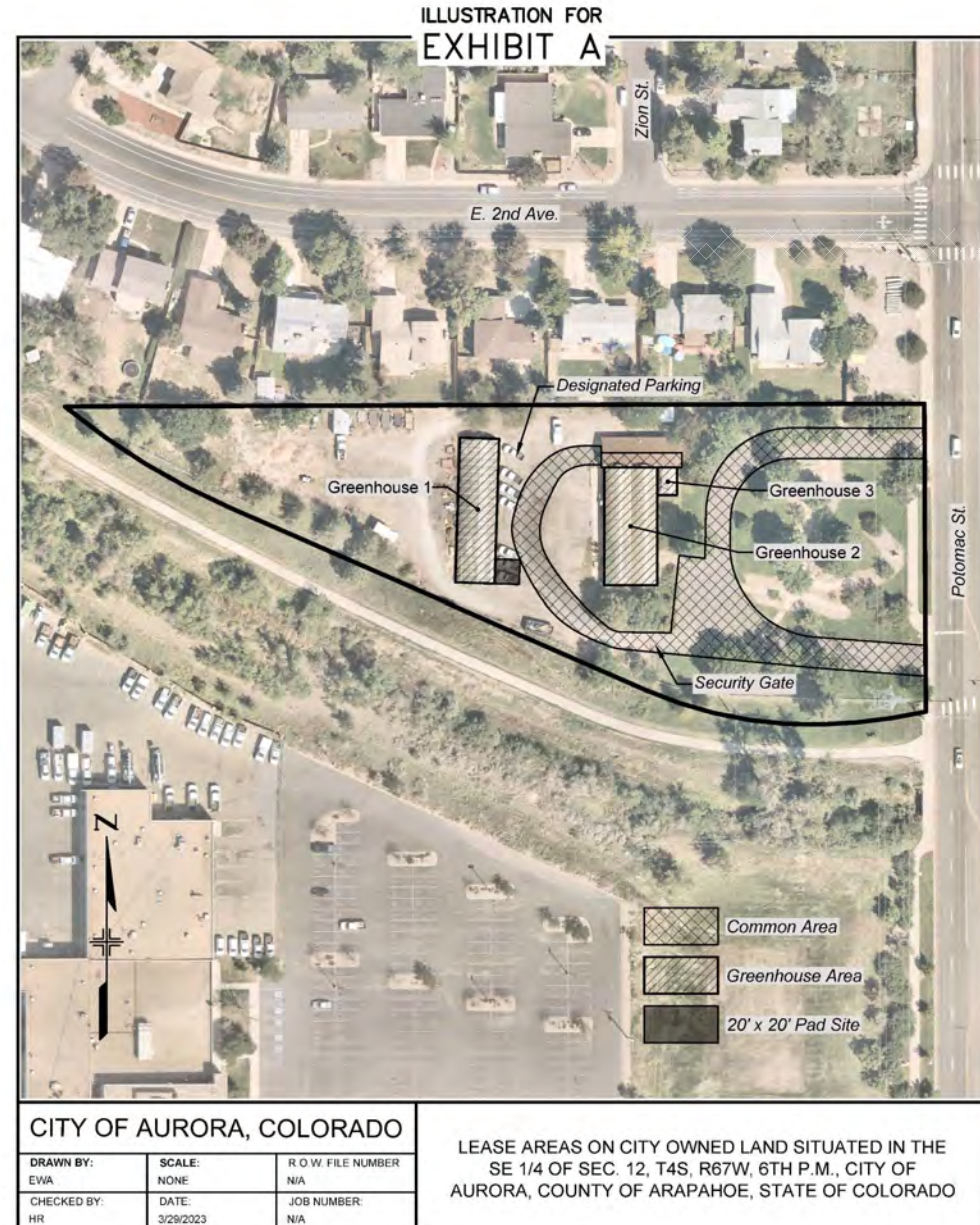
- Approximately 400 square feet
- All personal property will be removed
- Exterior, structural, HVAC, electrical, plumbing all require capital renovations
- Tenant will be required to maintain, repair, or otherwise modify the buildings after city capital renovations completed





# Fall 2021 Budget Workshop Recap

- Council endorsed setting aside \$350K pending responses to the following questions:
  - Is \$350k enough to complete capital repairs?
  - What is the operational business plan for a non-profit user?
  - What is the financial suitability of proposed business plan?
    - No financial contribution from city beyond capital cos





# Process

- April 2023 – Real Property issued RFP
  - RFP solicitation on the city’s website, multiple listing services, and LoopNet.
- May 10, 2023: Received one proposal from Food Justice NW Aurora (FJNWA)
  - Proposal was evaluated based on criteria identified in RFP
  - FJNWA was top-ranked proposal
- FJNWA engaged Prospiant, a greenhouse renovation company, to provide a construction estimate for capital repairs to the greenhouses which came in at approx. \$390k
  - If Council is supportive of the lease, then a Tenant Improvement Allowance (TIA) in an amount not to exceed \$350k would be negotiated into the final lease agreement which is subject to city council approval



## PROPOSAL DETAILS

Lease Term	5-year Initial Term, w/Option to Extend additional 5 years
Rental Rate	\$1/Month
<b>Successful Respondent</b>	<b>Food Justice NW Aurora (FJNWA)</b>
Financial detail	FJNWA is a community-based organization whose mission is to promote and advance an integrated, vibrant local food system with a nonprofit status through fiscal sponsorship by The Aurora Economic Opportunity Coalition (AEOC) . The AEOC is a 501(c)3 nonprofit organization that was established in 2016. As part of this fiscal sponsor relationship, AEOC files taxes to encompass FJNWA’s financials. Therefore, FJNWA provides AEOC’s W-9
Proposed operational business plan	Operations to commence in January 2024 in Greenhouse 1, subject to completion of renovations in 2023 to Greenhouse 1. Greenhouse 2 to go online in 2025.
Maintenance of Greenhouses	FJNWA to assume all responsibility for maintaining the Greenhouses upon completion of city renovations.
Partner agencies	Denver Urban Gardens, Project Worthmore, Aurora Economic Opportunity Coalition, Delaney Farms, Pickens Technical College, Georgia Green Project, Village Exchange Center (Village Farm), Aurora Seed Farm, Rebel Marketplace/Urban Symbiosis, and local farmers
Incentives for City	City will receive an allocation of 500 sq. ft. in Greenhouse 1 for PROS and other city programs to use, co-branding plant sales, and co-branding programming occurring onsite. Surplus plant starts that are not sold would be donated to community and school garden programs in the neighborhood.



# CULTIVATE AURORA: A COMMUNITY GREENHOUSE PROJECT

Presented to Aurora City Council on August 21, 2023  
by Caitlin Matthews, Food Justice NW Aurora,  
and Jenna Smith, AgroEco Solutions



## CULTIVATE AURORA VISION

- Grow food-producing plant starts and perennials for Aurora's residents, farms, and organizations
- Provide education and training about urban agriculture and food production to Aurora's residents





## CULTIVATE AURORA MODEL

To reactivate the City of Aurora greenhouses and to launch and sustain a nonprofit greenhouse program, we developed:

- Business plan
- Operations plan
- Financial model



## PARTNERSHIPS AND COLLABORATION

Village Exchange Center (Village Farm)

Project Worthmore (Delaney Farm)

Denver Urban Gardens

Urban Symbiosis

Aurora Seed Farm

a georgia green project

Pickens Technical College

Partners engage in various ways...

- Program advisory partner
- Technical advisory partner
- Sales and distribution partner
- Educational programming partner
- Customer of greenhouse products





## BENEFITS TO AURORA COMMUNITY

- Create new jobs
- Increase local food production
  - Increase access to fresh food
- Educate more community growers





## SALES AND DISTRIBUTION CHANNELS

- Direct to Aurora community
  - Farmer contract grows
- Organizational and institutional partners

The greenhouses are critical infrastructure for the local food economy





# SUCCESSFUL NONPROFIT GREENHOUSES IN THE METRO AREA

- Wellpower – Dahlia Campus for Health and Wellbeing
- Groundworks Denver
- GrowHaus



# PROSPIANT

- Prospiant (formerly Nexus and Rough Brothers) has over 100 years of combined experience in the greenhouse industry
- Full service company whose capabilities include manufacturing, design, construction, structural engineering, and project management
- Market segments consist of commercial, institutional, retail, and vegetable
- Considered the leading business within the agtech industry, known for quality and integrity
- Wide customer base and with repeat business
- Clients in Colorado include Denver Botanic Gardens, CSU Extension, US Department of Agriculture, Pickens Technical College, and Dahlia Campus for Health and Wellbeing





## Prospiant renovation projects







Prosplant renovation projects





VISION FOR THE  
GREENHOUSE REFURBISHMENT



BEFORE



AFTER

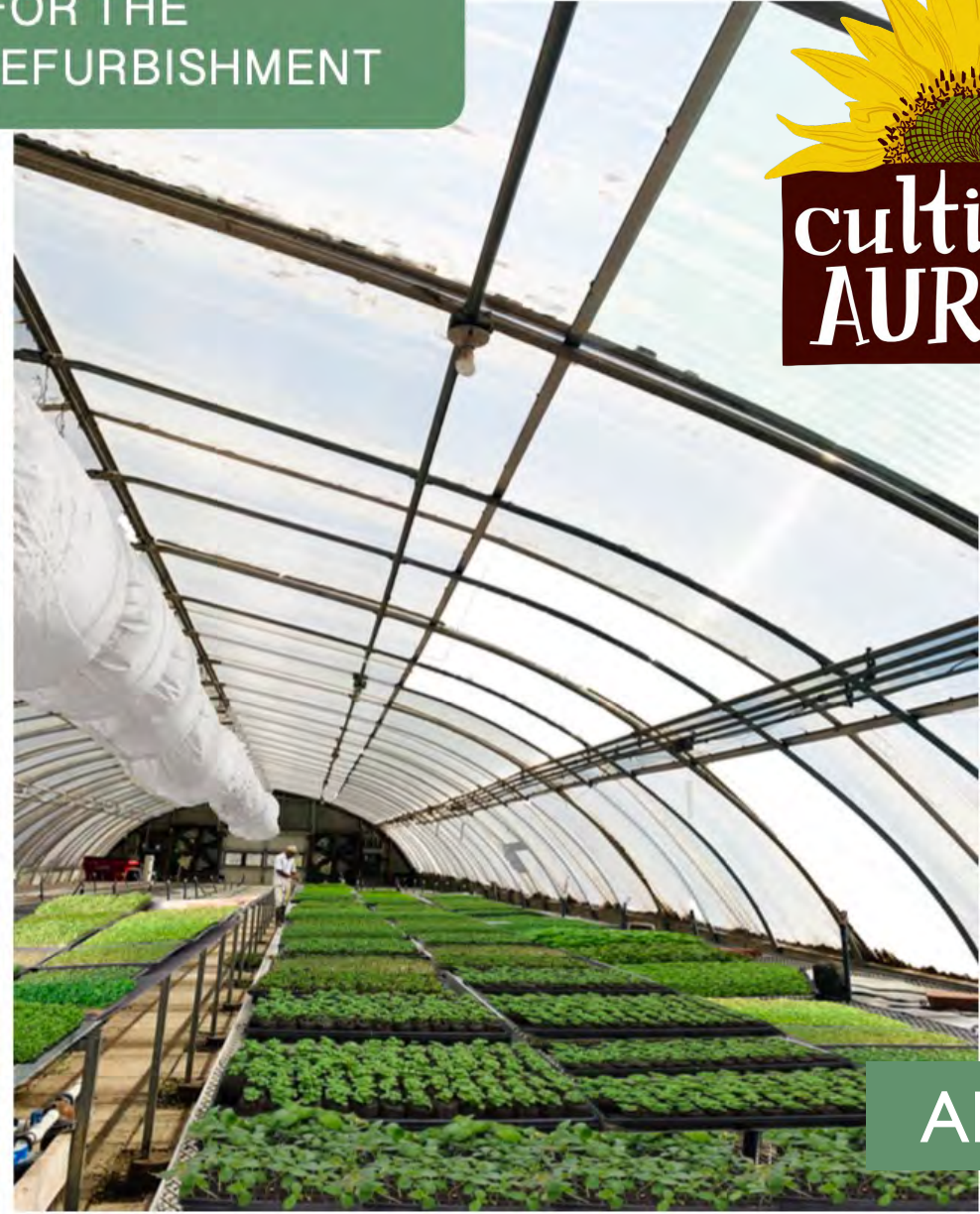


Photo credit: Diana Caruso



## OUR COMMITMENT

- Additional capital improvements in addition to the City of Aurora's renovations
- ADA accessibility in the teaching greenhouse
- Assume responsibility for start-up, operations, programming, and maintenance costs
- Secured grants from the Colorado Health Foundation, Big Green, Centura Health, and others







THANK YOU FOR YOUR CONSIDERATION.

Caitlin Matthews | [caitlin@foodjusticenwaurora.org](mailto:caitlin@foodjusticenwaurora.org)

Photo credits: Prospiant, Caitlin Matthews, Diana Caruso, Unsplash (Jael Rodriguez, Zoe Schaffer), Pexels (Zen Chung)

# QUESTION FOR COUNCIL

- Does City Council support moving forward with a lease to FJNWA for the greenhouses at 151 Potomac Street for a 5-year Initial Term, with Option to Extend additional 5 years?
- Does City Council support staff moving forward with city capital repairs to the Greenhouses?

