

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease") is made this 5<sup>th</sup> day of February, 2014, by and between Lita West (the "Owner"), and Wood River Waldorf Methods Schools, a Public Charter School, Inc., an Idaho nonprofit corporation, doing business as Syringa Mountain School (the "Tenant").

**LEASE OF PREMISES**

The Owner hereby leases to the Tenant and the Tenant hereby rents from the Owner, subject to the terms and provisions of this Lease, including the General Provisions hereafter set forth and the Exhibits hereafter identified and attached hereto, those certain premises (the "Premises") located at that certain address set forth in Section 1 of the Basic Lease Provisions below shown and described on Exhibit A, attached hereto and made a part hereof. As used in this Lease, reference to the "Premises" shall mean the whole of the buildings, parking areas, landscaping and other improvements, together with the underlying land.

**BASIC LEASE PROVISIONS**

- 1. Premises Address: 4021 Glenbrook, Hailey, Idaho.
- 2. Use of Premises: Charter school from grades kindergarten through twelfth grade.
- 3. Initial Term: Fifty-three (53) months.
- 4. Commencement Date: February 15, 2014.
- 5. Base Rent:

<u>Period</u>	<u>Rent</u>
February 15, 2014 – December 14, 2014	\$35,000 due as provided in Exhibit D
December 15, 2014 – July 14, 2015	\$7,000.00 per month
July 15, 2015 – July 14, 2016	\$8,160.00 per month
July 15, 2016 – July 14, 2017	\$8,323.20 per month
July 15, 2017 – July 14, 2018	\$9,489.66 per month

- 6. Security Deposit: \$16,000.00 (applicable to last month's rent as provided in Exhibit D).
- 7. Tenant's Address for Delivery of Notices:  

4021 Glenbrook  
Hailey, Idaho 83333

- 8. Owner's Address for Payment of Rent and Delivery of Notices:  

P.O. Box 1000  
Carey, Idaho 83320

With copies of all notice to Owner sent to: David McDonald, 121 N. 9<sup>th</sup> Street, Suite 402, Boise, Idaho 83702.

- 9. Lease Guarantor(s): None.
- 10. Exhibits Attached: Exhibit A (Description of Premises); Exhibit B (Owner Work); Exhibit C (Ability to Extend Lease Term); Exhibit D (Special Provisions); and Appendix I (Hazardous Waste).

IN WITNESS WHEREOF, the parties have executed this Lease, consisting of the foregoing provisions and the General Provisions and Exhibits attached, as of the date first above written.

OWNER:

\_\_\_\_\_  
Lita West

TENANT:

Wood River Waldorf Methods Schools, a Public Charter School, Inc., an Idaho nonprofit corporation, doing business as Syringa Mountain School

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

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

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

## GENERAL PROVISIONS

### I. PREMISES

1.01. **Condition of Premises.** The Tenant accepts the Premises "as is" and, except as described on Exhibit B, attached hereto and made a part hereof, the Owner shall have no responsibility to construct or pay for any tenant or other improvements in the Premises.

### II. TERM

2.01. **Initial Term.** The initial term (hereafter "Initial Term") of this Lease is as set forth in the Basic Lease Provisions. The Initial Term shall commence upon February 15, 2014, when Owner shall deliver possession of the Premises to the Tenant (hereafter "Commencement Date"). The Tenant's obligation to pay rent shall commence on February 15, 2014 (the "Rent Commencement Date").

2.02. **Ability to Extend Lease Term.** The Tenant shall have the ability to extend the Initial Term of this Lease on the terms and conditions set forth on Exhibit C, attached hereto and made a part hereof.

### III. RENT

3.01. **Security Deposit.** The security deposit specified in the Basic Lease Provisions shall be paid by the Tenant to the Owner upon execution of this Lease. The security deposit paid by the Tenant to the Owner shall be held by the Owner as security for the faithful performance by the Tenant of the terms and conditions of this Lease. In the event of the Tenant's default hereunder including, but not limited to, the obligation to pay rent, the Owner may, but shall not be required to, use or retain all or any portion of the security deposit for the payment of rent or any other sum in default or for the payment of any amount which the Owner may spend by reason of the Tenant's default, or to compensate the Owner for other loss or damage suffered by the Owner by reason of the Tenant's default. If any portion of the security deposit is so used or applied, the Tenant shall, within ten (10) days after written demand therefor, deposit cash with the Owner in an amount sufficient to restore the security deposit to its original amount. The Owner shall not be required to maintain the security deposit separate from the Owner's general funds and the Tenant shall not be entitled to interest on such deposit. If the Tenant fully performs the obligations under this Lease, the security deposit (or balance thereof) shall be returned to the Tenant within thirty (30) days after the Tenant vacates the Premises following the expiration of this Lease, less any sums required to reimburse the Owner for sums expended to place the Premises in the condition required under this Lease. In the event the Owner sells the Premises, the Owner shall transfer the security deposit to the Owner's successor in interest and the Owner shall thereupon be released by the Tenant from all liability for the return of the security deposit and the Tenant agrees to look solely to the successor to the Owner for the return thereof.

3.02. **Base Rent.** The Tenant shall pay to the Owner, without deduction or off-set, the Base Rent for the Premises specified in the Basic Lease Provisions. The monthly installments of the Base Rent shall be due on the fifteenth (15th) day of each calendar month, in advance, commencing on December 15, 2014. Rent for any period less than a full calendar month shall be pro-rated on a per diem basis calculated on the basis of a thirty (30) day month. All Base Rent and other amounts payable by the Tenant to the Owner under this Lease shall be in lawful money of the United States of America, and shall be considered "additional rent" for all purposes under this Lease and included in the reference to "Rent."

3.03. **Late Charges.** The Tenant acknowledges that the late payment of rent to the Owner will cause the Owner to incur costs not contemplated by this Lease, the exact amount of which the Owner is not capable of determining. Accordingly, if any monthly installment of the Base Rent or any other sum payable by the Tenant to the Owner under this Lease shall not be received by the Owner within five (5) days after its due date, the Tenant shall pay to the Owner a late charge equal to five percent (5%) of such overdue rent. Further, and in addition to any late charges, any sums (including rent) payable by the Tenant to the Owner under the terms of this Lease which shall be past due for a period of thirty (30) or more days, shall bear interest from the due date at the rate of twelve percent (12%) per annum. Acceptance of a late charge by the

Owner or interest on overdue amounts shall not constitute a waiver of the Tenant's default with respect to such overdue amount nor prevent the Owner from exercising any other rights or remedies granted hereunder. No payment by the Tenant of an amount less than that then due shall be deemed or construed other than a part payment on account of the most recent rent due nor shall any endorsement or statement on any check or letter accompanying any payment be deemed to create an accord and satisfaction.

3.04. **Place of Payment.** Until otherwise directed by the Owner in writing, the Tenant shall deliver all notices and pay all Base Rent and other amounts due under this Lease to the Owner at the address for the Owner set forth in the Basic Lease Provisions, or such other address as specified by the Owner to the Tenant in writing.

#### **IV. USE OF PREMISES**

4.01. **Use.** During the full term of this Lease, the Tenant shall use the Premises for the use specified in the Basic Lease Provisions. Any different use by the Tenant shall first require the prior written consent of the Owner, which consent shall be within the sole and exclusive discretion of the Owner. The Tenant acknowledges and agrees that the Owner may withhold consent to such different use, and such shall not be unreasonable, if it would (i) violate any restrictions applicable to the Premises, (ii) involve the storage, use or disposal of any material or substance which is then classified as "hazardous" or "toxic" by any law or regulation, (iv) adversely affect the reputation or image of the Premises, as reasonably determined by the Owner, or (v) require the Owner to perform any alterations to the Premises by reason of any applicable law, code or regulation. The provisions concerning hazardous waste and material set forth in Appendix I, attached hereto and made a part hereof, are hereby made a part of this Lease. The Tenant's use of the Premises shall be in full compliance with all statutes, ordinances, laws, rules, regulations and restrictive covenants applicable to the Premises, and in a manner which shall not result in a nuisance to or unnecessary disturbance of adjacent property owners. The Tenant shall comply with all rules and regulations of the National Fire Protection Association, the applicable Fire Rating Bureau and any similar body. The Tenant shall not maintain any item or do anything in or about the Premises which would cause the increase of insurance rates or make such insurance unobtainable.

4.02. **Waste.** The Tenant shall not use the Premises in any manner that will constitute waste.

4.03. **Disposal of Refuse.** The Tenant shall not dump, dispose, reduce or incinerate or cause other burning of any trash, papers, refuse or garbage of any kind in or about the Premises. The Tenant shall store all trash and garbage within the Premises.

4.04. **Suitability.** The Tenant acknowledges that the Owner (including any agent of the Owner) has not made any representation or warranty with respect to the Premises or concerning their suitability for the uses intended by the Tenant. The Tenant agrees that the Owner has not agreed to undertake any modification, alteration or improvement of the Premises except as provided on Exhibit B. The taking of possession of the Premises by the Tenant shall conclusively establish that the same were at that time in a satisfactory condition unless within thirty (30) days after the date of possession the Tenant gives to the Owner a written notice specifying in reasonable detail items which are defective or in an unsatisfactory condition. Unless otherwise expressly provided in this Lease, all improvements to the Premises required to make the Premises suitable for the Tenant's use thereof shall be made by the Tenant at the Tenant's cost and expense.

#### **V. UTILITIES AND SERVICES**

5.01. **Tenant's Obligations.** The Tenant shall pay the cost for all utilities and services furnished to the Premises as may be required by the Tenant for the use and occupation of the Premises. The Owner shall have no liability, and this Lease shall not terminate nor shall rent hereunder abate, by reason of any failure or interruption of the utilities and services to the Premises.

#### **VI. TAXES**

6.01. **Real Property Taxes.** The Tenant shall pay prior to delinquency all ad valorem real property taxes levied and assessed against the Premises, and shall submit written proof of such payment to the Owner. If the Tenant fails to pay ad valorem real property taxes levied and assessed against the Premises prior to delinquency, the Owner may, in its sole discretion, elect to estimate the ad valorem real property taxes which will be levied and assessed against the Premises for any calendar year and require the Tenant to pay monthly installments of such estimates as additional rent. If ad valorem real property taxes are waived due to Tenant's occupancy of the Premises as a 501(c)(3) tax exempt entity, the Tenant will not be required to pay such taxes.

6.02. **Property Tax Appeal.** Not later than June 1, 2014, the Owner agrees to use commercially reasonable efforts to have the assessed value of the Premises reduced in an effort to minimize the burden on Tenant of ad valorem taxes.

6.03. **Personal Property Taxes.** The Tenant shall pay prior to delinquency all personal property taxes levied and assessed against the Tenant's fixtures, equipment and other property.

## **VII. INSURANCE**

7.01. **Tenant's Obligations.** During the term of this Lease, the Tenant shall carry and maintain, at the Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereafter provided:

- (a) **Commercial General Liability and Property Damage.** Commercial general liability insurance with limits of not less than \$4,000,000.00 per person and \$4,000,000.00 per occurrence insuring against any and all liability of the insured(s) with respect to the Premises or arising out of or relating to the maintenance, use and occupancy thereof, and property damage liability insurance with a limit of not less than \$1,000,000.00 per accident or occurrence. All such commercial general liability insurance and property damage liability insurance shall specifically insure the performance by the Tenant of the indemnity agreement(s) contained in this Lease as to liability for injury to or death of person and injury or damage to property and shall name the Owner and the Owner's lender as additional insureds thereunder.
- (b) **Premises Facilities Furnished and Installed by Tenant and Personal Property.** Insurance covering all of the items comprising the Tenant's leasehold improvements, trade fixtures, equipment and personal property from time to time in, on or upon the Premises in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "fire and extended coverage," together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article XI, below.
- (c) **Casualty Insurance.** The Tenant shall purchase and keep in force a policy(s) of insurance covering the Premises in an amount not less than the full replacement cost providing protection against any peril generally included within the classification "fire and extended coverage," or, at the Owner's election, "all-risk coverage," including earthquake coverage and/or ordinance or law coverage, if required by the Owner's lender (if any). To the extent practicable or permissible, such policy or policies shall name the Owner as the primary and sole beneficiary.

7.02. **Policy Form.** All policies of insurance provided for herein shall be issued by insurance companies with a general policyholder's rating of not less than A and a financial rating of AAA (or equivalent ratings if such are changed) as rated in the most current available "Best's Insurance Reports" and qualified to do business in the State of Idaho, and shall name the Owner as an additional insured. Executed copies of

the policies of insurance to be provided by the Tenant, or certificates thereof, shall be delivered to the Owner within ten (10) days after the Commencement Date of the Initial Term of this Lease and thereafter within thirty (30) days prior to the expiration of the term of each policy. All public liability and property damage policies shall contain a provision that the Owner, although named as an additional insured, shall nevertheless be entitled to recover under such policies for any loss occasioned by it, or its partners, employees and agents. When any such policy shall expire or terminate, a like renewal or additional policy shall be purchased and maintained by the Tenant. All policies of insurance delivered to the Owner shall contain a provision that the insurer shall give to the Owner thirty (30) days prior notice in writing of any cancellation or lapse or of any reduction in the amounts of insurance. All public liability, property damage and other casualty policies required of the Tenant, shall be written as primary policies, not contributing with and not in excess of coverage which the Owner may carry.

7.03. **Adjustment of Coverage.** Not more frequently than every three (3) years during the term of this Lease if, in the opinion of the Owner based on industry and local standards, the amount of public liability and property damage insurance required to be carried and maintained by the Tenant is at the time not adequate, the Tenant shall increase insurance coverage as reasonably determined by the Owner to be adequate.

7.04. **Failure of Tenant to Insure.** In the event the Tenant shall fail to purchase and keep in force any of the insurance required of the Tenant in this Article, the Owner may, but shall not be required to, purchase and keep in force the same, in which event the Tenant shall pay to the Owner the full amount of the Owner's expense with respect thereto, said payment to be made within ten (10) days after demand for such payment by the Owner. The election by the Owner to purchase said insurance on behalf of the Tenant shall not constitute a curing of the default occasioned by the Tenant's failure nor be an election of remedies otherwise available to the Owner.

7.05. **Waiver of Subrogation.** Any insurance carried by either party as required by this Lease shall include a clause or endorsement denying to the insurer a right of subrogation against the other party to the extent rights have been waived by the insured prior to occurrence of an injury or loss. Each party, notwithstanding any provisions of this Lease to the contrary, hereby waives any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a clause or endorsement to the extent of the insurance proceeds paid or payable by reason of the injury or loss covered thereby.

## **VIII. MAINTENANCE AND REPAIR**

8.01. **Owner's Obligations.** The Owner shall provide all maintenance services with respect to the structural portions of the Premises, including the roof membrane. The Owner shall not be liable for any failure to make repairs or perform maintenance unless the same shall persist for an unreasonable time after written notice of the need for repairs or maintenance is given to the Owner by the Tenant.

8.02. **Tenant's Obligations.** The Tenant shall take good care of the Premises and shall maintain, repair and replace, at the Tenant's sole cost and expense, all the non-structural portions of the Premises, including, without limitation, glass, windows, doors and air conditioning and HVAC systems that serve the Premises. During the term of this Lease, the Tenant shall enter into and maintain in force a contract for service to the HVAC systems on at least a quarterly basis, at the Tenant's sole cost and expense. Any replacements made by Tenant hereunder shall be of like or better quality than existed at the Commencement Date of the Initial Term of this Lease.

8.03. **Failure to Repair.** If the Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to the Owner, the Owner shall have the right, upon giving the Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of the Tenant. In such event, such work shall be paid for by the Tenant as additional rent and shall be due promptly upon receipt of a bill therefor. No exercise by the Owner of any rights herein reserved shall entitle the Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Base Rent or other amounts payable by the Tenant under this Lease. If the Owner refuses or neglects to make repairs and/or maintain the Premises, or

any part thereof, as required under this Lease, the Tenant shall have the right, upon giving the Owner reasonable written notice of its election to do so, to make such repairs or perform such maintenance in a commercially reasonable manner. In such event, the Owner shall reimburse the Tenant for the cost of such repairs or maintenance promptly upon receipt of a bill therefor.

## **IX. INDEMNITY**

9.01. **By Tenant.** The Tenant agrees to indemnify and hold the Owner harmless against all actions, claims, demands, costs, damages or expense of any kind on account thereof, including attorneys' fees and costs of defense, which may be brought or made against the Owner, or which the Owner may pay or incur, by reason of the Tenant's use and occupancy of the Premises or the Tenant's failure to perform this Lease.

9.02. **By Owner.** The Owner agrees to indemnify and hold the Tenant harmless against all actions, claims, demands, costs, damages or expense of any kind on account thereof, including attorneys' fees and costs of defense, which may be brought or made against the Tenant, or which the Tenant may pay or incur, by reason of the Owner's failure to perform this Lease.

9.03. **Non-Liability of Owner.** Notwithstanding any provision in this Lease to the contrary, the Owner shall not be liable for any damage to or loss, by theft or otherwise, of property of the Tenant or of others located on the Premises. The Owner shall not be liable for injuries or damage to property resulting from fire, explosion, sprinklers, falling plaster, steam, gas, electricity, water, rain, snow or leaks from the pipes, appliances, plumbing, street or subsurface, or from any other place or from dampness. The Tenant assumes the risk of all property kept or stored on the Premises and shall hold the Owner harmless from any claims arising out of damage to the same. The Tenant shall give immediate notice to the Owner in case of fire or accidents on or in the Premises.

## **X. ALTERATIONS**

10.01. **Consent Required.** The Tenant shall make no alterations, improvements or additions ("Improvements") in or about the Premises without the prior written approval of the Owner, which shall include, without limitation, the Owner's approval of the plans and specifications for the proposed Improvements as well as the contractor(s) to perform the Improvements. At that time, the Owner will identify which of the Improvements must be removed upon the expiration or earlier termination of the Lease; provided, however, that notwithstanding the foregoing, Owner may elect, in its sole discretion, to permit any such identified Improvements to remain a part of the Premises by providing notice to the Tenant. All approved Improvements shall be performed at the sole cost of the Tenant in compliance with all applicable statutes, ordinances, codes and regulations. Upon expiration of the term of this Lease, the Improvements shall be considered a part of the Premises and remain therein unless the Owner shall request their removal, in which event the Improvements shall be promptly removed by the Tenant and the Premises restored to substantially the condition existing prior to such Improvements. The granting of the consent by the Owner as provided herein shall not constitute the appointment of the Tenant as the agent of the Owner with respect to the approved Improvements. The Tenant shall timely perform, at the Tenant's sole cost, in a good workmanlike manner, all alterations and/or repairs to the Premises required by any federal, state or local building, fire, life-safety or similar law, ordinance, code or regulation adopted or amended after the Commencement Date of this Lease and applicable to the Premises, or required by reason of any alteration to the Premises performed by the Tenant or a change in the Tenant's use of the Premises, even though such alteration(s) and/or change in use may be consented to by the Owner.

10.02. **Trade Fixtures.** Trade fixtures, equipment and other personal property which are installed in the Premises by the Tenant and are not permanently affixed to the walls, ceilings, floors or other part thereof shall remain the property of the Tenant and, providing the Tenant is not in default under this Lease, they may be removed by the Tenant at any time during the term of this Lease provided that the Tenant promptly repairs all damage resulting from the installation or removal and fully restores the Premises.

10.03. **Liens Prohibited.** The Tenant shall pay all costs for the work done by or for it on the Premises and the Tenant shall keep the Premises free and clear of all liens of whatever kind or nature. The

Tenant shall indemnify, save and hold the Owner and the Premises harmless against any liability, loss, damage, cost, attorneys' fees and all other expenses on account of any prohibited lien.

## **XI. DESTRUCTION OF PREMISES**

11.01. **Fully Tenantable**. Except as set forth below, if the Premises are damaged by fire or other casualty (an "occurrence"), but are not thereby rendered untenable, in whole or in part, the Owner shall, at its own expense, cause such damage to be repaired and neither the Base Rent nor other amounts payable by the Tenant under this Lease shall be abated.

11.02. **Partially or Totally Untenable**. If the Premises shall be rendered untenable by reason of such occurrence, the Owner shall have the right, which may be exercised by written notice delivered to the Tenant within sixty (60) days after such occurrence, to elect to terminate this Lease in which event all rights and obligations of the parties shall terminate and end as of the date of such occurrence, except for the obligation of the Tenant to pay Base Rent or other sums which were due and payable prior to the date of the occurrence. If the Owner does not exercise its right to terminate this lease, the Owner shall, at its own expense, cause the damage to be repaired and the Base Rent for the part of the Premises rendered untenable shall be abated proportionately on a square footage basis as long as said part remains untenable. As used herein, "untenable" shall mean that the Tenant is unable to use fifty percent (50%) or more of the Premises for the purposes leased for a period of thirty (30) or more consecutive days and the repair and restoration of the Premises will exceed one hundred twenty (120) days from the date of the occurrence.

11.03. **Uninsured Casualty**. If the damage to the Premises is caused by a casualty for which coverage is excluded under the insurance maintained by the Owner and the cost of repairing such damage exceeds Fifty Thousand Dollars (\$50,000.00), the Owner shall have the right, which may be exercised by written notice delivered to the Tenant within sixty (60) days after such occurrence, to elect to terminate this Lease in which event all rights and obligations of the parties shall terminate and end as of the date of such occurrence, except for the obligation of the Tenant to pay any Base Rent or other sums which were due and payable prior to the date of the occurrence.

The Owner shall have no obligation to repair the Premises and shall have the right to cancel and terminate this Lease if the term (exclusive of any options to renew the term unexercised by the Tenant as of the date of the occurrence) shall have less than two (2) years remaining from the date of occurrence to the date of expiration.

## **XII. EMINENT DOMAIN**

12.01. **Definition of Taking**. If the Premises are acquired or damaged by the exercise of the right of eminent domain or by the change of grade of adjacent street(s) or other activity by a public authority, whether or not such damage involves a physical taking of any portion of the Premises, this shall be considered a taking. If the extent of the taking is such that the Premises are no longer suitable for the purpose of the tenancy, this shall be considered a total taking. Any other taking shall be considered a partial taking.

12.02. **Total Taking**. In the case of a total taking, this Lease shall terminate at the date the Premises are rendered unsuitable for the purposes of the tenancy and all compensation therefor, whether fixed by agreement or judicial award, shall belong to the Owner except those portions of the award that are specifically allocated as compensation for actual expenses incurred by the Tenant for moving the Tenant's fixtures, stock in trade and inventory and as compensation for the taking of the Tenant's fixtures and leasehold improvements which shall belong to the Tenant and which Tenant has a right to remove at the expiration of the term of this Lease.

12.03. **Partial Taking**. In the case of a partial taking that renders the Premises partially or totally untenable, the Owner shall have the right, which may be exercised by written notice delivered to the Tenant within sixty (60) days after such occurrence, to elect to terminate this Lease in which event all rights

and obligations of the parties shall terminate and end as of the date of such occurrence, except for the obligation of the Tenant to pay any Base Rent or other sums which were due and payable prior to the date of the occurrence. In case of a partial taking and if this Lease is not terminated, the Owner shall repair the Premises at its own expense in accordance with plans and specifications approved by the Tenant, but the Owner shall not be obligated to expend for such repairs any amount greater than the compensation received from the condemning authority. In case of any partial taking, all compensation paid by the condemning authority in connection with the taking, whether fixed by agreement or judicial award, shall be paid to the Owner and the Tenant as provided in Section 12.02, above, and if this Lease is not terminated as above provided, the Base Rent shall be reduced proportionately on the basis which the square footage of that portion of the Premises taken bears to the total square footage of the Premises before the taking.

### **XIII. ASSIGNMENT, SUBLETTING AND MORTGAGING**

13.01. **Restriction**. The Tenant shall not, either voluntarily or by operation of law, transfer, assign, sublet, pledge, encumber, enter into license or concession agreements, change ownership or hypothecate this Lease or the Tenant's interest in and to the Premises or otherwise transfer (hereafter "transfer") this Lease or all any part of the Tenant's leasehold estate in the Premises without first obtaining the written consent of the Owner, which consent shall not be unreasonably withheld provided that the use of the Premises shall be as described in Section 4.01. If the use of the Premises shall change following such transfer, the Owner may withhold consent if the Owner refuses to consent to such change in use under Section 4.01. Any transfer of this Lease, the leasehold estate created hereby, or the Premises or any portion thereof, either voluntarily or involuntarily, whether by operation of law or otherwise, without the prior written consent of the Owner, shall be null and void and shall, at the option of the Owner, constitute a default under this Lease. The Owner reserves the right to refuse to give such consent unless the Tenant remains fully liable during the unexpired term of this Lease. The Owner further reserves the right to refuse to give such consent if, in the Owner's reasonable discretion and opinion, (i) the assignment and/or the use of the Premises by the assignee will cause a breach of any provision in any financing agreement or other agreement relating to the Premises, (ii) be in breach of any restrictions applicable to the Premises, (iii) involve the storage, use or disposal of any material or substance which is then classified as "hazardous" or "toxic" by any law or regulation, (iv) adversely affect the reputation or image of the Premises, as reasonably determined by the Owner, (v) require the Owner to perform any alterations to the Premises by reason of any applicable law, code or regulation, or (vi) the creditworthiness of the proposed assignee or sublessee is less than the creditworthiness of the Tenant at the date of this Lease. If the Tenant is an entity, the transfer of a majority of the ownership of such entity or a transfer of a majority of the issued and outstanding capital stock of the Tenant if it is a corporation, however accomplished, shall be deemed an assignment of this Lease. The Tenant agrees to pay to the Owner the Owner's reasonable attorney's fees and other necessary costs incurred in connection with the processing and documentation of any such requested transfer of this Lease or the Tenant's interest in and to the Premises. The consent by the Owner to any assignment or subletting by the Tenant shall not, unless expressly agreed by the Owner in writing to the contrary, relieve the Tenant of any obligations under this Lease, whether accruing before or after such assignment or subletting. The consent by the Owner to any assignment or subletting shall not constitute a waiver of the requirement to obtain the Owner's consent to subsequent assignments or sublettings. Each assignee or subtenant shall expressly assume in writing all obligations of the Tenant under this Lease, provided, that each assignee or sublessee shall, by taking possession of the Premises, be deemed to have expressly assumed all obligations of the Tenant under this Lease and shall remain jointly and severally liable with the Tenant for the full and timely performance of this Lease.

13.02. **Subsequent Modifications**. The assignment of this Lease by the Tenant with the consent of the Owner shall, without being specifically so stated or agreed, constitute the express agreement by the Tenant that subsequent modifications of this Lease by the Owner and the assignee shall not (i) require the prior consent or approval of the Tenant (assignor), or (ii) release or relieve the Tenant (assignor) from liability hereunder, provided that if such modifications increase the rent or other obligations of the Tenant hereunder, the Tenant's (assignor's) liability shall be limited to the terms of this Lease as the same existed on the date of assignment.

13.03. **Sublease Rent**. If the Tenant subleases the Premises at a rent in excess of the rent

reserved by the Owner hereunder, the Owner shall have the right to refuse consent thereto unless all such excess rent to be paid by the sublessee is agreed to be, and is, paid to the Owner and such condition is expressly agreed to be a reasonable limitation upon the Tenant's right to sublease the Premises.

#### **XIV. SIGNS**

14.01 **Exterior Signage.** All exterior signage installed by the Tenant shall be located, designed and installed in accordance with applicable law.

#### **XV. SUBORDINATION AND FINANCING**

15.01 **Subordination.** The Tenant agrees that at all times this Lease and the Tenant's leasehold estate created hereby shall be subordinate to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof, now or hereafter placed, charged or enforced against the Owner's interest in the Premises. Within twenty (20) days of the written request of the Owner, the Tenant agrees to execute and deliver such documents as may be required to effectuate such subordination.

#### **XVI. QUIET ENJOYMENT**

16.01 **Subject to Performance of Lease Obligations.** The Owner agrees that upon paying the Base Rent and other amounts payable by the Tenant under this Lease, and performing the covenants, terms and conditions of this Lease required of the Tenant to be kept and performed, the Tenant may quietly have, hold and enjoy the Premises during the term hereof.

#### **XVII. DEFAULT**

17.01. **Events of Default.** Time is of the essence of this Lease. The occurrence of any of the following events shall constitute a material default and breach of this Lease by the Tenant:

- (a) Failure of the Tenant to occupy the Premises, or once occupied, if the Tenant vacates or abandons the Premises;
- (b) Failure of the Tenant to pay any installment of rent within ten (10) days following its due date without the requirement of written notice of demand;
- (c) Failure of the Tenant to pay any other sum payable under this Lease within thirty (30) days after written demand therefor is delivered to the Tenant;
- (d) Default by the Tenant in the performance of any of the Tenant's covenants, agreements or obligations hereunder (excluding a default in the payment of rent or other monies due) which continues for thirty (30) days after written notice thereof is delivered to the Tenant by the Owner; or
- (e) Filing by or against the Tenant in any court, pursuant to any statute, either in the United States or of any other state, a petition in bankruptcy or insolvency, or for reorganization or for appointment of a receiver or trustee of all or a substantial portion of the property owned by the Tenant or if the Tenant makes an assignment for the benefit of creditors, or any execution or attachment shall be issued against the Tenant or all or a substantial portion of the Tenant's property, whereby all or any portion of the Premises covered by this Lease or any improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than the Tenant, except as may herein be otherwise expressly permitted, and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within thirty (30) days after the determination, issuance or filing of the same.

17.02. **Owner's Remedies.** In the event of a default by the Tenant under this Lease, the Owner shall have all rights and remedies allowed by law or equity including, but not limited to, the following:

- (a) **Termination - Damages.** In addition to any other remedy available to the Owner at law or in equity, all of which other remedies are reserved unto the Owner, the Owner shall have the right to immediately terminate the Tenant's right to possession of the Premises and/or this Lease and all rights of the Tenant hereunder by delivering a written notice of termination to the Tenant. In the event that the Owner elects to so terminate such possession and/or this Lease, such election shall constitute the election by the Owner to accelerate all future rents payable under this Lease to be immediately due and payable and the Owner shall have the right to recover from the Tenant the following:
- (i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus
  - (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss the Tenant proves could have reasonably been avoided; plus
  - (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could have reasonably been avoided; plus
  - (iv) Any other amount necessary to compensate the Owner for all detriment proximately caused by the Tenant's failure to perform the obligations under this Lease or which in the ordinary course of things would likely to result therefrom; plus
  - (v) Reasonable attorneys' fees incurred by the Owner as the result of such material default and breach and costs in the event suit is filed by the Owner to enforce any remedy; plus
  - (vi) At Owner's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used herein shall be deemed to be the Base Rent, additional rent and all other sums required to be paid by the Tenant pursuant to the terms of this Lease.

As used in subparagraphs (i), (ii) and (iii), above, the "worth at the time of award" shall be determined by allowing interest or discounting, as the case may be, at the rate equal to the discount rate of the Federal Reserve Bank of San Francisco at the time of the award.

A termination of this Lease under this Section shall not release or discharge the Tenant from any obligation under this Lease but shall constitute only a termination of the right of the Tenant to possess and occupy the Premises, unless otherwise specifically stated by the Owner in writing at the time of such termination.

- (b) **Enforcement.** In the event of a default by the Tenant under this Lease, the Owner may, from time to time, without terminating this Lease, either recover all rent as it

becomes due or re-let the Premises or any part thereof for such term or terms and at such rent and upon such other terms and conditions as the Owner, in the Owner's sole discretion, may deem advisable with the right to make alterations and repairs to the Premises, the cost of which shall be chargeable to the Tenant.

If the Owner shall elect to so re-let the Premises, rents received by the Owner therefrom shall be applied as follows: first, to reasonable attorneys' fees incurred by the Owner as a result of the Tenant's default; second, to the cost of suit if an action is filed by the Owner to enforce the Owner's remedies; third, to the payment of any indebtedness other than rent due under this Lease from the Tenant; fourth, to the payment of any cost of such re-letting; fifth, to the payment of the cost of any alterations and repairs to the Premises; and sixth, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by the Owner and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rent received from any re-letting during any month which is applied to the payment of rent hereunder be less than the rent payable during the month by the Tenant hereunder, the Tenant shall pay such deficiency to the Owner. The Tenant shall also pay to the Owner as soon as ascertained any costs and expenses incurred by the Owner in re-letting or in making the alterations and repairs to the Premises, the cost of which is not covered by the rents received from such re-letting.

- (c) **Non-Termination - Re-Entry.** In addition to the other rights of the Owner herein provided, the Owner shall have the right, without terminating this Lease, at its option, to re-enter and re-take possession of the Premises and all improvements thereon and collect rents from any subtenants and/or sublet the whole or any part of the Premises for the account of the Tenant, upon any terms or conditions determined by the Owner. In such event of subleasing, the Owner shall have the right to collect any rent which may become payable under any sublease and apply the same first to the payment of expenses incurred by the Owner in dispossessing the Tenant and in subletting the Premises and, thereafter, to the payment of the Base Rent and other amounts payable by the Tenant under this Lease required to be paid by the Tenant in fulfillment of the Tenant's covenants hereunder; and the Tenant shall be liable to the Owner for the payment of the Base Rent and other amounts required to be paid by the Tenant under this Lease, less any amounts actually received by the Owner from a sublease and after payment of expenses incurred, applied on account of the Base Rent and other amounts due hereunder. In the event of such election, the Owner shall not be deemed to have terminated this Lease by taking possession of the Premises unless written notice of termination has been given by the Owner to the Tenant.
- (d) **No Termination.** No re-entry or taking possession of the Premises by the Owner pursuant to the provisions of this Lease shall be construed as an election to terminate this Lease unless a written notice of such intention is delivered by the Owner to the Tenant. Notwithstanding a re-letting without termination by the Owner due to the default by the Tenant, the Owner may at any time after such re-letting elect to terminate this Lease for such default.

17.03. **Remedies Cumulative.** The rights, privileges, elections and remedies of the Owner set forth in this Lease or allowed by law or equity are cumulative and the enforcement by the Owner of a specific remedy shall not constitute an election of remedies and/or a waiver of other available remedies.

17.04. **Mitigation.** The Owner shall have the obligation to make reasonable efforts to mitigate the loss or damage occasioned by a default of the Tenant, provided that said obligation to mitigate shall not relieve the Tenant of the burden of proof as required in this Article or otherwise affect the rights and remedies available to the Owner in the event of a default by the Tenant as provided in this Article, or otherwise allowed

by law or equity. Nothing herein contained shall obligate the Owner to mitigate rental loss by re-letting the Premises so long as the Owner has other similar premises vacant or by re-letting the Premises to a new tenant whose use of the Premises would be undesirable in the reasonable judgment of the Owner, require the Owner to expend any money to remodel, alter or improve the Premises, or would result in the Owner being in breach or default under any contractual obligations of the Owner.

17.05 **Owner Default.** If the Owner materially breaches this Lease by refusing or neglecting to make repairs and/or maintain the Premises, or any part thereof, as required under this Lease, the Tenant shall have the right to make such repairs or performance such maintenance as provided in Section 8.03.

## **XVIII. SURRENDER OF PREMISES**

18.01. **Condition.** Upon the expiration or earlier termination of this Lease, the Tenant shall quit and surrender possession of the Premises to the Owner in as good order and condition as the same are at the Commencement Date of this Lease or hereafter may be improved by the Owner or the Tenant, reasonable wear and repairs, which repairs are the Owner's obligation, excepted. The Tenant shall, without expense to the Owner, remove or cause to be removed from the Premises all debris, rubbish, furniture, equipment, business and trade fixtures, free-standing cabinetwork, movable partitions and other articles of personal property owned by the Tenant (exclusive of any items described in Section 18.03, below) and all similar items of any other persons claiming under the Tenant, and the Tenant shall, before expiration of termination, repair all damage to the Premises resulting from such removal and otherwise restore the Premises.

18.02. **Abandoned Property.** If the Owner shall re-enter the Premises as provided in Article XVII, above, or as otherwise provided in this Lease, any property of the Tenant not removed by the Tenant upon the expiration of the Term of this Lease (or within seventy-two (72) hours after a termination by reason of the Tenant's default), as provided in this Lease, shall be considered abandoned and the Owner may remove any or all of such items and dispose of the same in any manner or store the same in a public warehouse or elsewhere for the account and at the expense and risk of the Tenant, and if the Tenant shall fail to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, the Owner may sell any or all of such property at public or private sale in such manner and at such times and places as the Owner, in its sole discretion, may deem proper, without notice to or demand upon the Tenant, for the payment of all or any part of such charges or the removal of any such property, and shall apply the proceeds of such sale as follows: First, to the cost and expenses of such sale, including reasonable attorneys' fees incurred; second, to the payment of the cost of or charges for storing any such property; third, to the payment of any other sums of money which may then or thereafter be due to the Owner from the Tenant under any of the terms hereof; and fourth, the balance, if any, to the Tenant. The provisions hereof shall be without prejudice to the Owner to exercise any other rights over the Tenant's property on the Premises as provided elsewhere in this Lease or allowed by law.

18.03. **Permanent Property.** All fixtures, equipment, alterations, additions, improvements and/or appurtenances attached to or built into the Premises prior to or during the Term of this Lease, whether by the Owner at its expense or at the expense of the Tenant, or both, shall be and remain part of the Premises and shall not be removed by the Tenant at the end of the Term unless otherwise expressly provided for in this Lease. Such fixtures, equipment, alterations, additions, improvements and/or appurtenances shall include, but shall not be limited to: all floor coverings, drapes, paneling, molding, doors, vaults, plumbing systems, electrical systems, lighting systems, silencing equipment, all fixtures and outlets for the systems mentioned above and for all telephone, radio, telegraph and television purposes and any special flooring or ceiling installations.

## **XIX. MISCELLANEOUS**

19.01. **Owner's Right of Entry.** The Owner and the Owner's authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of determining whether the Premises are in good condition, to make necessary repairs or perform any maintenance, to serve any notice required or allowed under this Lease or to show the Premises to prospective brokers, agents, buyers or tenants.

19.02. **No Waiver.** The failure of the Owner or the Tenant to seek redress for violations or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed a waiver of such violation or of any future similar violation and the waiver by the Owner or the Tenant of any breach shall not be deemed a waiver of any past, present or future breach of the same or any other term, covenant or condition of this Lease.

19.03. **Notices.** Whenever any notice, approval, consent, request or election is given or made pursuant to this Lease, it shall be deemed delivered when it is in writing and personally delivered or deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested and addressed to the party at the address set forth in the Basic Lease Provisions.

19.04. **Limitation of Owner's Liability.** The obligations of the Owner under this Lease do not constitute personal obligations of the Owner or its successors or assigns and the Tenant shall look solely to the Owner's interest in the real estate that is the subject of this Lease and to no other assets of the Owner or its successors or assigns for satisfaction of any liability under this Lease.

19.05. **Holding Over.** Should the Tenant continue to occupy the Premises or any part thereof after the expiration or earlier termination of this Lease, whether with or against the consent of the Owner, such tenancy shall be month-to-month at a rent equal to 125% of the Base Rent in force and effect for the last month of the term expired or terminated.

19.06. **Attorneys' Fees and Costs.** If either party shall default under this Lease and said default is cured with the assistance of an attorney for the other party, as a part of curing said default, the reasonable attorneys' fees incurred by the other party shall be added to the balance due and payable or, in the case of a non-monetary default, shall be paid to the other party upon demand. In the event suit or action is filed by either party against the other to interpret or enforce this Lease, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including attorneys' fees incurred therein, including the same with respect to an appeal.

19.07. **Transfer of Owner's Interest.** In the event of a sale or conveyance by the Owner of the Premises, other than a transfer for security purposes only, the Owner shall be relieved from all obligations and liabilities accruing thereafter on the part of the Owner, provided that any funds in the hands of the Owner at the time of transfer in which the Tenant has an interest, shall be delivered to the successor of the Owner. This Lease shall not be affected by any such sale and the Tenant agrees to attorn to the purchaser or assignee provided all the Owner's obligations hereunder are assumed in writing by the transferee.

19.08. **Notice of ADA Violations.** Within ten (10) days after receipt, the Owner and the Tenant shall advise the other party in writing, and provide the other party with copies of any notices claiming or alleging violation of the Americans with Disabilities Act of 1990 (hereafter "ADA") relating to the Premises, or any claim made or threatened in writing regarding noncompliance with the ADA and relating to the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Premises.

19.09. **Construction.** All parties hereto have either (i) been represented by separate legal counsel, or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Lease.

19.10. **Succession.** This Lease shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties.

19.11. **Estoppel Certificate.** The Tenant shall, within ten (10) days from written notice from the Owner, execute, acknowledge and deliver to the Owner a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, (b) acknowledging that there are not, to the Tenant's knowledge, any uncured defaults

on the part of the Owner hereunder, or specifying such defaults if they are claimed, and (c) containing any other certifications, acknowledgments and representations as may be reasonably requested by the Owner or the party for whose benefit such estoppel certificate is requested. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The Tenant's failure to deliver such statement within said time shall be conclusive upon the Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by the Owner, (ii) that there are no uncured defaults in the Owner's performance, (iii) that not more than an amount equal to one (1) month's installment of the Base Rent has been paid in advance (except in the case of the initial rent payment provided for in Section 2 of Exhibit D), and (iv) that such additional certifications, acknowledgments and representations as are requested under subsection (c) hereof, are valid, true and correct as shall be represented by the Owner. If the Owner desires to finance or refinance the Premises, the Tenant hereby agrees to deliver to any lender designated by the Owner such financial statements of the Tenant as may be reasonably required by such lender. All such financial statements shall be received by the Owner in confidence and shall be used only for the purpose herein set forth.

19.12. **Warranty Re: Financial Statements.** The Tenant and the officer(s) signing this Lease for a corporate Tenant and each guarantor of this Lease, if any, represent, warrant and certify to the Owner that any financial statement or other financial information given to the Owner is true, accurate and correct and truly and accurately represents the financial condition of the Tenant or the guarantor(s), as the case may be, as of the date of this Lease. The Tenant and the guarantor(s) acknowledge that said financial statement(s) and information was given to the Owner to induce the Owner to execute this Lease and was relied upon by the Owner in so doing.

19.13. **Severability.** If any term or provision of this Lease shall be determined by a Court to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties that if any provision in this Lease is capable of two constructions, then the provision shall be interpreted to have the meaning which renders it valid.

19.14. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, court orders, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, government restrictions, regulations or controls, hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage except the obligations imposed with regard to rent and other charges to be paid by the Tenant pursuant to this Lease, which obligation shall not be affected thereby.

19.15. **No Other Recording or Disclosure.** Upon execution of this Lease, the parties shall record a memorandum of this Lease in form and substance accepted by both parties. The Tenant agrees to not disclose the terms of this Lease to any third party, excepting only the employees and agents of the Tenant, including the Tenant's accountant and attorney.

19.16. **Article Headings.** The article headings, title and captions used in this Lease are for convenience only and are not part of this Lease.

19.17. **Entire Agreement.** This Lease, including the exhibits attached hereto, contains the entire agreement between the parties as of the date of this Lease and the execution hereof has not been induced by either party or any agent of either party, by representations, promises, or undertakings not expressed herein. There are no collateral agreements, stipulations, covenants, promises, inducements or undertakings whatsoever between the parties concerning the subject matter of this Lease which are not expressly contained herein.

19.18. **Special Provisions.** The special provisions, if any, on Exhibit D, attached hereto and made a part hereof, are a part of this Lease. In the event of a conflict between the General Provisions and the special provisions, if any, on Exhibit D, the latter shall control.

[END OF TEXT]

**EXHIBIT A**

[attach legal description and/or depiction of Premises]

## **EXHIBIT B**

### OWNER WORK

The HVAC and mechanical systems, including the sprinkler irrigation system and fire suppression system, in the Premises shall be in good and working order on the Commencement Date, except as otherwise expressly set forth below. Prior to June 1, 2014, the Owner will have the HVAC and mechanical systems, including the sprinkler irrigation system and fire suppression system, inspected and approved by a qualified third party.

Prior to March 1, 2014, the Owner shall repair the garage door.

Prior to July 1, 2014, the Owner shall repair, seal and stripe the asphalt.

## EXHIBIT C

### ABILITY TO EXTEND LEASE TERM

Subject to the terms and conditions set forth below, Tenant is hereby given the ability to further extend the term of the Lease for up to two (2) consecutive periods, each for four (4) years commencing upon the expiration of the then current term of the Lease. Each such extended term shall be upon all of the terms, conditions, covenants and provisions of the Lease except as provided below.

The Base Rent for each extended lease term shall be as mutually agreed by the Owner and Tenant. If the Owner and Tenant are unable to agree upon a Base Rent within thirty (30) days of Tenant's exercise of the ability to extend, then the Base Rent for the extended lease term shall be in an amount equal to the Base Rent last in effect prior to the extension as increased by Two Percent (2%), with annual increases to Base Rent of Two Percent (2%) thereafter.

Tenant's ability to further extend the term of the Lease shall be subject to the following terms and conditions:

(a) The Lease must be in force and effect at the time the notice of Tenant's election to extend the term is delivered to Owner and on the last day of the then current term.

(b) Tenant must not be in default under any provision of the Lease at the time Tenant delivers to the Owner a notice of Tenant's election to extend the term or on the last day of the then current term.

(c) Tenant must deliver to the Owner a written notice irrevocably electing to extend the term at least one hundred eighty (180) days before the last day of the then current term.

(d) Tenant's ability to extend the term of the Lease as set forth herein is not an "option" as that term is commonly used in real property transactions and has not been bargained, purchased or otherwise obtained by Tenant through independent consideration given by Tenant to Owner. Tenant hereby expressly agrees that Tenant's ability to extend the term of the Lease as set forth in this Lease is fully revocable by Tenant but not the Owner, and subject to waiver by Tenant but not the Owner. Tenant hereby expressly agrees that Tenant's submission to Owner or Owner's agents of any proposal or offer to further extend the term of the Lease upon terms and conditions that differ from those set forth herein, whether such proposal or offer is verbal or written, shall be deemed an immediate, express, irrevocable waiver of Tenant's ability to further extend the term of the Lease on the terms and conditions as set forth herein.

## EXHIBIT D

### SPECIAL PROVISIONS

The following are special provisions agreed between the Owner and the Tenant with respect to the foregoing Lease. A conflict between the General Provisions of the foregoing Lease and the following special provisions shall be controlled by the latter.

1. The Tenant shall have the option to purchase the Premises, subject to the following terms and conditions. In order for the Tenant to have the ability to exercise the option to purchase the Premises: (a) the Lease must be in force and effect at both the time the written notice of Tenant's election to exercise an option to purchase is delivered to Owner and on the date of closing; and (b) the Tenant must not be in default under any provision of the Lease at both the time of Tenant's election to exercise an option to purchase is delivered to Owner and on the date of closing.

The Tenant may elect to purchase the Premises with a closing date of September 1, 2014, for a purchase price equal to One Million One Hundred Fifty Thousand Dollars (\$1,150,000). To exercise this option, the Tenant must provide written notice to Owner at least ninety (90) days' prior to September 1, 2014, irrevocably exercising this option to purchase, along with a non-refundable deposit of One Hundred Thousand Dollars (\$100,000) that shall be applicable to the purchase price.

The Tenant may elect to purchase the Premises with a closing date from September 2, 2014 until May 31, 2015, for a purchase price equal to One Million Two Hundred Thousand Dollars (\$1,200,000). To exercise this option, the Tenant must provide written notice to Owner at least one hundred twenty (120) days' prior to the selected closing date, which must be between September 2, 2014 until May 31, 2015, irrevocably exercising this option to purchase. Tenant must include with such written notice a non-refundable deposit of One Hundred Thousand Dollars (\$100,000) that shall be applicable to the purchase price.

The Tenant may elect to purchase the Premises with a closing date from June 1, 2015 until December 1, 2015, for a purchase price equal to One Million Four Hundred Thousand Dollars (\$1,400,000). To exercise this option, the Tenant must provide written notice to Owner at least one hundred twenty (120) days' prior to the selected closing date, which must be between June 1, 2015 until December 1, 2015, irrevocably exercising this option to purchase. Tenant must include with such written notice a non-refundable deposit of One Hundred Thousand Dollars (\$100,000) that shall be applicable to the purchase price.

If the Tenant fails to exercise the above option to purchase or fails to provide the prior written notice required to exercise the above option to purchase, such option to purchase shall expire. Time is of the essence for the option to purchase.

At closing, Owner shall convey title to the Premises by warranty deed, subject to all liens, claims and encumbrances of record, other than any liens for monetary judgments or liens securing loans made to the Owner.

Taxes and assessments for the current year and all other items of income and direct expense relating to the Premises shall be prorated as of the date of closing. Owner shall pay the premium for an ALTA standard coverage owner's title insurance policy in the amount of the purchase price, and one-half (1/2) of closing agent's escrow fee. Tenant shall pay the cost of recording the warranty deed, and one-half (1/2) of closing agent's escrow fee.

If the Tenant properly exercises an option to purchase and the transaction fails to close because of the default of a party, in addition to any other remedy(s) in law or in equity available to the other party, the defaulting party shall reimburse the other party all costs and expenses incurred by the other party in connection with the transaction including, but not limited to, attorney's fees, appraisal fees and title company charges. If the defaulting party is Owner, Tenant's non-refundable deposit shall be

refunded.

2. Prior to executing this Lease, the Tenant was obligated to provide the Owner with a deposit in the amount of Fifty One Thousand Dollars (\$51,000) (the "Deposit"). Upon execution of this Lease, Thirty Five Thousand Dollars (\$35,000) of this Deposit shall be released to Owner and applied to Base Rent due for the period from February 15, 2014 through December 14, 2014. The remaining Sixteen Thousand Dollars (\$16,000) of this Deposit shall be held as security deposit as provided in this Lease, and shall be applied toward the last month's rent.
  
3. The Tenant shall use commercially reasonable efforts to get its proposed use of the Premises approved by the City of Hailey (the "City Approval"). If the Tenant is unable to obtain the City Approval despite using commercially reasonable efforts, the Tenant may terminate this Lease by providing written notice to the Owner by no later than February 7, 2014. If the Tenant terminates this Lease as provided in this Section, the Deposit shall be applied to the Owner's legal fees incurred in the preparation of this Lease with the balance of the Deposit released to the Tenant.

## APPENDIX I

### HAZARDOUS WASTE

The Tenant shall not cause or permit any hazardous substance(s) to be used, stored, generated or disposed of on or in the Premises, without first obtaining the Owner's written consent. Notwithstanding the Owner's consent, if any hazardous substance(s) is used, stored, generated or disposed of on or in the Premises by the Tenant, such usage, storage, generation and disposal shall, in all respects, be in strict accordance with all federal, state and local laws, statutes, ordinances and regulations (hereafter "Laws").

If the Premises become contaminated in any manner for which the Tenant is liable, the Tenant shall indemnify, defend, save and hold the Owner harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Premises, damages caused by loss or restriction of rentable or usable space within the Premises, or any damages caused by adverse impact on marketing of the said space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the lease term and arising as a result of that contamination by the Tenant. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the Premises, and/or any cleanup, removal or restoration required by applicable Laws or mandated by any federal, state or local governmental agency or entity. Without limitation of the foregoing, if the Tenant causes or permits the presence of any hazardous substance(s) on the Premises and such results in contamination of the Premises, the Tenant shall promptly, at the Tenant's sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such hazardous substance(s) on the Premises. The Tenant shall first obtain the Owner's approval of any such remedial action.

The Owner represents and warrants to Tenant, to Owner's actual knowledge, without duty of investigation or further inquiry, that the Premises do not contain any hazardous substance in violation of applicable Laws.

As used herein, "hazardous substance" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Idaho or the United States Government. The term "hazardous substance" includes, without limitation, any material, waste or substance that is (i) defined as a "hazardous substance" under any law of the State of Idaho; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); (v) defined as a "hazardous waste" pursuant to §1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, et. seq. (42 U.S.C. §6903), or the Idaho Hazardous Waste Management Act of 1983, Title 39, Chapter 44, Idaho Code; (vi) defined as a "hazardous substance" pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; (vii) defined as a "regulated substance" pursuant to subchapter IX, Solid Waste Disposal Act (regulation of underground storage tanks), 42 U.S.C. §6991, et seq; or (viii) a material, substance, waste or other matter or element which is defined or classified as "hazardous," "toxic" or "regulated by any federal, state and local law, ordinance, regulation, rule, order, policy or action adopted after the Commencement Date of the Initial Term of the foregoing Lease.

As used herein, "Owner" or "Tenant" shall mean and include the Owner or Tenant, as the case may be, named in the foregoing Lease, the members, partners, shareholders, directors, officers, employees, agents, contractors or invitees of each, a subtenant of the Tenant, and the successors and assigns of the Owner, Tenant or subtenant, including the members, partners, shareholders, directors, officers, employees, agents, contractors or invitees of a successor, assign or subtenant.