

**TOWN OF KEYSTONE**  
**Summit County, Colorado**

**RESOLUTION 2024-19**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO  
AUTHORIZING A LEASE OF A PORTION OF THE KEYSTONE CENTER**

**WHEREAS**, the Town of Keystone (“Town”) is a home rule municipality governed by the Keystone Home Rule Charter; and

**WHEREAS**, The Keystone Center owns approximately 5.75 acres more or less of real property located at 1628 Saints John Road, Keystone, Colorado 80435, which is the site of the Keystone Center (the “Property”); and

**WHEREAS**, the Town desires to enter into a lease with The Keystone Center to use of a portion of the Property as Town Hall and for a government workplace; and

**WHEREAS**, the Town Council finds that it is in the best interests of the Town to lease the Property from the Keystone Center.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. The Lease Agreement between the Town of Keystone and the Keystone Center for use of a portion of the Keystone Center as Town Hall and as a government workplace is authorized and approved in the form substantially similar to the form attached hereto as Exhibit A and made a part of this resolution. The Mayor is authorized to execute the Lease Agreement on behalf of the Town.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED** by a vote of 1 in favor and 0 against, this 8th day of February 2024.

By: Kenneth D. Riley  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: Madeleine Sieb  
Town Clerk

By: Jennifer Madson  
Town Attorney

EXHIBIT A  
LEASE AGREEMENT

**OFFICE LEASE  
SUMMARY OF BASIC LEASE TERMS**

1. Tenant: Town of Keystone
2. Building.
  - (a) Address: 1628 Sts. John Rd, Keystone, Colorado 80435
3. Demised Premises.
  - (a) Approximate Total Floor Area:
    - Small Offices - approximately 100 square feet per office
    - Medium Offices - approximately 130 square feet per office
    - Large Office - approximately 180 square feet
    - Community room - approximately 1748 square feet
    - Downey Library - approximately 380 square feet
    - Common Space - approximately 340 square feet
  - (b) Address: Offices 101, 102, 103, 104, 105, 106, 107, 109, and 111 of the building in addition to the Downey Memorial Library and the east end common space
4. Lease Term.
  - (a) February 1, 2024 through January 31, 2025 (as further described in Section 2.2 of this Lease)
  - (b) Details:
    - Monthly Rent - February 1, 2024 - \$1,900
    - Monthly Rent - March 1, 2024 through January 31, 2025 - \$4,900

Office Number	Size	Monthly Rent	Total Rent	Lease Dates
107	Small	\$ 350.00	\$ 4,200.00	2/1/24 - 1/31/25
109	Small	\$ 350.00	\$ 4,200.00	2/1/24 - 1/31/25
111	Large	\$ 600.00	\$ 7,200.00	2/1/24 - 1/31/25
Community Room		\$ 600.00	\$ 7,200.00	2/1/24 - 1/31/25
103	Medium	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
104	Medium	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
105	Medium	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
106	Medium	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
101	Corner	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
102	Corner	\$ 400.00	\$ 4,400.00	3/1/24 - 1/31/25
Downey Library		\$ 350.00	\$ 3,850.00	3/1/24 - 1/31/25
Common Space		\$ 250.00	\$ 2,750.00	3/1/24 - 1/31/25
		<b>\$ 4,900.00</b>	<b>\$55,800.00</b>	

6. Initial Payment Due May 1, 2024:
  - (a) February through May Rent totaling \$16,600.00
  - (b) Security Deposit of \$4,900.00
7. Address for Notices and Payment to Landlord.
 

Keystone Policy Center  
1628 Sts John Rd  
Keystone, CO 80435
8. Address for Notices and Billings to Tenant.
 

Town of Keystone  
1628 Sts John Rd  
Keystone, CO 80435
9. Permitted Use(s) by Tenant: general office purposes and for conducting public meetings and public business and for no other purpose

Landlord's Initials \_\_\_\_\_

Tenant's Initials \_\_\_\_\_

## OFFICE LEASE

This Lease ("Lease") is made this 8<sup>th</sup> day of February 2024, between The Keystone Center, a Colorado nonprofit corporation ("Landlord"), and the Town of Keystone ("Tenant").

### 1. DEMISE

1.1 **Demise**. Landlord enters into this Lease in consideration of the payment by Tenant of the rents herein reserved and the keeping, observance and performance by Tenant of the covenants and agreements of Tenant herein contained. Subject to the provisions, covenants and agreements herein contained, Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, the Demised Premises as hereinafter defined, subject to existing covenants, conditions, restrictions, easements and encumbrances affecting the same.

1.2 **Demised Premises**. The "Demised Premises" means the space to be occupied by Tenant and its employees and the public, in space as permitted by Tenant, containing approximately the Floor Area set forth in the Summary. The address of the Demised Premises is the address set forth in the Summary. Landlord reserves the right to relocate the Demised Premises to another location in the Property, provided that the Floor Area of such substitute Demised Premises is reasonably comparable to the Demised Premises.

1.3 **Definitions**. "Land" shall mean the parcel of real property more particularly described as the Land in Exhibit A attached hereto. "Building" shall mean the building or buildings constructed on the Land and containing approximately the Floor Area set forth on the Summary. "Improvements" shall mean the Building, the Parking Area as hereinafter defined, and all other fixtures and improvements owned by Landlord on the Land, including landscaping thereon. "Property" shall mean the Land, the Building and the Improvements and any fixtures and personal property used in operation and maintenance of the Land, Building and Improvements other than fixtures and personal property of Tenant and other users of space in the Building.

1.4 **Common Facilities**. Tenant is hereby granted the non-exclusive right and license to use, in common with others entitled to such use, the Common Facilities (defined below), subject to the rights of Landlord reserved herein. Landlord acknowledges and agrees that the public may need to use the Common Facilities to conduct business with the Tenant and to attend public meetings. Tenant shall not interfere, at any time, with the rights of Landlord and others entitled to use any part of the Common Facilities, and shall not store, either permanently or temporarily, any materials, supplies or equipment in or on the Common Facilities. "Common Facilities" shall mean all of the Property except (a) the Demised Premises, (b) any other premises in the Building leased or held for lease to other tenants, and (c) any areas reserved by Landlord for special purposes as determined by Landlord from time to time. Common Facilities shall include the Parking Area, any walks and driveways, and any other interior and exterior areas designated by Landlord from time to time for common use of Tenant and other users of space in the Building or the Property. "Parking Area" shall mean that portion of the Common Facilities which is designated by Landlord for the parking of motor vehicles. Landlord reserves the right to use the roof, the demising floors, walls and ceilings, and the exterior walls of the Demised Premises, the Building and the Property, and all telecommunications and utilities chases, ducts or other passageways located within the Demised Premises or the Building (collectively, "Reserved Area"). The installation of any telecommunications, data, utility or other wires, cables or other equipment or facilities in the Reserved Area by Tenant or for use by Tenant shall be subject to the prior approval of Landlord, and Landlord shall be entitled to charge Tenant for any costs related thereto. Tenant shall: (i) keep any Common Facilities it uses neat and clean, (ii) pick up trash that originated from Tenant after each use, and (iii) control the activities of Tenant's employees, agents, visitors, contractors, and invitees (collectively, "Tenant's Agents") in the Common Facilities so that they do not create a nuisance. Notwithstanding the foregoing.

1.5 **Covenant of Quiet Enjoyment**. Landlord covenants and agrees that, provided a Default (as hereinafter defined) by Tenant has not occurred, and provided that Tenant keeps, observes and performs its covenants and agreements contained in this Lease, Tenant shall have quiet possession of the Demised Premises and such possession shall not be unreasonably disturbed or interfered with by Landlord. Landlord shall under no circumstances be held responsible for restriction or disruption of use, enjoyment or access to the Property from public streets caused by construction work or other actions taken by governmental authorities or other tenants (their employees, agents, visitors, contractors or invitees), or any entry or work by Landlord in or around the Demised Premises authorized under this Lease, or any other cause not entirely within Landlord's direct control, and such circumstances shall not constitute a constructive eviction of Tenant nor give rise to any right of Tenant against Landlord.

1.6 **Condition of Demised Premises**. Tenant covenants and agrees that, upon taking possession of the Demised Premises, Tenant shall be deemed to have accepted the Demised Premises "as is" and Tenant shall be deemed to have waived any warranty of condition or habitability, suitability for occupancy, use or habitation, fitness for a particular purpose or merchantability, express or implied, relating to the Demised Premises. Tenant's acceptance of the Demised Premises shall constitute its acknowledgment that the Demised Premises was in good condition, order and repair at the time of such acceptance including, without limitation, all mechanical and electrical systems.

### 2 LEASE TERM AND RENT

2.1 **Lease Term**. The term of this Lease (the "Lease Term") shall commence on the commencement date specified in the Summary ("Commencement Date") and expiring at midnight on the last day of the lease term. If for any reason Landlord has been unable to deliver possession of the Demised Premises to Tenant on or before the Commencement Date of the Lease Term, then the Lease Term and all other applicable deadlines shall be delayed in their entirety until Landlord has delivered possession of the Demised Premises to Tenant. In no event shall Landlord be liable to Tenant for any loss or damage and in no event shall this Lease be void or voidable as a result of any such delay. If Landlord grants access or occupancy of the Demised Premises prior to the Commencement Date of the Lease Term or Tenant otherwise enters the Demised Premises for any reason whatsoever, Tenant's access, occupancy and entry shall be subject to all terms and conditions of this Lease. The Tenant will have the right to renew the Lease upon written notice delivered to the Landlord at least ten (10) days prior to the expiration of the then-current Lease Term.

**2.2 Rent.** Tenant covenants and agrees to pay to Landlord, without offset, reduction, deduction, counterclaim or abatement, rent for the Lease Term in the amount specified as rent in the Summary (“Rent”). In addition, Tenant shall pay Tenant’s printing and copying costs billed by the Landlord (a code will be assigned to Tenant by Landlord) and such costs shall also be included in the definition of “Rent”. Rent shall be payable monthly in advance, without notice, in installments in the amount of monthly Rent specified in the Summary. The first such monthly installment shall be due May 1, 2024 (to cover February – May 2024 rent) and a monthly installment shall be due and payable on or before the first day of each calendar month thereafter for that month’s monthly Rent. If applicable, rental payment for any fractional calendar month at the commencement or end of the Lease Term shall be prorated based on a thirty (30) day month. Rent and all other sums payable by Tenant to Landlord under this Lease shall be paid to Landlord at the place for payments specified in the Summary, or such other place as Landlord may, from time to time, designate in writing.

**2.3 Security Deposit.** Tenant shall deposit with Landlord the amount specified as a security deposit in the Summary (“Security Deposit”) on or before May 1, 2024. The Security Deposit shall be retained by Landlord and may be applied by Landlord, to the extent necessary, to pay and cover any loss, cost, damage or expense, including attorneys’ fees sustained by Landlord by reason of the failure of Tenant to comply with any provision, covenant or agreement of Tenant contained in this Lease. To the extent not necessary to cover such loss, cost, damage or expense, the Security Deposit, without any interest thereon, shall be returned to Tenant after the expiration of the Lease Term in accordance with applicable law. Tenant shall, from time to time, within five (5) days of Landlord’s demand, deposit with Landlord such amounts as may be necessary to replenish the Security Deposit to its original amount. The Security Deposit is not an advance payment of Rent or a measure of Tenant’s liability for damages.

**2.4 General Provisions as to Security Deposit.** Landlord may commingle the Security Deposit with Landlord’s own funds and use such funds as Landlord determines. In no event shall Landlord be required to hold such funds in escrow or trust for Tenant. Landlord shall not be obligated to pay interest to Tenant on account of the Security Deposit. In the event of a transfer by Landlord of Landlord’s interest in the Demised Premises, Landlord may deliver the remaining balance of any Security Deposit to the transferee of Landlord’s interest and Landlord shall thereupon be discharged from any further liability to Tenant with respect to such Security Deposit. In the event of a Transfer (as defined in Section 4.5) by Tenant of Tenant’s interest in this Lease, Landlord shall be entitled to return the Security Deposit to Tenant’s successor in interest and Landlord shall thereupon be discharged from any further liability with respect to the Security Deposit.

**2.5 Taxes.** Tenant shall pay, prior to delinquency, all taxes coming due which accrue during or after the Term of this Lease against Tenant’s interest in this Lease, as well as all taxes levied against Tenant’s personal property, fixtures and improvements in the Demised Premises. Landlord acknowledges that Tenant is a tax-exempt entity.

**2.6 Landlord’s Insurance.** Landlord covenants and agrees to maintain such insurance for the Building and the Common Facilities, in such amounts, from such company, with such deductible and on such terms and conditions as Landlord deems appropriate. Any such insurance obtained by Landlord need not name Tenant as an additional insured or loss payee.

**2.7 Tenant’s Insurance.**

(a) Tenant covenants and agrees to obtain and maintain, throughout the Lease Term, property insurance covering the Demised Premises and all of Tenant’s business and personal property, equipment, fixtures, and improvements, with coverage as broad as ISO Causes of Loss -Special Form- against risks of direct physical loss or damage (commonly known as “all risk”) for an amount adequate to replace, and at replacement cost coverage, all of Tenant’s equipment, fixtures, improvements, business or personal property, and any other property for which Tenant is responsible located in or about the Building and Demised Premises; and Tenant acknowledges that Landlord has no responsibility to determine adequate values for Tenant’s property.

(b) Tenant covenants and agrees to maintain, throughout the Lease Term, a commercial general liability insurance policy, with coverage including at least \$500,000.00 in respect of personal injury or death in respect of any one person and of not less than \$1,000,000.00 for death or injury to more than one person, and \$500,000.00 for property damage, which general liability policy shall: (i) name Landlord, any property manager, and any mortgagee as additional insureds; (ii) be endorsed to be primary and non-contributory to any other similar insurance of said additional insureds; (iii) be endorsed to include a waiver of subrogation in favor of additional insureds; (iv) provide at least thirty (30) days prior written notice be given to additional insureds of any cancellation, non-renewal or material change as respects the coverages required by this Lease; and (v) not contain any deductible, retention or self-insured provisions or any contractual liability coverage exclusion modifying or deleting the definition of “insured contract”, unless otherwise approved in writing by Landlord. The limits of insurance required in this Lease do not limit or restrict the limit of liability of Tenant hereunder. Prior to the occupancy of the Demised Premises and prior to the expiration of the then-current policy, Tenant shall cause to be delivered to the Landlord certificates of insurance evidencing that the insurance required under this Lease is in effect. Tenant covenants and agrees to obtain other insurance, coverages and endorsements as requested from time to time by Landlord.

(c) Tenant acknowledges that Landlord is not obligated to maintain any insurance or extended coverage insurance with respect to damage to any plate glass or other glass located in the Demised Premises. Tenant shall be entitled to obtain any such insurance for plate glass or other glass located in the Demised Premises; provided, however, that Tenant shall be obligated to replace any damaged or broken or plate glass or other glass located in the Demised Premises, whether or not Tenant has obtained such insurance coverage.

**2.8 Waiver.** Tenant waives all right of recovery against Landlord, its property manager, their respective officers, partners, members, agents, representatives, and employees for loss or damage to Tenant’s real business or personal property kept in or about the Building, the Property or Demised Premises, for loss which is capable of being insured against or for loss of business revenue or extra expense arising out of or related to the use and occupancy of the Demised Premises, to the extent there is valid and collectible insurance provided by Tenant’s property insurance policy as required to be carried by Tenant under this Lease. In obtaining such property insurance as required by this Lease, Tenant shall notify its insurance carrier of this foregoing waiver and provide to Landlord certificate of insurance so representing such waiver of subrogation.

**2.11 Place of Payments.** Rent and all other sums payable by Tenant to Landlord under this Lease shall be paid to Landlord by check, or wire transfer, in immediately available funds at the place for payments specified in the Summary, or such other place as Landlord may, from time to time, designate in writing. All payments made to Landlord by Tenant by check or wire transfer shall be payable to the name set forth in the Summary, until such time as Landlord may notify Tenant otherwise. Landlord shall not be liable for and Tenant hereby releases and covenants not to bring any action against Landlord for any loss, liability or damage incurred by Tenant or any third party in connection with Landlord's initiation or acceptance of any such wire transfers or debit entries in accordance with this Lease.

### **3. MAINTENANCE AND REPAIR.**

**3.1 Utilities.** During the Lease Term, Landlord, at its expense, shall furnish the Demised Premises with: (i) electric current to the extent available and reasonably required for lighting and other normal and customary business office uses (but expressly excluding electric current for computers or any office machines or equipment that do not operate on existing circuits in the Building or that require special circuits or equipment); (ii) heat in the appropriate seasons reasonably required for the comfortable occupation of the Demised Premises; and (iii) replacement of bulbs for Building standard lights in the Demised Premises. Tenant shall pay the cost of any modifications to the electrical system or heating and air conditioning system of the Building necessitated by its usage, the cost of separate metering if required by Landlord and the cost of any additional electrical service provided to Tenant (any and all such costs shall be deemed "Rent" for purposes of this Lease, and shall be payable by Tenant within five (5) days following Landlord's demand therefor). Landlord shall also provide reasonable trash collection and disposal for the Building and Tenant shall have the right to access Landlord's internet by LAN or by wireless network using existing devices and cabling. Landlord shall not be liable for any damage, loss or expense incurred by Tenant by reason of any interruption, reduction (permanent or temporary) or failure of any utilities or services for the Demised Premises or the Building. Landlord may, with written notice to Tenant (except that no notice shall be required in the event of an emergency), cut off and discontinue any utilities and services when such discontinuance is necessary in order to make repairs or alterations or if otherwise required in connection with the fulfillment of Landlord's obligations under this Lease or pursuant to applicable law. In no event shall Tenant be entitled to any abatement of Rent as a result of the Demised Premises being rendered unusable due to any such failure, interruption or reduction. No failure, interruption or reduction of utilities or services shall be construed as an eviction or disturbance of possession by Landlord and Tenant shall have no right to terminate this Lease as a result thereof. Tenant shall cooperate with Landlord in connection with all benchmarking, rating, reporting and other requirements of Landlord under any energy efficiency programs including, without limitation, providing Landlord with access to the Demised Premises to perform any required lighting upgrades and/or retro-commissioning (as determined by Landlord in its sole discretion) and providing Landlord with information and reports regarding Tenant's energy and other utility usage in the Demised Premises as requested by Landlord from time to time. Tenant acknowledges and agrees that Landlord may be required to disclose energy and other utility usage data for the Building (including the Demised Premises) to governmental authorities and such data may be made available to the public.

**3.2 Tenant's Maintenance.** Tenant, at its sole cost and expense, shall maintain, repair, replace and keep the Demised Premises and all improvements, fixtures and personal property thereon in good, safe and sanitary condition, order and repair and in accordance with all applicable laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction.

**3.3 Landlord's Maintenance.** Landlord shall maintain and replace the exterior walls and structural elements of the Building and the Improvements. Landlord, at its sole cost and expense, shall be responsible for the replacement of the roofs of the Building. Landlord's maintenance obligation shall be determined in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Landlord shall not be obligated to repair or replace any damage caused by the acts or omissions of Tenant or Tenant's Agents, which repair and replacement shall be at the sole cost and expense of Tenant, and, if performed by Landlord, Tenant shall additionally remit to Landlord upon demand a ten percent (10%) administrative fee.

**3.5 Parking.** Tenant shall be entitled to the non-exclusive use of the Parking Area on a first come-first serve basis. Landlord may designate a specific area for Tenant's parking spaces within the Parking Area, may institute charges for use of parking facilities, and may modify, relocate, reduce or restrict any portion of the Parking Area. Landlord shall not be liable for and Tenant hereby releases and covenants not to bring any action against Landlord for any loss, damage or theft to or from any motor vehicle or other property of Tenant or Tenant's Agents which occurs in or about the Parking Area.

### **4. TENANT'S COVENANTS.**

**4.1 Use by Tenant.** Tenant covenants and agrees to use the Demised Premises only for the use or uses set forth as Permitted Uses by Tenant in the Summary and for no other purposes, except with the prior written consent of Landlord. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises in violation of any law, ordinance, order, rule or regulation of any governmental authority having jurisdiction and that the Demised Premises shall be used, kept and maintained in compliance with any such law, ordinance, order, rule or regulation and with the certificate of occupancy issued for the Building and the Demised Premises. Tenant shall provide written notice to Landlord within one (1) day after Tenant receives any notice of a violation or other requirement to comply with any such law, ordinance, rule or regulation. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises which impairs or increases the cost of insurance maintained with respect to the Demised Premises or the Property, which increases the insured risks or results in cancellation of any such insurance. No signs or advertising devices shall be erected by Tenant except if approved by Landlord. Landlord agrees to allow Tenant to post signs for public meeting notices under the Colorado Open Meetings Law. With the exception of the public meeting notice signs, Tenant agrees not to place signs, stickers, decals or other advertising devices shall be installed or displayed in any windows or on any doors of the Demised Premises or otherwise be visible from outside of the Demised Premises (other than suite identification signage (if any) approved in advance by Landlord). Notwithstanding anything to the contrary contained in this Lease, and without in anyway limiting the provisions of this Section 4.1, Tenant acknowledges and agrees that its use of the Demised Premises shall be subject to the following: (i) Tenant shall not be open to the public other than between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday and any time after 5:00 p.m. for scheduled Tenant meetings (Tenant will provide advance notice to Landlord of scheduled Tenant meetings after 5:00 p.m.); (ii) Tenant shall minimize foot traffic to

and from the Demised Premises at all times; (iii) in no event shall Tenant permit use of the Demised Premises as for purposes of a marijuana dispensary, food service, beverage sales, saloon or public house, adult book- or gift store, massage parlor, gambling parlor, or similar uses (and such other uses as Landlord may, in its discretion, prohibit from time to time); (iv) Tenant shall turn off all lights and appliances and lock all doors and windows to the Demised Premises at any time during which Tenant is not in physical occupancy thereof; and (v) Tenant acknowledges that, if Tenant desires janitorial service within the Demised Premises (which shall be provided by Landlord at such times as Landlord deems appropriate), Tenant must provide unlocked access to the Demised Premises for that purpose (provided, however, that in no event shall Landlord be in breach of this Lease for failure to provide janitorial service to the Demised Premises for any reason, including but not limited to Tenant's failure to so provide access to the Demised Premises).

**4.2 No Waste or Nuisance.** Tenant covenants and agrees that (a) nothing shall be done or kept on the Demised Premises or the Property which impairs the value of the Demised Premises or the Property or constitutes waste; (b) nothing shall be done or kept on the Demised Premises or the Building which impairs the structural soundness of the Building or results in an overload of electrical lines serving the Building; (c) no noxious or offensive activity shall be carried on upon the Demised Premises or the Property nor shall anything be done or kept on the Demised Premises or the Property which is a public or private nuisance or which causes disturbance or annoyance to others in the Building or on adjacent or nearby property; (d) no refuse, scrap, debris, garbage, trash, bulk materials or waste shall be kept, stored or allowed to accumulate on the Demised Premises or the Property except as may be securely enclosed within the Demised Premises; and (e) Tenant shall not commit, suffer or permit any violation of any covenant, condition or restriction affecting the Property.

**4.3 Restriction on Changes.** Tenant covenants and agrees not to improve, change, alter, add to, remove or demolish any improvements on the Demised Premises, including, without limitation, any work, restoration, removal or decommissioning (individually and collectively, "Changes"), without the prior written consent of Landlord. Tenant covenants and agrees that any Changes approved by Landlord shall be completed with due diligence and in a good and workmanlike fashion and in compliance with all conditions imposed by Landlord and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction, and that the costs and expenses with respect to such Changes shall be paid promptly when due and that the Changes shall be accomplished free of mechanics' and materialmen's liens. In addition, if any Changes affect compliance of the Demised Premises or any portion of the Property with the Americans With Disabilities Act ("ADA"), Tenant shall be solely responsible for all costs of compliance with the ADA resulting from such Changes. At least twenty (20) days prior to any Changes, Tenant shall provide written notice to Landlord of the date of commencement of any Changes. Landlord shall have the right, at any time and from time to time, to post and maintain on the Demised Premises and Building such notices as Landlord deems necessary to protect the Demised Premises against any liens. Tenant covenants and agrees not to permit or suffer, and to cause to be removed and released within thirty (30) days after imposition, any mechanic's, materialman's or other lien occurring by, through or under Tenant. Tenant covenants and agrees that all Changes shall become the property of Landlord at the expiration or earlier termination of the Lease Term or, if Landlord so requests, Tenant shall, at or prior to expiration of the Lease Term and at its sole cost and expense, remove such Changes and restore the Demised Premises to their condition prior to such Changes.

**4.4 Subordination.** Tenant covenants and agrees that this Lease and Tenant's interest in the Demised Premises shall be junior and subordinate to any mortgage or deed of trust ("Mortgage") now or hereafter encumbering the Property. In the event of a foreclosure of any Mortgage, Tenant shall attorn to the party acquiring title to the Property as the result of such foreclosure. No act or further agreement by Tenant shall be necessary to establish the subordination of this Lease to any such Mortgage, which subordination is self-executing, but Tenant covenants and agrees, within five (5) days following request by Landlord or mortgagee, to execute such documents as may be necessary or appropriate to confirm and establish this Lease as subordinate to any Mortgage in accordance with the foregoing provisions (including, without limitation, such mortgagee's form of subordination, non-disturbance and attornment agreement). If any mortgagee or purchaser at foreclosure thereof succeeds to the interest of Landlord in the Land or the Building, such person shall not be (i) liable for any act or omission of Landlord under this Lease; (ii) liable for the performance of Landlord's covenants hereunder which arise prior to such person succeeding to the interest of Landlord hereunder; (iii) bound by the payment of any Rent which Tenant may have paid more than one month in advance; (iv) liable for any security deposit which was not delivered to such person; or (v) bound by any modifications to this Lease to which such person has not consented in writing.

**4.5 Assignment or Subletting.** Tenant covenants and agrees not to make or permit a Transfer. A "Transfer" by Tenant shall include (i) an assignment of this Lease, a sublease of all or any part of the Demised Premises, (ii) any assignment, sublease, transfer, mortgage, pledge or encumbrance of all or any part of the Demised Premises or of Tenant's interest under this Lease or in the Demised Premises, by operation of law or otherwise, (iii) the use or occupancy of all or any part of the Demised Premises by anyone other than Tenant, (iv) the transfer or change, whether voluntary, involuntary, or by operation of law, of twenty-five percent (25%) or more of the control or ownership, whether legal or beneficial, in Tenant, (v) the dissolution, merger, consolidation or other reorganization of Tenant, or (vi) the withdrawal, resignation or termination of the majority of any general partners, managers or board of directors of Tenant. Any such Transfer by Tenant without Landlord's written consent shall be void and shall constitute a Default by Tenant under this Lease. Notwithstanding any Transfer by Tenant, Tenant shall not be relieved of its obligations under this Lease and Tenant shall remain liable, jointly and severally, and as a principal, not as a guarantor or surety, under this Lease, to the same extent as though no Transfer by Tenant had been made, unless specifically provided to the contrary in Landlord's prior written consent. The acceptance of rent by Landlord from any person other than Tenant shall not be deemed to be a waiver by Landlord of the provisions of this Section or of any other provision of this Lease and any consent by Landlord to a Transfer by Tenant shall not be deemed a consent to any subsequent Transfer by Tenant. Tenant shall reimburse Landlord for all of Landlord's costs incurred in connection with any request for consent to a Transfer, including, without limitation, a reasonable sum for attorneys' fees. Notwithstanding the foregoing, Landlord shall, at Landlord's option, have the right in lieu of consenting to a Transfer by Tenant, to terminate this Lease as to the portion of the Demised Premises that is the subject of the proposed Transfer, and in such event Landlord may (but shall not be required to) enter into a new lease with the proposed transferee. Alternatively, at the request of Landlord, Tenant shall pay over to Landlord all sums received by Tenant from such transferee in excess of the Rent payable by Tenant hereunder which is attributable on an equally allocable Floor Area basis, to any subletting of all or any portion of the Demised Premises so subleased, and all consideration received on account of or attributable to any assignment of this Lease. Tenant shall not publicly advertise the rate of other terms upon which Tenant is willing to Transfer the Demised Premises. As a condition to any Transfer by Tenant, Tenant shall

acknowledge in writing to Landlord that Tenant shall remain obligated and liable under this Lease, any assignee or other transferee (other than a subtenant) shall expressly assume all the obligations of Tenant under this Lease, and any subtenant shall covenant to Landlord to comply with all obligations of Tenant under this Lease as applied to the portion of the Demised Premises so sublet and to attorn to Landlord, at Landlord's election, in the event of any termination of this Lease prior to the expiration date of the Lease Term; all of which shall be in a written instrument satisfactory to Landlord and delivered not later than fifteen (15) days prior to the effective date of such Transfer. Nothing in this paragraph 4.5 prohibits the Tenant from allowing others to use the Community Room for periods of 5 hours or less on any day with the prior approval of Tenant.

**4.6 Financial Statements.** Tenant covenants and agrees to furnish to Landlord, within ten (10) days after written request thereof from Landlord, copies of publicly, available financial statements of Tenant certified by the chief financial officer of Tenant. Landlord may deliver any such financial statements to any existing or prospective mortgagee or purchaser of the Property. The financial statements shall include a balance sheet as of the end of, and a statement of profit and loss for, the preceding fiscal year of Tenant.

**4.7 Estoppel Certificates.** Tenant covenants and agrees to execute, acknowledge and deliver to Landlord, within five (5) days of Landlord's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the dates to which Rent has been paid; stating the amount of the Security Deposit held by Landlord; stating that there have been no defaults by Landlord or Tenant and no event which with the giving of notice or the passage of time, or both, would constitute such a default (or, if there have been defaults, setting forth the nature thereof); and stating such other matters concerning this Lease as Landlord may request. Tenant agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Property.

**4.8 Landlord's Access.** Tenant covenants and agrees that Landlord and the authorized representatives of Landlord shall have the right to enter the Demised Premises at any reasonable time during ordinary business hours (or at any time in the event of an emergency) for the purposes of inspecting, repairing or maintaining the Demised Premises or the Building, performing any alterations or improvements to the Demised Premises or the Building as Landlord may determine from time to time, performing any obligations of Tenant which Tenant has failed to perform hereunder, or for the purposes of showing the Demised Premises to any existing or prospective mortgagee, purchaser or tenant of the Property or the Demised Premises. When practical, Landlord agrees to provide 12 hours' notice to Tenant of the need to enter the Demised Premises.

**4.9 Tenant Indemnification.** To the extent permitted by law, Tenant covenants and agrees to protect, indemnify, defend and save Landlord and Landlord's managers, employees, agents, beneficiaries, successors, assigns and other affiliated or related parties ("Related Parties") harmless from and against all liability, obligations, claims, damages, penalties, causes of action, costs and expenses, including attorneys' fees, imposed upon, incurred by or asserted against Landlord or its Related Parties by reason of (a) any accident, injury to or death of any person or loss of or damage to any property occurring on or about the Demised Premises; (b) any accident, injury to or death of any person or loss or damage to any property occurring on or about the Common Facilities as a result of the actions, omissions, or negligence of Tenant or any of Tenant's Agents, or (c) any failure on the part of Tenant or Tenant's Agents to perform or comply with any of the provisions, covenants or agreements of Tenant contained in this Lease or with any applicable law. To the extent permitted by law, Tenant further covenants and agrees that, in case any action, suit or proceeding is brought against Landlord or its Related Parties by reason of any of the foregoing, Tenant shall, at Tenant's sole cost and expense, defend Landlord and its Related Parties in any such action, suit or proceeding with counsel reasonably acceptable to Landlord.

**4.10 Limitation of Landlord Liability.** Notwithstanding any claim by Tenant against Landlord, Landlord and its Related Parties shall not be personally liable with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the equity of Landlord in the Property in the event of any default or liability of Landlord under this Lease, such exculpation of liability to be absolute and without any exception whatsoever.

**4.11 Transfer by Landlord.** In the event of a transfer by Landlord of the Property or of Landlord's interest as Landlord under this Lease, Landlord's successor or assign shall take subject to and be bound by this Lease and in such event, Tenant covenants and agrees that Landlord and its Related Parties shall be released from all obligations of Landlord under this Lease, except obligations which arose and matured prior to such transfer by Landlord; that Tenant shall thereafter look solely to Landlord's successor or assign for satisfaction of the obligations of Landlord under this Lease; and that, upon demand by Landlord or Landlord's successor or assign, Tenant shall attorn to such successor or assign.

**4.12 Rules and Regulations.** Tenant shall observe and comply with any rules and regulations promulgated by Landlord, which may be amended from time to time by Landlord by providing written notice thereof to Tenant. Landlord shall not be responsible to Tenant for the failure of any other tenant of the Building to observe or comply with any such rules or regulations.

**4.13 Hazardous Substances.** Tenant shall, at its sole cost and expense, promptly respond to and clean up any release or threatened release of any Hazardous Substance (as hereinafter defined) on or about the Demised Premises or, if resulting from the actions, omissions, or negligence of Tenant or Tenant's Agents, the balance of the Property, including any such release or threatened release into the drainage systems, soil, surface water, groundwater, or atmosphere, in a safe manner, in strict accordance with all applicable laws, and as authorized or approved by all federal, state, and/or local agencies having authority to regulate the permitting, handling, and cleanup of Hazardous Substances; provided, however, Tenant's obligations under this sentence shall not include any Hazardous Substances which Tenant conclusively proves existed on the Property on the Commencement Date of the Lease Term unless caused by any act, omission, or negligence of Tenant or Tenant's Agents. Tenant and Tenant's Agents shall not use, store, generate, treat, transport, or dispose of any Hazardous Substance at the Property without first obtaining Landlord's written approval, which consent shall be in Landlord's sole and absolute discretion. Tenant hereby indemnifies, defends and holds harmless Landlord from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, incurred by, claimed or assessed against Landlord or its Related Parties in any way connected with any injury to any person or damage to any property, or any loss to Landlord or its Related Parties occasioned in any way by Hazardous Substances on the Property; provided, however, Tenant's obligations under this sentence shall not include any Hazardous Substances which Tenant conclusively proves existed on the Property on the Commencement Date of the Lease Term unless caused by any act, omission, or negligence of Tenant or Tenant's Agents. Tenant hereby waives, releases and discharges



forever Landlord from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with any condition of environmental contamination of the Property, or the existence of Hazardous Substances in any state on the Property, however they came to be placed there. "Hazardous Substance(s)" shall mean any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under any of the applicable laws; oil and petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under any applicable laws; asbestos and asbestos containing materials, PCBs and other substances regulated under any applicable laws. As used in this Section, the term "applicable laws" shall include, but shall not be limited to, all federal, state, and local statutes, ordinances, regulations and rules regulating the environmental quality, health, safety, contamination and cleanup.

## 5. CASUALTY OR CONDEMNATION.

**5.1 Substantial Damage.** If any portion of the Demised Premises shall be damaged or destroyed by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord ("Tenant's Notice of Damage"). Upon receipt of Tenant's Notice of Damage, Landlord shall determine the nature and extent of the damage or destruction and estimate the time necessary to repair or restore the Demised Premises. As soon as reasonably possible, Landlord shall give written notice to Tenant stating Landlord's estimate of the time necessary to repair or restore the Demised Premises ("Landlord's Notice of Repair Time"). If Landlord reasonably estimates that repair or restoration of the Demised Premises cannot be completed within two hundred (200) days from the time of Tenant's Notice of Damage, Landlord and Tenant shall each have the option to terminate this Lease. If, however, the damage or destruction was caused by the act, omission, or negligence of Tenant or Tenant's Agents, Landlord shall have the option to terminate this Lease at any time and, in such event, Tenant shall not have the option to terminate this Lease. Any option granted hereunder shall be exercised by written notice to the other party given within ten (10) days after Landlord's Notice of Repair Time. If either Landlord or Tenant exercises its option to terminate this Lease, the Lease Term shall expire ten (10) days after written notice by either Landlord or Tenant exercising such party's option to terminate this Lease. As used herein, the term "other casualty" shall mean casualty insured under a customary property damage insurance policy without modifications or endorsements, and does not include an event or occurrence involving Hazardous Substances or other environmental matters or similar events or occurrences (which events or occurrences shall be governed by Section 4.13 above).

**5.2 Building Damage.** If the Building in which the Demised Premises is located shall be damaged or destroyed by fire or other casualty (though the Demised Premises may not be affected or, if affected, can be repaired within two hundred (200) days) to the extent of fifty percent (50%) or more of the replacement value of the Building, Landlord may elect not to reconstruct or rebuild the Building. In such event, upon written notice to Tenant, this Lease shall terminate and Landlord shall refund to Tenant such amounts of Rent paid by Tenant for the period of the Lease Term after such damage less the reasonable value of any use or occupation of the Demised Premises by Tenant during such period.

**5.3 Repair and Abatement.** If repair and restoration of the Demised Premises can be completed within the period specified in Section 5.1, in Landlord's reasonable estimation, or if neither Landlord nor Tenant terminates this Lease as provided in Sections 5.1 or 5.2, then this Lease shall continue in full force and effect and Landlord shall proceed forthwith to cause the Demised Premises (including any improvements constructed by Landlord but excluding any alterations, improvements, Changes, fixtures, furniture, equipment, and personal property constructed or owned by Tenant) to be repaired and restored with reasonable diligence and there shall be abatement of Rent proportionate to the extent of the space and period of time that Tenant is unable to use and enjoy the Demised Premises. The proceeds of any property insurance maintained on the Demised Premises, other than property insurance maintained by Tenant on fixtures and personal property of Tenant, shall be paid to and become the property of Landlord, subject to any obligation of Landlord to cause the Demised Premises to be repaired and restored and further subject to any rights under any Mortgage encumbering the Property to such proceeds. Landlord's obligation to repair and restore the Demised Premises provided in this Section 5 is limited to the repair and restoration that can be accomplished with the proceeds of any property insurance maintained by Landlord on the Demised Premises. The amount of any such insurance proceeds is subject to any right of any mortgagee to apply such proceeds to its secured debt under its Mortgage. In the event that Landlord determines that the proceeds of any property insurance are not sufficient to complete the repair and restoration of the Demised Premises or the Building (as the case may be), Landlord shall have the right to terminate this Lease by providing written notice thereof to Tenant.

**5.4 Condemnation.** A "Taking" shall mean the taking of all or any portion of the Demised Premises or the Building as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of the Demised Premises or the Building under the threat of condemnation. A "Substantial Taking" shall mean a Taking of twenty-five percent (25%) or more of the Floor Area of either the Demised Premises or the Building. An "Insubstantial Taking" shall mean a Taking which does not constitute a Substantial Taking. If there is a Substantial Taking with respect to the Demised Premises or the Building, the Lease Term shall expire on the date of vesting of title pursuant to such Taking. In the event of termination of this Lease under the provisions hereof, Landlord shall refund to Tenant such amounts of Rent theretofore paid by Tenant as may be applicable to the period subsequent to the time of termination of this Lease. In the event of an Insubstantial Taking with respect to the Demised Premises or the Building, this Lease shall continue in full force and effect, and Landlord shall proceed forthwith to cause the Demised Premises (but excluding any alterations, improvements, Changes, fixtures, furniture, equipment and personal property constructed or owned by Tenant), less such Taking, to be restored as near as may be to the original condition thereof and there shall be abatement of Rent proportionate to the extent of the space so taken. The total award, compensation, damages or consideration received or receivable as a result of a Taking ("Award") shall be paid to and be the property of Landlord, including, without limitation, any part of the Award made as compensation for diminution of the value of this leasehold or the fee of the Demised Premises. Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any such Award. Tenant covenants and agrees to execute, immediately upon demand by Landlord, such documents as may be necessary to facilitate collection by Landlord of any such Award. Notwithstanding Landlord's right to the entire Award, Tenant shall be entitled to a separate award, if any, for the loss of Tenant's personal property, the loss of Tenant's business and profits, and Tenant's moving expenses, which may be pursued by Tenant at its sole expense.

## 6. DEFAULT AND REMEDIES

**6.1 Defaults.** In the event that any of the following events shall occur, Tenant shall be deemed to be in default of Tenant's obligations under this Lease (each of the following shall be referred to as a "Default by Tenant"): (a) Tenant fails to pay Rent or any other amounts payable by Tenant within five (5) days after such rental or other amount is due under the terms of this Lease; (b) Tenant breaches or fails to comply with any non-monetary agreement, term, covenant or condition in this Lease and does not cure such breach or failure within twenty (20) days after written notice thereof by Landlord to Tenant; (c) Tenant's interest under this Lease or in the Demised Premises shall be taken upon execution or by other process of law directed against Tenant, or shall be subject to any attachment at the instance of any creditor or claimant against Tenant and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof; and/or (d) Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any similar act of any state, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall be dissolved or shall make an assignment for the benefit of creditors or if involuntary proceedings under any such bankruptcy or insolvency law or for the dissolution of Tenant shall be instituted against Tenant or a receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

**6.2 Remedies.** Upon the occurrence of any Default by Tenant, Landlord shall have the right, at Landlord's election, then or any time thereafter, to exercise any one or more of the following remedies:

(a) Landlord may, at Landlord's option, but without obligation to do so, and without releasing Tenant from any obligations under this Lease, make any payment or take any action as Landlord may deem necessary or desirable to cure any Default by Tenant in such manner and to such extent as Landlord may deem necessary or desirable. Landlord may do so without demand on, or written notice to, Tenant and without giving Tenant an opportunity to cure such Default by Tenant. Tenant covenants and agrees to pay to Landlord, within ten (10) days after demand, all advances, costs and expenses of Landlord in connection with the making of any such payment or the taking of any such action including, without limitation, (i) a charge in the amount of fifteen percent (15%) of such advances, costs and expenses payable to Landlord to compensate for the administrative overhead attributable to such action, (ii) reasonable attorneys' fees, and (iii) interest as hereinafter provided from the date of payment of any such advances, costs and expenses by Landlord. Action taken by Landlord may include commencing, appearing in, defending or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien, with respect to the Demised Premises which Landlord, in its sole and absolute discretion, may deem necessary or desirable to protect its interest in the Demised Premises and under this Lease. In the event that the Lease Term has expired or Tenant is no longer occupying the Demised Premises, Landlord shall be entitled to take such actions as provided under this Section 6.2 without Landlord being required to provide the notice to Tenant.

(b) Landlord may terminate this Lease, effective at such time as may be specified by written notice to Tenant, and demand (and, if such demand is refused, recover) possession of the Demised Premises from Tenant. Tenant shall remain liable to Landlord for damages in an amount equal to the Rent and other sums which would have been owing by Tenant hereunder for the balance of the Lease Term, had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Demised Premises by Landlord subsequent to such termination (provided, however, that Landlord shall have no obligation to relet the Demised Premises or otherwise mitigate its damages except to the extent that may be required by applicable law), after deducting all Landlord's expenses in connection with such recovery of possession or reletting. Landlord shall be entitled to collect and receive such damages from Tenant on the days on which the Rent and other amounts would have been payable if this Lease had not been terminated. Alternatively, at the option of Landlord, Landlord shall be entitled to recover forthwith from Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, represents the excess, if any, of (i) the aggregate of the Rent and all other sums payable by Tenant hereunder that would have accrued for the balance of the Lease Term, over (ii) the aggregate rental value of the Demised Premises for the balance of the Lease Term, both discounted to present worth at the discount rate of the Federal Reserve Bank of San Francisco at the time of such award plus one percent (1%) per annum.

(c) Landlord may reenter and take possession of the Demised Premises or any part thereof, without demand or notice, and repossess the same and expel Tenant and any party claiming by, under or through Tenant, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Demised Premises by Landlord shall be construed as an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice, in which event this Lease shall terminate as specified in said notice. After recovering possession of the Demised Premises, Landlord may, from time to time, but shall not be obligated to, relet the Demised Premises, or any part thereof, for the account of Tenant, for such term or terms and on such conditions and upon such other terms as Landlord, in its sole and absolute discretion, may determine. Landlord may make such repairs, alterations or improvements as Landlord may consider appropriate to accomplish such reletting, and Tenant shall reimburse Landlord upon demand for all costs and expenses, including attorneys' fees, which Landlord may incur in connection with such reletting. Landlord may collect and receive the rents for such reletting but Landlord shall in no way be responsible for or liable for any failure to relet the Demised Premises, or any part thereof, or for any failure to collect any rent due upon such reletting. Notwithstanding Landlord's recovery of possession of the Demised Premises, Tenant shall continue to pay on the dates herein specified, the Rent and other amounts which would be payable hereunder if such repossession had not occurred. Upon the expiration or earlier termination of this Lease, Landlord shall refund to Tenant any amount, without interest, by which the amounts paid by Tenant, when added to the net amount, if any, recovered by Landlord through any reletting of the Demised Premises, exceeds the amounts payable by Tenant under this Lease. If, in connection with any reletting, the new lease term extends beyond the existing Lease Term, or the premises covered thereby include other premises not part of the Demised Premises, a fair apportionment of the rent received from such reletting and the expenses incurred in connection therewith shall be made in determining the net amount recovered from such reletting.

(d) Actions or suits for the recovery of amounts and damages payable under this Lease may be brought by Landlord from time to time, at Landlord's election, and Landlord shall not be required to await the date upon which the Lease Term would have expired to bring any such action or suit. All costs and expenses incurred by Landlord in connection with collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease or to enforce any provision of this Lease, including reasonable attorneys' fees, whether or not any action is commenced by Landlord, shall be paid by Tenant to Landlord upon demand.

(e) Notwithstanding any other remedies for nonpayment of rent, if the monthly payment of Rent is not received by Landlord on or before the fifth (5<sup>th</sup>) day of the month for which such rental is due, or if any other payment due Landlord by Tenant is not received by Landlord on or before the fifth (5<sup>th</sup>) day of the month next following the month in which Tenant was invoiced, an administrative late charge of five percent (5%) of such past due amount shall become due and payable, in addition to such amounts owed under this Lease, to help defray the additional cost to Landlord for processing such late payments. Tenant covenants and agrees to pay Landlord interest on demand at the rate of eighteen percent (18%) per annum, compounded on a monthly basis, on the amount of any Rent or other charges not paid when due, from the date due and payable, and on the amount of any payment made by Landlord required to have been made by Tenant under this Lease and on the amount of any costs and expenses, including reasonable attorneys' fees, paid by Landlord in connection with the taking of any action to cure any Default by Tenant, from the date of making any such payment or the advancement of such costs and expenses by Landlord; and (f) exercise of any of the remedies of Landlord under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Landlord at law or in equity, recover as damages, in addition to all other damages and remedies provided hereunder, an amount equal to the total of (i) the cost of recovering possession of the Demised Premises, (ii) the unpaid Rent and any other amounts current at the time of such Default by Tenant, (iii) damages for the wrongful withholding of the Demised Premises by Tenant, and (iv) consequential damages and loss of profits. Moreover, in the event of a Default by Tenant, Tenant shall be liable to Landlord for the entire amount of all tenant improvements, tenant improvement allowances, rental abatements, or other concessions or allowances provided to Tenant, in addition to all other remedies and damages available to Landlord. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any statute or rule of law governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable, either as damages or rent, under this Lease.

## **7. SURRENDER AND HOLDING OVER**

**7.1 Surrender.** Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by Landlord after any Default by Tenant, Tenant shall immediately quit and surrender possession of the Demised Premises to Landlord broom clean, in good order and condition, ordinary wear and tear excepted, and in the condition required under this Lease with all lighting, doors (including, without limitation, all loading dock doors, dock levelers, and related dock systems and areas) electrical and mechanical systems in good working order and condition, all walls in clean condition and holes or punctures in the walls repaired, and otherwise in the same condition as when Tenant first occupied the Demised Premises. Tenant covenants and agrees to remove, at or prior to the expiration or earlier termination of the Lease Term, all of Tenant's equipment, apparatus, machinery, signs, furniture, furnishings, trade fixtures, and other personal property used in the operation of the business of Tenant (as distinguished from the use and operation of the Demised Premises). Prior to the expiration or earlier termination of this Lease, Tenant shall remove all Changes (unless otherwise agreed to in writing by Landlord). If, Tenant has vacated the Demised Premises prior to the expiration of the Lease Term, Landlord shall have the right to decorate, remodel, repair, or otherwise prepare the Demised Premises for reletting and re-occupancy. In addition, Tenant shall surrender any and all keys to the Demised Premises to Landlord.

## **8. MISCELLANEOUS**

**8.1 General.** No failure by Landlord to insist upon the strict performance of any term, covenant or agreement contained in this Lease, no failure by Landlord to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any Default by Tenant, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy, or a waiver of any such Default by Tenant. The covenants, agreements, obligations and indemnifications of the parties hereto shall continue in force and effect and survive any expiration or earlier termination of this Lease. This Lease shall be construed as if the covenants herein between Landlord and Tenant are independent, and not dependent, and Tenant shall not be entitled to any offset against Landlord if Landlord fails to perform its obligations under this Lease. Time is of the essence under this Lease, and all provisions herein relating thereto shall be strictly construed. This Lease shall be interpreted and enforced according to the laws of the State of Colorado.

**8.2 Binding Effect.** This Lease shall extend to and be binding upon the heirs, executors, legal representatives, successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Lease shall be construed as covenants running with the Land. If there is more than one party constituting Tenant or liable for the obligations of Tenant under this Lease, such parties shall be jointly and severally liable for the obligations of Tenant under this Lease. Neither this Lease nor any memorandum or other memorialization of this Lease shall be recorded in the records of any County Clerk and Recorder of the State of Colorado or any other public records without Landlord's prior consent. If any provision of this Lease shall be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision. This Lease, the Summary, and any Attachments, Exhibits and Addenda referred to herein or attached hereto, constitute the final and complete expression of the parties' agreements with respect to the Demised Premises and Tenant's occupancy thereof. Each party agrees that it has not relied upon or regarded as binding any prior agreements, negotiations, representations, or understandings, whether oral or written, except as expressly set forth herein. No amendment or modification of this Lease, and no approvals, consents or waivers by Landlord under this Lease, shall be valid or binding unless in writing and executed by the party to be bound.

**8.3 Notices.** All notices under this Lease shall be provided by Landlord to Tenant at the address set forth in the Summary by regular mail or personal delivery. All other notices and demands under this Lease shall be in writing, signed by the party giving the same and shall be deemed properly given and received when personally delivered or three (3) business days

after mailing through the United States mail, postage prepaid, certified or registered, return receipt requested, addressed to the party to receive the notice at the address set forth for such party in the Summary or at such other address as either party may notify the other of in writing.

**8.5 Real Estate Brokers.** Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all cost, expense or liability for any compensation, commissions, charges or claims by any broker or other agent with respect to this Lease or the negotiation thereof, whether or not meritorious, other than the broker(s) listed as the Broker(s) on the Summary. Tenant acknowledges Landlord is not liable for any representations by Tenant's Broker (as set forth in Section 10 of the Summary) or by Landlord's Broker, regarding the Demised Premises, the Building, the Property or this Lease.

**8.6 Authority of Tenant.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.

**8.7 Counterparts/Electronic Signatures.** This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Lease may be executed and delivered by a party by facsimile or email transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party. Landlord and Tenant acknowledge and agree that electronic signatures used for the execution of this Lease and/or amendments hereto (if any) shall be valid, binding and enforceable against such party.

**8.8 Waiver of Jury Trial.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or the Building, and/or any claim of injury, loss or damage.

**8.9 TABOR.** The Parties understand and agree that the Tenant is subject to Article X, Section 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR.

**8.10 No Governmental Immunity Waiver.** Nothing in this Agreement is intended to waive any protection afforded to the Tenant by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 et seq., or any other applicable law providing immunity to the Tenant, its officials, and employees.

**8.11 Right of First Refusal. Right of First Refusal to Purchase.** Tenant shall have the right of first refusal to purchase the demised premises as hereinafter set forth. If at any time during the term and as may be extended, Landlord shall receive a bona fide offer from a third person for the purchase of the demised premises, which offer Landlord shall desire to accept, Landlord shall promptly deliver to Tenant a copy of such offer, and Tenant may, within thirty (30) days thereafter, elect to purchase the demised premises. If Landlord shall receive an offer for the purchase of the demised premises, which is not consummated by delivering a deed to the offerer, the Tenant's right of first refusal to purchase shall remain applicable to subsequent offers. If Landlord shall sell the demised premises after a failure of Tenant to exercise its right of first refusal, such shall be subject to the Lease and shall continue to be applicable to subsequent sales of the demised premises.

**8.12 Exhibits and Attachments.** The Summary of Basic Lease Terms ("Summary"), Attachments, Exhibits and Addenda listed below shall be attached to this Lease and be deemed incorporated in this Lease by this reference. In the event of any inconsistency between such Summary, Attachments, Exhibits and Addenda and the terms and provisions of this Lease, the terms and provisions of the Summary, Attachments, Exhibits and Addenda shall control. The Summary, Attachments, Exhibits and Addenda to this Lease are:

Summary of Basic Lease Terms  
Exhibit A — Legal Description of Land

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed the day and year first above written.

**TENANT:**

Town of Keystone

By: Kenneth D Riley  
Name: Kenneth D Riley  
Title: Mayor

**LANDLORD:**

The Keystone Center,  
a Colorado nonprofit corporation

By: Susan Wilcox  
Name: Susan Wilcox  
Title: VP of Business and Administration

**EXHIBIT A**

**Legal Descriptions of Land**

1628 Sts. John Road  
Keystone, Colorado 80435

Part Tenderfoot  
Subdivision #2