

# SAMPLE LEASE WITH RIGHT OF FIRST REFUSAL

THIS LEASE is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Flagstaff, an Arizona municipal corporation (“Lessor”), and \_\_\_\_\_, a(n) \_\_\_\_\_ (“Lessee”).

IN CONSIDERATION of the mutual covenants and obligations set forth hereinbelow, the Lessor and Lessee agree as follows:

## **1. Lease of the Premises and Possession.**

1.1. Lease of Premises. The Lessor leases to the Lessee and the Lessee leases from the Lessor those Premises situated at \_\_\_\_\_, City of Flagstaff, Coconino County, Arizona, in accordance with the terms and conditions of this Lease.

1.2. Condition of Premises. The Lessor makes no representations or warranties regarding the condition or tenantability of the Premises. The Premises are leased to the Lessee “AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT”.

1.3. Term and Commencement Date. The Term of this Lease shall commence on \_\_\_\_\_ (“Commencement Date”) and shall end at midnight \_\_\_\_\_, unless terminated earlier as provided in Section 7 (“Term”).

1.4. Permitted Use. The Lessee’s permitted use under this Lease is \_\_\_\_\_ (“Permitted Use”).

1.5. Base Rent. The Lessee shall pay the base monthly rent of \_\_\_\_\_ (“Base Rent”).

1.6. Security Deposit. The security deposit under this Lease is \_\_\_\_\_ (“Security Deposit”).

## **2. Possession.**

2.1. Possession of Premises. The Lessor shall deliver possession of the Premises to the Lessee on the Commencement Date. The Lessor covenants on behalf of itself, and its successors and assigns, not to disturb the quiet enjoyment, possession or Permitted Use of the Lessee during the Term of this Lease, subject to the Lessor’s rights set forth in this Lease.

2.2. Early Possession. If the Lessee occupies the Premises prior to the Commencement Date, then (i) such occupancy shall be subject to all provisions of this Lease, (ii) such occupancy shall not change the termination date and (iii) the Lessee shall pay rent for such occupancy.

### **3. Rent.**

3.1. Time of Payment. Each monthly Base Rent and other rent payments shall be due on or before the first (1<sup>st</sup>) day of each month of the Term of this Lease, with the first monthly rental payment due on the Commencement Date of this Lease.

3.2. Late Charges. The Lessee shall pay to the Lessor a late payment charge equal to five percent (5%) of any amount due and owing for any rental payment not paid within seven (7) days of the due date thereof. Any late payments not paid as described above shall bear interest until paid at the lesser of two percent (2%) per month or the highest rate permitted by law.

3.3. Form and Payment of Rent. The Lessee shall pay rent in the form of cash, a check or money order made payable to the Lessor. The Lessee shall deliver the payment to the Lessor at the Lessor's address set forth in Section 8.1 on or before the due date for the rent payment.

3.4. Proration of Rent. If the Term begins on a day other than the first (1<sup>st</sup>) calendar day of a month, or if the Term ends on other than the last calendar day of a month, the Lessee shall pay an amount equal to the then effective monthly Base Rent and any additional rent multiplied by the number of days of such month within the Term and divided by the number of calendar days in such month.

3.5. Rental Rate Adjustment. The Base Rent shall be adjusted annually at each anniversary of the Commencement Date of this Lease based upon the most recently published revised Consumer Price Index of the United States Bureau of Labor Statistics. The adjustment, if any, in each year shall be implemented by increasing the Base Rent during the ensuing year to the extent that there is an increase in the revised Consumer Price Index escalator.

3.6. Taxes. The Lessee shall pay, as the same become due and payable, all general real estate taxes and all special assessments levied upon or assessed against, or which become due and payable in connection with, the Premises. In addition, the Lessee shall be liable for and shall pay before the same shall be past due all taxes levied against its trade fixtures and equipment and other personal property placed upon, or owned by the Lessee in, on or about the Premises, plus those levied against the personal property, if any, being leased to the Lessee under this Lease.

### **4. Representations, Warranties and Covenants of Lessee.**

4.1. Use of Premises. The Lessee shall occupy and use the Premises for the Permitted Use and no other purpose, and the Lessee shall occupy the entire Premises during the Term of this Lease and any renewal thereof. The Lessee shall conduct no industrial, manufacturing or processing activity on the Premises. Lessee shall not (i) cause or permit any auction, fire, closing out or bankruptcy sales in or about the Premises; (ii) make or permit any noise or odor objectionable to the public to emit from the Premises; (iii) create, maintain or permit a nuisance in or about the Premises; (iv) permit or do anything that is contrary to any law or regulation of any federal, state or

local governmental body or agency; or (v) permit or do anything that is contrary to any covenant, condition or restriction affecting the Premises.

4.2. Hazardous Material. The Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by the Lessee, its agents, employees, contractors or invitees, without the prior written consent of the Lessee, which consent may be withheld for any reason or for no reason.

4.2.1. Hazardous Material Indemnity. The Lessee shall indemnify, defend and hold the Lessee, its officers, officials, employees and agents, harmless from and against any and all claims, judgements, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims and attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of (i) the Lessee's breach of the obligations stated in this Section 4.2, or (ii) the presence of Hazardous Material on the Premises caused or permitted by the Lessee. This indemnification of the Lessor by the Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil on or groundwater under or within the Premises caused or permitted by the Lessee results in any contamination of the Premises or elsewhere, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises.

4.2.2. Definitions. As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of Arizona or the United States. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under applicable law, (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. Section 1321, (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6903, (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 or (vii) defined as a "regulated substance" pursuant to Section 9001, Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. Section 6991.

4.3. Alterations, Improvements and Additions. The Lessee shall not make any alteration, improvement or addition to the Premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Lessor consents to, and the Lessee shall be responsible for any alteration, improvement or addition to the Premises mandated by the Americans With Disabilities Act of 1990, as amended, and applicable rules and regulations as promulgated from time to time. All alterations, improvements and additions (i) shall be performed at the sole cost and expense of the Lessee in compliance with all applicable laws and regulations of any federal, state or local governmental body or agency, and (ii) shall become and remain the

property of the Lessor. In contracting for the performance of any alterations, improvements or additions, the Lessee shall not act as the agent of the Lessor.

4.4. Covenant Against Liens. The Lessee covenants and agrees not to suffer or permit any lien (including, but not limited to, tax liens, mechanics' liens and materialmen's liens) to be placed against the Premises. If a lien is placed against the Premises that is directly or indirectly related to an act or failure to act of the Lessee, the Lessee agrees to pay off and remove such lien within five (5) days' of receipt by the Lessee of notice thereof, irrespective of whether the Lessee contests the validity of the lien. The Lessee has no authority or power to cause or permit any lien or other encumbrance created by act of the Lessee, operation of law, or otherwise, to attach to or be placed upon the Lessor's title or interest in the Premises. Any such lien or encumbrance shall attach, if at all, only to the Lessee's leasehold interest in the Premises.

4.5. Waiver of Claims. Exclusive of direct or consequential damages caused by the gross negligence or willful misconduct of the Lessor, its officers, officials, employees or agents, the Lessee agrees that the Lessor, its officers, officials, employees or agents, shall not be liable for any direct or consequential damages (including damage claimed for actual or constructive eviction) either to persons or property sustained by the Lessee, or its officers, directors, employees, agents, invitees, licensees or contractors due to (i) any part of the Premises not being in repair or (ii) the happening of any incident on the Premises. This provision shall include, but not be limited to, damage caused by water, snow, frost, sewage, gas or malfunction of any electrical, heating, cooling or ventilation systems or installations on the Premises.

4.7. Waiver of Notice. The Lessee expressly waives the service of any demand for payment of rent or for possession.

4.8. Acceptance of Premises and Disclaimer of Representations. The Lessee is fully familiar with the condition of the Premises and accepts the Premises in their present condition "AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT".

4.9. Subordination and Attornment.

4.9.1. Subordination. The Lessee agrees that this Lease is and shall remain subordinate to any existing or subsequent mortgage or deed of trust covering the fee title to the Premises, together with any renewals, modifications or extensions of such existing or subsequent mortgages or deeds of trust. Upon the request of the Lessor, the Lessee shall execute such instruments as are reasonably required to subordinate this Lease to mortgages or deeds of trust made by the Lessor.

4.9.2. Attornment. The Lessee shall attorn to, and recognize as successor Lessor under this Lease, any person that purchases or obtains title to the Premises pursuant to (i) foreclosure proceedings, (ii) exercise of the power of sale under a deed of trust or (iii) a deed in lieu of foreclosure or similar transfer.

**5. Triple Net Lease.**

5.1. Triple Net Lease. The Lessee acknowledges that (i) this is a "triple net lease" as such term is commonly used in the real estate industry; (ii) the Lessor shall have no obligation or liability to pay any cost or expense with respect to the Premises, except as expressly provided for in this Lease; and (iii) the Lessee shall be liable for all costs and expenses with respect to the Premises, except as expressly, otherwise, provided in this

Lease. As provided below, the costs and expenses payable by the Lessee shall include, without limitation, services, repairs, maintenance, insurance and taxes.

5.2. Services to be Provided by the Lessee. Lessee shall maintain, at its own expense, all necessary or desired services for the Premises, including, but not limited to electricity, communication services, janitorial services, garbage disposal and snow removal. The Lessor is not obligated to supply or maintain any service or equipment to the Premises. The Lessee shall put, keep and maintain all portions of the Premises, including sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and obstructions.

5.3. Repairs and Maintenance. The Lessee shall maintain and repair the Premises in a condition not less than the condition of the Premises existing as of the Commencement Date, normal wear and tear excepted. The parties agree that the exception for "normal wear and tear" shall not relieve the Lessee of the obligations to repair and maintain in good working order the roof, paved parking areas and the heating, ventilating, air conditioning, plumbing, electrical and telecommunication systems and to operate the Premises as a high grade and reputable concern. All repairs made by the Lessee shall be at least equal to the original work in class and quality. If the Lessee fails to make such maintenance or repairs, the Lessor or its agents may, but shall not be required to, enter the Premises at all reasonable times to make such maintenance or repairs, and the Lessee shall pay to the Lessor the cost of such maintenance or repairs within five (5) days of receipt of a bill for such maintenance or repairs.

5.5. Taxes. The Lessee shall pay, as the same become due and payable, all general real estate taxes and all special assessments levied upon or assessed against, or which become due and payable in connection with, the Premises. In addition, the Lessee shall be liable for and shall pay before the same shall be past due all taxes levied against its trade fixtures and equipment and other personal property placed upon, or owned by the Lessee in, on or about the Premises, plus those levied against the personal property, if any, being leased to the Lessee under this Lease.

5.6. Insurance Requirements. In addition to the requirements in **Section 6** of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance.

## **6. WAIVER, INDEMNITY AND TENANT'S INSURANCE.**

6.1 **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

6.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,

- 6.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;
- 6.1.3. The disrepair of any equipment;
- 6.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;
- 6.1.5. The backup of any sewer pipe or down spout;
- 6.1.6. The escape of steam or hot water;
- 6.1.7. Water, snow or ice;
- 6.1.8. The falling of any fixture, plaster or stucco;
- 6.1.9. Broken glass; and
- 6.1.10. Any unauthorized or criminal entry of third parties within the Premises.

## 6.2 **Indemnification.**

6.2.1 **Tenant's Indemnification of Landlord.** To the fullest extent permitted by law, the Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") including but not limited to, personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent acts of the Indemnatee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

- 6.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought

against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

- 6.4 **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

6.4.1. **Minimum Scope and Limits of Insurance.**

6.4.1.1. **Commercial General Liability - Occurrence Form**

General Aggregate -- \$2,000,000  
Each Occurrence -- \$1,000,000

6.4.1.2. **Workers' Compensation and Employer's Liability**

Workers' Compensation -- Statutory  
Employer's Liability: Each Accident -- \$500,000  
Disease - Each Employee -- \$500,000  
Disease - Policy Limit -- \$500,000

- 6.4.2. **Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

6.4.2.1. **Commercial General Liability Coverage.**

6.4.2.1.1. Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current

and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

6.4.2.1.2. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

6.4.2.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

6.4.3. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

6.4.4. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

## **7. Default.**

7.1. **Default by Lessee.** The Lessee shall be in default under this Lease if any of the following occurs: (i) Lessee fails to pay when due any monthly rental amount or other payment required to be paid by the Lessee under this Lease in accordance with Section 3 hereof; (ii) the Lessee fails to perform or observe any other covenant, agreement or condition which the Lessee is required to perform or observe and such failure shall not be cured within thirty (30) days after delivery of written notice to the Lessee of such failure; (iii) the Lessee is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) substantially all of the Lessee's assets are placed in receivership or are subjected to attachment or other judiciary seizure; (v) the Lessee makes or suffers a general assignment for the benefit of creditors; (vi) the Lessee vacates or abandons the Premises; or (vii) the Lessee breaches any other provision of this Lease.

7.2. **Lessor's Remedies.** In the event of Lessee's default hereunder, the Lessor shall have available the remedies set forth in this Section 6.2. Except as expressly, otherwise, provided in this Lease, and to the extent permitted by law, the Lessor's remedies shall be cumulative and not alternative remedies.

7.2.1. **Legal and Equitable Remedies.** The Lessor shall have all remedies available at law or in equity.



7.2.2. Advances. In the event of any breach of this Lease by the Lessee, the Lessor may remedy such breach for the account of and at the expense of the Lessee. If the Lessor at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money or perform any act, which will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting or processing any action or proceeding to enforce the Lessor's rights under this Lease, the sum or sums so paid by the Lessor, with interest from the date of payment, shall be deemed to be additional rental and shall be due from the Lessee to the Lessor on the first day of the month following such payment.

7.2.3. Definition of Rent. For purposes of this Section 6, the term "rent" shall include any monthly rent, base rent, additional rent or other existing or future amounts payable by the Lessee to the Lessor under this Lease if default had not occurred.

7.3. Lessor's Default. The Lessor shall be in default under this Lease if the Lessor fails to perform or observe any covenant, agreement or condition, which the Lessor is required to perform or observe and such failure is not cured within thirty (30) days after delivery of written notice to the Lessor of such failure.

7.4. Lessee's Remedies. In the event of the Lessor's default hereunder, the Lessee shall have all remedies available at law or in equity; provided, however, the Lessee hereby expressly waives any right to abatement or withholding of rent or other amounts payable to the Lessor under this Lease.

## **8. Termination of Lease.**

8.1. Events of Termination. The Lease shall terminate upon the occurrence of one or more of the following events: (i) By written agreement between the Lessor and Lessee; (ii) by the Lessor pursuant to this Lease; (iii) by the Lessee pursuant to this Lease; (iv) upon lapse of the Term of the Lease; or (v) by reason of Sections 8.6 or 8.7 relating to condemnation or destruction of the Premises.

8.2. Surrender of Possession. Upon termination of this Lease, the Lessee shall immediately surrender possession of the Premises to the Lessor. If the Lessee does not surrender possession immediately, the Lessor may re-enter and repossess the Premises and remove all persons or property using such force as may be necessary without being deemed guilty of, or liable for, any trespass, forcible entry, detainer or damage to persons or property.

8.3. Condition of Premises Upon Termination or Abandonment. The Lessee, upon termination or abandonment of this Lease or termination of the Lessee's right of possession, covenants and agrees as follows:

8.3.1. Removal of Property. The Lessee shall not remove any alterations, improvements or additions made to the Premises by the Lessee or others without the prior written consent of the Lessor, which consent may be withheld for any reason or for no reason. The Lessee shall immediately remove, in a good and workmanlike manner, all personal property of the Lessee, and such alterations, improvements and additions made to the Premises by the Lessee during the Term as the Lessor may request in writing to be removed. All damage occasioned by such removal shall be promptly repaired by the Lessee in a good and workmanlike manner. If the Lessee fails to remove any such property, the Lessor may accept the title to such property without credit or compensation

to the Lessee or remove and store such property, at the Lessee's expense, in any reasonable manner that the Lessor may choose.

8.3.2. Restoration of the Premises. The Lessee shall restore the Premises to the condition existing on the Commencement Date, with the exception of ordinary wear and tear, and alterations, improvements and additions which the Lessor has not directed the Lessee in writing to remove.

8.4. Holding Over. If the Lessee fails to deliver actual possession of the Premises to the Lessor upon termination of this Lease, the Lessor shall have all remedies available at law or in equity to a lessor of commercial real property in the State of Arizona, together with the following remedies: (i) The Lessor may recover damages from the Lessee in an amount equal to (a) double the monthly rental payment applicable immediately prior to termination for each full or partial month that the Lessee fails to deliver actual possession of the Premises to the Lessor; or (ii) the Lessor may accept the Lessee's failure to deliver actual possession of the Premises to the Lessor as an irrevocable offer to renew this Lease for a period of one (1) additional year.

## **9. Right of First Refusal.**

9.1 Notice Requirements. During the term of the Agreement, before Lessor may sell the Premises to a third party, Lessor shall first offer the Premises to Lessee following the procedures set forth in this Section. Lessee shall have fifteen (15) days following the date Lessor first presents Lessee such offer to decide whether to try to negotiate an agreement for the purchase of the Premises from Lessor. If Lessee desires to try to negotiate such an agreement, Lessee shall, within said 15 day period, deliver to Lessor written notice thereof. Promptly after receipt of such notice, the parties shall commence good faith negotiations exclusively with each other for a period not to exceed 90 days after the date Lessee gives the requisite notice to Lessor.

9.2 Negotiations. If Lessor does not receive said notice within said 15-day period, or if Lessor receives said notice within said period but Lessor and Lessee do not enter into a legally binding, written agreement for the purchase and sale of the Premises within said 90-day period, Lessor shall be free to enter into an agreement with a third party on terms no more favorable to the third party than Lessor offered to Lessee.

9.3 Expiration. If Lessor does not enter into a legally binding, written agreement with a third party within the 90 day period, Lessor's right to sell the Premises to a third party shall expire and the procedure described in this Section shall be applicable again, and Lessor, prior to selling the Premises to a third party, shall first offer to try to negotiate the sale of the Premises to Lessee. Upon each repetition of this procedure, notice shall once again be due.

## **10. General Provisions.**

10.1. Notices. All notices or other communications under this Lease shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person

or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed as follows:

If to Lessor:                   City Manager  
  City of Flagstaff  
  211 W. Aspen Avenue  
  Flagstaff, Arizona 86001

If to Lessee:

Or to such other address as a party may provide to the other by written notice.

10.2. Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and the Lessee.

10.3. Assignment and Subletting.

10.3.1. Prohibition Without Written Consent. The Lessee shall not, without the prior written consent of the Lessor, (i) assign this Lease or any interest therein; (ii) permit or suffer any assignment of this Lease by operation of law; (iii) sublet all or any portion of the Premises; or (iv) permit the use of the Premises by any party other than the Lessee and its officers and employees.

10.3.2. Standards for Consent. The Lessor's consent to any proposed assignment or subletting may be withheld for any reason or no reason unless the credit history, financial strength and business reputation of the subtenant or assignee are acceptable to the Lessor; and the proposed uses of the Premises by the subtenant or assignee are acceptable to the Lessor.

10.3.3. No Release of Lessee. No assignment or subletting shall release the Lessee from any of the obligations set forth in this Lease.

10.4. Nonwaiver of Remedies. A waiver of any condition expressed in this Lease shall not be implied by any failure of the Lessor or Lessee to enforce any remedy available by reason of the failure to observe or perform such condition. A waiver by the Lessor or the Lessee shall not affect any condition other than the one specified in such waiver and a waiver shall waive a special condition only for the time and in the manner specifically stated in the waiver. The acceptance by the Lessor of any rent or other money from the Lessee, after termination of the Lessee's right of possession, after the occurrence of a default by the Lessee or after institution of any remedy by the Lessor shall not alter, diminish, affect or waive such lease termination, termination of possession, default or remedy.

10.5. Rights Cumulative. Except as expressly provided in this Lease, and to the extent permitted by law, the Lessor's or Lessee's remedies described in this Lease are cumulative and not alternative remedies.

10.6. Fire and Casualty.

10.6.1. Termination or Repair. If all or a portion of the Premises are damaged or destroyed by fire or other casualty, the Lessor shall deliver to the Lessee written notice thereof within thirty (30) days of such damage or destruction stating whether the construction work for repairing or rebuilding the damaged or destroyed portion of the Premises to the same condition as existed immediately prior to such damage can be

completed within one hundred eighty (180) days of such damage or destruction. In the event that any part of the Premises is damaged by fire or other casualty, the Lessor shall have no obligation to expend more in repairing, restoring or rebuilding than the proceeds of insurance available for such purposes after any amount required to be paid to any mortgagee of the Lessor has been paid. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises can be completed within such period with the available insurance proceeds, the Lessor shall promptly proceed to repair or rebuild the damaged or destroyed portion of the Premises. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises cannot be completed within such period with the available insurance proceeds, either the Lessor or the Lessee may terminate this Lease upon thirty (30) days' written notice to the other party.

10.6.2. Abatement of Apportionment of Rent. If the Lease is not terminated and if the damage or destruction to the Premises is not caused by the act or failure to act of the Lessee, its officers, employees, agents, guests or invitees, then a just portion of the rent shall abate as of the date of the damage or destruction until the Premises are repaired or rebuilt. If the Lease is terminated, the rent shall be apportioned as of the date of the damage or destruction.

10.6.3. Alterations, Improvements and Additions. With respect to any damage or destruction of alterations, improvements or additions made to the Premises by the Lessee, (i) this Section 8.6 shall be inapplicable; (ii) no abatement of rent shall occur and (iii) the Lessor shall not be obligated to repair or rebuild such alterations, improvements or additions.

10.7. Condemnation. If all of the Premises are taken or condemned by any authority for any use or purpose, this Lease shall terminate upon, and the rent shall be apportioned as of the date when actual possession of the Premises is required for such use or purpose. If less than all of the Premises are taken or condemned by any authority for any use or purpose, then (i) the Lessor may terminate this Lease upon thirty (30) days' written notice thereof, or (ii) the Lessor may continue the Lease and a just portion of the rent will abate as of the date when actual possession of such portion of the Premises is required for such use or purpose. The Lessor reserves all rights to damages to the Premises for any taking or condemnation of all or any portion of the Premises, provided that the taking authority is an entity other than the Lessor. The Lessee hereby assigns to the Lessor any right that the Lessee may have to such award or damages. The Lessee shall have the right to claim and recover from the condemning authority compensation for any loss for moving expenses and for interruption of or damage to the Lessee's business only if such award or damages are awarded separately and not as part of the award or damages recoverable by the Lessor.

10.8. Effect of Lessor's Insurance on Lessee's Obligations. From time to time and without obligation to do so, the Lessor may purchase insurance against damage or liability arising out of or related to the Premises. The purchase or failure to purchase such insurance shall not release or waive the obligations of the Lessee set forth in this Lease. The Lessee waives all claims on insurance purchased by the Lessor.

10.9. Attorneys' Fees and Costs. If either party brings an action to enforce the terms of this Lease or declare rights hereunder, the prevailing party in such action, at trial or on appeal, shall be entitled to its reasonable attorneys' fees and costs as may be determined by the court.

10.10. Governing Law, Jurisdiction and Forum. This Lease shall be construed and interpreted in accordance with the laws of the State of Arizona. The parties agree that the courts of Arizona shall have exclusive jurisdiction and that Coconino County shall be the proper venue.

10.11. Estoppel Certificate. The Lessee agrees that, from time to time upon not less than ten (10) days' prior written request by the Lessor, the Lessee will deliver to the Lessor a statement in writing certifying (i) that the Lease is unmodified and in full force and effect (or that the Lease as modified is in full force and effect, describing the modifications), (ii) that the rents and other charges have been paid to date without any prepayments or defaults (or if any prepayments or defaults, the nature of such prepayments or defaults) and (iii) that the Lessor is not in default under any provision of this Lease (or, if in default, the nature of the default). The certificate may be relied on by a mortgagee, assignee of a mortgage or a purchaser of the Lessor's interest in the Premises. If the Lessee shall fail to respond within ten (10) days of receipt by the Lessee of a written request from the Lessor as herein provided, the Lessee shall be deemed to have given such certificate as provided above without modification.

10.12. Relationship of the Parties. Nothing contained in this Lease shall be construed as creating the relationship of principal or agent or of partnership or joint venture. Neither the method of computation of rent nor any other provision of this Lease, nor any act of the parties, shall be deemed to create any relationship other than that of landlord or tenant.

10.13. Effect of Conveyance. If, during the term of this Lease, the Lessor should sell its interest in the Premises, then from and after the effective date of such sale, the Lessor shall be released and discharged from any and all further obligations and responsibilities under this Lease (except those already accrued) upon written assumption by the buyer of the Lessor's liabilities under this Lease.

10.14. Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

10.15. Severability. The invalidity of any portion of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other portion of this Lease.

10.16. Cancellation Notice. The Lessee acknowledges that the Lessor is an Arizona municipal corporation and a political subdivision of the State of Arizona, and, as such, is required by Arizona Revised Statutes Section 38-511 to include notice in this Lease that this Lease is subject to cancellation under said statute if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the City is at any time while the Lease is in effect an employee or agent or consultant of the Lessee with respect to the subject matter of this Lease. (See A.R.S. Section 38-511 for further details.)

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease effective the date first set forth above.

LESSOR

CITY OF FLAGSTAFF

By \_\_\_\_\_  
Gerald W. Nabours, Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

LESSEE

\_\_\_\_\_