

PURCHASE AND SALE AGREEMENT
(2601-2605 W. 7TH Avenue)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") made and entered into as of the Effective Date, between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 (the "City"), and **2601-2605 W 7th Avenue LLC**, a Colorado limited liability company whose address is 2605 W. 7th Ave., Denver, CO 80204 ("Owner"). City and Owner are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. Owner owns certain real Property (as defined in Paragraph 1 below) in the City and County of Denver, State of Colorado; and

B. Subject to the terms of this Agreement, Owner agrees to sell and the City agrees to purchase the Property (as defined in Paragraph 1 below) for essential Purchaser functions, and other related improvements and appurtenances as described ("Project"); and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. SUBJECT PROPERTY. Subject to the terms of this Agreement, the City shall purchase and the Owner shall sell the real property interests generally located at 2601-2605 W. 7th Avenue, Denver, CO, more particularly described in **Exhibit 1**, attached hereto and incorporated herein by reference, together with Owner's interest, if any, in: (i) the land (approximately 58,700 square feet), and all buildings (consisting of approximately 34,007 square feet - including second floor office and mezzanine areas), fixtures and improvements on the property described in **Exhibit 1** (ii) all easements, rights of way and vacated roads, streets and alleys appurtenant to the property described in **Exhibit 1**; (iii) all of Owner's right, title and interest in and to all utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the property described in **Exhibit 1**; and (iv) all of Owner's right, title and interest in and to all furniture permanently attached to the real property ("Personal Property", which together with items under (i) through (iv) above collectively "Property"). A demonstrative drawing of the Property, is attached as **Exhibit 3** for reference purposes only.

2. PURCHASE PRICE.

a. Purchase Price. The total purchase price for the Property to be paid by the City at Closing (as defined in this Agreement as just compensation is **FOUR MILLION, SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$4,075,000.00)** ("Purchase Price"), which shall be paid in good funds which comply with all applicable Colorado laws, including cash, certified check, cashier's check or electronic wire transfer.

b. Earnest Money Deposit. On or before Seven (7) business days after mutual execution of this Agreement, the City shall deposit **SEVENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$75,000.00)** ("Earnest Money") in to an escrow account held by Land Title Guarantee Company ("Title Company"). If the City elects to proceed to Closing and the Closing

occurs, the Earnest Money shall be applied to the Purchase Price. If the City elects not to close for any reason, in the City's sole and absolute discretion, within the deadlines set forth in Section 7 below or because of Owner's default hereunder as provided for in this Agreement, the Earnest Money, and any interest accrued thereon, shall be returned to the City within three (3) business days. In the event the Closing does not occur due to a default by the City, the Earnest Money, and any interest accrued thereon, shall be given to Owner as liquidated damages in lieu of any other right or remedy which Owner may have at law or in equity.

3. ENVIRONMENTAL CONDITION.

a. Environmental Information. By the timeframe set forth in paragraph 7(a), Owner shall disclose, in writing, to the City all information Owner has actual knowledge of regarding any environmental contamination (including asbestos-contaminated soils) or the presence of any hazardous substances or toxic substances on, under, or about the Property. If Owner acquires any actual knowledge of any additional information regarding environmental contamination, Owner has the ongoing duty to provide such information to the City up to the time of Closing, and will do so within five (5) days of the receipt of such additional information. For purposes of this Agreement: "hazardous substances" means all substances listed pursuant to regulation and promulgated under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C., § 9601 *et seq.*, or applicable state law, and any other applicable federal or state laws now in force or hereafter enacted relating to hazardous waste disposal; provided, however, that the term hazardous substance also includes "hazardous waste" and "petroleum" as defined in the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.* §6991(1). The term "toxic substances" means and includes any materials present on the Property that are subject to regulation under the Toxic Substance Control Act ("TSCA"), 15 U. S. C. § 2601 *et seq.*, applicable state law, or any other applicable federal or state law now in force or later enacted relating to toxic substances. The term "toxic substances" includes, but is not limited to, asbestos, polychlorinated biphenyls (PCB's), and lead-based paints.

b. Environmental Review. City, at its sole option and expense, may conduct or cause to be conducted environmental audits and perform other environmental tests on the Property to identify any existing or potential environmental problems located in, on, or under the Property, including but not limited to, the presence of any hazardous waste, hazardous substances or toxic substances. Owner hereby grants the City and any of its employees and consultants access to the Property to perform such audits and tests; provided, however, no invasive testing on the Property shall be conducted without the prior written consent of Owner, which shall not be unreasonably withheld, conditioned or delayed.

c. Notice of Unacceptable Environmental Conditions, Cure, City Election. By the deadline set forth in paragraph 7(b) of this Agreement, the City shall give notice to Owner of any unacceptable environmental condition relating to the Property. Owner may elect (in Owner's sole discretion), at Owner's sole cost and expense, to cure such unacceptable environmental conditions by the deadline set forth in paragraph 7(c) to City's satisfaction. In the event Owner declines to cure the unacceptable environmental conditions or fails to respond to City's notice thereof by the date set forth in paragraph 7(c), City, in its sole discretion, may elect to waive such unacceptable conditions and proceed to Closing by the deadline set forth in paragraph 7(d) or treat the Agreement as terminated with no further obligation on the part of either party.

4. **INSPECTION/SURVEY.** The City has the right to inspect the physical condition of the Property. Owner, at its sole cost and expense, shall provide to the City a copy of any existing survey of the Property in Owner's possession in accordance with the delivery schedule set forth in paragraph 7(a) below. This right to inspect is in addition to the right of the City to obtain an environmental audit. The City shall have the right to have any such survey updated at the City's sole cost and expense. The City shall give notice of any unacceptable physical or survey condition of the Property to Owner by the deadline set forth in paragraph 7(b). Owner may elect (in Owner's sole discretion), at Owner's sole cost and expense, to cure such unacceptable physical or survey condition by the deadline in paragraph 7(c) to the City's satisfaction. In the event Owner declines to cure the unacceptable physical or survey conditions or fails to respond to the City's notice thereof by the date set forth in paragraph 7(c), the City, at its sole discretion, may elect to waive such unacceptable physical or survey condition by the date set forth in paragraph 7(d) and proceed to Closing by the deadline set forth in paragraph 7(d), or treat the Agreement as terminated with no further obligation on the part of either party and the Earnest Money, and any interest thereon, shall be delivered to the City within three (3) business days. Owner hereby grants the City and any of its employees and consultants access to the Property to perform such inspections of the Property.

5. **TITLE.**

a. **Title Review.** Within three (3) business days after execution of this Agreement, Owner, at Owner's expense, shall provide the City a current commitment for ALTA Form B Seller's Title Insurance Policy for the Property from the Title Company, including copies of all exception documents identified in the commitment. The title insurance commitment and all copies or abstracts of instruments or documents identified in the commitment shall constitute the title documents ("Title Documents"). The City has the right to inspect the Title Documents.

b. **Matters Not Shown by the Public Records.** By the deadline set forth in paragraph 7(a) of this Agreement, Owner shall deliver to the City complete and accurate copies of all lease(s) and survey(s) in Owner's possession pertaining to the Property that are not included in the Title Documents and shall disclose, in writing, to the City all easements, liens or other title matters not shown by the public records of which Owner has actual knowledge.

c. **Notice of Unacceptable Condition, Cure, and City Elections.** The City shall give notice of any unacceptable condition of title to Owner by the deadline set forth in paragraph 7(b). Owner may elect (in Owner's sole discretion), at Owner's sole cost and expense, to cure such unacceptable conditions by the date in paragraph 7(c) to the City's satisfaction. In the event Owner declines to cure such unacceptable conditions or fails to respond to the City's notice thereof by the date in paragraph 7(c), the City in its sole discretion and by the date set forth in paragraph 7(d), may elect to waive such unacceptable conditions and proceed to Closing or treat this Agreement as terminated with no further obligation on the part of either Party and the Earnest Money, and any interest thereon, shall be delivered to the City within three (3) business days.

6. **CLOSING PRE-CONDITIONS.**

a. **Cooperation.** Owner shall fully cooperate with the City to do all things necessary, including execute affidavits as necessary and provide adequate assurances necessary for removal of the standard exceptions for defects, liens, mechanic's liens, tax or assessment liens, title insurance, encumbrances, encroachments, prescriptive easements, adverse claims, or similar matters, regarding such matters. Owner's obligation to execute necessary affidavits and provide

adequate assurances for the removal of the standard exceptions from title insurance to be issued is a condition precedent to the City's obligation to purchase the Property. If Owner does not provide the adequate assurances by the date in paragraph 7(d) of this Agreement, then the City may elect to waive the failure to provide the adequate assurances and proceed to Closing or treat this Agreement as terminated with no further obligation on the part of either Party.

b. Owner's Work.

(i) As a condition precedent to Closing, Owner, at Owner's sole cost and expense, shall complete the improvements to the Property as specifically set forth on **Exhibit 4**, attached hereto and incorporated herein by the reference ("Owner's Work"). Owner shall commence the Owner's Work following the expiration of the Due Diligence Period (defined in Section 7b. hereof) and shall diligently pursue completion of the work. All work shall be performed in a thorough, first-class and workmanlike manner, shall incorporate only new first-quality materials, and shall be free from defects and in good and useable condition at the date of completion. Other than as specifically set forth on the Owner's Work **Exhibit 4**, the Property shall be delivered to the City in its "as-is" condition.

(ii) Owner shall prepare, at its sole cost and expense, and in full compliance with all laws, codes, zoning ordinances and any other rules or regulations exercising control or jurisdiction over the Property, complete plans and specifications for all of Owner's Work. Owner shall submit such plans and specifications to the City or City's designated representative for approval not later than five (5) days after mutual execution of this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed. Upon its receipt of such plans and specifications, City shall either: (i) approve such plans and specifications; or (ii) reject such plans and specifications, in which case the City shall provide Owner with its reasons for rejection. If the City has not responded to Owner's request for approval within two (2) business days after receipt thereof, Owner's plans and specifications so submitted shall be deemed accepted. However, if the City reasonably rejects Owner's plans and specifications, Owner may submit revised plans and specifications within two (2) business days after receipt of Owner's notice of rejection. Such process shall continue until the plans and specifications are approved; provided, however, if the plans and specifications are not agreed to on or before thirty (30) days following the first submittal of plans and specification by Owner to the City, Owner shall have the right to terminate this Agreement. Once approved, such plans shall be referred to as "Approved Plans and Specifications." After approval of such plans and specifications, no further material changes to the Approved Plans and Specifications shall be made without the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any change to Approved Plans and Specifications may be made pursuant to change orders prepared by Owner and submitted to the City for its approval as contemplated above. Approval or disapproval of such changes shall be given by City within five (5) business days of delivery of such change orders or such change orders shall be deemed approved.

7. TIMEFRAMES.

a. Owner's Disclosure. Owner shall deliver any documents and make the disclosures required by this Agreement, including as required under paragraphs 3(a) and 5(b) of this Agreement, no later than 5 p.m. local time two (2) business days after the Effective Date.

b. City's Objection Notice. The City shall notify Owner in writing of any unacceptable environmental, physical, survey, title conditions and all other unacceptable matters under paragraphs 3(c), 4 and 5(c) of this Agreement, above, no later than 5 p.m. local time thirty (30) days after the deadline for Owner to deliver documents and make disclosures under paragraphs 7(a) of this Agreement ("Due Diligence Period"). The City may terminate this Agreement for any reason or no reason at all in the City's sole and absolute discretion by delivering written notice to Owner on or before the expiration of the Due Diligence Period and in such termination event, the Earnest Money, and any interest thereon, shall be delivered to the City within three (3) business days of notice to the Title Company requesting the return of the Earnest Money.

c. Owner's Cure. Owner shall have until no later than 5 p.m. local time five (5) days from the date of City's objection notice to elect to cure all the unacceptable conditions set forth in the objection notice under paragraphs 3(c), 4, 5(c) and 7(b) of this Agreement.

d. City's Election. The City shall elect to waive any uncured objections and proceed to Closing or to terminate this Agreement within four (4) days of the deadline to cure established in paragraph 7(c) of this Agreement, above. In the event the City terminates this Agreement pursuant to this provision, the parties shall be relieved of any further obligation under the Agreement and the Earnest Money, and any interest thereon, shall be delivered to the City within three (3) business days.

8. DATE OF CLOSING. The date of closing will be on a date mutually agreed upon by the Parties, but no later than forty-five (45) days from the expiration of the Due Diligence Period ("Closing Date") unless otherwise agreed to by the Director of the Division of Real Estate with written agreement of the Owner. The Closing will be held at a time and place agreed to by the Parties.

9. CLOSING. The Closing shall take place at the offices of the Title Company or other place as the parties may agree in writing and shall be completed on or before 5:00 p.m. Mountain Standard Time on the Closing Date. Seller or Buyer may elect to close in escrow without attending the Closing.

- a. Obligations of Owner at Closing. The following events shall occur at the Closing:
- i. Owner shall execute and deliver a Special Warranty Deed in substantially the form set forth as Exhibit 2 herein ("Deed") to the City at Closing conveying the Property free and clear of all taxes (with proration as provided herein) and free and clear of other title matters other than those accepted by the City in accordance with the provisions of this Agreement;
 - ii. Owner shall execute, have acknowledged and deliver to the City a bill of sale conveying to City all of Owner's right, title and interest in the Personal Property.
 - iii. Owner shall deliver such other instruments and documents as may be reasonably necessary or required to transfer title to the Property to City in the condition herein contemplated, including without limitation any customary and reasonable affidavit or agreement required by the Title Company.
- b. Obligations of City at Closing: The following events shall occur at Closing:

- i. City shall deliver or cause to be delivered to the Title Company good funds payable to the order of Owner in the amount of the Purchase Price, after giving credit for the Earnest Money deposit.
- ii. Such delivery may be made pursuant to a closing instruction letter.
- c. Closing Costs. Closing costs shall be as provided for in Section 13 below.
- d. No Material Adverse Change. During the period from the date of Owner's execution of this Agreement to the Closing Date, there shall have been no material adverse change in the environmental condition or results of operations of the Property, and the Property shall not have sustained any loss or damage which materially adversely affects its use.

10. **POSSESSION**. Possession of the Property shall be delivered to the City at Closing.

11. **REPRESENTATIONS AND WARRANTIES**.

a. Owner warrants and represents that at the time of the execution of this Agreement and at the time of conveyance:

- i. There are no other parties in possession and the City shall have possession as of Closing or as otherwise agreed to herein; and
- ii. Except for the Lease by and between Owner, as Tenant and City, as Landlord, in the form attached hereto as **Exhibit 3**, to be executed and delivered at Closing, there are no leasehold interests in the Property; and
- iii. To Owner's actual knowledge, without duty to investigate, there is no known condition existing with respect to the Property or its operation, that violates any law, rule regulation, code or ruling of the local jurisdiction, the State of Colorado, the United States, or any agency or court thereof; and
- iv. To Owner's actual knowledge without duty to investigate, there are no patent or latent soil deficiencies, or subsurface anomalies existing on the Property; and
- v. There is no pending or threatened litigation, proceeding, or investigation by any governmental authority or any other person known to Owner against or otherwise affecting the Property, nor does Owner have any actual knowledge of any grounds for any such litigation, proceeding or investigations; and
- vi. Owner has no actual knowledge that any document, schedule, item, and other information delivered or to be delivered by the Owner to the City or made available to the City for inspection under this Agreement is incomplete or inaccurate; and
- vii. To the best of the Owner's knowledge, Owner has provided or will provide, on the timeframes set forth herein, the City with a copy of all leases or rental and all other agreements and documents not shown in the

real property records relating to the Property, or to any part thereof under Paragraph 5 of this Agreement (Title); and

- viii. To Owner's actual knowledge, all improvements on the Property and all Personal Property are owned by the Owner and Owner is entitled to the Purchase Price as compensation for the same; and
- ix. To Owner's actual knowledge, without duty to investigate, there are no claims of possession not shown by record, as to any part of the Property; and
- x. With respect to environmental matters, except as previously disclosed herein, to the Owner's actual knowledge, without duty to investigate:
 - (1) No part of the Property has ever been used as a landfill by Owner; and
 - (2) Owner has no reason to believe or suspect and has no actual knowledge of the presence of asbestos-contaminated soils existing within the Property; and
 - (3) Owner has no actual knowledge or information that the Property is or may be contaminated with any hazardous substances or toxic substances; and
 - (4) Owner has not caused and will not cause, and to the best of the Owner's knowledge, there never has occurred, the release of any hazardous substances or toxic substances on the Property; and
 - (5) Owner has received no written or official notification that the Property is subject to any federal, state or local lien, proceedings, claim, liability or action or the threat or likelihood thereof, for the cleanup, removal, or remediation of any hazardous substances or toxic substances from the Property; and
 - (6) Owner has no knowledge or information as to any storage tanks on or beneath the Property.

By selling the Property, Owner does not transfer, nor is it released from, any liability for the cleanup, removal, or remediation of any hazardous or toxic substances from the Property or any liability, cost, or expense for the oversight, management, and removal of any asbestos (including asbestos-contaminated soils) or underground storage tank from the Property, to the extent such liability may exist under federal, state, or local law. Due to the age of the building, it is not unreasonable to believe that certain portions of the Property may contain asbestos containing materials, although Owner is not aware of any specific presence of asbestos containing materials.

- b. Each Party hereto represents to the other Party that:

- i. It has the requisite power and authority to execute and deliver this Agreement and the related documents to which such Party is a signatory;
- ii. The execution and delivery of this Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party, enforceable in accordance with its terms subject to the effect of general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors;
- iii. To the actual knowledge of the Director of the Division of Real Estate for the City and Owner, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument or other arrangement to which such Party is bound;
- iv. It is authorized to execute this Agreement on behalf of its officers, directors, representatives, employees, subsidiaries, affiliates, members/shareholders, agents, trustees, beneficiaries, attorneys, insurers, successors, predecessors and assigns. Each person who signs this Agreement in a representative capacity represents that he or she is duly authorized to do so;
- v. It has not sold, assigned, granted or transferred to any other person, natural or corporate, any chose in action, demand or cause of action encompassed by this Agreement; and
- vi. IT IS FREELY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT UNCOERCED BY ANY OTHER PERSON AND THAT HE OR IT HAS READ THIS AGREEMENT AND HAS BEEN AFFORDED THE OPPORTUNITY TO OBTAIN THE ADVICE OF LEGAL COUNSEL OF ITS CHOICE WITH REGARD TO THIS AGREEMENT IN ITS ENTIRETY AND UNDERSTANDS THE SAME.

12. **PAYMENT OF ENCUMBRANCES.** Owner is responsible for paying all such encumbrances at or before Closing from the proceeds of this transaction or from any other source.

13. **CLOSING COSTS, DOCUMENTS AND SERVICES.** Owner shall pay for any title insurance policy to be issued on the Property for the benefit of the City and all fees for real estate closing services. The City and Owner shall sign and complete all customary or required documents at or before Closing, including the Deed. Any documents executed before Closing shall be held in escrow until all conditions of Closing are satisfied.

14. **PRORATIONS.** Owner shall pay any and all taxes and special assessments accrued and owed on the Property prorated through the date of Closing. Based on the most recent levy and the most recent assessment, at or before Closing, Owner shall pay all utility, water and sewer charges, and other items related to the Property prorated through the date of Closing.

15. **TIME IS OF THE ESSENCE/REMEDIES.** Time is of the essence in this Agreement. All the agreements and representations set forth in this Agreement shall be binding upon and for the benefit of each Party's successors and assigns. If any payment due in accordance with this Agreement is not paid, honored or tendered when due, or if any other obligation under this Agreement is not performed or waived as provided in this Agreement, then there shall be the following remedies:

a. **If City Is In Default.** Owner may treat this Agreement as canceled and the Parties shall thereafter be released from all obligations under this Agreement. Owner expressly waives the remedies of specific performance and damages, including delay damages and attorney fees, or both, or any other legal or equitable remedy; provided, however, that in the event the Agreement is not terminated prior to the expiration of the inspection timeframes set forth in Sections 7 (b) and 7 (d), the Agreement shall be canceled, the Parties shall thereafter be released from all obligations under this Agreement and Owner shall be entitled to retain the Earnest Money as Owner's sole and exclusive remedy for a default by City.

b. **If Owner Is In Default.** The City may elect to (i) treat this Agreement as canceled, in which case the Earnest Money and all payments and things of value received under this Agreement shall be returned to the City, and the Parties shall thereafter be released from all obligations under this Agreement; or (ii) treat this Agreement as being in full force and effect and seek specific performance and damages, provided damages available to the City shall be limited to actual, direct damages, including, but not limited to reasonable attorney fees, and shall not include consequential or special damages. Nothing herein impairs the City's condemnation powers.

16. **TERMINATION.** If this Agreement is terminated, then all payments and things of value received under this Agreement shall be returned and the Parties shall be relieved of all obligations under this Agreement.

17. **COOPERATION OF THE PARTIES.** In the event that any third party brings an action against a Party to this Agreement regarding the validity or operation of this Agreement, the other Party will reasonably cooperate in any such litigation. Any Party named in an action shall bear its own legal costs.

18. **NO BROKER'S FEES.** The City and Owner represent to each other that except for McLin Commercial, they have had no negotiations through or brokerage services performed by any broker or intermediary that would require the City to pay any commission or fees. Owner shall pay a commission to McLin Commercial equal to 2.5% of the Purchase Price at Closing. Any arrangements that Owner has with a broker or other intermediary regarding the sale of the Property shall be solely at the cost of Owner.

19. **SEVERABILITY.** In the event that any provision of this Agreement would be held to be invalid, prohibited, or unenforceable in any jurisdiction for any reason unless narrowed by construction, this Agreement shall, as to such jurisdiction, be construed as if such invalid,

prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable in any jurisdiction for any reason. Such provision, as to such jurisdiction, shall be ineffective to the extent of such invalidity, prohibition, or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance duties under the Agreement, the Owner agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts relating to the Agreement.

21. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any performance under this Agreement constitute or be construed to be a waiver by either Party of any breach of covenant or condition or of any default that may then exist. The rendering of any such performance when any breach of default exists in no way impairs or prejudices any right of remedy available with respect to the breach of default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of this Agreement may be deemed or taken to be a waiver or any other default or breach.

22. **SUBJECT TO LOCAL LAWS; VENUE.** This Agreement is subject to and is to be construed in accordance with the laws of the City and County of Denver and the State of Colorado, without regard to the principles of conflicts of law, including, but not limited to, all matters of formation, interpretation, construction, validity, performance, and enforcement. Venue for any action arising out of this Agreement will be exclusively in the District Court of the City and County of Denver, Colorado.

23. **NOTICES.** All notices provided for in this Agreement must be in writing and be personally delivered, sent via facsimile, electronic mail, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, if to the Owner at the addresses or facsimile numbers listed below and if to the City at the addresses or facsimile numbers given below. Notices delivered personally or sent electronically or by facsimile are effective when sent. Notices sent by certified or registered mail are effective upon receipt. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

If to City:

Jeffrey J. Steinberg
Director of Division of Real Estate
Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
e-mail: jeffrey.steinberg@denvergov.org
facsimile: 720.865.7585

With copies of termination and similar notices to:

Mayor
City and County of Denver

1437 Bannock Street, Room 350
Denver, Colorado 80202

and

Denver City Attorney's Office
201 W. Colfax Ave. Dept. 1207
Denver, Colorado 80202

If to Owner:

2601-2605 W. 7th Ave LLC
Attn: Brett Kaup
2605 W. 7th Avenue
Denver, Colorado 80204
e-mail: bret@orvillegroup.com

and

Fairfield and Woods, P.C.
Attn: Thomas P. Kearns
1800 California Street, Suite 2600
Denver, CO 80202
e-mail: tkearns@fwlaw.com

24. **RIGHT TO ALTER TIME FOR PERFORMANCE.** The Parties may alter any time for performance set forth in this Agreement or the Lease attached hereto by a letter signed by the Director of the Division of Real Estate and an authorized representative of Owner.

25. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment to this Agreement will have any force or effect whatsoever, unless embodied in writing in this Agreement. Except as expressly provided for in this Agreement, no subsequent notation, renewal, addition, deletion, or other amendment to this Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by both Parties.

26. **THIRD-PARTY BENEFICIARY.** It is the intent of the Parties that no third party beneficiary interest is created in this Agreement except for any assignment pursuant to this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives that would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

27. **APPROPRIATION BY CITY COUNCIL.** All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

28. **REASONABLENESS OF CONSENT OR APPROVAL.** Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either Party, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

29. **NO PERSONAL LIABILITY.** No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of Owner shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

30. **CONFLICT OF INTEREST BY CITY OFFICER.** Owner represents that to the best of Owner's information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

31. **MERGER.** The terms of this Agreement survive Closing and do not merge into the Deed conveying the Property.

32. **CONSTRUCTION.** This Agreement may not be interpreted in favor of or against either Owner or the City merely because of their respective efforts in preparing it. The rule of strict construction against the drafter does not apply to this Agreement. This instrument is subject to the following rules of construction:

a. Specific gender references are to be read as the applicable masculine, feminine, or gender neutral pronoun.

b. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."

c. The words "Party" and "Parties" refer only to a named party to this Agreement.

d. Unless otherwise specified, any reference to a law, statute, regulation, charter or code provision, or ordinance means that statute, regulation, charter or code provision, or ordinance as amended or supplemented from time to time and any corresponding provisions of successor statutes, regulations, charter or code provisions, or ordinances.

e. The recitals set forth in this Agreement are intended solely to describe the background of this Agreement and form no part of this Agreement. Headings and captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

33. **ASSIGNMENT.** The City is not obligated or liable under this Agreement to any party other than Owner named in this Agreement. Owner understands and agrees that it may not assign any of its rights, benefits, obligations, or duties under this Agreement without the City's prior written approval.

34. **CITY EXECUTION OF AGREEMENT.** This Agreement is subject to, and will not become effective or binding on the City until full execution by all signatories of the City.

35. **COUNTERPARTS.** This Agreement may be executed in two (2) counterparts, each of which is an original and together constitute the same document. This Agreement may be executed by electronically scanned signatures which shall be deemed an original.

36. **EFFECTIVE DATE**. The effective date shall be the date set forth on the City signature page below. The City shall provide notice and an original execution copy of this Agreement to Owner immediately upon execution of this Agreement by the City. The time period for Owner's obligations under this Agreement which are tied to the Effective Date shall not commence until Owner has received such notice and original counterpart of this Agreement.

37. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**. Each Party consents to the use of electronic signatures by the other Party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

38. **NO RELIANCE**. The Parties expressly assume any and all risks that the facts and law that may be or become different from the facts and law as known to, or believed to be, by the Parties as of the date of this Agreement. In executing this Agreement, no Party has relied upon any information supplied by the other or by their attorneys, or upon any obligation or alleged obligation of the other Party to disclose information relevant to this Agreement other than the information specifically required to be disclosed by this Agreement.

Remainder of Page Intentionally Left Blank

Contract Control Number: FINAN-201627755-00

Contractor Name: 2601-2605 W 7TH AVE LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of
Denver

By _____

By _____

By _____



"Owner"

2601-2605 W 7th Avenue LLC, a Colorado
limited liability company

By: _____

A handwritten signature in black ink, appearing to be 'Bj', written over a horizontal line.

Title: *Manager*



EXHIBIT 1

(Legal Description of Property)

(LEGAL TO BE CONFIRMED BY VESTING DEED, TITLE COMMITMENT AND SURVEY AND REVISED ACCORDINGLY)

EXHIBIT 2
(Form of Deed)

After recording, return to:
Division of Real Estate
City and County of Denver
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed"), made as of this _____ day of _____, 201__, by _____, a _____ limited liability company, whose address is _____ ("Grantor") to the CITY AND COUNTY OF DENVER, a Colorado municipal corporation of the State of Colorado and home rule city, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("Grantee").

WITNESSETH, that the Grantor, for and in consideration of the sum of _____ Dollars (\$) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and by these presents does hereby grant, bargain, sell, convey and confirm, unto the Grantee, and its successors and assigns forever, the real property described below, together with all improvements thereon, owned by the Grantor situate, lying and being in the City and County of Denver, State of Colorado, and being more particularly described on Exhibit A attached hereto and incorporated herein ("Property");

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all of the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in, and to the above-bargained Property, together with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the Property above bargained and described with the appurtenances, unto the Grantee, and its successors and assigns forever. The Grantor, for itself and its successors and assigns does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained Property in the quiet and peaceable possession of the Grantee, and its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

No separate bill of sale with respect to improvements on the Property will be executed.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

ATTEST:

By: _____ a _____ Colorado

Exhibit 3

Form of Lease by and between Owner, as Tenant and City, as Landlord

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado ("City"), and 2601-2605 W 7th Avenue LLC, a Colorado limited liability company, whose address is 2605 W. 7th Avenue, Denver, Colorado 80204 ("Lessee"). The City and Lessee shall each be referred to as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the City and 2601-2605 W 7th Avenue LLC, a Colorado limited liability company entered into that certain Purchase and Sale Agreement dated _____ ("PSA") for the City to purchase and 2601-2605 W 7th Avenue LLC to sell the building and related property in which a certain premises exists as a separately demised unit ("Leased Premises" as more defined below), and

WHEREAS, at the time of Closing of the transaction, as defined in the PSA, Lessee is desirous of leasing the Leased Premises from the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: This Lease shall be contingent upon the City purchasing the Leased Premises from 2601-2605 W 7th Avenue LLC.

2. **LEASED PREMISES**: Subject to the terms of this Lease, the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises defined as the "Leased Premises" located at 2601, 2603 and 2605 W. 7th Avenue, Denver, Colorado 80___, as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein, containing space of approximately 28,807 square feet located in the building which square footage includes second floor space containing approximately 5,435square feet. The depiction contained on Exhibit B may be modified upon the written authorization of the City's Director of Real Estate (the "Director") to correct minor, technical errors.

3. **TERM:** The term of this Lease shall begin on the date that the City closes on the purchase and sale of Leased Premises from 2601-2605 W 7th Avenue LLC pursuant to paragraph 9 of the PSA. (the "Delivery Date"), and it shall terminate Ninety (90) days from the Delivery Date (the "Term").

4. **RENT:** Rent shall be paid by Lessee monthly to the City on the first business day of each month, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Rent payable monthly by Lessee shall be:

Monthly Base Rent	\$1.00
Total Contract Amount	\$3.00

In addition to the foregoing, at such time that the City Assessor assesses a Possessory Interest or other related tax to the Leased Premises, Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the Term, upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, resulting from Lessee's occupation or subletting of the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises. Such taxes include any Possessory Interest taxes resulting from this Lease or a sublease of the Leased Premises.

5. **USE:** The Leased Premises are to be used and occupied by Lessee solely as general office use and light manufacturing, and for no other purpose, unless the Director agrees in writing to another use, which consent shall not be unreasonably withheld. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter, ordinances or Executive Orders of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its

use or the use by its employees, officers, agents, invitees and visitors.

6. **“AS IS” CONDITION:** Lessee acknowledges that it has occupied the Leased Premises as the Owner of the building in which the Leased Premises exists. Therefore, Lessee has operated and is familiar with the Leased Premises and its current condition. The Leased Premises are accepted by Lessee in an “AS IS, WHERE IS” condition, with all faults and defects. No additional work will be performed by the City and Lessee hereby accepts the Leased Premises in its as-is condition. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

7. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited and performs all of Lessee's covenants and agreements herein contained.

8. **ENTRY BY CITY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises after receiving reasonable prior notice from the City to inspect the same, except in the case of emergencies, in which case the City will attempt to contact Lessee and if the City is unable to contact Lessee and the emergency is imminent, in the City's sole discretion, the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of Rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

9. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination of this Lease, including any exercised option terms, Lessee shall surrender the Leased Premises to the City and deliver the Leased Premises to the City for demolition by the City's contractor for the Project, in substantially the same condition as existed on the date hereof, reasonable wear and tear excepted. Lessee shall not remove any personal property from the Leased Premises without the prior, express written permission of the City.

10. **UTILITIES AND MAINTENANCE EXPENSE:** Lessee shall pay for all water,

sewer, gas and electricity, or other utilities or services or fees charged on utilities or other consumables for the building, which the City and Lessee agree will equal the actual cost for such services as metered by the respective utility companies. Lessee shall pay all interior and exterior cleaning and maintenance, snow removal, common area maintenance expenses, structural or mechanical maintenance or replacement, including the building's mechanical, plumbing and roof systems and the HVAC system. Any items paid directly by the City such as water and sewer shall be due within thirty (30) days of the date of the City's billing statement. All past due payments shall accrue interest at the rate of twelve (12%) per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with, (i) water, sewer, gas and electricity (ii) telephone and other communication services to the Leased Premises, (iii) janitorial services, and (iv) trash hauling and any other service provider for the Leased Premises. Lessee shall pay prevailing wages, as set by the City's prevailing wage ordinance (§20-76, DRMC) for any services set forth in the prevailing wage ordinance which may include, but is not limited to such services as janitorial services, interior and exterior maintenance, interior and exterior cleaning and snow removal. The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

11. **INDEMNITY**: The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in

no way lessen or limit the liability of the Lessee under this Lease. Subject to compliance with the provisions of Section 17 below, the Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

12. **LOSS OR DAMAGE:** The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. Likewise, Lessee shall not be liable or responsible to City for any loss or damage to the Leased Premises occasioned by theft, vandalism, fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. In case of partial destruction of the Leased Premises by fire, or other casualty, the City at its discretion may repair the Leased Premises with reasonable dispatch after notice of said partial destruction. If the Leased Premises are made untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where City, within a reasonable time, decides not to rebuild or repair the Leased Premises, then this Lease shall terminate and any Rent shall be prorated and payable only up until the time of the partial or full destruction of the Leased Premises.

13. **HAZARDOUS SUBSTANCES:** Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises, or if the Leased Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration

mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

14. **HOLDING OVER:** If after the expiration of the Term and any extensions of the Term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent equivalent to 125% of the then current monthly installment of rent due hereunder, payable in advance on the first day of each calendar month thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

15. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

(a) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the rate of twelve percent (12%) per annum from the due

date; (iii) the balance of the Rent for the remainder of the term less any Rents the City receives for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid taxes or assessments and (vi) any other sum of money in damages owed by Lessee to City as a result of its use and occupancy of the Leased Premises.

(b) Before exercising any remedy or right herein or in law or equity, the City shall supply written notice of such default to the Lessee and provide fifteen (15) days from the date of such notice to cure the noted default.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Lease, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **LESSEE'S INSURANCE:** From the commencement of this Lease, and at all times throughout the term, Lessee (or its contractor(s)) shall carry and maintain the following insurance policies:

(a) Sufficient Workers' Compensation Insurance to fully insure its responsibilities under Colorado law;

(c) Fire and extended coverage insurance on all of its personal property, including without limitation fixtures and removable trade fixtures, located in the Leased Premises;

(d) A policy or policies of comprehensive general liability insurance, issued by and binding upon an insurance company authorized to do business in the State of Colorado, such insurance to afford minimum protection of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Commercial general liability coverage shall be at least as broad as insurance services office standard form CG 0001 or equivalent. The City and County of Denver, its officers, officials and employees shall be named as additional insureds, with coverage at least as broad as insurance services office standard form CG 2026. Defense costs coverage shall include defense costs coverage for additional insureds outside the limits of insurance;

(e) Contractual liability coverage;

(f) Waiver of Subrogation and Rights of Recovery against the City, its officers,

officials and employees for both Worker's Compensation and commercial general liability (per ISO form CG2404 or equivalent) coverage;

(g) The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Administrator may require, are to be provided to the City prior to execution of this Lease. Each such policy or certificate shall contain a valid provision or endorsement stating "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City's Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202, and sent by certified mail, return receipt requested."

Lessee understands and acknowledges that the City does not provide any insurance coverage for any property of the Lessee, its agents, employees or assignees located in the Leased Premises and Lessee acknowledges and agrees that the Lessee, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of Lessee, its agents, employees or assignees in the Leased Premises.

18. **VENUE, GOVERNING LAW:** This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

19. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent will not be unreasonably withheld. However, Lessee shall be able to sublease the Leased Premises to Lessee's current tenant, Service Systems Associates, Inc., without obtaining any further approval. 20. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring

which is a part of a performance or show or any event displayed or held in City facilities.

21. **EXAMINATION OF RECORDS**: The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

22. **AMENDMENT**: No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Lease, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

23. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

24. **BINDING EFFECT**: This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto.

25. **THIRD PARTIES**: This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

26. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City:

Director of Real Estate
201 W. Colfax Ave., Dept. 1010
Denver, CO 80204

With copies to: Denver City Attorney's Office
201 W. Colfax, Department 1207
Denver, Colorado 80202

To Lessee: 2601-2605 W 7th Avenue LLC
Brett Kaup
2605 W. 7th Avenue
Denver, Colorado 80204

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

27. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

28. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

29. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

30. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of

the lawful discharge of the responsibilities of such elected official or employee.

31. **APPROPRIATION**: All obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease and paid into the Treasury of the City.

32. **AUTHORITY TO EXECUTE**: Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

33. **PARAGRAPH HEADINGS**: The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

34. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: Lessee consents to the use of electronic signatures by the City. The Lease, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Lease solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties have executed and affixed their seals, if any, at Denver, Colorado as of: _____.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Debra Johnson,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Michael B. Hancock, Mayor

APPROVED AS TO FORM:
Denver City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Chief Financial Officer

By: _____
Timothy O'Brien, Auditor

"CITY"

Contract Control Number: _____

Lessee's Name:

2601-2605 W 7th Avenue LLC,
a Colorado limited liability company

By: _____

Name: _____
(please print)

Date: _____

Exhibit 4

Owner's Work

Owner agrees to furnish or perform at Owner's sole cost and expense those items of construction and those improvements in accordance with (A) the Approved Plans and Specifications as required by Section 6 (b)(ii), (B) the requirements of all applicable laws, ordinances, regulations, codes and other requirements of governmental authorities, and (C) the requirements of City's insurance underwriters. In addition, Owner's work shall be performed in a thorough, first-class and workmanlike manner, shall incorporate only new first-quality materials, and shall be free from defects and in good and useable condition at the date of completion. The Approved Plans and Specifications shall include at a minimum, those items specified below:

- Construct a new ramp compliant with the Americans with Disabilities Act of 1990, as amended ("ADA") on the east side of building as depicted on the Approved Plans and Specifications.
- Construct new entrance door compliant with the ADA as depicted on the Approved Plans and Specifications for bay 5.
- Construct new restroom as depicted on the Approved Plans and Specifications. Restroom to include:
 - Eight (8) commercial grade toilet fixtures, including one ADA compliant commercial grade toilet fixture
 - Five (5) commercial grade urinal fixtures
 - Five (5) commercial grade sink fixtures
- Construct one office as depicted on the Approved Plans and Specifications.
- Upgrade to 2" tap and bring 2" service into existing Premises.
- Install two (2) new evaporative coolers of a sufficient size to individually cool bay 4 and bay 5 based upon industry standards as approved by the City's Public Works Mechanical Engineer or designee.
- Construct demising wall with interior door between bay 4 and bay 5 as depicted on the Approved Plans and Specifications.
- Install backflow Preventer
- Construct fencing as depicted on the Approved Plans and Specifications.