

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" or "Lease Agreement") is made and entered into as of the Effective Date (defined below), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City" or "Lessee"), and **DENVER 44TH AVENUE, LLC**, a Colorado limited liability company whose address is 1333 2nd Street, Suite 650, Santa Monica, CA 90401 ("Owner" or "Lessor"), jointly with Lessee, the "parties" and individually a "party".

WITNESSETH:

WHEREAS, Lessor is the owner of certain property located at 570 W. 44th Avenue, in the City and County of Denver, Colorado, consisting of a two-story building containing approximately 33,070 square feet and an adjacent surface parking lot, as legally described on Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, the City is desirous of leasing the Property from Owner and Owner desires to lease the Property to the City subject to the terms hereof.

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

1. **LEASED PREMISES**: Subject to the terms of this Lease, Lessor agrees to lease, demise, and let unto the City and the City does hereby lease from Lessor the Property, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein, consisting of a two-story building containing 33,070 rentable square feet ("Building") and surrounding land and parking lot located on the Property (the "Leased Premises"). The description contained on Exhibit A may be modified upon the written authorization of the Director of the Division of Real Estate ("Director") and Lessor, to correct minor, technical errors.

2. **TERM**:

a. The initial term of this Lease shall commence on the date of Substantial Completion (as defined in the Work Letter attached hereto as Exhibit C) (such date, the "Commencement Date") and shall terminate on the last day of the month that is one hundred twenty (120) months thereafter ("Initial Term"), unless either extended or sooner terminated pursuant to the terms of this Lease.

b. Upon Substantial Completion, the City and Lessor shall complete and execute the Acknowledgment of Lease Commencement and Base Rent in the form attached hereto as Exhibit B (the “Commencement Date Memorandum”). On behalf of the City, the Director is authorized to sign the Commencement Date Memorandum. If the Commencement Date is not the first day of a calendar month, then the Initial Term shall be extended by the time between the Commencement Date and the first day of the next month. The period from the Commencement Date through the succeeding twelve (12) full calendar months and each successive 12-month period thereafter during the Term may be referred to herein as a “Lease Year”.

3. **OPTION(S) TO EXTEND TERM:**

a. Lessor hereby grants to the City the option (the “Extension Option(s)”) to extend the Initial Term for two (2) successive periods of five (5) years each (the “Extension Term(s)”; the Initial Term, together with the Extension Term(s), if extended, may be referred to hereinafter as the “Term”), on the same terms and conditions as set forth in the Lease, except that (a) Base Rent beginning on the Lease Year of each applicable Extension Term shall be at the “Market Rent” determined as set forth below, and (b) Lessor shall have no additional obligation for leasehold improvements or for any other tenant inducements for the Extension Term. Each Extension Option shall be exercised only by written notice to Lessor (the “Extension Notice”) at least six (6) months, and not more than twelve (12) months, before the expiration of the then current term. “Market Rent” shall mean the annual rent being charged for space comparable to the Leased Premises in a similar location in Denver, Colorado, taking into account the location, parking, condition and improvements to the Premises and the fact that the City is not entitled to rent concessions or a tenant improvement allowance; provided, however, that (i) Base Rent during the first Lease Year of the first Extension Term shall neither exceed the amount of Base Rent due during the final Lease Year of the Initial Term by more than 103%, nor be less than the Base Rent due during the seventh (7th) Lease Year of the Initial Term, and (ii) Base Rent during the first Lease Year of the second Extension Term (if exercised) shall neither exceed the amount of Base Rent due during the final Lease Year of the preceding Extension Term by more than 103%, nor be less than the Base Rent due during such Final Lease Year.

b. In the event Lessee timely delivers its Extension Notice as set forth above, Lessor and Lessee shall have a period of sixty (60) days from the date of such Extension Notice in

which to agree on the Market Rent. If the parties agree within that period, they shall immediately execute an amendment to the Lease stating the Base Rent for the Extension Term. If, after negotiating in good faith, Lessor and Lessee are unable to agree on the Market Rent within said sixty (60) day period, then an independent qualified commercial real estate broker selected by mutual agreement of the parties shall prepare a determination of the Market Rent. If within ten (10) business days after being notified of the results of such determination, Lessor and/or Lessee elect(s) to reject that determination, then each party shall name an additional independent commercial real estate broker within (10) days after such rejection. In the event the brokers so named together with the originally named broker are unable to agree on Market Rent then the determination shall be the amount agreed upon by the majority of said brokers and reported to the parties within ten (10) days thereafter. The costs and expenses of such broker determinations shall be divided equally between Lessor and Lessee. For purposes of this Section 3, "qualified commercial real estate broker" shall mean firms or individuals, each of whom shall have no less than ten (10) years' experience in commercial real estate transactions.

c. Lessee shall not have the right to extend the Lease for any amount of space less than the entire Leased Premises hereunder. In the event of any assignment of this Lease by Lessee, the Extension Options shall be extinguished. The Extension Options granted herein shall terminate as to the entire Leased Premises upon the failure by Lessee to timely exercise in accordance with Section 3(a). Lessee shall not have the option to extend, as provided in this Section 3, if, as of the date of the Extension Notice, or as of the scheduled commencement date of the Extension Term, a default exists which remains uncured beyond all applicable notice or cure periods.

4. **BASE RENT and OPERATING EXPENSES.**

a. Subject to the terms of the Work Letter attached hereto as Exhibit C, the base rent due during the first twelve (12) months of the Lease Term (the "Base Rent") shall be an amount equal to (i) 12%, *multiplied by* (ii) the Total Project Costs (as defined below). Commencing on the first day of the second Lease Year and continuing on the first day of each Lease Year thereafter during the Term, Base Rent shall be increased by an amount equal to 3% of the Base Rent for the immediately preceding Lease Year. The Base Rent due during the initial Lease Term shall be set forth in the Commencement Date Memorandum. "Total Project Costs"

means (i) the purchase price of \$7,100,000.00 paid by Lessor for its acquisition of the Property, plus (ii) the full amortization of all “hard costs” and “soft costs” incurred by Lessor in connection with Lessor’s construction of the Lessee Improvements (as defined in the Work Letter on Exhibit C attached hereto), including, without limitation, all due diligence, testing, investigation, acquisition, architectural, design, engineering, planning, zoning, permitting, insurance, financing costs, construction costs, taxes, utility connection fees, leasing fees, legal, professional and consultant fees, and Lessor’s Construction Management Fee (as defined below). As an example of such calculation only, as of the date hereof, one projected estimate of Total Project Costs, as set forth on the Rough Order of Magnitude (ROM) Estimate of the Total Project Costs attached hereto as Exhibit F, is \$ 17,518,827.00. For purposes of clarity, the parties acknowledge that in no event shall the estimate of Total Project Costs set forth in this Section 4(b) and Exhibit F constitute any warranty by Lessor to Lessee of the actual amount of such Total Project Costs or impose any liability upon Landlord in connection with such estimate. Accordingly, as of the date hereof, the estimated Base Rent for the first Lease Year would be \$2,102,259.24 [(Total Project Costs x 12% = Base Rent for the first Lease Year) \$ 17,518,827.00 x 12% = \$2,102,259.24] and with the Base Rent for each subsequent Lease Year increasing by 3% annually, the estimated Base Rent due and payable during the Term, as of the date hereof, would be as follows:

Lease Year	Month of Lease Term	Base Rent	Monthly Base Rent
1	Commencement Date – Last day of 12 th full calendar month of the Term	\$2,102,259.24	\$175,188.27
2	First day of the 13 th full calendar month of the Term - Last day of the 24 th full calendar month of the Term	\$2,165,327.02	\$180,443.92
3	First day of the 25 th full calendar month of the Term - Last day of the 36 th full calendar month of the Term	\$2,230,286.85	\$185,857.24
4	First day of the 37 th full calendar month of the Term - Last day of the 48 th full calendar month of the Term	\$2,297,195.49	\$191,432.96
5	First day of the 49 th full calendar month of the Term - Last day of the 60 th full calendar month of the Term	\$2,366,111.39	\$197,175.95
6	First day of the 61 st full calendar month of the Term - Last day of the 72 nd full calendar month of the Term	\$2,437,094.74	\$203,091.23
7	First day of the 73 rd full calendar month of the Term - Last day of the 84 th full calendar month of the Term	\$2,510,207.60	\$209,183.97
8	First day of the 85 th full calendar month of the Term - Last day of the 96 th full calendar month of the Term	\$2,585,513.87	\$215,459.49
9	First day of the 97 th full calendar month of the Term - Last day of the 108 th full calendar month of the Term	\$2,663,079.30	\$221,923.27
10	First day of the 109 th full calendar month of the Term - Last day of the 120 th full calendar month of the Term	\$2,742,971.62	\$228,580.97

* Base Rent shall be payable in monthly installments equal to one-twelfth (1/12) of the Base Rent calculated for the applicable Lease Year.

b. For purposes of this Agreement, "Lessor's Construction Management Fee" means the fee payable to Lessor in connection with Lessor's supervision and management of the Lessee Improvements in the amount equal to two percent (2%) of the Actual Cost of Lessee Improvements (as defined in the Work Letter attached hereto as Exhibit C). The Lessor's Construction Management Fee shall be included in the Total Project Costs for purposes of calculating Base Rent, provided that Lessee, at its sole option, may elect to pay the Lessor's Construction Management Fee in one lump sum payment upon Substantial Completion.

c. During each Lease Year, Lessee shall pay Lessor, at the same time as Base Rent is paid, an amount equal to one-twelfth (1/12) of Lessor's estimate of any Operating Expenses for the particular Lease Year (each, an "Estimated Payment"). "Operating Expenses" means, collectively, all costs, fees, charges and expenses incurred or charged by Lessor in connection with the ownership, operation, maintenance and repair of, and services provided to, the Property, including, but not limited to: (i) all actual real estate taxes and general and special assessments, and all other charges, assessments, and taxes of every description, imposed upon the Property, *provided, however*, Lessee, as a municipal corporation, is exempt from paying real estate taxes and upon City and County of Denver Assessor's Office exempting the Property from real estate tax assessments and for the duration of such exemption, Lessee shall not be obligated to pay for real estate taxes to the extent such exemption relieves Lessor of its obligation to pay said taxes on account of the Property, (ii) the cost of insurance carried by Lessor pursuant to Section 21 of this Lease together with the cost of any deductible paid by Lessor in connection with an insured loss costs, (iii) subject to Sections 8 and 14 below, Lessor's costs and expenses of maintaining and repairing the Property and any other improvements now or hereafter located on the Property in the condition required pursuant to Section 8 below; and (iv) the charges for any utilities provided by or through Lessor pursuant to Section 5 of this Lease, if any. Notwithstanding the foregoing, "Operating Expenses" will not include: (i) expenses incurred in maintaining the foundation and structural components of the Building (but excluding any roof replacement) pursuant to Section 14; (ii) depreciation on the Building; (iii) financing and refinancing costs (except as provided above), interest on debt or amortization payments on any mortgage, or rental under any ground or

underlying lease; (iv) leasing commissions, advertising expenses, tenant improvements or other costs directly related to the leasing of the Property; (v) capital improvements (excluding any replacement of the roof or roof membrane), unless such capital improvements are either required under any governmental law or regulation or actually improve the energy efficiency of the Building, with the cost of such improvement(s) amortized over its useful life; or (vi) income, excess profits or corporate capital stock tax imposed or assessed upon Lessor, unless such tax or any similar tax is levied or assessed in lieu of all or any part of any taxes includable in Operating Expenses above.

d. By the 1st day of March of each calendar year, the Lessor shall provide a reconciliation of the preceding calendar year of the actual Operating Expenses due the Lessor (each, a “Reconciliation Statement”), including assessor’s bills and paid receipts evidencing Lessor’s tax assessment payments, and the Estimated Payments paid monthly by the City, with any amounts owing the Lessor to be paid by the City within (30) days following receipt by Lessee of the Reconciliation Statement and any overages paid by the City to be credited against next due Rent (as defined below). Lessor’s and City’s obligations with respect to any underpayment or overpayment of Operating Expenses shall survive the expiration or termination of this Lease. If the Lease is in effect less than a full year, the Operating Expenses shall be paid proportionately for the portion of the year that is included in the Term.

e. Exclusive of any amount due pursuant to the Extension Term(s), real estate taxes (if not exempted), and Lessee’s obligations set forth in Sections 5, 8, 11 and 14 below, the maximum contract amount for this Lease for the Initial Term shall not exceed TWENTY SIX MILLION and 00/100 Dollars (\$26,000,000.00) (“Maximum Contract Amount”).

f. Lessee agrees to pay Lessor, promptly when due, the monthly installments of Base Rent and Operating Expenses (collectively, the “Rent”), without notice or demand and without deduction or set-off of any amount for any reason whatsoever. Said monthly installments of Rent shall be payable in advance on the first (1st) day of each calendar month during the Lease Term, except that the Rent for the period beginning on the Commencement Date and ending on the last day of the first (1st) full calendar month of the Lease Term shall be payable in advance on or prior to the Commencement Date. Subject to the foregoing, the City shall have no right to pay in advance any portion of the monthly installment(s) of Rent, provided, however, that in the event

Lessor receives any portion of the monthly installment(s) of Rent, Lessor at its sole option may retain the same to be applied toward future Rent.

g. Any Rent or other amount due from City to Lessor under this Lease that is not paid when due shall be subject to any claimed interest, late charges, fees, taxes or penalties or any matters as allowed by the City's Revised Municipal Code.

5. **UTILITIES:**

a. All connections for necessary utility services on the Property shall be made in the name of the City only, and the City shall be solely responsible for all utility charges as they become due, including those for sewer, water, gas, electricity, internet and telephone services.

b. Lessee shall be solely responsible for and promptly pay all charges for all of the following services for the Property: trash and garbage disposal; janitorial and cleaning services; security services; snow and ice removal; window washing.

6. **USE:** The Leased Premises are to be used and occupied by Lessee as a community corrections residential facility or any other lawful use City deems necessary that is allowed pursuant to applicable zoning laws, and for no other purpose without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. The City 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 (i) prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver, including any applicable zoning laws, or (ii) that would constitute a violation of any governmental approvals, licenses or permits applicable to the Leased Premises. 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. Lessee shall 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, licensees and invitees.

7. **SIGNAGE:** The Lessor shall allow exterior signage at an agreed upon location at the Property, which location approval by Lessor shall not be unreasonably withheld, delayed or conditioned. The fabrication, installation, and removal of such signage shall be the cost and responsibility of the City or may be included in Lessee Improvements if included in the Approved Improvement Documents (as defined in the Work Letter on Exhibit C attached hereto) and comply with all relevant laws, codes and ordinances.

8. **CONDITION OF LEASED PREMISES:** Except for the Lessee Improvements and as specified in Section 9 below or as otherwise expressly provided in this Lease, the Leased Premises shall be accepted in an “AS-IS” condition by the City. The Lessor shall deliver all mechanical systems in good working order on the Commencement Date, including, plumbing, electrical, heating, ventilation and air conditioning. Lessor warrants that, as of the Commencement Date, (i) the Property will comply with Americans with Disabilities Act of 1990 (42 U.S.C. 12181, et. seq.) and all regulations promulgated thereunder in effect as of such date, and (ii) the structural components of the Building, including the roof, are in good working condition and free of known material defects. Except for those specific items referenced in Section 14 below, which are the responsibility of Lessor, the Leased Premises and all non-structural parts thereof, including, without limitation, utility meters, plumbing, pipes and conduits, all heating, ventilating and air conditioning systems, all windows, restrooms, ceilings, interior walls, skylights, interior and demising walls, doors, electrical and lighting equipment, parking areas, driveways, walkways, parking lots, loading dock areas and doors, fences, signs, additions and other property and/or fixtures located within and upon the Leased Premises shall at all times be maintained, repaired and replaced by Lessee, at Lessee’s sole cost and expense, in compliance with all applicable laws, codes, ordinances and regulations including, but not limited to, the Denver Building Code, as amended, and the Americans with Disabilities Act (ADA), concerning building accessibility for physically challenged citizens. In addition, Lessee, at its sole cost and expense, shall maintain the Building roof and membrane (including all gutters) in good working order and repair.

9. **LESSOR REPRESENTATIONS AND WARRANTIES:** Lessor represents and warrants to the City as of the Effective Date as follows:

(a) Lessor has full right and lawful authority to enter into this Lease, is lawfully seized of the Property and, subject to instruments of record, has good and valid fee simple title to the Property.

(b) The Property is in material compliance with all laws, ordinances, orders, rules, regulations and other requirements of any governmental authority (“Applicable Laws”) and all insurance requirements affecting the Property, and the current use and occupancy of the Property do not violate any Applicable Laws, permits, licenses, or certificates of occupancy affecting the Property. Lessor has not received notice of violation of any Applicable Laws which

remains uncured beyond all applicable notice or cure periods other than as expressly disclosed herein.

(c) To Lessor's knowledge, there is no condemnation, expropriation or other proceeding in eminent domain, pending or threatened, affecting the Property or any portion thereof or interest therein.

(d) There is no injunction, decree, order, writ or judgment outstanding, or any claim, litigation, administrative action or similar proceeding, pending or, to Lessor's knowledge, threatened, relating to the ownership, lease, use or occupancy of the Property or any portion thereof.

(e) Lessor has not received any notice of violation of any easement, covenant, condition, restriction or similar provision in any instrument of record affecting the Property which remains uncured beyond all applicable notice or cure periods.

(f) All taxes, assessments, fees or charges imposed on the Property or portion thereof by any governmental authority, association or other entity having jurisdiction over the Property that are due and payable have been paid.

Where a representation or warranty is made in this Lease on the basis of Lessor's knowledge, such representation or warranty is deemed made solely on the basis of the actual, conscious knowledge, without inquiry or investigation of David Lebowitz.

10. **QUIET ENJOYMENT:** Lessor covenants that, so long as this Lease is in full force and effect and Lessee is in compliance with all terms and conditions of this Lease, Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to Applicable Law and the other terms and conditions hereof.

11. **IMPROVEMENTS.** Lessor, at its cost and expense, shall perform Lessee Improvements for the Leased Premises. The City shall make no further alterations in or improvements to the Leased Premises without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. After the Commencement Date, the City will pay or cause to be paid all costs and charges for: (i) work done by the City or caused to be done by the City, in or to the Leased Premises; and (ii) materials furnished for or in connection with such work. All alterations or improvements to the Leased Premises by the City shall be conducted in a lien-free manner in compliance with all applicable

laws, codes, ordinances and regulations. Upon completion of any alterations or improvements to the Leased Premises by the City, the City shall furnish Lessor with (a) contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith and such other documentation reasonably requested by Lessor or any mortgagee, and (b) a digitized set of plans and specifications for all alterations or improvements that require a building permit, involve any structural elements of the Building or modifications to the floor plans of the Building, or are reasonably estimated to cost \$50,000.00 or more.

12. **ENTRY BY LESSOR:** The City shall, upon no less than 24 hours' notice by Lessor to the City, permit representatives (with or without invitees) of Lessor escorted by a City representative to enter into and upon the Leased Premises at all reasonable hours (a) to inspect the same and make any repairs deemed necessary by Lessor, (b) to show the same to prospective purchasers and/or lenders of the Property or to Lessor's insurance and/or surety companies, or (c) during the last six (6) months of the Term, to show the same to prospective tenants of the Leased Premises.

13. **CARE AND SURRENDER OF THE LEASED PREMISES:** Upon the expiration or early termination of this Lease, the City shall deliver the Leased Premises to Lessor in the same condition as the Leased Premises were in as of the Commencement Date, ordinary wear and tear excepted, and Lessee shall remove all of Lessee's movable furniture and other effects. All of the City's installations and fixturing made by City during the Lease term shall be removed, and all damage caused by such removal repaired, at the City's sole expense at the end of the Lease term unless Lessor shall direct otherwise in writing to the City.

14. **SERVICES FURNISHED BY LESSOR:** Lessor, at its cost and expense without such costs passed through to Lessee as Operating Expenses, shall maintain the foundations and structural components of the Building, except that Lessee shall be responsible for any damage caused by any act or omission of Lessee or Lessee's employees, agents, contractors, assigns, or invitees. For purposes of this Lease, the phrase "structural" and "structural components" as it relates to the Building shall mean the roof framing, the supporting structure of walls (excluding windows, window frames, doors, door frames, paint and facade, insulation, drywall, plumbing, electrical, heating, ventilation, air-conditioning), and foundation (excluding floor surfaces) of the Building. If necessary at any time during the Lease Term, Lessor, at its sole cost and expense, shall

be responsible for replacing the Building roof and membrane, and the cost of such replacement, amortized over its useful life as required to be capitalized under GAAP principles, will be passed through to Lessee as an Operating Expense; provided, however, that Lessee shall be responsible for the cost of such replacement to the extent caused by any act or omission of Lessee or Lessee's employees, agents, contractors, assigns, or invitees. Notwithstanding the provisions of Section 8 to the contrary, upon receipt of written notice by Lessee of the failure occurring within two (2) years from the Commencement Date, of any heating ventilation, and air conditioning systems and equipment serving the Leased Premises (“HVAC Equipment”), and provided such failure was not caused by Lessee or Lessee’s employees, contractors, licenses or invitees, Lessor agrees to replace the HVAC Equipment as soon as reasonably practicable thereafter, upon which fifty percent (50%) of the cost of such replacement, amortized over its useful life as required to be capitalized under GAAP principles, will be passed through to Lessee as an Operating Expense. Lessor will be responsible for replacing, at its sole cost and expense, any HVAC Equipment that fails prior to Commencement Date, and the cost thereof will neither be passed through to Lessee as an Operating Expense nor included in the Total Project Costs. After the earlier of (i) two (2) years from the Commencement Date or (ii) installation of replacement HVAC Equipment by Lessor, Lessee shall maintain, repair and replace such HVAC Equipment, at its sole cost and expense, in accordance with this Lease.

15. **INDEMNITY**: The Lessor 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 gross negligence or misconduct of the Lessor, the Lessor’s agents, employees, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessor, excluding Lessee or Lessee’s invitees, 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. Lessor 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 Lessor under this Lease. The Lessor shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

16. **LOSS OR DAMAGE:** In the event the Leased Premises are damaged by fire or other insured casualty, and the insurance proceeds have been made available therefor by the holder or holders of any mortgages or deeds of trust covering the Property, the damage shall be repaired by and at the expense of Lessor to the extent of such insurance proceeds available therefor, provided such repairs can, in Lessor's sole opinion, be completed within one hundred twenty (120) calendar days after the occurrence of such damage, without the payment of overtime or other premiums. Until such repairs are completed, the Rent shall be abated in proportion to the part of the Leased Premises which is unusable by Lessee in the conduct of its business; provided, however, if the damage is due to the fault or neglect of Lessee or its employees, agents, or invitees, there shall be no abatement of Rent. Lessor shall notify Lessee within thirty (30) calendar days of the date of occurrence of such damage as to whether or not Lessor shall have elected to make such repairs. If Lessor elects not to make such repairs, then either party may, by written notice to the other, cancel this Lease as of the date of the occurrence of such damage. In the event that the Leased Premises is damaged such that more than thirty-three percent (33%) of the same is rendered untenantable, or if insurance proceeds are insufficient or unavailable to repair the damage, Lessor may, at its sole option, terminate this Lease by written notice to Lessee given not more than thirty (30) days after the occurrence of the damage. Lessee understands that Lessor will not carry insurance of any kind on Lessee's furniture and furnishings or on any fixtures or equipment removable by Lessee under the provisions of this Lease, and that Lessor shall not be required to repair any injury or damage caused by fire or other cause, or to make any repairs or replacements to or of improvements installed in the Leased Premises by or for Lessee. Unless the Lease shall be terminated, Lessor shall, within thirty (30) days, or as soon thereafter as is reasonably possible, after the damage or other casualty occurred, restore the Leased Premises to substantially the same or better condition as they existed immediately before such damage or casualty; however, Lessor

shall not be required to repair or replace any part of the furniture, equipment, fixtures, and other personal property of Lessee whether or not insurance proceeds are available to Lessee for such purpose.

17. **HAZARDOUS SUBSTANCES:**

a. City shall not cause or permit the storage, use, release, generation or disposition of any Hazardous Substances (as hereinafter defined) in the Leased Premises and shall conduct its business and operations on and from the Leased Premises in strict compliance and accordance with all federal, state and local environmental laws, regulations, executive orders, ordinances and directives now in force or which may hereafter be in force with respect to Hazardous Substances (collectively "Environmental Laws").

b. Lessor warrants and represents that Lessor has received no notice of Hazardous Substances on the Leased Premises in violation of Environmental Laws which remains uncured beyond all applicable notice or cure periods. 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.

18. **HOLDING OVER:** If, after the expiration of this Lease, the City 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 the City's occupancy, and at a rent equivalent to 110% of the most recent 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 Lessor in accordance with Colorado law.

19. **REMEDIES UPON BREACH:**

a. Notwithstanding anything in this Lease to the contrary, if Lessee is in arrears in the payment of any installment of Rent, or any portion thereof, or any other monetary

sums required to be paid hereunder (a “Lessee Default”), and the Lessee Default remains uncured for a period of fifteen (15) days after Lessor has given written notice thereof pursuant to applicable law, then Lessor may, at Lessor’s option, undertake any of the following remedies without limitation: (a) declare the then current term of the Lease ended; (b) terminate Lessee’s right to possession of the Leased Premises and reenter and repossess the Leased Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (c) recover all present and future damages, costs, and other relief to which Lessor is entitled; (d) pursue breach of contract remedies; and (e) pursue any and all available remedies in law or equity. Lessor’s rights and remedies hereunder are cumulative and Lessor shall have all rights and remedies provided by law or equity. In the event possession is terminated by reason of a Lessee Default prior to expiration of the then current term, Lessee shall remain responsible for the Rent, subject to Lessor’s duty to mitigate such damages.

b. In the event the City fails to perform or observe any non-monetary provision of this Lease and the City shall not cure the failure within thirty (30) business days after Lessor notifies City thereof in writing, it shall constitute a Lessee Default and Lessor shall have all remedies set forth in Section 19(a) above; provided, however, if the failure is of a nature that it cannot be cured within such 30-day period, the City shall not have committed a default if the City commences the curing of the failure within such 30-day period and thereafter diligently pursues the curing of same and completes the cure within ninety (90) days.

c. In the event of a breach of this Lease by the Owner, the City shall deliver written notice to Owner of such breach. Owner shall be given the right to cure any breach or deficiencies noted within thirty (30) business days of written notice from the City. If such cure is effected within such thirty (30) day period, this Agreement will not be terminated. If the failure is of a nature that it cannot be cured within such 30-day period, the Lessor shall not have committed a default if the Lessor commences the curing of the failure within such 30-day period and thereafter diligently pursues the curing of same and completes the cure within ninety (90) days. If Owner fails to cure such breach before expiration of the cure period, it shall constitute a default of this Lease by Lessor (“Lessor Default”) and the City may avail itself of all rights and remedies in equity and law, including but not limited to terminating this Lease upon ten (10) days written

notice to Owner and the City will reimburse Owner the actual cost of any completed Lessee Improvements.

d. In the event any action is brought to enforce or interpret the provisions of this Lease, the prevailing party in any final judgment or award shall pay the other party reasonable attorneys' fees and court costs of the prevailing party.

20. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Lease, Lessor 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 identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

21. **LESSOR'S INSURANCE:**

a. **General Conditions:** Lessor agrees to secure, at or before the time of execution of this Lease, the following insurance, at Lessee's sole cost and expense. Lessor shall keep the required insurance coverage in force at all times during the term of the Lease, or any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Lease. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Lessor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). The insurance coverages specified in this Lease are the minimum requirements and do not preclude Lessor from obtaining additional coverage reasonably acceptable to Lessor; however, these requirements do not lessen or limit the liability of the Lessor.

b. **Proof of Insurance:** The City requests that the City's contract number be referenced on the certificate of insurance. The City's Risk Management Office may require

additional proof of insurance, including but not limited to policies and endorsements. Lessor certifies that the certificate of insurance attached as Exhibit D, preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessor's breach of this Lease or of any of the City's rights or remedies under this Lease.

c. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Lessor shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all property damage coverages required under this Lease, Lessor's insurer shall waive subrogation rights against the City.

e. **Commercial General Liability:** Lessor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

f. **Real Property insurance:** Lessor shall maintain insurance on the Property in amounts reasonably acceptable to Lessor.

g. **Rental Loss insurance:** Lessor may maintain rental loss insurance in amounts reasonably acceptable to Lessor and its Lender.

22. **CITY INSURANCE:** The City has elected to self-insure against any and all risks related to this Lease. Upon request, the City will provide Lessor with a letter of self-insurance. The City's election to self-insure shall not affect or diminish the other insurance requirements, covenants and conditions set forth in this Lease to be observed by the City.

23. **ADEQUACY OF COVERAGE.** Lessor and its agents make no representation that the limits of liability specified to be carried by City pursuant to this Lease are adequate to protect the City. If City believes that any of such insurance coverage is inadequate, City shall obtain such additional insurance coverage as City deems adequate, at City's sole expense. Furthermore, in no way does the insurance required herein limit the liability of City assumed elsewhere in the Lease.

24. **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.

25. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The City shall not assign, transfer or encumber its rights under this Lease to third parties or sublet the Leased Premises, or any portion thereof, without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, Lessor expressly acknowledges and agrees that City will contract with third-party service providers to operate the Leased Premises and the use of the Leased Premises by such third-party service providers and their licensees or invitees for the permitted use set forth in Section 6 shall not constitute either an assignment or sublease requiring the consent of Lessor. No assignment, transfer, or encumbrance shall relieve the City of its obligations to pay the Rent and to perform all of the other obligations to be performed by the City under this Lease.

26. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Lessee's performance pursuant to this Lease, provision of any goods or services to the City, and any other transactions related to this Lease. Lessee shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Lease or expiration of the applicable statute of limitations. When conducting an audit of this Lease, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Lessor to make disclosures in violation of state or federal privacy laws. Lessee shall at all times comply with D.R.M.C. 20-276.

27. **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; provided, however, the Director shall have the authority to execute on behalf of the City any written instrument(s) executed by the parties hereto 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.

28. **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.

29. **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, subject to restriction on assignment or sublease in accordance with Section 25 above. Time is of the essence hereof.

30. **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.

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

To the City:	Mayor's Office City and County Building 1437 Bannock Street, Room 350 Denver, CO 80202
With copies to:	Denver City Attorney Denver City Attorney's Office 1201 West Colfax Avenue, Dept. 1207 Denver, CO 80202
	Director of Real Estate 201 West Colfax Avenue, Dept. 1010 Denver, CO 80202

To Lessor: Denver 44th Avenue, LLC
1333 2nd Street, suite 650
Santa Monica, CA 90401
Attn: David Lebowitz

With copies to: Brownstein Hyatt Farber Schreck, LLP
675 15th Street, Suite 2900
Denver, CO 80202
Attention: Jacob Whitted, Esq.

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.

32. **NET NET NET (TRIPLE NET) LEASE:** Except as may be otherwise provided in this Lease (specifically including but not limited to Section 4), it is the intention of the parties that the Lessor shall receive the Rent and all sums payable by the Lessee under this Lease free of all expenses, charges, damages, setoffs, abatements, deductions and other costs of any nature or description whatsoever and the Lessee covenants and agrees to pay all sums, which except for any provisions of this Lease (specifically including but not limited to Section 4), would have been chargeable against the Property and payable by Lessor. To the extent such costs and expenses payable by Lessee cannot be charged directly to, and paid, by Lessee, such costs and expenses shall be paid by Lessor but reimbursed by Lessee. All of the foregoing charges, costs and expenses shall, together with the Base Rent and Operating Expenses, constitute "Rent", and upon the failure of Lessee (after any applicable notice and cure period) to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay such Rent.

33. **TRANSFER BY LESSOR:** Lessor may freely transfer any interest of Lessor under or in connection with this Lease without Lessee's consent. In the event of any transfer(s) of any interest of Lessor under or in connection with this Lease, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Lessor accruing from and after the date of such transfer and the transferee alone shall be liable to the Lessee for any and all such obligations and liabilities.

34. **ESTOPPEL CERTIFICATE:** Within ten (10) business days following receipt of Lessor's written request, Lessee shall deliver, executed by the Director, an estoppel certificate to

any person designated by Lessor certifying that: 1) this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); 2) all conditions under this Lease to be performed by Lessor have been satisfied (stating exceptions, if any); 3) no defenses, credits or offsets against the enforcement of this Lease by Lessor exist (or stating those claimed); 4) the sum of advance Rent, if any, paid by Lessee; 5) the date to which Rent has been paid; 6) that Lessee has no offsets or defenses to the performance of its obligations under this Lease (or if Lessee believes there are any offsets or defenses, a full and complete explanation thereof); 7) if requested on or after the Commencement Date, that the Lessee Improvements have been completed in accordance with the terms and provisions of this Lease and the Work Letter, that Lessee has accepted the Property and the condition thereof and of all improvements thereto and has no claims against Lessor or any other party with respect thereto; and, 8) such other information as Lessor reasonably requires; it being understood that persons or entities receiving such statements and certifications of Lessee shall be entitled to rely upon them.

35. **SUBORDINATION AND NON-DISTURBANCE:** This Lease shall be subject to and subordinate and inferior at all times to the lien of any mortgage, to the lien of any deed of trust or other method of financing or refinancing now or hereafter existing against all or a part of the real property upon which the Leased Premises is located, and to all renewals, modifications, replacements, consolidations and extensions of any of the foregoing (collectively, "Superior Instrument"). Lessee shall execute and deliver all documents, reasonably requested by any mortgagee or security holder (collectively, "Lienholder") or Lessor to affect such subordination, and Lessee agrees to negotiate in good faith any provision that requires the City to provide Lienholder reasonable additional time, after receipt of notice pursuant to Section 36 below, within which to cure a Lessor default; *provided, however*, the City's subordination to any future lien of any deed of trust or other method of financing or refinancing shall be conditioned on the receipt by the City of a commercially reasonable form of non-disturbance agreement, executed by such Lienholder, providing for (i) the City's rights under this Lease shall not be disturbed nor shall this Lease be terminated or cancelled at any time, except in the event that Lessor shall have the right to terminate this Lease under the terms and provisions expressly set forth herein, and (ii) the City's Extension Option(s) and ROFO Purchase Option (as defined below) shall remain in force and

effect, except in the event that such Extension Option(s) and/or ROFO Purchase Option shall have previously terminated pursuant to the provisions hereof.

36. **LIENHOLDER PROTECTION:** Lessee agrees to give any Lienholder, by registered or certified mail, a copy of any notice of default served upon Lessor by Lessee, provided that prior to such notice Lessee has received notice (by way of recording of an assignment of rents and leases, or otherwise) of the address of such Lienholder.

37. **BROKERS:** The City and Lessor represent to each other that it has not had and it shall not have, any dealings with (and it has not engaged and it will not engage) any third party to whom the payment of any broker's fee, finder's fee, commission or similar compensation shall or may become due or payable in connection with the transactions contemplated hereby.

38. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein 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.

39. **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 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 this Lease shall be deemed or taken to be a waiver of any other default or breach.

40. **RIGHT TO ALTER TIME FOR PERFORMANCE.** The parties may alter any time for performance set forth in this Lease by a letter signed by the Director of the Division of Real Estate and an authorized representative of Lessor.

41. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessor 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. Lessee shall look solely to the equity in the Property

for the satisfaction of any remedies of Lessee in the event of a breach by the Lessor of any of its obligations. Such exculpation of liability shall be absolute without any exception whatsoever.

42. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessor 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.

43. **APPROPRIATION:** The obligations of the City pursuant to this Lease or any renewal or holdover shall extend only to monies appropriated for the purpose of this Lease by the City Council, paid into the City Treasury, and encumbered for the purposes of this Lease. Lessor acknowledges that (i) City does not by this Lease irrevocably pledge present cash reserves for lease payments in future fiscal years; and (ii) this Lease is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

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

45. **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.

46. **PAYMENT OF CITY MINIMUM WAGE:** Lessor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this this Lease, Lessor expressly acknowledges that Lessor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Lessor, or any other individual or entity acting subject to this Lease, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

47. **RIGHT OF FIRST OFFER TO PURCHASE:**

a. Subject to the terms and conditions of this Section 47, Lessor hereby grants to Lessee, during the period commencing on the Commencement Date and continuing through and

including the expiration or earlier termination of the Lease (the “ROFO Option Period”), a right of first offer (the “ROFO Purchase Option”) to purchase the Property from Lessor. If, and only if, Lessor desires to sell the Property, Lessor shall notify Lessee in writing (the “ROFO Notice”). In order to exercise the ROFO Purchase Option, Lessee must, within fifteen (15) calendar days of delivery of the ROFO Notice to Lessee, deliver written notice to Lessor (“ROFO Exercise Notice”) electing to exercise its ROFO Purchase Option. During the thirty (30) day period after delivery of the ROFO Exercise Notice, Lessor and Lessee shall negotiate in good faith and use commercially reasonable efforts to agree upon the purchase price and other terms and conditions of the purchase of the Property pursuant to the exercise of the ROFO Purchase Option. Thereafter, subject to City Council approval and City Charter, the Parties shall proceed with execution of the purchase agreement based on such agreed upon terms and conditions (the “ROFO Purchase Agreement”). In the event that (i) Lessee fails to timely provide Lessor with its ROFO Exercise Notice, or (ii) the parties fail to agree upon the purchase price and other terms and conditions of the purchase of the Property within the expiration of the 30-day period set forth above, the ROFO Purchase Option shall terminate and be of no further force or effect and the parties shall have no further obligations hereunder with respect to the sale of the Property. Notwithstanding anything in this Section 47 to the contrary, in the event the ROFO Purchase Option has terminated because Lessee fails to exercise the ROFO Purchase Option or the parties fail to execute the ROFO Purchase Agreement within the respective time periods set forth above, the ROFO Purchase Option shall be reinstated if Lessor has not consummated and closed the sale of the Property within one (1) year after the date of the ROFO Offer Notice.

b. For purposes of this Section 47, Lessor shall have no obligation to deliver the ROFO Offer Notice, and Lessee’s ROFO Purchase Option shall not be applicable to: (a) any transfer of the Property to an Affiliate of Lessor; (b) any collateral assignment of this Lease and/or pledge of Lessor’s interest in the Property made in connection with a financing or refinancing of the Property; or (c) any transfer of the Property effected in a foreclosure action pursuant to a Superior Instrument or by a deed in lieu thereof, in which case the ROFO Purchase Option shall survive such transfer and Lessor’s obligations shall be assumed by the transferee. For purposes of this Section 47(b), an “Affiliate” of Lessor shall be an entity which controls, is controlled by or is under common control with Lessor. The term “control” shall mean the power to direct or cause

the direction of the management and policies of the controlled entity through the ownership of more than fifty percent (50%) of the shares or interests in such controlled entity.

48. **EFFECTIVE DATE:** This Lease is expressly subject to, and shall not be or become effective or binding on the City until, approval by its City Council and full execution by all signatories set forth below. The effective date shall be the date the City delivers a fully executed electronic copy of this Lease to Lessor ("Effective Date").

49. **MEMORANDUM OF LEASE AND RIGHT OF FIRST OFFER TO PURCHASE:** Upon execution of this Lease, Lessor and the City shall enter into a short form memorandum of this Lease, in form attached hereto as Exhibit E, in which reference to this Lease, and the Right of First Offer to Purchase contained herein, shall be made. The City shall pay the cost and expense of recording such memorandum of this Lease.

List of Exhibits

Exhibit A – Legal Description of Property and Leased Premises

Exhibit B – Commencement Date Memorandum

Exhibit C - Work Letter

Exhibit D – Lessor's Certificate of Insurance

Exhibit E – Memorandum of Lease and Right of First Offer to Purchase

Exhibit F – Rough Order of Magnitude (ROM) Estimate of Total Project Costs

[SIGNATURE PAGES FOLLOW]

Contract Control Number:

FINAN-202368329-00

Contractor Name:

Denver 44th Avenue, 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:

Contract Control Number:
Contractor Name:

FINAN-202368329-00
Denver 44th Avenue, LLC

By: **SEE VENDOR SIGNATURE PAGE ATTACHED**

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement pursuant to due authorization on the dates herein acknowledged.

Lessor: **DENVER 44TH AVENUE, LLC**, a Colorado limited liability company

By: 
Name: David L. Lebowitz
Its: Co-Managing Member

Date: May 26, 2023

[Lessee signature page follows]

Exhibit A

Legal Description of Property and Leased Premises

Lots 2 through 9, Block 7, Viaduct Addition to Denver, City and County of Denver, State of Colorado.

For informational purposes only: APN 02223-07-013-000

Exhibit B

Commencement Date Memorandum

ACKNOWLEDGEMENT OF LEASE COMMENCEMENT AND BASE RENT

The undersigned parties acknowledge that the following described Lease is in full force and effect and that Lessee has taken possession of the Leased Premises.

Date of Lease: _____

Lessor: DENVER 44th AVENUE, LLC, a Colorado limited liability company

Lessee: CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado

Leased Premises: The Property located at 570 W. 44th Avenue, Denver, CO 80216

The undersigned parties acknowledge that the commencement date and the expiration date of the Initial Term as defined in Section 2 of the above referenced Lease are as follows:

Commencement Date: _____

Expiration Date: _____

The undersigned parties acknowledge that the Base Rent as defined in Section 4 of the above referenced Lease for the Initial Term is as follows:

Lease Year	Monthly Base Rent	Annual Base Rent
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

The undersigned parties further acknowledge that the above referenced Lease has not been amended or modified and all terms and provisions remain in full force and effect.

Lessor: **DENVER 44th AVENUE, LLC**, a Colorado limited liability company

By: _____

Name: _____

Its: _____

Date: _____

Lessee: **City and County of Denver**, a municipal corporation of the State of Colorado

By: _____

Name: Lisa Lumley

Its: Director of Real Estate

Date: _____

Exhibit C
Work Letter

This Work Letter supplements and is hereby incorporated in that certain lease (hereinafter referred to as the "Lease") dated and executed concurrently herewith by and between **DENVER 44th AVENUE, LLC**, a Colorado limited liability company ("Lessor") and **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado ("City" or "Lessee") with the terms defined in the Lease to have the same definition where used herein.

(a) Lessee Improvements. Lessor, at Lessor's cost and expense, shall furnish or complete the Lessee Improvements specified in the Approved Improvement Documents (each as generally described below).

(b) Improvement Documents. Within 30 days after the Effective Date, Lessor shall cause Lessor's architect ("Lessor's Architect") to prepare proposed plans, drawings and specifications (the "Proposed Improvement Documents") for the proposed site work, Building improvements and interior improvements to be constructed by Lessor at Property pursuant to this Work Letter. Within five (5) business days of its receipt of the Proposed Improvement Documents, the City shall give to Lessor written notice ("City's Improvement Documents Notice") with its reasonable comments and revisions to or approval of the Proposed Improvement Documents, which approval shall be deemed granted if the City fails to give City's Improvement Documents Notice to Lessor within the time period prescribed above. If the City requests changes, the Lessor's Architect shall have five (5) business days in which respond to the City's reasonable requests for changes to the Proposed Improvement Documents accordingly and re-submit the Proposed Improvement Documents for City's approval. City shall advise Lessor within five (5) business days after receipt of any revised Proposed Improvement Documents of its approval or disapproval thereof, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be deemed granted if the City fails to give City's Improvement Documents Notice to Lessor within such 5-business day period. The foregoing process shall apply until the City provides its final approval of the Improvement Documents; *provided, however*, that Lessor and the City shall expeditiously, diligently and in good faith use their commercially reasonable efforts to cause the Proposed Improvement Documents to be mutually agreed upon on or before the date that is forty-five (45) days after the date that Lessee obtains the Approvals (as defined below), which mutually agreed upon Proposed Improvement Documents Drawings shall hereinafter be referred to as the "Approved Improvement Documents" and shall be automatically incorporated into and made a part of the Lease without the necessity of further action. All site work and other

improvements to the Property and the Building shall be constructed by Lessor in accordance with the Approved Improvement Documents (the "Lessee Improvements"). The Lessee Improvements shown in the Approved Improvement Documents shall (i) utilize building standard materials and methods of construction, (ii) be compatible with the design, construction and equipment of the Leased Premises, and (iii) comply with all applicable laws, rules, regulations, codes and ordinances. The City's review and approval of the Approved Improvements Documents will in no way relieve the Lessor or Lessor's Architect from their liabilities under this Lease and will be given with the understanding that the City makes no representation or warranty as to the validity, accuracy, legal compliance or completeness of the Approved Improvement Documents and that any reliance by the Lessor or Lessor's Architect on the Approved Improvement Documents is at the risk of the Lessor and Lessor's Architect.

(c) Coordination and Liaison. The City appoints the Director, as its authorized representative ("City's Representative") under this Work Letter and, as such, such appointee shall be vested with the authority to act on behalf of the Lessee in performing the City's obligations under this Work Letter. The City may change its authorized representative at any time by providing three (3) days' prior written notice to Lessor of such change. David Lebowitz is Lessor's authorized representative ("Lessor's Representative") under this Work Letter and, as such, is responsible for overseeing the satisfactory completion of the Lessee Improvements, in accordance with the terms and conditions of this Work Letter and Improvement Documents, make disbursements required to be made to the contractor(s). Lessor may change its authorized representative at any time by providing three (3) days' prior written notice to the City of such change. All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Work Letter will be made to Lessor's Representative or City's Representative, as the case may be, with copies to City's notice addresses set forth in the Lease. Neither party will make any inquiries of or submit a request to, and will not give any instructions or authorizations to, any other employee or agent of the other party, including architects, engineers and contractors or any of their agents or employees, with regard to matters covered by this Work Letter, and the representatives identified above, or such successor representatives, shall be the only persons authorized to take actions or grant consents on behalf of such party. Any actions taken by a party's representative shall be binding on such party for all purposes. Lessee's Representative shall at all times provide reasonable written notice prior to entering onto the Leased Premises to observe the Lessee Improvements. Nothing herein shall be deemed to constitute Lessor's authorization for Lessee to provide direction or otherwise authorize Lessor's Contractor or Lessor's Architect to perform any work.

(d) Completion of Lessee Improvements. Lessor shall be responsible for obtaining all

necessary final, un-appealable permits and other governmental approvals necessary for construction of the Lessee Improvements (collectively, the “Approvals”). The City shall cooperate with Lessor in Lessor’s efforts get to the Approvals. Lessor shall commence construction of the Lessee Improvements within a reasonable period of time following the later of (i) Lessee’s approval of the Improvement Documents, or (ii) Lessor’s receipt of all final, unappealable permits or other required governmental approvals prerequisite to commencement of completion of such Lessee Improvements (“Improvement Commencement Date”). Lessor shall use commercially reasonable efforts to Substantially Complete (defined below) the Lessee Improvements within fourteen (14) months after the Improvement Commencement Date (“Target Completion Date”), subject, however, to Construction Force Majeure (as defined below), Approved Delay (as defined below) or Lessee Delay (as defined below) (collectively, “Excusable Delays”). The Target Completion Date is an estimate only, and Lessor shall not be subject to any liability for the failure to give possession on the Target Completion Date. Lessor shall arrange for its general contractor to provide to City Representative on a bi-weekly basis a Construction Schedule. “Construction Schedule” shall mean the schedule for permitting, material purchase and delivery, construction of Lessee Improvements, and acquisition and installation of all equipment and other property required for the completion of Lessee Improvements. In the event of any Excusable Delays, Lessor shall provide written notice of such delay (“Delay Notice”) to the City Representative within seven (7) business days after the occurrence of the Excusable Delay. Any failure to deliver a timely Delay Notice with respect to any event shall be deemed to be an acknowledgement by Lessor that such event does not constitute an Excusable Delay hereunder. “Substantial Completion” or “Substantially Complete” shall be defined as the date that Lessor has delivered to City a copy of the final certificate of occupancy for the Leased Premises, provided that Substantial Completion shall be deemed to have occurred on the date that Lessor has delivered to City a copy of the temporary certificate of occupancy if the applicable governmental authorities issue a temporary certificate of occupancy certifying that the Leased Premises have been approved for immediate occupancy consistent with Lessee’s intended use. Within ten (10) days after Substantial Completion, Lessor and Lessee shall inspect the Lessee Improvements and prepare in writing a “punch list” of errors and omissions (if any) in the construction of the Lessee Improvements (collectively, the “Punch List Items”); provided, however, that Punch List Items shall not include (i) any items that were constructed in accordance with the Approved Improvement Documents or (ii) any items of damage caused by Lessee, or parties acting by or through Lessee. Upon Substantial Completion, Lessor shall assign to Lessee all guaranties and warranties relating to the Lessee Improvements to which Lessor is a party and which are assignable by Lessor. Lessor shall use commercially reasonable efforts to complete the Punch List Items within 90 days following the preparation of such list, unless the nature of the incomplete work item listed therein is such that a

longer period of time is required to repair or correct the same or unless due to Excusable Delays.

The term “Construction Force Majeure” shall mean time actually lost by Lessor or Lessor’s Contractor or either of their subcontractors, materialmen or suppliers due to power failure, scarcity, unavailability or delay in obtaining fuel, materials, equipment or components, epidemic, pandemic, public outbreak of disease, national, regional or local emergency, riots, protests, insurrection, sabotage, rebellion, war, embargo, war or other national emergency, accidents, floods, defective materials, fire damage or other casualties, adverse weather conditions and unanticipated field conditions which reasonably prevent Lessor from pursuing construction activities in a normal manner, soil conditions, or any other cause similar to the foregoing beyond the reasonable control of Lessor or Lessor’s Contractor or either of their subcontractors or suppliers.

The term “Approved Delay” means in the event of any unforeseen delay, Lessor shall provide written notice of such delay in a Delay Notice to the City Representative who shall have the authority to extend the Target Completion Deadline by responding to Lessor within five (5) business days of receipt of the Delay Notice.

The term “Lessee Delay” means: (i) delay in completion of construction of the Lessee Improvements directly attributable to any failure by the Lessee to provide its response to the proposed set of plans, specifications, documents or drawings covering work to be performed by Lessor in connection with the Lessee Improvements within the time frames set forth in subsection (b) above, or (ii) any subsequent changes, modifications, or alterations requested by the Lessee to any plans, specifications, documents or drawings, which actually cause delay in the completion thereof. For purposes of determining delay, the term Lessee or City shall include any of Lessee’s employees, agents and representatives. In the event that Lessor has made a reasonable request for a certain approval or item to be provided by the Lessee by a certain date and the Lessee fails to reply or provide said item by said date, subject to and except for Lessor delivering a Delay Notice as described above, no further written notice need be provided by Lessor in the event that the City fails to meet such deadline in order for Lessor to claim a Lessee Delay.

(e) Budget. As soon as practicable following City’s approval of the Improvement Documents, Lessor shall obtain a written non-binding itemized estimate (“Contractor's Estimate”) of the costs of all Lessee Improvements shown in the Approved Improvement Documents as prepared by Lessor’s general contractor (“Lessor’s Contractor”). Within ten (10) business days after receipt of Contractor's Estimate, Lessee shall either (A) give its written approval thereof and authorization to proceed with completion of the Lessee Improvements, in which case such cost estimate shall constitute the final, approved budget (“Budget”) or (B) submit a written request to Lessor with reasonable comments and revisions to the Approved Improvement Documents for the

purpose of reducing the cost of the Lessee Improvements. If Lessee requests changes, the Lessor's Architect shall have five (5) business days in which respond to the Lessee reasonable requests for changes to the Approved Improvement Documents with a corresponding update to the cost estimate based upon any revisions to the Approved Improvement Documents. The foregoing process shall apply until Lessee provides its final approval of the Budget. Lessee's final approval of the Approved Improvement Documents and Budget shall constitute authorization to Lessor to commence the completion of the Lessee Improvements in accordance with the Improvement Documents, as modified or revised by the Lessee.

(f) Change Order. Once the Budget is approved per section (e), except for Non-Material Field Adjustments, Lessor shall not make any changes to the Improvement Documents or Budget without first obtaining the prior written approval of Lessee's representative, which approval shall not be unreasonably withheld, conditioned or delayed. If Lessee shall desire any changes to the Approved Improvement Documents ("Change Order"), Lessee shall so advise Lessor in writing and Lessor shall have any necessary revisions to the Approved Improvement Documents prepared, and the cost of preparing such revisions shall be added to the Total Project Costs. Lessor shall notify Lessee in writing of (i) the estimated increased cost, if any, to the Lessee Improvements, if any, which will be chargeable to Lessee by reason of such Change Order, which increased costs, if any, together with the costs of preparing revisions to the applicable construction documents are collectively referred to herein as the "Excess Costs", and (B) Lessor's estimate of delay resulting from the Change Order. Lessee shall, within two (2) business days after receiving Lessor's estimate of the cost of the Change Order and delay, notify Lessor in writing whether it desires to proceed with such Change Order. In the absence of such written authorization, Lessor shall have the option to continue perform the Lessee Improvements disregarding the requested Change Order, or Lessor may elect to discontinue the performance of the Lessee Improvements until Lessor receives notice of Lessee's decision, in which event any such delay shall be deemed to be a delay caused by Lessee. Following written approval from Lessee of a Change Order, Lessor shall cause the Lessee Improvements to be constructed substantially in accordance with the approved Change Order and any and all Excess Costs therefrom shall be added to the Total Project Costs, with the Base Rent being adjusted accordingly. Notwithstanding the foregoing, Lessee shall not be permitted to modify, revise, change or amend the Lessee Improvements or the Approved Improvement Documents without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Non-Material Field Adjustments. The parties hereto acknowledge and agree that, except as expressly set forth in the Approved Improvement Documents, the Lessee Improvements shall be constructed using Building-standard methods, materials and finishes designated by Lessor.

Lessor shall have the right, from time to time, to make reasonable and non-material changes/field adjustments (collectively, “Non-Material Field Adjustments”) in and to the Approved Improvement Documents to the extent that the same shall be necessary or desirable in order to adjust to actual field conditions or to cause the work shown on the Approved Improvement Documents or to comply with any applicable requirements of public authorities and/or requirements of insurance bodies, provided, however, that any such Non-Material Field Adjustments shall not materially adversely affect Lessee’s use of the Leased Premises or significantly diminish the floor area or alter the configuration of the Leased Premises. All Non-Material Field Adjustments (which may be made immediately but confirmed by written change order and notice to Lessee) shall be noted on the applicable plans or documents within 5 business days after Lessor makes such Non-Material Field Adjustment. Except for Non-Material Field Adjustments, Lessor shall not make any other changes/field adjustments in and to the Approved Improvement Documents, without first obtaining the written consent of Lessee, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent shall be deemed granted if Lessee fails to respond to Lessor in writing within 72 hours (not including weekends or holidays) after the date of Lessee’s receipt of Lessor’s written request for such consent.

(h) Actual Costs for Lessee Improvements; Acknowledgment of Lease Commencement and Base Rent. The actual, documented “hard costs” and “soft costs” of completing the Lessee Improvements (the “Actual Cost of Lessee Improvements”) shall be initially paid by Lessor but shall be included in the Total Project Costs, which shall be used in determining Base Rent as set forth in Section 4(a) of the Lease. For the avoidance of doubt, in addition to the foregoing and the additional costs set forth in the Lease, all of the following costs and expenses shall be added to the Total Project Costs in determining Base Rent: (i) the purchase price of \$7,100,000.00 paid by Lessor in acquiring the Property; (ii) the “hard costs” and “soft costs” incurred by Lessor in connection with Lessor’s construction of the Lessee Improvements, including, without limitation, all architectural, design, engineering, planning, zoning, permitting, insurance, financing costs, construction costs, taxes, utility connection fees, legal, professional and consultant fees, (iii) the documented cost of any Change Order in the Lessee Improvements initiated by Lessee and approved by Lessor; and (iv) all documented costs and any expenses occasioned by a delay by Lessee, including any costs and expenses attributable to increases in labor or materials. Upon Substantial Completion, Lessor shall submit to the City Representative its invoices, paid receipts and any other documentation reasonably requested by the City, evidencing the work performed by Lessor’s Architect, Lessor’s Contractor and such other persons engaged to provide services, materials or labor in connection with the Lessee Improvements, and the Actual Cost of the Lessee Improvements paid by Lessor. Upon Lessee’s receipt of such documentation, Lessee shall calculate Base Rent in accordance with Section 4 of the Lease and

the parties shall execute the Acknowledgment of Lease Commencement and Base Rent in the form attached to the Lease as Exhibit B.

Exhibit D
Lessor's Certificate of Insurance

Exhibit E

Memorandum of Lease and Right of First Offer to Purchase

Return to:
Denver City Attorney's Office
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202

MEMORANDUM OF LEASE AND RIGHT OF FIRST OFFER TO PURCHASE

This is a Memorandum of Lease made and entered into as of this _____ day of _____, 20____, by and between **DENVER 44TH AVENUE, LLC**, a Colorado limited liability company (hereinafter "Lessor") and the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter "City"), upon the following terms:

1. Lease. The provisions set forth in a written lease between the parties hereto dated _____ (the "Lease"), are hereby incorporated by reference into this Memorandum.
2. Capitalized Terms. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Lease.
3. Premises. The Property which is the subject of the Lease is more particularly described as follows: See Attached Exhibit "A"
4. Right of First Offer to Purchase. Pursuant to Section 47 of the Lease, Lessor grants to City a right of first offer to purchase the Property commencing on the Commencement Date and continuing through the Term of the Lease, including any Extension Term(s), if and only if, Lessor desires to sell the Property.
5. Purpose. It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease and Right of First Offer to Purchase.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease and Right of First Offer to Purchase pursuant to due authorization on the dates herein acknowledged.

Lessor: **DENVER 44TH AVENUE, LLC**, a Colorado limited liability company

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: Director of Real Estate
Date: _____

STATE OF _____
COUNTY OF _____

On the _____ day of _____, 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Notary Public

STATE OF _____ :
 :
 : SS.:
COUNTY OF _____ :
 :

On the _____ day of _____, 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Notary Public

Exhibit F

Rough Order of Magnitude (ROM) Estimate of Total Project Costs

[attached]