

City of Aurora

Real Property Services, Suite 3200
15151 E. Alameda Parkway
Aurora, Colorado 80012
Phone: 303-739-7300
Email: hrey noso@auroragov.org
www.auroragov.org



Date: December 8, 2023

REQUEST FOR PROPOSALS

The City of Aurora (the "City") requests written proposals (each a "Proposal") from qualified for-profit commercial tenants (each a "Tenant") to construct, finance, and operate a legally permissible, physically possible, financially feasible, and maximumly productive facility under the terms of a long-term, fair market rent, ground lease with the City for the City-owned land located at 23951 E. 6th Pkwy, Aurora, CO 80018 ("Property"). The chosen Tenant will be granted a License and Option to Lease Agreement in the form attached in **Section IV as Exhibit A** (the "License") to perform due diligence, during which the chosen Tenant shall be responsible to obtain any and all federal, state, and local approvals, permits, site plans, secure financing, and satisfy all other requirements necessary. If the Tenant decides to proceed with leasing the Property upon completion of necessary due diligence, then the City and the Tenant will execute the long-term Ground Lease in the form attached in **Section IV as Exhibit B** (the "Ground Lease").

Proposal Submission Requirements

To be eligible to submit a Proposal, a Tenant must obtain the RFP documents and addenda from the Rocky Mountain E-Purchasing System ("BidNet") site at <https://www.rockymountainbidsystem.com>

Proposals must be addressed and submitted as follows:

One (1) electronic copy of the proposal shall be through the Rocky Mountain E-Purchasing System web site.

Proposals will be accepted until 3:00 p.m. on January 29, 2024. No late submissions will be considered.

Only those proposals that are received through BidNet, prior to the deadline noted above shall be considered. Delivery to the Aurora Municipal Services building, mail room, or to any other department within the City of Aurora, does not constitute proper or adequate delivery. The respondent assumes the risk of their method of delivery.

Multiple Awards

After evaluation of all Proposals, the City reserves the right to award more than one License or Ground Lease. The License and Ground Lease will be executed with the successful Tenant or Tenants that are selected for award under this Request for Proposals.

Tenant Responsibilities

Each Tenant shall:

- a. Examine all the components of this RFP, including all appendices, forms and addenda; and
- b. Acquire a clear and comprehensive knowledge of the requirements before submitting a Proposal.

The failure of any Tenant to receive or examine any document, form, agreement or policy shall not relieve the Tenant of any obligation with respect to its Proposal.

Tenant shall be solely responsible for costs incurred in the preparation, submission, or presentation of any Proposal, for interviews, or any other activity that may be requested as part of the evaluation process or the negotiation or execution of any agreement with the City, as the case may be. The rejection or non-acceptance of any or all Proposals shall not render the City liable for any costs or damages to any Tenant that submits a Proposal.

CONTACTS DURING SOLICITATION PROCESS

Written questions, comments or other communications regarding this RFP shall be submitted by e-mail to the City Contact identified below. No other contact shall be made regarding this RFP with any other City staff or City Council members during the RFP process.

City Contact	Contact Info
Hector Reynoso, Real Property Services Manager	hreynoso@auroragov.org (303) 739-7327

Requests for clarification and questions to this RFP must be received by the City Contact not later than the date shown in the Tentative RFP Schedule below. The Tenant's failure to request clarification and submit questions by such date shall be considered to constitute the Tenant's acceptance of all City's terms and conditions and requirements. No information, instruction or advice provided orally or informally by any City personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Respondents shall be entitled to rely only on written material contained in an Addendum to this RFP.

Pre-Proposal Conference

A virtual pre-Proposal conference on Microsoft Teams is scheduled for **January 9, 2024** from 9:00 AM – 10:00 AM. Attendance at the pre-Proposal conference is not mandatory, but is highly recommended. Please email Hector Reynoso, hreynoso@auroragov.org to be added to the virtual pre-Proposal conference that will be held on Microsoft Teams.

Tentative RFP Schedule

Date and Time	RFP PROCESS
December 8, 2023	Advertise RFP
January 9, 2024	Virtual Pre-Proposal conference, 9:00 a.m.
January 11, 2024	5:00 p.m. Deadline for written vendor questions
January 29, 2024	Proposals Due 3:00 p.m. Deadline
February 2, 2024	Notification of short-listed Tenants
Week of February 5, 2024	Interviews with Tenants, if needed
February 9, 2024	Selection of Tenant(s)
March 4, 2024	Anticipated start date of Option and License Agreement

Selection Process

The City reserves the right to reject any and all Proposals, to waive any informalities in the Proposals received, and to accept the Proposals deemed most advantageous and in the best interests of the City, in the City's sole discretion. All interested firms must submit Proposals addressing those items cited in the Submittal Requirements found in Section II of this RFP. Proposals will be evaluated in accordance with the Evaluation Criteria found in Section III of this RFP. The City may request additional information as deemed necessary. The City may, at its sole discretion, conduct interviews with select Tenants.

Proposals will be considered only from Tenants that are firmly established in an appropriate business; are financially responsible; and have the resources and ability to develop and operate the proposed development on the Property in a professional and expedient manner.

The successful Tenant(s) will be offered a License, which will allow the successful Tenant(s) time to perform due diligence activities on the Property, obtain any and all federal, state, and local approvals, permits, site plans, subdivision plats, secure financing, and satisfy all other requirements necessary to construct its proposed development on the Property. The successful Tenant(s) will need to coordinate with the Office of Development Assistance ("ODA") to obtain approvals from the City. Certain improvements may be necessary and required by the ODA and will be constructed by Tenant at Tenant's sole expense as determined by the ODA. Tenant will be responsible for coordinating with the ODA in order to determine all such public and on-site improvements necessary to access, develop, and operate the development on the Property.

Upon obtaining all necessary permits and approvals to construct on the Property, the successful Tenant(s) shall have the option to execute the Ground Lease. **Proposals shall include material terms that the Tenant, or its lender, require to be included in the Ground Lease.**

The Ground Lease will be sent to the Aurora City Council for approval at a public meeting. Should the City be unable to reach an agreement with any Tenant, the City may move on to any other Tenant.

Confidentiality

All materials submitted in response to this RFP become the property of the City. Subject to applicable law, confidential information provided in response to this RFP will be kept confidential, so long as any such confidential information is clearly identified as such by the Tenant. Proposals marked entirely as "confidential" will be considered non-responsive and will be removed from the evaluation process. Please be aware that Proposals submitted to the City in response to this RFP shall be subject to the Colorado Open Records Law, C.R.S. § 24-72-200.1, *et seq.*

Each Tenant submitting a response to this RFP shall be presumed to indemnify the City for any and all attorney fees the City may incur in defending the withholding of any confidential information. Each Tenant will be notified of any open records requests and will be given a chance to respond to the City. If, in the opinion of City's legal counsel, the City is compelled to disclose any confidential information, the City may disclose such information without liability.

Conflicts of Interest

City contracts are controlled by certain conflict of interest provisions under both state and local law. In each Proposal, the Tenant must disclose any potential conflict of interest, including whether any City employee, Council member or member of a City agency, board or commission member or employee has a financial interest in the Tenant's entity and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of final agreements, the City may, at its discretion refuse to consider the Proposal or withhold the awarding of any agreement to the Tenant until the matter is resolved to the City's satisfaction.

State: Failure to disclose a conflict of interest is a misdemeanor criminal offense under Colorado Law. Such conflict may arise if any public official exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without necessary disclosures as defined by C.R.S. § 18-8-308, as amended.

City: City of Aurora Code § 2-1-44 regulates private transactions between the City and its officials and employees. The Section requires that elected officials shall not take official action on a matter before the City if they, a member of their immediate family, a business association, or any employer has any substantial employment, contractual, or financial interest in the matter.

A Tenant may not give any gratuity in the form of entertainment, participation in social events, gifts, or otherwise to any City employee, City Council member, or member of a City agency, board or commission in connection with this RFP.

Addenda to the RFP

The City reserves the right to amend this RFP by an addendum at any time prior to the date set for receipt of Proposals. Addenda will be posted on the Rocky Mountain E-Purchasing System web site as soon as available, and it is the responsibility of each interested party to obtain all addenda. Interested parties that are registered for the paid notification service on the Rocky Mountain E-Purchasing System will be notified of addenda either by fax or email depending on the service that they have subscribed to. Interested parties that are registered for the no charge, no notification service on the Rocky Mountain E-Purchasing System must monitor the Rocky Mountain E-Purchasing System for any addenda. If revisions are of such magnitude to warrant, in the City's opinion, the postponement of the date for submission of Proposals, an addendum will be issued announcing the new date.

A potential Tenant who finds omissions, discrepancies, ambiguities, or conflicts in any of the RFP documentation or who is in doubt as to the meaning the RFP should notify the City Contact in writing. If the City considers that a correction, explanation or interpretation is necessary or desirable, the City will issue an addendum. The decisions and interpretation of the City shall be binding. No oral explanation or interpretation shall modify any of the requirements or provisions in the RFP documents.

Tenant Acceptance of the RFP

By submitting a Proposal in response to this RFP, the Tenant accepts all of the terms and conditions described in this RFP, including the License and the Ground Lease.

Attachments

Section I	Project Description
Section II	Proposal Submittal Requirements
Section III	Evaluation Criteria
Section IV	Sample Agreements
Section V	Request for Business Status
Section VI	W-9 Request for Taxpayer Identification

SECTION I **PROJECT DESCRIPTION**

The City wishes to contract with one or more qualified development partners (each a "Tenant") to construct, finance, operate, and maintain a legally permissible, physically possible, financially feasible, and maximumly productive development on the Property under a long-term ground lease. The chosen Tenant will be granted a License and Option to Lease Agreement in the form attached in **Section IV as Exhibit A** (the "License") to perform due diligence, during which the chosen Developer shall be responsible to obtain any and all federal, state, and local approvals, permits, site plans, secure financing, and satisfy all other requirements necessary to construct a commercial and/or residential development on the Property. The City will grant a nonexclusive license to such Tenant to enter upon the Property for lawful due diligence purposes to investigate with respect to the physical, environmental, financial, economic, and legal suitability, developability, constructability and feasibility of the Property, all at Tenant's sole cost. Due diligence activities may include without limitation: obtaining permits and approvals, surveying, conducting environmental site assessments, data collection, and other investigations. If the Tenant decides to proceed with leasing the Property upon completion of necessary due diligence, then the City and the Tenant will execute the long-term Ground Lease in the form attached in **Section IV as Exhibit B** (the "Ground Lease").

The Property contains approximately 2 acres of land and is zoned MU-R. The Property is located near the Cross Creek subdivision which is a newly expanding and growing area of eastern Aurora. The MU-R district is intended to serve "image making" areas in Aurora such as gateways, major arterial street and highway intersections, and regional activity centers. The MU-R district allows for a mix of medium-to high-density residential and regional commercial uses, as well as other uses as shown in Table 3.2-1 (Permitted Use Table) of the Aurora Unified Development Ordinance which can be found at <https://aurora.municipal.codes/UDO/146-2.4.7>.

The MU-R district intends to promote a distinctive, unified character and to ensure high quality development. More specifically, the district intends to promote:

- 1) A larger scale of development that presents a recognizable skyline or silhouette, and a visible transition in building massing and concentration from a visible focal point;
- 2) A safe and pleasant pedestrian and bicycle environment connected to the streets and walkways;
- 3) Nodes for multi-modal movement, including mass transit facilities; and
- 4) A pleasant visual environment with high-quality architectural materials, properly sized and positioned signage, and intensive landscaping with generous outdoor common areas.

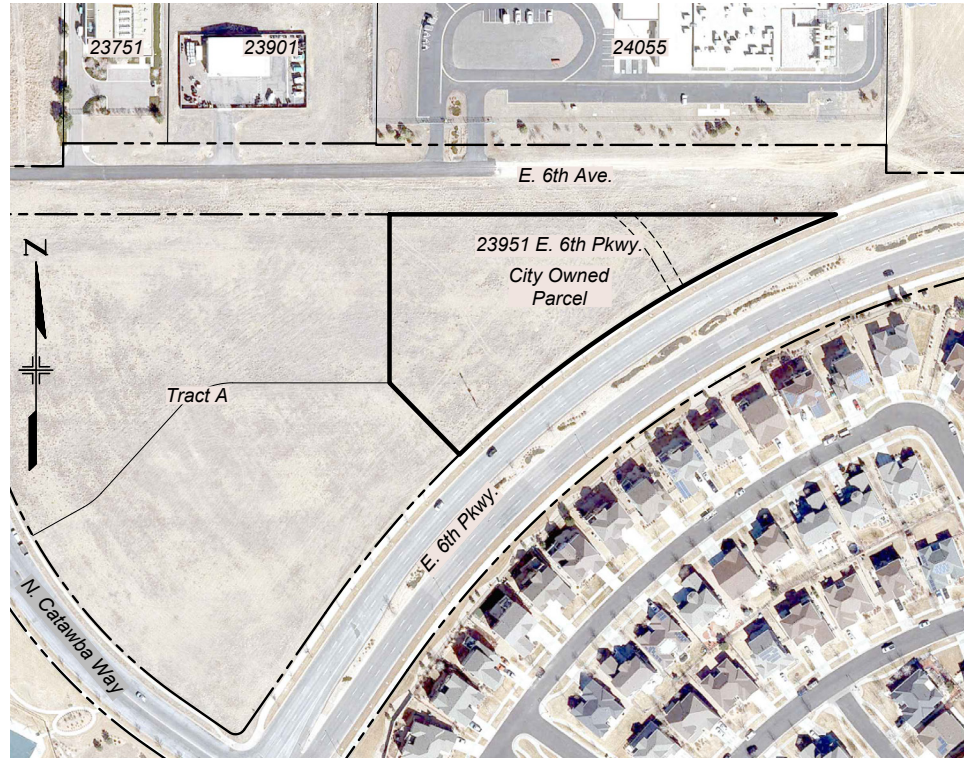
Close proximity to E-470 and Buckley Space Force Base in Aurora which is the 3rd largest city in Colorado.

Additional commercial space could be included in the proposed development but is not required. The City will consider any creative Proposals with respect to green space, sustainability, commercial uses, and design.

- Site available for lease located near the intersection of East 6th Avenue and North Catawba Way.
- Zoned MU-R Mixed Use
- Corner Lot
- Approx. 2 acre(s)
- Retail, gas and auto are approved uses.
- Close proximity to Buckley Space Force Base which supports 93,000 personnel and has 88 housing units.
- Aurora is the 3rd largest city in Colorado.
- This property is located near the Cross Creek subdivision which is a newly expanding and growing area of eastern Aurora.

FOR LEASE

23951 E. 6th Ave, Aurora, CO



For more information, contact:

Real Property Services Manager
Public Works Department | City of Aurora
office 303.739.7327 | **mobile** 469.939.3791

Interested parties may notify the City of Aurora Real Property Services Manager by email at **hrey noso@auroragov.org** or by phone at **303.739.7327**. Please include the name of your firm and the name(s) of the participant(s) from your firm.

SECTION II

PROPOSAL SUBMITTAL REQUIREMENTS

The total length of each Proposal shall not exceed 30 pages, excluding the cover letter, index/table of contents, front and back covers, title page, separation tabs, and resumes (provided that resumes are 1 page each, maximum). Tenants are expected to provide a concise narrative response that explains exactly how they plan to meet the City's requirements. It is not sufficient to simply restate the requirement or provide generic boilerplate responses. Tenants must use 10-point font or larger. Use of figures, photographs, or other graphics within the page constraints indicated is up to the discretion of the Tenant. The City cannot guarantee review of voluminous firm-specific or other information contained as an appendix.

Each Proposal must include the following information, at a minimum:

1. Transmittal Letter. The transmittal letter must be signed by an authorized representative of the Tenant's company confirming the Tenant's availability to design, finance, construct, own, and operate a commercial, mixed-use, and/or residential development on the Property. The transmittal letter must also state that the Tenant has read, understood, and accepted each section of the RFP. The transmittal letter must also include the following:

Firm Name

Business Address

Primary Contact Name, Telephone Number and Email Address

Year Established

Type of Organization/Entity

2. Experience and Financial Capacity. Each Proposal must include:

a. A business plan, operations plan, detailed maintenance plan, and financial model that demonstrates the ability to design, finance, construct, own, and operate a development on the Property for the duration of the Ground Lease.

b. Detailed information on the Tenant's background and experience as it relates to their proposed use and demonstrate the Tenant's success in implementing similar projects in Colorado.

c. Documents to demonstrate financial strength.

3. Staff. Each Proposal must include a list of staff members and their proposed roles in the Project, with their relevant experience, including only personnel that would play a significant role in the Project.

4. References. Each Proposal must include at least 3 references from property owners, or public or private entities for work of a similar scope of services, including the name, point of contact, address, email address and phone number.

5. Development Plan. Each Proposal must include the following, at a minimum:

- a. A narrative detailing the Tenant's plan to design, finance, construct, own, and operate its proposed development on the Property.
- b. Details regarding the composition of the proposed use.
- c. A detailed summary of the proposed use.
- d. A description of how the proposed use will operate.
- e. Vertical plans.
- f. Detailed plan to begin construction within 2 years of execution of the Ground Lease, including an overall project schedule with the timing of major work tasks for implementation of the proposed use.
- g. A detailed description of the Tenant's plan for common area maintenance ("CAM") and long-term management of the Project, if applicable.
- h. A detailed description of the plan to provide security for the proposed use and surrounding community.
- i. Design options, including without limitation materials, style, and sustainability.
- j. A narrative detailing the Tenant's customer service approach, including response time for repairs and a detailed maintenance plan.
- k. Any social and environmental enhancing elements of the proposed use and provide a brief description of each.
- l. A narrative detailing the Tenant's approach to coordination with the City's Office of Development Assistance ("ODA"), a list of necessary public or on-site improvements.
- m. Explain why your company will do a better job at maximizing revenue than your competitors.

6. Ownership. Each Proposal must describe the proposed ownership and management structure of the proposed use, including detail regarding partnerships with investors or others.

7. Budget and Financing. Each Proposal must include:

- a. A detailed description of the proposed budget, including a 20-year cash flow Pro Forma that demonstrates viability of the proposed use.
- b. A description of how the contribution of the Property by the City reduces the financing gap.
- c. A conceptual outline of proposed financing sources for the proposed use, identifying how the financing will be structured with the Ground Lease.
- d. Most recent 3 years of consolidated, audited financials.

8. Timeline. Each Proposal must include a timeline that includes due diligence, securing financing, permitting, licenses and other approvals necessary for design and construction, as well as for long-term operations and maintenance. Additional consideration will be given to Proposals with shorter pre-operational timelines.

9. Community Engagement. Each Proposal must include:

a. A community engagement plan, including a detailed summary of historical community knowledge, planned community engagement during the RFP process, future engagement in the planning/design/construction process, and communication plans for post-construction operations.

b. Identification of a minimum of one stakeholder in this community that supports the Project.

10. Acknowledgement of Ground Lease Terms, Base Rent and Additional Rent. Each Proposal shall include an acknowledgement of the terms of the attached Ground Lease and shall include any additional or varied material terms that the Tenant, or any leasehold mortgagee, as applicable, require to be included in the Ground Lease. Each Proposal shall include an acknowledgement of the proposed yearly rental amount in the amount of **\$X per square foot**, for each year, the Additional Rent for all charges and expenses associated with the Property, and acknowledgement of annual rent escalations in the form of Ground Lease; or include any proposals over and above such base rent and annual escalations for the City's consideration.

11. Additional Benefits: Each Proposal may include a proposal for Additional Benefits. If applicable, Tenants can take this opportunity to include in their Proposal Additional Benefits or incentives they can offer to the City. For example, this may include benefits such as:

a. A revenue sharing model, under which Tenant agrees to share a percentage of the gross or net revenue earned. Proposals should include a payment schedule for anticipated revenue share (or other benefit) through the length of the Ground Lease, if any;

b. A revenue sharing model, under which Tenant agrees to share a percentage of the gross or net revenue earned from any advertising space or opportunities incorporated into Tenant's development;

c. Any other benefits, incentives, or combinations of such benefits and incentives.

The foregoing are only examples of possible Additional Benefits and incentives, and the City Encourages Tenants' creativity with respect to Additional Benefits proposals. The following questions and information may serve as a guide for this section of the Proposal, but are not intended to be an all-inclusive list and Tenant is encouraged to add, edit, or modify as it deems appropriate:

- Provide a narrative on the Aurora market and how your use fits into that market.
- How will you advertise your use?
- How will your use benefit the City?
- What advertising space or opportunities are included in your proposed development? How will advertising space be sold? Where will such advertising be located?
- What do you estimate the monetary value of the Additional Benefit/Incentive to be per year? On what basis?
- Why/How does this Additional Benefit/incentive set you apart from other potential Tenants.

12. Due Diligence Fee. Each proposal shall include an acknowledgement of the requirement under the Option Agreement to submit a fee of Twenty Thousand Dollars (\$20,000.00). Each proposal may include a proposal to increase the amount of such Due Diligence Fee for the City's consideration. Such Due Diligence Fee which will be credited back to Tenant as a credit against the first year's base rent to the extent such Tenant enters into such Ground Lease following the Due Diligence Period (the "Due Diligence Fee". If the Tenant notifies the City at the expiration of or during the Due Diligence Period that the Tenant does not intend to execute the Ground Lease or if for any reason the Ground Lease is not executed by the end of the Due Diligence Period, then the Due Diligence Fee may be forfeited and the City has the right to retain the entire Due Diligence Fee, or any portion thereof as deemed appropriate by the City in its sole discretion.

13. Subcontractors. Each Proposal must include a list of all subcontractors and their roles, including resumes and qualifications of key personnel, as appropriate.

SECTION III
EVALUATION CRITERIA

Proposals will be evaluated based on the following criteria:

	<u>Maximum Points</u>
1. Experience on similar projects in Colorado, include record of performance and availability of project team.	20
2. Rent, Rent Escalation, Revenue Sharing/Additional Benefits.	20
3. Timeline, ownership, budget and financing	20
4. Project methodology, community engagement, and approach	20
5. Development Plan	<u>20</u>
TOTAL POINTS	100

SECTION IV
SAMPLE AGREEMENTS

EXHIBIT A

LICENSE AND OPTION AGREEMENT

This LICENSE AND OPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__ (the "Effective Date"), by and between the City of Aurora, a Colorado home rule municipality with an address of c/o Real Property Services Manager, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80015 (the "City") and _____, a _____ with an address of _____ ("Licensee") (each a "Party" and collectively the "Parties").

WHEREAS, the City is the owner of certain real property generally described as _____ and more particularly described in **Exhibit 1**, attached hereto and incorporated herein by this reference (the "Premises");

WHEREAS, the City wishes to contract with one or more qualified development partners (each a "Developer") to construct, finance, operate, and maintain an _____ development on the Premises (the "Project"), through a long-term ground lease with the City (the "Ground Lease"); and

WHEREAS, Licensee wishes to have access to the Premises for the purpose of conducting due diligence to determine whether it will act as a Developer.

NOW, THEREFORE, in consideration of the Due Diligence Fee, and the promises and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. License.

a. *Grant.* Upon receipt of the Due Diligence Fee, as hereinafter defined, the City hereby grants to Licensee and its authorized agents and representatives a nonexclusive license (the "License") to access, use and occupy the Premises in compliance with this Agreement. Licensee acknowledges that Licensee does not have the right to exclude the City or its employees or authorized agents and representatives from the Premises.

b. *Purpose.* Licensee and its authorized representatives and agents shall have the right to enter upon the Premises during normal business hours, subject to the advanced notification requirements herein, and subject to any existing licenses, for any lawful due diligence purpose to investigate with respect to the physical, environmental, financial, economic, and legal suitability, developability, constructability and feasibility of acting as a Developer, all at Licensee's sole cost. Licensee activities on the Premises pursuant to this License may include without limitation: obtaining permits and approvals, surveying, conducting environmental site assessments, data collection, and other investigations.

c. *Condition of Premises.* Licensee has inspected and is familiar with the Premises and accepts the Premises "as is". The City shall not be required to perform any work or furnish any materials in order to prepare the Premises for Licensee's occupancy under the License.

2. Option.

a. *Grant.* In addition to the License, the City hereby grants Licensee an exclusive option to lease the Premises, under the terms and conditions in this Agreement and as set forth in the ground lease (the “Option”).

b. *Exercise.* Prior to expiration of the Due Diligence period, Licensee may exercise its Option by providing the City with written notice of its intention to exercise the Option in writing (the “Option Notice”). Upon Licensee's exercise of its Option, the Parties shall enter into the Ground Lease, subject to approval by the Aurora City Council. Upon execution of the Ground Lease, the terms and conditions of such Ground Lease shall govern Licensee's use and access to the Premises and any improvements thereon, and this Agreement shall automatically terminate. If for any reason the Parties cannot agree on the terms of the Ground Lease within 30 days of the Option Notice, the Option shall automatically terminate and be of no further force and effect.

c. *Expiration.* If Licensee does not provide the City with the Option Notice before the expiration of the Due Diligence Period, the Option shall automatically terminate and be of no further force or effect.

3. Due Diligence Period.

a. *Time.* The Due Diligence Period shall commence on the Effective Date and shall terminate on _____. Upon expiration of the Due Diligence Period, unless this Agreement is earlier terminated, Licensee may either exercise its Option, or allow its rights under the Option to lapse.

b. *Purpose.* During the Due Diligence Period, Licensee shall diligently undertake and conduct its due diligence activities in good faith to arrive at its decision regarding the Option in an efficient and reasonable manner. Licensee shall not undertake any development or construction of improvements during the Due Diligence Period, without the express written consent of the City in each instance.

c. *Fee.* Within 7 days of the Effective Date, Licensee shall pay to the City a fee of Twenty Thousand Dollars (\$20,000.00) (the “Due Diligence Fee”). To the extent the Licensee exercises its Option and enters into a Ground Lease with the City, such Due Diligence Fee will be a credit to the first lease year's base rent in the Ground Lease. If this license terminates without execution of the Ground Lease, then the Due Diligence Fee shall be forfeited and the City has the right to retain the entire Due Diligence Fee.

4. Licensee's Obligations.

a. *Notice.* At least 24 hours prior to entering the Premises, Licensee shall provide the City with written notice of its intent to enter, along with a description of the activities to be conducted.

b. *Liens.* Licensee shall not permit any liens or encumbrances to arise against the Premises in connection with its activities hereunder.

c. *Compliance.* Licensee shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

5. *Insurance.* Licensee shall procure and maintain throughout the Term the insurance described in **Exhibit 2**, attached to and incorporated into this Agreement, and provide the certificates of insurance to the City. Licensee shall name the City as additional insured on all policies of insurance.

6. *Indemnification.* Licensee agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents or representatives from any and all suits, actions and claims of every nature and description caused by, arising from, related to, or on account of any act or omission of Licensee, or of any other person or entity for whose act or omission Licensee is liable, related to this Agreement or Licensee’s use of the Premises (the “Claims”); and Licensee shall pay any and all judgments rendered against the City as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the City in defending any such suit, action or claim arising out of or related to Claims; provided however, that Licensee shall not indemnify, defend or hold the City harmless for the City's own gross negligence.

7. *Termination.*

a. *By Expiration.* This Agreement shall expire upon termination of the Due Diligence Period.

b. *By Licensee.* Licensee may terminate this Agreement by providing the City with 30 days’ prior written notice, for any of the following reasons:

- i. If any governmental agency denies a request by Licensee for or revokes a permit, license or approval that is required for Licensee to conduct its Due Diligence;
- ii. If the Premises are damaged or destroyed to an extent that prohibits or materially interferes with Licensee’s use and eventual development of the Leased Premises; or

- iii. If Licensee determines that it will be unable to secure sufficient financing or approvals required for acting as a Developer for the Project.

c. *By the City.* If Licensee defaults in the performance of any of its obligations hereunder and such default continues for more than 30 days after receipt of written notice of the default from the City, the City shall have the right to terminate this Agreement.

d. *Effect.* Upon termination of this Agreement, Licensee shall be deemed to have forfeited the entire Due Diligence Fee to the City and shall lose all rights to access in and about the Premises and shall promptly remove all equipment and property it has placed on the Premises and if requested by the City shall restore the Premises to the condition that existed as of the Effective Date within a reasonable amount of time not to exceed ____ days.

8. Miscellaneous.

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Arapahoe County, Colorado.

f. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

g. *No Joint Venture.* Nothing contained herein or in any document executed pursuant hereto and no action or inaction whatsoever on the part of the City, shall be deemed to make the City a partner or joint venture with the Licensee or any other participant in the activities authorized by this Agreement, and the City shall never be liable or responsible for any debt or obligation of the Licensee nor any participant in the activities authorized by this Agreement.

h. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail, return receipt requested, to the Party at the address set forth on the first page of this Agreement.

i. *Recording.* This Agreement shall be recorded with the Arapahoe County Clerk and Recorder.

j. *Assignment.* Licensee shall not assign any of its rights or obligations under this Agreement without prior written approval of the City.

k. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attacks, strikes, riots, war, labor disputes, pandemics or the authority and orders of government.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF AURORA, COLORADO

LICENSEE:

By: _____
Jason Batchelor, City Manager

By: _____

Print Name: _____

Title: _____

ATTEST:

Kadee Rodriguez, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

REVIEWED FOR THE CITY:

Real Property Services Manager

Public Works Director

EXHIBIT 1
Premises

EXHIBIT A

A parcel of land situated in the NW 1/4 of Section 7, Township 4 South, Range 65 West of the 6th Principal Meridian, County of Arapahoe, State of Colorado, being that parcel of land described in that Special Warranty Deed recorded at Rec No. B8060199 in the office of the Arapahoe County Clerk and Recorder, more particularly described as follows:

Tract H, Cross Creek Subdivision Filing No. 2, the plat of said subdivision being recorded at Rec. No. B4002719 in said office.

Reserving unto the City of Aurora a fire lane easement as shown and depicted within said Tract H on said subdivision plat.

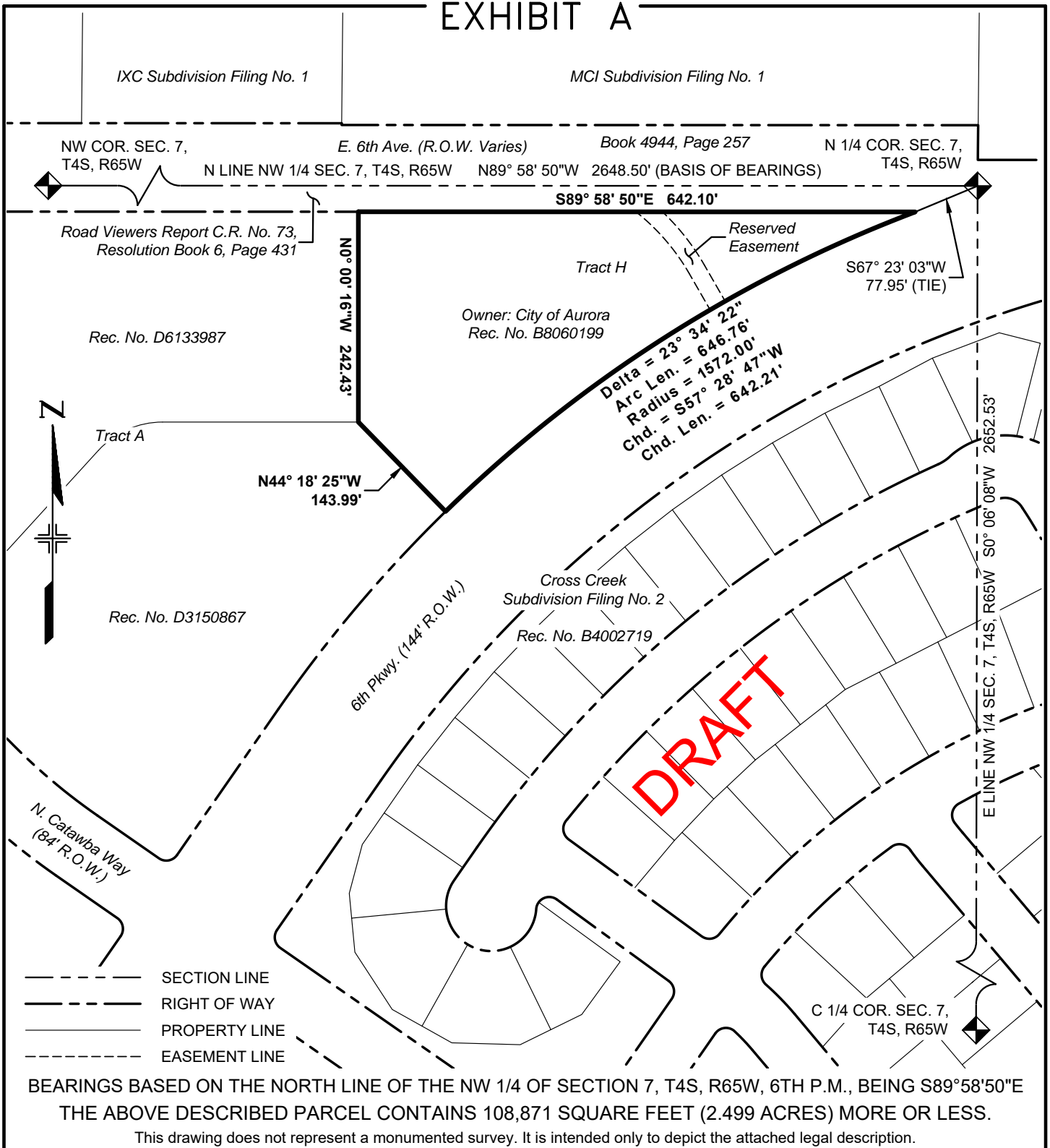
The above described parcel contains an area of 108,871 square feet (2.499 acres) more or less.

Illustration for Exhibit A attached and made a part hereof.

Eric W. Ansart
Colorado PLS# 38356
For and on behalf of the
City of Aurora, Colorado
13636 E. Ellsworth Ave.
Aurora, Colorado 80012

DRAFT

ILLUSTRATION FOR EXHIBIT A



CITY OF AURORA, COLORADO

DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER N/A
CHECKED BY: DMR	DATE: 1/21/2020	JOB NUMBER: N/A

A PARCEL OF LAND SITUATED IN THE NW 1/4 OF
SEC. 7, T4S, R65W, 6TH P.M., CITY OF AURORA,
COUNTY OF ARAPAHOE, STATE OF COLORADO

EXHIBIT 2: INSURANCE REQUIREMENTS

- a. **Commercial General Liability Insurance:** Tenant shall maintain a commercial general liability policy covering all operations by or on behalf of the Landlord, on a per occurrence basis, for claims personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability, and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents, and representatives shall be named as Additional Insureds by endorsement.
Minimum limits:
\$1,000,000 each occurrence
\$2,000,000 general aggregate
\$2,000,000 products and completed operations.
- b. **Workers' Compensation and Employers Liability Insurance:** If the Tenant has any employees, it shall maintain Workers' Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado and Employer's Liability Insurance shall maintain with minimum limits of:
\$100,000 bodily injury for each accident,
\$100,000 bodily injury by disease each employee, and
\$100,000 bodily injury/disease aggregate.
- c. Tenant's insurance policies shall be primary insurance and non-contributory with respect to any and all insurance policies purchased by the City. Tenant's insurance shall be issued by an insurance company having a rating of not less than A-VIII AM Best Insurance Rating.
- d. Upon execution of this Lease, Tenant shall deliver to the Landlord a certificate of insurance with all insurance coverages, deductibles and limits noted as well as the requisite endorsements required herein. Tenant must provide at least thirty (30) days' written notice to Landlord prior to any cancellation or material changes to the insurance policy or policies. Tenant shall, upon renewal, provide Landlord with updated Certificates of Insurance verifying the required coverages are still in place.
- e. **Landlord as Additional Insured.** The City, its officers, employees, and agents shall be named as additional insureds and the policy shall contain a waiver of subrogation by endorsement on Tenant's commercial general liability insurance policy. Tenant shall provide a copy of the requisite endorsements providing these coverages.

EXHIBIT B

UNSUBORDINATED GROUND LEASE AGREEMENT

This UNSUBORDINATED GROUND LEASE AGREEMENT (hereinafter referred to as "Lease") is entered into this _____ day of _____, 20____ (hereinafter referred to as "Effective Date"), by and between the City of Aurora, Colorado, a municipal corporation (organized under the laws of the State of Colorado, (hereinafter referred to as "Landlord") and _____, a Colorado _____ (hereinafter referred to as "Tenant").

ARTICLE I

GRANT AND TERM

1.1 Grant. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the right to use and occupy that certain real property commonly referred to as _____, Aurora, Colorado, containing approximately _____ square feet of land and being legally described as follows:

Lot _____ Block _____, Subdivision Name and Recording Info, as also legally described and depicted on **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter referred to as "Premises").

1.2 Term. The term of this lease ("Term") shall commence on the "Effective Date" and shall end in fifty (50) Lease Years, as that term is defined hereinbelow, plus any extensions executed by the parties, after the Effective Date unless sooner terminated pursuant to this Lease. Landlord shall tender and Tenant shall take possession of the Premises on the Effective Date.

1.3 Lease Year. The first Lease Year shall begin on the Effective Date. If the Effective Date is the first day of a month, then the first Lease Year will end twelve (12) full calendar months after the Effective Date. If the Effective Date is a day other than the first day of a month, then the first Lease Year will end on the last day of the month in which the first anniversary of the Effective Date occurs. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year and shall continue for a period of twelve (12) full calendar months.

1.4 Lease Term Extensions. If this Lease has not been previously terminated, Tenant shall have the option, exercisable at any time not later than six (6) months prior to the then current Lease expiration date, to extend the Lease Term for an additional five (5) year period; provided that the total Term of the Lease including any extensions thereof is limited to a total of eighty (80) years. Such Lease extension may be exercised by Tenant by giving written notice to Landlord, provided that Tenant's right to extend the Lease may be denied by Landlord, in Landlord's sole discretion, if Tenant has been in default of the Lease at any time prior to or after giving such notice.

1.5 Unsubordinated Lease. Notwithstanding anything to the contrary herein provided, this Lease is an unsubordinated ground lease. Landlord shall not be obligated to subordinate its rights and fee interest in the Premises to any loan, mortgage, lien or money encumbrance that Tenant shall place against the Tenant's interest in this Lease. Tenant acknowledges and agrees that the Landlord's fee interest in the Premises shall not be subordinated to the Lease under any circumstances.

ARTICLE 2 PREMISES

2.1 Premises. The Premises subject to this Lease are more particularly described and depicted on Exhibit "A" attached hereto and incorporated herein by reference.

2.2 Additions to the Premises. Tenant shall construct, finance, operate and maintain the Development, as defined in **Exhibit B**, on the Premises.

2.3 Premises taken by Tenant "as is, where is." **TENANT ACKNOWLEDGES THAT TENANT TAKES THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS". LANDLORD EXPRESSLY DISCLAIMS THE MAKING OF ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PREMISES OR MATTERS AFFECTING THE PREMISES, ITS SUITABILITY FOR THE PURPOSE INTENDED BY THE TENANT, WHETHER MADE BY TENANT OR LANDLORD, ON ITS BEHALF OR OTHERWISE INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PREMISES, TITLE TO OR THE BOUNDARIES OF THE PREMISES, PEST CONTROL MATTERS, SOIL CONDITIONS, THE PRESENCE, EXISTENCE OR ABSENCE OF HAZARDOUS WASTES, TOXIC SUBSTANCES OR OTHER ENVIRONMENTAL MATTERS, COMPLIANCE WITH BUILDING, HEALTH, SAFETY, LAND USE AND ZONING LAWS, REGULATIONS AND ORDERS, STRUCTURAL AND OTHER ENGINEERING CHARACTERISTICS, TRAFFIC PATTERNS, MARKET DATA, ECONOMIC CONDITIONS OR PROJECTIONS, THE FITNESS OF THE PREMISES FOR ANY USE, THE FINANCIAL PERFORMANCE OR POTENTIAL OF THE PREMISES AND ANY OTHER INFORMATION PERTAINING TO THE PREMISES OR THE MARKET AND PHYSICAL ENVIRONMENTS IN WHICH THEY ARE LOCATED. TENANT ACKNOWLEDGES (I) THAT TENANT HAS ENTERED INTO THIS LEASE WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OR THAT OF THIRD PARTIES WITH RESPECT TO THE PHYSICAL, ENVIRONMENTAL, FINANCIAL, ECONOMIC AND LEGAL CONDITION OF THE PREMISES: AND (II) THAT TENANT IS NOT RELYING UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES OF ANY KIND, OTHER THAN THOSE SPECIFICALLY SET FORTH IN THIS LEASE MADE BY LANDLORD. TENANT FURTHER ACKNOWLEDGES THAT IT HAS NOT RECEIVED FROM OR ON BEHALF OF LANDLORD ANY ACCOUNTING, TAX, LEGAL, ARCHITECTURAL, ENGINEERING, PROPERTY MANAGEMENT OR OTHER ADVICE WITH RESPECT TO THIS TRANSACTION AND IS RELYING SOLELY UPON THE ADVICE OF THIRD-PARTY ACCOUNTING, TAX, LEGAL, ARCHITECTURAL, ENGINEERING, PROPERTY MANAGEMENT AND OTHER ADVISORS. SUBJECT TO THE PROVISIONS OF THIS LEASE, TENANT ACCEPTS THE PROPERTY IN ITS AS IS WHERE IS CONDITION WITH ALL FAULTS ON THE EFFECTIVE DATE. TENANT FURTHER ACKNOWLEDGES THAT, TO THE EXTENT REQUIRED TO BE OPERATIVE, THE DISCLAIMERS OF WARRANTIES CONTAINED IN THIS PARAGRAPH 2.3 ARE CONSPICUOUS DISCLAIMERS FOR PURPOSES OF ANY APPLICABLE LAW, RULE, REGULATION OR ORDER.**

2.4 Acceptance of Premise by Tenant: The taking of possession of the Premises by the Tenant shall be conclusive evidence as against the Landlord that the Premises were in good and satisfactory condition for the purpose intended by the Tenant when possession was taken.

2.5 Inspection by Tenant. At any time, but not prior to _____ (____) days, prior to Effective Date, Tenant or designee of Tenant (or their representatives) shall be entitled, at Tenant's sole cost and expense to enter upon the Premises at all reasonable times in order to perform such investigations as Tenant shall deem necessary in its sole discretion, including without limitation, soil tests and environmental audits. Tenant shall cause copies of any final soils and environmental report that it has prepared regarding the Premises to be delivered to Landlord. Tenant will promptly repair and restore any damage or injury to the Premises caused by such investigations. Tenant shall not permit any liens or encumbrances to arise against the Premises in connection with or as a result of such investigations. Tenant shall indemnify, defend and hold Landlord and the Premises harmless from any and all losses, liabilities, costs, expenses (including without limitation, reasonable attorney's fees and costs of court), damages, liens, claims (including without limitation mechanics' or materialman's liens or claims of liens), actions and causes of action arising from or relating to Tenant's or Tenant's agents, employees, designees or representatives entering upon the Premises to conduct investigations of the Premises. Whether pursuant to this Section or otherwise. The indemnity obligation shall survive termination of this Lease.

ARTICLE 3 **RENT**

3.1 Rent. As used in this Lease, "Rent" shall mean the Base Rent (including escalations) plus Additional Benefits plus Additional Rent, as defined herein.

3.2 Base Rent. The Base Rent under this Ground Lease shall be _____ (\$_____) per square foot for the first Lease Year.

3.3 Base Rent Escalation. The Base Rent will automatically increase effective as of the beginning of the second Lease Year and annually thereafter during the Lease Term by either: (i) _____ % or the (ii) the proportionate cumulative increase in the CPI, if any, during the previous Lease Year, whichever is higher. For purposes of this section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Cities Average Consumer Price Index, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale.

3.4 Rent Absolutely Net. It is the intention of the parties that the rent payable hereunder shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the net annual rent specified herein during the Lease Term, including Base Rent and any Additional Benefits, and that all costs, expenses and obligations of every kind and nature whatsoever directly or indirectly relating to the Premises and its physical structures shall be paid by Tenant. Without limiting any other provision of this Lease, it is expressly understood and agreed that Tenant shall pay as "Additional Rent" all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use, maintenance and occupancy thereof, including but not limited to, construction, repairs, replacements, maintenance, taxes (including but

not limited to taxes or assessments levied against any and all improvements constructed thereon or ad valorem taxes on any leasehold interest), operating expenses, insurance premiums, water and sewer rents, charges for public utilities, licenses and permit fees, any other governmental or quasi-governmental charges, and all other amounts that Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon. It is expressly understood and agreed that Landlord shall have no obligation for any cost or expense associated with the Premises during the Term of the Lease and any extensions thereof and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses and obligations.

3.5 **Additional Benefits.** Rent includes Additional Benefits that the Tenant shall pay or provide to the Landlord over and above Base Rent and Additional Rent. Commencing on the Effective Date, Tenant shall pay to Landlord, as Additional Benefits, ___% of gross receipts, income and revenues of the Development and its operations. Tenant shall provide verifiable business records to Landlord quarterly documenting the above bases for Additional Benefits. All non-monetary Additional Benefits shall be continuously provided and maintained throughout the Term.

3.6 **Rent Effective Date.** The “Rent Effective Date” shall be the same date as the Effective Date as set forth hereinabove.

3.7 **Rent Payable.** The Base Rent shall be payable on the Effective Date of this Lease. Each subsequent Rent payment shall be due and payable on, or before, the anniversary date of each Lease Year; and shall continue for so long as this Lease remains in effect. Additional Rent shall be paid by Tenant as such Additional Rent expenses are incurred and invoiced. Monetary Additional Benefits shall be paid quarterly to Landlord by Tenant beginning on the Lease Effective Date. Tenant, however, shall have the right, but not the obligation, to pay the Base Rent portion of the Rent in advance for periods not to exceed twenty-five years. Tenant shall pay all Rent when due without notice, demand, set-off, off-set, counterclaim or deduction of any kind, and before any fine, penalty or interest or cost may be added thereto.

ARTICLE 4

TAXES

4.1 **Defined.** Commencing on the Rent Effective Date, Tenant shall pay directly to each taxing authority the taxes, including but not limited to municipal, county, special district, state and federal taxes, and special assessments, if any, levied against the Premises during each calendar year of the Term. Failure to timely pay such taxes shall constitute an event of default under Article 12 hereof.

4.2 **Right of Protest.** Tenant may protest or seek a reduction of Real Estate Taxes from any taxing authority. Landlord agrees to reasonably assist Tenant at Tenant's sole cost and expense, in attempting to obtain a reduction or refund. Any savings effected, and the cost of effecting said savings, shall belong solely to Tenant. Tenant's protest shall not jeopardize Landlord's interest in the Premises. Tenant shall indemnify and save Landlord harmless from and against all loss, cost, damage, and expense relating to the Premises arising out of any contest made by Tenant.

ARTICLE 5

UTILITIES

5.1 Payment of Charges. Tenant shall contract in its own name for all utilities including electric, cable, gas, telephone service, sewer, and water service furnished to the Premises and shall pay the provider/supplier directly for the same. The Premises shall be separately metered (or sub-metered) for water and sewer. Expenses for maintenance of utility meters shall be borne by Tenant. Landlord shall not be liable for any failure to furnish or for any interruption of utility services. Landlord does not warrant nor guarantee the continued availability of any or all of the utility services necessary or desirable for the use of the Premises by Tenant.

5.2 Fees. Local governments may require the payment of certain fees for public utility facilities and services provided in whole or in part by the local government. These fees are derived for one of two purposes: (i) to pay for the usage of a proportionate share of the local government's facilities for future capacity and infrastructure improvements, or to pay for a new user's utilization of oversized facilities paid for by other parties, including local government (hereinafter referred to as "Connection Fees", "Impact Fees," or "Tap Fees"); or (ii) to pay for local government's time and expense to program or turn on the public utility facilities to a building or structure for each new customer (hereinafter referred to as "Turn On Fees"). Tenant shall be responsible for payment of all Connection Fees, Tap Fees, and all Turn On Fees applicable to the Premises, if any. Local government fees are subject to the exemptions in Colorado Revised Statutes § 29-4-227.

ARTICLE 6

USE OF PREMISES

6.1 Use of Premises. This Lease is conditional upon Tenant's use of the Premises for development ("Development") being more particularly defined in the attached Exhibit B and Tenant shall construct and operate such Development in accordance with all applicable ordinances, rules, or regulations of the City of Aurora, Colorado and the state of Colorado. Tenant shall obtain any and all permits or approvals from appropriate federal, state, and local agencies for its Development on the Premises. All design and construction on the Premises shall be designed and built to the minimum standards of the City of Aurora, and Federal codes and requirements in effect at the time of construction. Nothing in this Lease shall be construed as a limitation on Tenant's ability to set, enforce, or otherwise impose commercially reasonable rules and regulations governing the day-to-day use and operation of the Premises. Tenant shall begin meaningful and material construction of the Development within twelve (12) months of the Effective Date unless such other time period is agreed to by Landlord in writing. For the avoidance of doubt, meaningful and material construction entails actual construction of buildings and improvements, and does not include site assessments, dirt work, or other pre-construction or due diligence activities. The Development shall be completed on or before _____.

6.2 Governmental Regulation. Tenant shall, at its expense, obtain all licenses and permits required for, and shall comply with, all applicable federal, state, and local laws, ordinances, orders, rules & regulations pertaining to the operation of the Premises, now or hereafter in force, including without limitation Title III of the Americans with Disabilities Act ("ADA") (all of the foregoing referred to as "Governmental Regulations"). Governmental penalties, fines or

damages imposed on any portion of the Premises as a result of the acts of Tenant, its employees or agents, shall be paid by Tenant within 30 days after receipt of said notice by Tenant. Tenant shall have the right to contest any of the foregoing items at Tenant's sole cost and expense, and Tenant shall indemnify Landlord for any resulting loss to Landlord.

6.3 Compliance with Law. Tenant shall, at Tenant's sole cost and expense, promptly comply with all reporting requirements of any applicable laws and ordinances and the orders, rules, regulations, and requirements of all Federal, State, and Municipal governments and departments, commissions, boards, and officers thereof. Tenant shall file with Landlord a copy of all reports and other information necessary for Tenant to comply with applicable federal laws and regulations pertaining to the Development and its operations on the Premises. Tenant shall retain all such reports for a period of five (5) years after the termination of this Lease.

6.4 Liens. Tenant will pay all costs and charges for work (i) done by Tenant or caused to be done by Tenant on the Premises and (ii) for all materials furnished for or in connection with such work. Tenant will indemnify Landlord against and defend and hold Landlord and the Premises free, clear, and harmless of and from all liens and claims of liens, and all other liabilities, liens, claims, and demands on account of such work by or on behalf of Tenant. The existence of any such lien, which is not discharged or bonded off by Tenant within 30 days after notice of filing, shall constitute an "Event of Default" (as defined below) under this Lease. Landlord may discharge or transfer to bond any lien filed against the Premises by Tenant's contractor that has not been discharged or transferred to bond within 30 days from Tenant's receipt of notice of the filing thereof. Any reasonable cost or expense, (including reasonable attorney's fees) incurred by Landlord in connection with the discharge or transfer to bond of any such lien shall immediately be due and payable by Tenant as Additional Rent. Tenant's failure to pay the amount due to Landlord hereunder within 30 days after notice from Landlord that such sums are due shall constitute an Event of Default under this Lease. Tenant shall immediately give notice to Landlord if Tenant receives notice that a lien has been or is about to be filed against the Premises or that any action affecting title to the Premises has been commenced.

6.5 Construction Clause. Tenant agrees that whenever it enters into any contract for the alteration, construction or repair of any building or improvement on the Premises, or for the furnishing of any materials or labor to be used in connection therewith, it will insert a provision whereby the person with whom such contract is made shall, for himself, and for all subcontractors, expressly waive the right to file any mechanics' or other lien against the Landlord or against its reversionary or other interest in the Premises or any portion thereof.

ARTICLE 7 **IMPROVEMENTS**

7.1 Demolition of Improvements. From and after the Rent Effective Date, Tenant shall have the right to demolish and remove all structures and other improvements on the Premises. All demolition and removal of structures and other surface improvements shall be at Tenant's sole cost and expense.

7.2 Additional Construction. Tenant shall have the right throughout the Term of this Lease to make alterations, additions, and improvements to the existing improvements on the

Premises and to construct such new improvement on the Premises, for the development of Development as set forth in the attached Exhibit B. Landlord agrees to reasonably cooperate with Tenant, at Tenant's sole cost, in making such governmental applications and submittals as may be necessary or desirable for Tenant's construction of improvements for the development of Development as set forth in the attached Exhibit B on the Premises, and agreed that, within twenty-one (21) days after receipt of written request from Tenant, it will join in applications for permits, licenses, or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work in furtherance of the Development. Notwithstanding anything in this paragraph to this contrary, the Landlord shall not be obligated, under any circumstances whatsoever, to exercise its legislative authority to approve any of Tenant's governmental applications or submittals.

7.3 Landlord Approval of Plans. At least _____ days before commencement of contraction or filing for necessary building permits, Tenant will submit to Landlord for Landlord's approval: (i) all plans, documents and specification for development of the Premises in accordance with **Exhibit B**; (ii) notification from Tenant's mortgagee, if any, who is financing construction, that such mortgagee has received and approved the final plans and specifications for the construction thereof; and (iii) copies of all approvals from governmental authorities, offices, and departments having jurisdiction in this project.

7.4 Required Improvements. Certain improvements may be required as determined by the Landlord's Office of Development Assistance (ODA) and shall be constructed by Tenant at Tenant's sole expense. Tenant shall be responsible for coordinating with the ODA in order to determine all public and on-site improvements necessary to access, develop, and operate the Development on the Premises.

7.5 Completion Requirements. Tenant will construct the improvements for the Development in a good, careful, proper, and workmanlike manner by licensed contractors with appropriate permits in accordance with: (i) the Landlord approved plans and specifications; and (ii) all provisions of applicable law, codes, ordinances and regulations.

7.6 No Agency Intended. The parties acknowledge that Tenant is entitled to construct improvements. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct on the Premises, the same being done at the sole expense of Tenant.

7.7 Ownership of Improvements. During the Term of this Lease, Tenant shall be considered to be the owner of all improvements constructed on the Premises by Tenant, and Tenant alone shall be entitled to take tax deductions on its federal and state income tax returns for the depreciation and other expenses related to same. Upon expiration or termination of this Lease for any reason, the ownership of all improvements shall be transferred to Landlord. Any major improvements erected by Tenant on the Premises, including the building(s) to be constructed, shall become the property of the Landlord upon expiration of this Lease or termination of this Lease.

ARTICLE 8

MAINTENANCE OBLIGATIONS

8.1 **Maintenance by Tenant.** Tenant, at its cost, shall maintain in good order and repair all improvements on the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and in accordance with City of Aurora standards and regulations. Tenant shall not permit or commit waste of the Premises, but this obligation shall not preclude Tenant from demolishing or removing improvements during the Term of this Lease.

8.2 **Loss or Damage.** Landlord shall not be liable for any loss or damage to Premises of Tenant or of others located on the Premises, by theft or otherwise, unless such damage or loss is directly and proximately caused by the grossly negligent or willful act or omission of Landlord, its officers, or employees (acting within the scope of their office, agency or employment). Landlord shall not be liable for any claims arising from damage to the Premises or located in or on the Premises resulting from fire, explosion, gas or electrical malfunction, water damage or leakage, unless said damage results from the grossly negligent or willful act or omission of Landlord, its officers, or employees (acting within the scope of their office, agency, or employment). Landlord shall not be liable to Tenant for any damages caused by other persons or third parties on the Premises, or by public or quasi-public work on adjacent Premises.

8.3 **Rebuilding and Repair of Damage to Premises.** In the event the improvements constructed on the premises, or a major portion thereof are damaged or destroyed by casualty, fire, or otherwise, Tenant shall immediately give notice to Landlord of such damage or destruction. In the event the improvements constructed on the Premises, or a major portion thereof shall be damaged or destroyed by casualty, fire or otherwise, to an extent which renders them untenable, Tenant shall rebuild or repair such damaged or destroyed portions. In the event Tenant fails to proceed with such repair or rebuilding for a period of 180 days after the damage or destruction, this Lease shall terminate and Tenant shall surrender in the premises in accordance with Article 9 herein. This period may be extended at the sole discretion of the Landlord, if Tenant has made good faith efforts to proceed with the rebuilding or repair.

ARTICLE 9

SURRENDER OF PREMISES

9.1 **Surrender of Premises.** Upon expiration or termination of the Lease for any reason, Tenant shall remove its personal property and shall peaceably surrender the Premises to Landlord. All personal property of Tenant remaining on the Premises after the expiration or other termination of this Lease will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without written notice to Tenant or any other party. Tenant shall surrender any and all keys for the Premises to Landlord. Surrender of the Premises shall not constitute Landlord's acceptance of the Premises if Tenant is in default hereunder. Tenant's obligations under this subsection will survive the expiration or other termination of this Lease.

9.2 **Improvements Upon Termination.** Tenant shall not remove any improvements from the Premises upon the expiration or termination of this Lease without express written

permission from the Landlord in each instance, nor shall Tenant have any obligation to replace any improvements that Tenant has removed during the Term of this Lease. Upon expiration or termination of this Lease for any reason, the ownership of all improvements, completed and in-progress, including but not limited to all buildings and facilities and improvements appurtenant thereto, shall be transferred to Landlord. Any major improvements erected by Tenant on the Premises, including the building(s) to be constructed, shall become the property of the Landlord upon expiration of this Lease or termination of this Lease, and Tenant shall have no right, title or claim to such improvements.

9.3 Landlord's Right to Reenter. If Tenant shall fail to abide by the requirements of this Article, Landlord may enter upon the Premises and expel or remove Tenant and Tenant's personal property therefrom without prejudice to Landlord's right to pursue additional remedies including obtaining legal ownership of all improvements. If legal ownership is not transferred by Tenant to Landlord within 30 days of expiration or termination of this Lease, then Landlord has the right to file an action to obtain transfer of ownership of the improvements and Tenant agrees to pay all of Landlord's reasonable costs and attorneys' fees for obtaining transfer of ownership of all improvements.

ARTICLE 10

INSURANCE AND INDEMNITY

10.1 Insurance. Tenant, and any subcontractor of Tenant, shall provide the levels of insurance described and required by **Exhibit C**, attached to and incorporated into this Lease, and provide the certificates of insurance and Workers' Compensation documents to Landlord at no expense to Landlord. Tenant shall maintain and keep in force the required insurance described in **Exhibit C** throughout the term of the Lease. Tenant shall name Landlord as additional insured in all certificates of insurance. The insurance requirements described are minimum requirements for this lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of this Lease for the Tenant, its agents, representatives, employees or contractors.

10.2 Indemnity by Tenant. Tenant shall indemnify, defend, and hold harmless Landlord, its officers, employees, agents and representatives ("Landlord Indemnified Parties") from and against any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Tenant, or of any other person or entity for whose act or omission Tenant is liable, related to construction or operation of the improvements and Development, Tenant's use of the Premises, or this Lease (the "Claims"); and Tenant shall pay any and all judgments rendered against the Landlord Indemnified Parties as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Landlord in defending any such suit, action or claim arising out of or related to Claims; provided however, that Tenant shall not indemnify, defend or hold Landlord harmless for Landlord's own gross negligence.

10.3 Waiver of Subrogation. Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage incurred by Landlord or Tenant, as the case may be, arising from any risk covered by fire and extended coverage insurance policies earned

by them. The parties each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that such companies may have against Landlord or Tenant, as the case may be. Each covenants with each other that, to the extent such insurance endorsement is available, they will each use their best and reasonable efforts to obtain for the benefit of the other a waiver of any right of subrogation from their respective insurance companies, if such endorsement is requested. Each party agrees to use its best and reasonable efforts to provide the other with written notice within 10 days of being notified that such waiver of subrogation is not available. If such a waiver of subrogation is not available or if Landlord or Tenant is by law, statute, or governmental regulation unable to obtain a waiver of the right of subrogation for the benefit of the other party, then, during any period of time when such waiver is unobtainable, said party shall not have been deemed to release any subrogated claim of its insurer or insurers against the other party, and during the same period of time the other party shall be deemed not to have released the other party who has been unable to obtain such waiver from any claims they or their insured or insurers may assert which otherwise would have been released and waived pursuant to this Section.

ARTICLE 11

ASSIGNMENT, SUBLETITING, MORTGAGE

11.1 General. Tenant may make partial assignments or transfer of this Lease or any interest therein and may sublet or otherwise permit others to use any part of the Premises, all with the prior written consent of Landlord: provided that the use of the Premises made by each such assignee, transferee, sublessee, or permittee is a lawful use in accordance with the terms of this Lease. Notwithstanding any partial assignment or sublease of the Premises, Tenant shall remain fully liable on this Lease. Tenant may assign, transfer or sublet one hundred percent (100%) of this Lease to an affiliate of Tenant without advance notice to or consent of Landlord. For purposes of this Lease, the term “affiliate” shall mean a corporation, limited liability company, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or a state thereof that directly or indirectly controls, is controlled by, or is under common control with Tenant, and “control” shall mean the power to direct the management and policies of an entity through the ownership of at least a majority of its voting interests or otherwise, or the right to, designate or elect at least a majority of the members of its governing body. Tenant may assign, transfer, or sublet one hundred percent (100%) of this Lease to an unaffiliated third party subject to the written approval of Landlord, which approval may not unreasonably be withheld, however, in no event may Tenant assign or sublet 100% of this Lease to an unaffiliated third party prior to the issuance of a final certificate of occupancy for the Development project that Tenant is constructing on the Premises or while Tenant is in default of any obligation under this Lease at the time of the Assignment. Tenant shall pay reasonable costs of Landlord’s legal fees in reviewing any documentation relating to the assignment, obtaining the consent of Landlord and preparing assignment documents.

11.2 Pledge of Lease and Subordination of Fee. Tenant may assign, pledge, hypothecate, grant a deed of trust in, or mortgage Tenant's leasehold interest under this Lease (collectively, “Mortgage”) as security for loans to Tenant to a permitted leasehold mortgagee (the “Leasehold Mortgagee”) provided that: (i) each Mortgage shall cover no interests in real property other than Tenant’s interest in the Premises (i.e. Landlord’s fee interest shall not be encumbered by any mortgage); and (ii) Tenant or the holder of such Mortgage shall promptly deliver to

Landlord a true copy of the Mortgage, and any assignment thereof, and of the satisfaction thereof.

Landlord agrees that in the event of an exercise of assignment rights or the foreclosure of a leasehold Mortgage by Tenant's "Leasehold Mortgagee", Landlord will accept the Leasehold Mortgagee, any assignees or any purchaser at a foreclosure sale as Tenant under this Lease, provided that: (i) Leasehold Mortgagee shall have cured any default of Tenant under this Lease at the time of such exercise of assignment rights or Mortgage foreclosure; (ii) Leasehold Mortgagee, its assignee or any purchaser at a foreclosure sale assumes all of Tenant's obligations under this Lease including all terms, conditions, and covenants with respect to the Development; and; (iii) Tenant or Leasehold Mortgagee pays all of Landlord's legal fees incurred in reviewing the transaction.

After receiving written notice from any person, firm, or other entity that it holds a Mortgage of Tenant's Leasehold, the Landlord shall, if requested in writing by Tenant along with identification of the name and address of such Leasehold Mortgagee, and so long as the Mortgage is outstanding, give to such Leasehold Mortgagee the same notice as is required to be given to Tenant under the terms of this Lease, but such notice may be given by the Landlord to the Tenant and such Leasehold Mortgagee concurrently. Such Leasehold Mortgagee shall have the opportunity to cure any default within the time granted to Tenant plus such additional time thereafter to cure such default (namely, 10 days beyond the grace period or cure period granted to Tenant for a monetary default and 30 days beyond the grace period or cure period granted to Tenant for a non-monetary default). Notwithstanding anything to the contrary herein, Landlord will not terminate the Lease for a voluntary bankruptcy filing by Tenant or any default personal to Tenant which cannot be cured by the Leasehold Mortgagee, so long as the Leasehold Mortgagee, assumes all of Tenant's obligations under this Lease and cures all defaults. Such Leasehold Mortgagee shall have the same opportunity to cure any default, and the same time within which to effect such cure, as is available to Tenant, to take such action or to make such payment as may be necessary or appropriate to cure any such default. Nothing herein shall prohibit or preclude Landlord from seeking injunctive relief or the specific performance of Tenant's obligations hereunder. Under no circumstances shall Landlord's fee interest in the Premises be subject to loss or risk of loss by any action of Tenant or the Leasehold Mortgagee contemplated by this Lease.

11.3 Protection to Leasehold Mortgagee. Provided there is no default under this Lease of which notice has been given to Leasehold Mortgagee in the manner provided in Section 11.2, and if there exists any unpaid mortgage against the leasehold estate, the Landlord agrees it will not accept a surrender of the Premises, or a cancellation of the Lease from the Tenant, nor terminate this Lease for any reason prior to the stated termination of this Lease without written notice to the Leasehold Mortgagee. There shall be no merger of the estate of the Landlord and the Tenant, notwithstanding any acquisition of the leasehold estate of the Tenant through purchase, foreclosure, or otherwise so long as any mortgage indebtedness of the Tenant secured by mortgage or trust deed shall remain outstanding on the leasehold estate, nor shall any merger of the estates of the Landlord and the Tenant be permitted by operation of law or otherwise which would adversely affect the rights of any Leasehold Mortgagee.

11.4 Continuing Liability. Unless expressly agreed to in writing by Landlord, the making of any assignment or sublet in whole or in part shall not operate to relieve Tenant from its obligations under this Lease, and Tenant shall remain liable for all Rent and for the due

performance of all covenants, agreements, terms, and provisions of this Lease to the full end of the Term.

11.5 Form of Assignment. All assignments and subleases shall be in writing, and a fully executed copy shall be provided to Landlord within 10 days after its execution. All subleases shall contain an express provision that upon an Event of Default by Tenant under this Lease, and upon notice thereof from Landlord to the subtenant, all rentals payable by the subtenant shall be paid directly to Landlord, for the Tenant's account, until subsequent notice from Landlord that the Event of Default has been cured.

11.6 Sublessee Rights Subordinate. The rights of any person, firm or corporation that enters into possession of all or any portion of the Leased Premises under an assignment or sublease, either with or without Landlord's prior written consent, shall be subordinate and subject to all of the rights of Landlord and the obligations of Tenant under this Lease. This provision, however, shall not affect or impair the right of the holder of a mortgage or lien upon the Tenant's leasehold estate to foreclose upon its security.

11.7 Bankruptcy. This Lease constitutes a lease of real property within the meaning of Section 365(b)(3) of the Bankruptcy Code, U.S.C. Section 101 et seq. (the "Bankruptcy Code"). If a bankruptcy case is filed by or against Tenant and if, pursuant to the provisions of the Bankruptcy Code, Tenant assumes this Lease and proposes to assign this Lease to a person or entity that has made a bona fide offer to accept an assignment of this Lease, then Tenant shall give Landlord notice of the intended assignment (the "Notice of Intended Assignment") within 20 days after receipt of the offer by Tenant, but in any event no later than 10 days prior to the date on which Tenant applies to a court of competent jurisdiction for the authority and approval to enter into the assignment. The Notice of Intended Assignment shall include (i) the name and address of the proposed assignee, (ii) all of the terms and conditions of the offer, and (iii) adequate assurances of the proposed assignee's future performance under the Lease, including the assurances referred to in Section 365(b)(3) of the Bankruptcy Code.

ARTICLE 12 **DEFAULT**

12.1 Default of Tenant. Tenant shall be deemed in default of its obligations under this Lease upon the occurrence of any of the following (collectively or individually, an "Event of Default"):

- (a) If the Tenant shall fail to pay the Rent or shall fail to pay any other sums required hereunder to be paid by Tenant, at the time or times the same shall become due, the Landlord shall forward written notice of such failure to the Tenant, except as provided herein. If the Tenant shall fail to make such payment in full within thirty days after the date of the giving of said first notice, Landlord shall give Tenant a second default notice. If Tenant shall fail to make such payment in full within thirty (30) days after the date of giving of the second notice, Tenant shall be in default hereunder. However, in no event shall Landlord be required to send Tenant more than two such second notices in any calendar year.

- (b) Tenant fails to maintain any insurance required hereunder and fails to cure such default within thirty (30) days after written notice from Landlord.
- (c) Tenant or any guarantor of Tenant's obligations under this Lease files for relief, voluntarily or involuntarily, under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant or any guarantor files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency law is commenced against Tenant or any guarantor.
- (d) The seizure, sequestration or impounding by virtue or under authority of any legal proceeding of any of the improvements or fixtures of Tenant used in or incident to the operation of the Premises.
- (e) Tenant shall do or permit to be done anything that creates a lien upon the Premises and shall fail to obtain the release of any such lien or bond off any such lien as required herein.
- (f) Except where excluded from this general grace period, Tenant's failure to comply with any other obligation under this Lease or exhibits thereto within 30 days after written notice of the failure from Landlord or, if such failure cannot be reasonably cured within the 30-day period, Tenant's failure to commence to cure the failure within the 30-day period and to diligently pursue completion of the cure as soon as possible thereafter.
- (g) Tenant abandons or vacates the Premises during the Term for a period of fourteen (14) days or more.
- (h) Tenant fails to begin meaningful and material construction of the Development project on the Premises as described herein and in **Exhibit B within twelve (12) months** of the Effective Date. For the avoidance of doubt, meaningful and material construction entails actual construction of buildings and improvements, not site assessments, dirt work, or other pre-construction or due diligence activities.

12.2 Landlord's Remedies. Upon the occurrence of an Event of Default by Tenant and the expiration of any applicable cure period, and subject to any Leasehold Mortgagee's rights to cure in accordance with section 11.2, as applicable, Landlord may exercise any one or all of the following options:

- (a) If a Tenant default occurs, the Landlord may, in its sole discretion and without waiving any other rights under this Lease or available to Landlord, cause construction of all or part of the Development to be completed and recover appropriate damages from Tenant. If the Landlord proceeds to complete the Development, Tenant shall, at Landlord's request, promptly deliver a copy of all of Tenant's plans and specifications related to construction of the Development.
- (b) If Tenant fails to surrender the Premises in compliance with this Lease, the

Landlord may enter upon the Premises and expel or remove Tenant and Tenant's personal property therefrom without prejudice to the Landlord's right to pursue additional remedies.

- (c) Terminate this Lease, in which event Tenant shall immediately surrender the Premises and transfer ownership of all improvements to Landlord. Pursuant to 7.4, upon expiration or termination of this Lease for any reason ownership of all improvements shall be transferred to Landlord and Tenant also forfeits to Landlord all improvements in progress. Any major improvements erected by Tenant on the Premises, including the building(s) to be constructed, shall become the property of the Landlord upon expiration of this Lease or termination of this Lease. If Tenant shall fail to do so, Landlord may enter upon the Premises and expel or remove Tenant and Tenant's personal property therefrom without prejudice to Landlord's right to pursue additional remedies including obtaining legal ownership of all improvements. If legal ownership is not transferred by Tenant to Landlord within 30 days of expiration or termination of this Lease, then Landlord has the right to file an action to obtain transfer of ownership of the improvements and Tenant agrees to pay all of Landlord's reasonable costs and attorneys' fees for obtaining transfer of ownership of all completed and in progress improvements.
- (d) Without terminating this Lease, enter the Premises and remove Tenant and its personal property therefrom, and relet the Premises as the agent of Tenant and receive such Rent therefor; repair or alter the Premises in a manner as Landlord may deem necessary to relet the same; and in such event Tenant shall be liable to Landlord for any deficiency which may arise by reason of such reletting during the remainder of the Term of this Lease.
- (e) Recover from Tenant all damages Landlord may incur by reason of termination of this Lease upon such Event of Default, including but not limited to the reasonable cost of recovering the Premises, reasonable attorneys' fees and the excess of the amount of Rent and charges reserved for the remainder of the Term of this Lease over the then reasonable rental value of the Premises for the remainder of the Term of this Lease, and brokers' fees incurred by Landlord in connection with reletting the whole or any part of the Premises.
- (f) Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the premises by Landlord, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. Tenant agrees that any reentry by Landlord shall be pursuant to judgment obtained in forcible entry and detainer proceedings or other legal proceedings and Landlord shall not be liable in trespass or otherwise for such reentry.
- (g) If Tenant or its Leasehold Mortgagee, as applicable, should fail to make any payment or cure any default hereunder within the time herein permitted, Landlord, without being under any obligation to do so and without hereby waiving such default may make such payment end/or remedy such other default for the account

of Tenant (and enter the Premises for such purpose), and thereupon Tenant shall be obligated to, and hereby agrees, to pay to Landlord (as Additional Rent), upon demand, all costs, expenses and disbursements (including reasonable attorneys' fees) incurred by Landlord in taking such remedial action.

- (h) In addition to the specific remedies set forth herein, Landlord shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy. The expiration or termination of this Lease shall in no way limit the Landlord's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.
- (i) No receipt of money by a party from Tenant after the termination of this Lease as herein provided shall reinstate, continue, or extend the Term of this Lease or operate as a waiver of the right of Landlord to enforce the payment of Rent or other money when due hereunder, or operate as a waiver of the right of Landlord to recover possession of the Premises.

12.3 Default of Landlord.

- (a) Events of Default. Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of 30 days after written notice from Tenant to Landlord, unless such failure cannot reasonably be cured within 30 days, in which event Landlord shall commence to cure said failure within the 30 day period and thereafter diligently continue to cure the default.
- (b) Tenant's Remedies. If Landlord is in default under this Lease, Tenant may commence an independent action and seek any available remedy at law against Landlord, including but not limited to the recovery of out-of-pocket costs, or any enforcement of the obligations of the Landlord hereunder by any equitable remedies to which Tenant is entitled.. In no event shall the Landlord be liable for special, consequential, or punitive damages.

ARTICLE 13 **ACCESS BY LANDLORD**

13.1 Landlord's Right to Enter. Landlord or its agents may enter the Premises during normal business hours and upon reasonable notice to Tenant, or in the event of an emergency, at any time, to examine the same for any purpose and to show them to prospective purchasers, tenants, and lenders.

ARTICLE 14 **EMINENT DOMAIN**

14.1 Taking. If any part of the Premises or Development is taken for any public or quasi-public use under governmental law, ordinance, or by right of eminent domain, (a "Taking") and

such Taking would, in Landlord's reasonable judgment, either prevent or materially interfere with Tenant's use of the Premises, then this Lease shall terminate and expire on the date of such Taking and Tenant shall have the right to participate in such proceeding, at its own expense, in accordance with applicable law and any proceeds and awards in such proceeding shall be payable according to applicable law.

14.2 Partial Taking. In the event of a partial Taking and if such taking in Landlord's reasonable judgment does not materially prevent or interfere with Tenant's use of the Premises, the Term and all obligations under this Lease shall not be reduced or affected in any way.

14.3 Notice. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceeding affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

ARTICLE 15

HAZARDOUS SUBSTANCES

15.1 Definitions.

- (a) "Hazardous Materials" means (1) petroleum or petroleum products, natural or synthetic gas, asbestos in any form, urea formaldehyde foam insulation, and radon gas; (ii) any substances defined now or in the future as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law; and (iii) any other substance the exposure to which is regulated by governmental authority.
- (b) "Environmental Law" means, without limitation, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601-9657 (CERCLA), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, *et seq.*, and all other federal, state or local laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, codes and regulations (i) relating to the environment, human health or natural resources; (ii) regulating, controlling, or imposing liability or standards of conduct concerning hazardous materials; or (iii) relating to the clean-up or other remediation of the Premises, as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time.
- (c) "Environmental Claims" means any and all administrative, regulatory, or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance, or violation, investigations, proceedings, consent orders or consent agreements

relating in any way to any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and/or (ii) any and all Environmental Claims by any third-party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

- (d) “Environmental Permits” means all permits, approvals, identification numbers, licenses, and other authorizations required under any applicable Environmental Law.

15.2 Compliance. During the term of this Lease, Tenant, at its sole expense, shall comply with all Environmental Laws and Environmental Permits applicable to the operation or use of the Premises, shall cause all other persons occupying or using the Premises to comply with all such Environmental Laws and Environmental Permits, shall immediately pay all costs and expenses incurred by reason of such compliance, and shall obtain and renew all Environmental Permits, if any, required for operation or use of the Premises. Tenant shall not generate, use, treat, store, handle, release or dispose of, or permit the generation, use, treatment, storage, handling, release or disposal, of Hazardous Materials on the Premises, or transport or permit the transportation of Hazardous Materials to or from the Premises, except supplies and cleaning products required in connection with the routine operation and maintenance of the Premises, and then only in compliance with all applicable Environmental Laws and Environmental Permits.

15.3 Tenant Notice. Tenant will advise Landlord in writing not later than five (5) Business Days after Tenant has knowledge of any of the following: (1) any pending or threatened Environmental Claim relating to the Premises; (2) any condition or occurrence on the Premises, of which Tenant has knowledge that results in non-compliance by Tenant with any applicable Environmental Law; and (3) the actual or anticipated taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on the Premises. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and Tenant's response thereof. In addition, Tenant promptly will provide Landlord with copies of all written communications regarding the Premises between Tenant and any government or governmental agency, relating to actual or possible non-compliance with Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Landlord. At any time and from time to time during the term of this Lease, Landlord or its agents may perform an environmental inspection of the Premises, and Tenant hereby grants to Landlord and its agents access to the Premises to undertake such an inspection, upon five (5) Business Days' notice, during Tenant's normal business hours and in a manner to minimize interference with Tenant's use of the Premises. In the event of an environmental emergency, Landlord may enter the Premises without prior notice to Tenant, but in such event Landlord shall give Tenant notice of Landlord's entry promptly after the entry.

15.4 Landlord Notice. Landlord will advise Tenant in writing not later than five (5) Business Days after Landlord has actual knowledge of any pending or threatened Environmental Claim against Landlord and/or Tenant relating to the Premises. All such notices shall describe in

reasonable detail the nature of the claim. In addition, Landlord promptly will provide to Tenant all communications with any person relating to Environmental Claims and such detailed reports in Landlord's possession relating to any such Environmental Claim as may reasonably be requested by Tenant.

15.5 Tenant Environmental Indemnity. Tenant agrees to defend, indemnify, and hold harmless the Landlord, its elected officials, officers, managers, owners, lenders, employees, attorneys and agents ("Landlord Indemnitees") from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties (including, by way of illustration and not by way of limitation, civil fines), damages (excluding consequential and punitive damages), costs and expenses (including reasonable attorneys' and consultants' fees and expense) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Landlord Indemnitees directly or indirectly based on, or arising or resulting from (i) the actual presence (or alleged presence if alleged by any governmental authority) of Hazardous Materials on the Premises that was caused by Tenant, its employees, agents, contractors or invitees after the Effective Date of this Lease and/or (ii) the actual or alleged presence of Hazardous Materials or any Environmental Claim, occurring after the Effective Date.

15.6 Survival. The indemnity obligations of Tenant and the rights and remedies of the Landlord under this Article 15 and under any other provision of this Lease shall survive the termination of this Lease,

ARTICLE 16 **MISCELLANEOUS**

16.1 Notice. All notices and other communications hereunder shall be in writing and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the addresses listed below. Either party may designate in writing a change in its notice address. Notices that are delivered in person shall be deemed given when received. Notices that are mailed shall be deemed given three business days after receipt of United States Postal Service Certified Mail, return receipt requested. Phone and Facsimile numbers indicated below are provided for convenience only and are not deemed to be a method of notice hereunder.

If to Landlord:

City of Aurora, Colorado
15151 E. Alameda Parkway, Suite 3200
Aurora, CO 80012
ATTN: Manager of Real Property Services
(303) 739-7300

With a copy to:

City of Aurora, Colorado
15151 E. Alameda Parkway, Suite 5200
Aurora, CO 80012

ATTN: City Attorney

If to Tenant:

With a copy to:

16.2 Waiver. The waiver by Landlord or Tenant of any breach or default of any term, covenant, or condition shall not be deemed to be a waiver of any subsequent breach or default of the same or any other term, covenant, or condition, nor shall the acceptance of Rent be deemed to be a waiver of any such breach or default of such Rent. No term, covenant, or condition of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing.

16.3 Accord and Satisfaction. No payment by Tenant or acceptance by Landlord of a lesser amount than sums herein stipulated shall be deemed to be other than on account of the sums due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment prejudice Landlord's right to recover the balance of such Rent or pursue any other remedy provide in this Lease, unless otherwise agreed to by Landlord.

16.4 Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections.

16.5 Entire Agreement. Each Exhibit attached hereto is incorporated herein by reference. This Lease, the Exhibits and any attachments hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon Landlord or Tenant until reduced to writing and signed by both parties.

16.6 Tenant and Landlord Defined, Use of Pronoun. The words "Tenant" and "Landlord" shall mean each party mentioned as Tenant or Landlord herein whether one or more. If there is more than one party any notice required or permitted may be given to anyone thereof, and such notice to one shall be deemed notice to all. The use of the singular pronoun to refer to Tenant or Landlord shall be deemed proper regardless of the number of parties.

16.7 Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable,

the remainder of this Lease or the application of such term, covenant, or condition to persons or circumstances other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

16.8 Governing Law. The parties hereto shall be bound by, and this Lease shall be construed according to, the laws of the State of Colorado. Each party agrees to submit to the exclusive jurisdiction of the courts of the State of Colorado. Any suit between the parties arising under this Lease shall be brought in a Colorado court of competent jurisdiction.

16.9 Recording. Tenant or Landlord may record this Lease or a memorandum or short form thereof. Tenant and Landlord shall, at the request of either, execute a memorandum of this Lease or a short form lease for recording.

16.10 Costs of Enforcement. If Landlord or Tenant shall bring an action to recover any sum due hereunder or for any breach hereunder and shall obtain a judgment in its favor, or if Landlord or Tenant retain an attorney for the purpose of collecting any sum due hereunder or construing or enforcing any of the terms or conditions hereof or protecting their interest in any bankruptcy, receivership, or insolvency proceeding or otherwise against the other, the prevailing party shall be entitled to recover all reasonable costs and expenses incurred, including reasonable attorneys' and legal assistants' fees prior to trial, at trial, and on appeal.

16.11 Successors. All rights and liabilities herein given to or imposed upon the parties hereto shall inure to the benefit of and be binding upon their respective heirs, executors, administrators, successors and assigns and, except as may be otherwise set forth herein, if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless such assignment has been approved by Landlord in writing if written approval is required elsewhere in this Lease.

16.12 Force Majeure. Neither party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (herein, "Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within 15 days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act or performance of work due to a Permitted Delay shall be 60 days. Provided, however, no such Permitted Delay, event, occurrence, or situation, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal or inability for any reason to construct or operate the Development) shall permit Tenant to quit or surrender the Premises of this Lease nor shall it relieve the Tenant of its liability to pay the Rent and any other charges under this Lease.

16.13 Relationship of the Parties. Landlord and Tenant shall not be considered or deemed to be joint ventures or partners of one another, and neither shall have the power to bind or obligate

the other except as expressly set forth herein.

16.14 No Employment Relationship. Nothing contained in this Lease Agreement shall be construed to create any relationship other than that of Lessor and Tenant, between the City of Aurora and Tenant. Lessee shall be solely responsible for its acts and the acts of its agents, employees, representatives, and independent contractors. It is not intended, nor shall it be construed, that the Tenant or any officer or employee thereof is an employee or officer of the City of Aurora for any purpose whatsoever.

16.15 Third Parties. There are no intended third-party beneficiaries to this Lease.

16.16 Governmental Immunity. Nothing in this Agreement shall be construed or interpreted as a waiver of the Landlord's rights and responsibilities under the provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

16.17 Time of the Essence. Time is of the essence to all dates set forth in this Lease.

16.18 Ambiguity. Both parties have freely negotiated the terms of this Lease and have had the Lease reviewed by counsel. In the event of any judicial or quasi-judicial determination that requires the interpretation of language contained within this Lease, the language shall not be construed against either party on the basis that the party was the drafter of the disputed portion of the Lease.

16.19 Counterparts. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as the day and year first above and written.

LANDLORD:
CITY OF AURORA, COLORADO

TENANT:

By: _____
Mike Coffman, Mayor

By: _____

Print Name: _____

Title: _____

ATTEST:

Kadee Rodriguez, City Clerk

APPROVED AS TO FORM FOR LANDLORD:

Assistant City Attorney

REVIEWED FOR LANDLORD:

Real Property Services Manager

Public Works, Director

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

A parcel of land situated in the NW 1/4 of Section 7, Township 4 South, Range 65 West of the 6th Principal Meridian, County of Arapahoe, State of Colorado, being that parcel of land described in that Special Warranty Deed recorded at Rec No. B8060199 in the office of the Arapahoe County Clerk and Recorder, more particularly described as follows:

Tract H, Cross Creek Subdivision Filing No. 2, the plat of said subdivision being recorded at Rec. No. B4002719 in said office.

Reserving unto the City of Aurora a fire lane easement as shown and depicted within said Tract H on said subdivision plat.

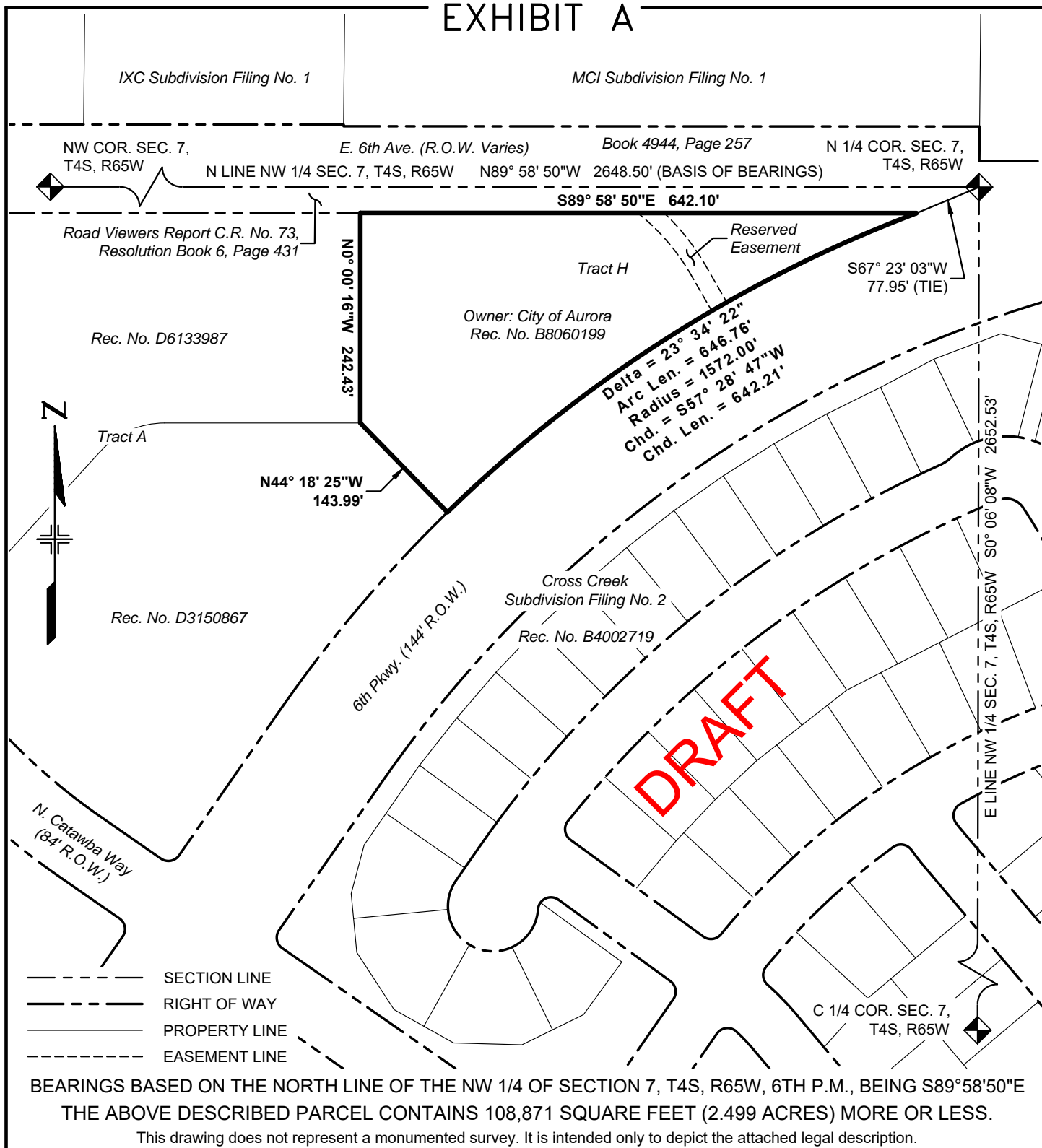
The above described parcel contains an area of 108,871 square feet (2.499 acres) more or less.

Illustration for Exhibit A attached and made a part hereof.

Eric W. Ansart
Colorado PLS# 38356
For and on behalf of the
City of Aurora, Colorado
13636 E. Ellsworth Ave.
Aurora, Colorado 80012

DRAFT

ILLUSTRATION FOR EXHIBIT A



CITY OF AURORA, COLORADO

DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER N/A
CHECKED BY: DMR	DATE: 1/21/2020	JOB NUMBER: N/A

A PARCEL OF LAND SITUATED IN THE NW 1/4 OF
SEC. 7, T4S, R65W, 6TH P.M., CITY OF AURORA,
COUNTY OF ARAPAHOE, STATE OF COLORADO

EXHIBIT B

**[EXHIBIT OF SPECIFIC DEVELOPMENT REQUIREMENTS TO BE SUBMITTED BY
TENANT]**

EXHIBIT C
INSURANCE REQUIREMENTS

EXHIBIT C: INSURANCE REQUIREMENTS

- a. **Commercial General Liability Insurance:** Tenant shall maintain a commercial general liability policy covering all operations by or on behalf of the Landlord, on a per occurrence basis, for claims personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability, and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents, and representatives shall be named as Additional Insureds by endorsement.
Minimum limits:
\$1,000,000 each occurrence
\$2,000,000 general aggregate
\$2,000,000 products and completed operations.
- b. **Workers' Compensation and Employers Liability Insurance:** If the Tenant has any employees, it shall maintain Workers' Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado and Employer's Liability Insurance shall maintain with minimum limits of:
\$100,000 bodily injury for each accident,
\$100,000 bodily injury by disease each employee, and
\$100,000 bodily injury/disease aggregate.
- c. Tenant's insurance policies shall be primary insurance and non-contributory with respect to any and all insurance policies purchased by the City. Tenant's insurance shall be issued by an insurance company having a rating of not less than A-VIII AM Best Insurance Rating.
- d. Upon execution of this Lease, Tenant shall deliver to the Landlord a certificate of insurance with all insurance coverages, deductibles and limits noted as well as the requisite endorsements required herein. Tenant must provide at least thirty (30) days' written notice to Landlord prior to any cancellation or material changes to the insurance policy or policies. Tenant shall, upon renewal, provide Landlord with updated Certificates of Insurance verifying the required coverages are still in place.
- e. **Landlord as Additional Insured.** The City, its officers, employees, and agents shall be named as additional insureds and the policy shall contain a waiver of subrogation by endorsement on Tenant's commercial general liability insurance policy. Tenant shall provide a copy of the requisite endorsements providing these coverages.

When recorded mail to:

MEMORANDUM OF LEASE

This is a Memorandum of Lease by and between the City of Aurora, Colorado, a Colorado municipal corporation hereinafter called "Landlord" and

a Colorado _____ hereinafter called "Tenant" upon the following terms:

1. Date of Lease: _____
2. Description of Premises: (See Exhibit A, attached hereto.)
3. Date of Commencement of Lease: _____
4. Term of Lease: 50 years
5. Extension Option(s): up to 80 years from the Effective Date upon the agreement of the Landlord and Tenant
6. Purchase Option(s): None
7. Right of First Refusal Option: None

The purpose of this Memorandum of Lease is to give record notice of the lease and of the rights created by thereby, all of which are hereby confirmed.

IN WITNESS WHEREOF the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

Landlord: City of Aurora, Colorado

Tenant:

By: _____
Signature and title

By: _____
Signature and title

Acknowledgement of Landlord

State of Colorado)
) ss
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by: _____, City of Aurora, Colorado

Witness my hand and official seal.

My Commission Expires:

Notary Public

Acknowledgement of Tenant

State of Colorado)
) ss
County of _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2023, by: _____,
_____(Tenant)

Witness my hand and official seal.

My Commission Expires:

Notary Public

SECTION V
REQUEST FOR BUSINESS STATUS

Each Tenant must provide the following information:

The North American Industry Classification System (NAICS) code for this award is _____.

The small business size standard the City of Aurora designates for this award is:

☒ U.S. dollars ☐ Employees

Business size status based on the above small business size standard:

- ☐ Large Business
- ☐ Small Business Enterprise

If the business is a Small Business Enterprise, please identify if the business is in one of the following categories:

- ☐ Minority-owned vendor
- ☐ Woman-owned vendor
- ☐ Minority/woman-owned vendor
- ☐ Veteran
- ☐ Disabled Veteran

From what source did you learn about this RFP?

- ☐ Website;
- ☐ Newspaper (please name the paper);
- ☐ Fax;
- ☐ Automatic notice by E-mail;
- ☐ Telephone call from buyer;
- ☐ Other(please describe): _____

Tenant

Contact Person

Signature

SECTION VI
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

The W-9 form may be found at the following link <http://www.irs.gov/pub/irs-pdf/fw9.pdf>