

## LEASE AGREEMENT

**DATE:** June \_\_\_\_, 2023

**LANDLORD:** Woodlands Business Center, LLC  
Attn: Stephen Thompson  
P.O. Box 399  
Flagstaff, AZ 86002  
Email for Notice: st@greatcharterproperties.com

**TENANT:** Coconino County  
Attn: Thomas Hanecak, Director of Facilities Management  
2500 N. Ft. Valley Road, #2  
Flagstaff, AZ 86001  
Email for Notice: thanecak@coconino.az.gov

**PREMISES:** 1300 W. University, Suite 180  
Consisting of the center approximately 9,304 square feet of the building  
Flagstaff, AZ 86001 as depicted in Exhibit "A" attached hereto

**PROJECT:** Woodlands Business Center – 1300 W. University and all common  
areas

**TERM:** Eighty-seven (84) months; July 1, 2023, through June 30, 2030

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The foregoing lease provisions are an integral part of this Lease, and each reference in the body of the Lease to any provision shall be construed to incorporate all of the terms set forth above with respect to any such provision. Capitalized terms in the Lease shall have the meanings set forth above.

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

### **1. PREMISES**

Subject to the terms and conditions set forth herein, Landlord hereby leases to Tenant the Premises. A site plan showing the boundaries of the Premises and its relative location within the Project is attached hereto as **EXHIBIT A**, which is incorporated herein by this reference as an integral part of this Lease. Tenant's acceptance of the Premises and agreement to the terms of this Lease are not conditioned upon any representation by Landlord, or Landlord's representatives, of the number of square feet or condition of the Premises and any size reference for the Premises or Building is an approximation which the parties agree is reasonable and shall be bound by the same. TENANT ACKNOWLEDGES THAT IT HAS INSPECTED THE PREMISES, IS FAMILIAR WITH THE CONDITION OF

THE PREMISES, BUILDING AND PROJECT, AND ACCEPTS THE SAME AND ALL IMPROVEMENTS THEREON IN THEIR PRESENT CONDITION “AS IS” AND “WHERE IS.” EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD HAS MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING SQUARE FOOTAGE, OTHER USES OF THE BUILDING, THE PREMISES, IMPROVEMENTS OR THE OVERALL COMMERCIAL PROJECT OF WHICH THE PREMISES FORM A PART.

**2. GENERAL PROVISIONS**

Reserved.

**3. TERM**

- A. Term. The term of this Lease (herein called the “Lease Term” or the “Term”) shall be from July 1, 2023, through June 30, 2030. Notwithstanding the foregoing, Tenant’s obligation to pay rent and all other charges set forth herein shall commence on October 1, 2023 under the terms set forth in Section 4.
- B. Holding Over. If Tenant, upon expiration or termination of this Lease, either by lapse of time or otherwise, remains in possession of the Premises with Landlord’s written consent but without a new lease reduced to writing and duly executed, Tenant shall be deemed to be occupying the Premises as a tenant from month to month, subject to all covenants, conditions and provisions of this Lease – provided, however, that the monthly rent shall be one-hundred ten percent (110%) of Tenant’s minimum monthly rent payable hereunder. If Tenant remains in possession without Landlord’s written consent, Tenant shall be deemed to be wrongfully holding over and shall be subject to all the rights and remedies provided to Landlord under this Lease and by Arizona law, including but not limited to any self-help remedy available and/or the institution of eviction proceedings. During any holdover period without Landlord’s written consent, the monthly rent shall be one hundred fifty percent (150%) of the rent that was due in the last month Tenant occupied the premises under a duly executed Lease Agreement.
- C. Surrender of Premises. Upon any termination of this Lease for any reason, Tenant shall immediately surrender possession of the Premises to Landlord in good and tenantable repair, reasonable wear and tear excepted, and shall surrender all keys and copies of such keys for the Premises to Landlord at the place then fixed for the payment of rent or other agreed upon location.
- D. Renewal Option. Provided that (i) this Lease is in full force and effect; (ii) Tenant is in possession of the Premises; and (iii) Tenant is not in default under this Lease, Tenant shall have the option to extend the Term of this Lease for one additional period of seven (7) years (hereinafter “Renewal Option”). The renewal period shall commence on July 1, 2030. The tenancy resulting from the exercise of this Renewal Option shall be on the same terms and conditions as set forth in this Lease, including 2% annual increases to the Minimum Rent

set forth in paragraph 4.A., below. The Renewal Option may be exercised only upon written notice to Landlord at least three (3), but not more than six (6), months prior to the Termination Date. If Tenant fails to exercise the Option in writing during the period when the Renewal Option is available, or if any of the above-listed conditions are not in place, the Renewal Option shall be unavailable.

**4. RENT AND SECURITY DEPOSIT**

A. Minimum Rent. Tenant agrees to pay to Landlord, without notice or demand, via ACH deposit, the full annual Rent in a lump sum as set forth below by July 15<sup>th</sup> preceding each period shown:

July 1 – September 30, 2023	Donation
October 1, 2023, through June 30, 2024	\$155,260.50
July 1, 2024 through June 30, 2025	\$207,014.00
July 1, 2025 through June 30, 2026	\$211,154.28
July 1, 2026 through June 30, 2027	\$215,377.37
July 1, 2027 through June 30, 2028	\$219,684.91
July 1, 2028 through June 30, 2029	\$224,078.61
July 1, 2029 through June 30, 2030	\$228,560.18

Tenant agrees to pay additional amounts, when applicable, as described in Section 8; as well as all state, local and county transaction privilege taxes.

B. Donation to County. The parties agree that no rent will be due for the period from July 1, 2023, through September 30, 2023, and that the value of any rent that might otherwise have been due is being voluntarily donated by Landlord to the County. The County has not promised anything, either orally or in writing, to Landlord in return for this donation. Landlord has no expectation to receive anything in return for his donation.

(i) Security Deposit. Landlord hereby waives the requirement for a Security Deposit. While Landlord has agreed to waive an initial Security Deposit, Landlord reserves the right to require a Security Deposit should Tenant be in breach of this Lease more than twice in any consecutive 12-month period, provided that Landlord has provided Tenant timely notice of such breach. Should this occur, Landlord may demand a Security Deposit not more than one and one-half (150%) of one months' Minimum Rent (the "Security Deposit"), which shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the Term hereof. Thereafter, if Tenant defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become

obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss of damage which Landlord may suffer by reason of Tenant's default. Should Landlord choose to use the Security Deposit to cure a Tenant default, the Tenant shall immediately pay to Landlord upon demand a sum equal to the portion of the Security Deposit expended or applied by Landlord as provided in this Section so as to maintain the Security Deposit in the sum initially deposited with Landlord. If Tenant is not in default at the expiration of this Lease, and if Tenant timely returns the Premises in good and clean condition, reasonable wear and tear excepted, Landlord shall return the Security Deposit to Tenant within thirty (30) days of the termination date. Landlord's obligations with respect to the security deposit are those of a debtor and not a trustee. Landlord may commingle the security deposit with Landlord's general and other funds. Landlord shall not pay Tenant interest on the security deposit. Notwithstanding anything contained herein to the contrary, should Tenant vacate the Premises prior to the expiration of the Term through no fault of Landlord, Tenant shall not be entitled to a return of any portion of the Security Deposit.

- C. Cleaning Deposit. Landlord hereby waives any requirement for a Cleaning Deposit.
- D. No Notice Required. Except as expressly provided herein, all Rent and additional charges and all other sums payable by Tenant shall be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.
- E. No Conditional Payment. No payment by Tenant or receipt by Landlord of a lesser amount than the total of all sums due hereunder shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check, other payments or any accompanying letter be deemed as accord and satisfaction and Landlord may accept such cash and/or negotiate such check or payment without prejudice to Landlord's right to recover the balance of rent or other amounts due or pursue any other remedy provided in this Lease or otherwise, regardless of whether Landlord makes any notation on such instrument of payment or otherwise notifies Tenant that such acceptance, cashing or negotiation of such payment is without prejudice to any of Landlord's rights.

## 5. LATE PAYMENT, DEFAULT AND REMEDIES

- A. Late Charge. If the full annual rent is not received by the 30<sup>th</sup> day of July of the applicable year prior to the annual period immediately following from July 1 through June 30<sup>th</sup>, a late payment charge in the amount of five percent (5%) of the total annual rent shall be paid in addition to the rent. If rent has not been received by the 30<sup>th</sup> day of August, an additional penalty of ten percent (10%)

shall be paid by Tenant, for a total of fifteen percent (15%). If Tenant tenders to Landlord a check that is returned marked "NSF" or its equivalent, Tenant shall pay Landlord a payment in the amount of ten percent (10%) of the amount of such non-negotiable check. Tenant's failure to pay any NSF or Late Charge within three (3) days after Landlord's demand therefore shall constitute an Event of Default hereunder.

B. Default. The occurrence of any one of more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) If Tenant fails to pay any rent, additional charges or any sum due hereunder promptly when due and such failure continues for five (5) days after the date such payment was due, and Landlord has given written notice of delinquency. If Tenant fails to pay any monies due Landlord under any agreement between Landlord and Tenant within five (5) days after written notice of default in payment is hand-delivered, emailed, or sent to Tenant via regular mail to Tenant at the address listed above.
- (ii) If Tenant defaults or breaches any of the other (non-monetary) covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant and such default continues for twenty (20) days after written notice thereof is hand-delivered or sent to Tenant via regular mail to Tenant at the address listed above; provided, however, that if the nature of Tenant's default is such that more than twenty (20) days are reasonably required for its cure, then Tenant shall not be considered in default if Tenant commences, and continues to diligently prosecute, such cure within said twenty (20) day period.

C. Remedies. In the event of any such default by Tenant, Landlord may at any time thereafter, in its sole discretion, with or without notice and demand, and without limiting Landlord in the exercise of any right or remedy otherwise available to it at law or in equity, exercise any or all of the following remedies:

- (i) Re-Entry of Premises. Landlord shall have the right, at its election, to re-enter the Premises, or any part thereof, either with or without process of law, and to expel, remove and evict Tenant and all persons occupying the Premises, and to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings and improvements thereon and to have, hold and enjoy the same and to receive all rental income from the same. No reentry by Landlord shall be deemed an acceptance of a surrender of this Lease, nor shall it absolve or discharge Tenant from any liability under this Lease. Upon such re-entry, all rights of Tenant to occupy or possess the Premises shall terminate.
- (ii) Lease Termination. Upon the occurrence of any such Event(s) of Default and at any time thereafter, Landlord shall have the right, at its

election, with or without re-entry as provided above, to give written notice to Tenant stating that this Lease shall terminate on the date specified by such notice, and upon the date specified in such notice this Lease and the Term hereby demised and all rights of Tenant hereunder shall terminate. Upon such termination, Tenant shall quit and peacefully surrender to Landlord the Premises and the buildings and improvements then situated thereon. When the lease is terminated by the Landlord and through no fault or breach by tenant, Tenant shall be reimbursed with the unearned portion of the annual rent calculated as any month for which tenant will not remain as an occupant of the leased premises.

- (iii) Re-letting. If Landlord exercises his right of re-entry due to Tenant default, Landlord shall use reasonable efforts to mitigate any damages by re-letting the Premises. Even though it may re-let the Premises, Landlord shall have the right thereafter to terminate this Lease and all of the rights of Tenant in or to the Premises. Nothing contained in the foregoing shall be deemed a waiver or relinquishment by Tenant of any duty imposed by law on Landlord to mitigate its damages.
- (iv) Survival of Liability. Unless Landlord shall have notified Tenant in writing that it has elected to terminate this Lease, no such re-entry or action in unlawful detainer or possession of the Premises by Landlord shall relieve Tenant of its liability and obligations under this Lease; and all such liability and obligations shall survive any such re-entry.
- (v) Cumulative Remedies. Each right and remedy of Landlord provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise.

## 6. USE OF PREMISES

- A. Use. Tenant shall use the Premises solely for the Permitted Uses set forth herein and not for any other purposes. Tenant shall not use or permit the Premises to be used in violation of the laws, ordinances, regulations and requirements of the United States, the State of Arizona, Coconino County, the City of Flagstaff or any subdivision or department thereof or any other authority or agency having jurisdiction over the Premises (Applicable Law). "Permitted Uses" shall mean: general office, warehouse, storage and related uses to Tenant's Election Department or other Coconino County department, and all incidental services and uses associated therewith.

- B. Prohibited Conduct. Except by prior written consent of Landlord, Tenant shall not:
- (i) Use or operate any machinery that, in Landlord's reasonable opinion is harmful to the Premises or Building or disturbing to other tenants in the Building of which the Premises is a part; excessive use of any loud speakers, televisions, stereos, radios or other devices in a manner so as to be heard or seen at the external property line of the Project, or display merchandise on the exterior of the Premises either for sale or for promotional purposes other than customary signage in place at the commencement of this Lease.
  - (ii) Conduct or permit any auction sale to be held on or about the Premises, whether such auction be voluntary or involuntary.
  - (iii) Keep, display, promote or sell any merchandise, service or any object outside the interior of the Premises, or on any portion of any sidewalk, walkway, or other portion of the common facilities, without the written consent of the Landlord. Landlord retains absolute right to withhold such consent. The term "common facilities" as used in this Lease shall include, but not be limited to, vehicular parking areas, service areas, driveways, sidewalks, and alleys.
  - (iv) Do or allow to be done any act, matter or thing objectionable to the fire, casualty or liability insurance carriers whereby any insurance now in force or hereafter to be placed on the Premises or the Project, or any part thereof, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date when Tenant received possession of the Premises. In case of a breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant agrees to pay to Landlord as additional rent any and all increase or increases of premiums on insurance carried by Landlord on the Premises or the Project.
  - (v) Commit, or suffer to be committed, any waste upon the Premises or any nuisance or other act or thing against public policy, including any advertising or promotional medium which can be heard or experienced outside the Premises. Tenant shall not keep on Premises any vehicle that is not in good repair and shall not perform any vehicle repair/maintenance on the Premises.
  - (vi) Permit any hazardous material, waste, or substance to be placed, held, located, or disposed of on, under, or at the Premises or any part thereof, or from the Premises or any part thereof, into the atmosphere or any water course, body of water, or wetlands, and neither the Premises nor any part thereof nor any adjoining real property shall be used as a treatment, storage or disposal site for any hazardous material or substance. For purposes of this agreement, "hazardous material" means and includes any petroleum product and any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act; and so-called "Super Fund" or "Super Lien" law, the Toxic Substance Control Act, or any other federal, state

or local statute, law ordinance, codes, rule, regulation, order, or decree 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; and asbestos or any substance or compound containing asbestos, PCBs, or any substance or compound containing asbestos, PCBs, or any other hazardous, toxic, or dangerous waste, substance or material. Tenant hereby indemnifies Landlord and agrees to pay, defend, and hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever, including reasonable attorney's fees paid, incurred, or suffered by, or asserted against, Tenant for, with respect to, or as a direct or indirect result of the presence on or under the Premises of any hazardous material, or the escape, seepage, leakage, spillage, discharge, emission, or release from the premises into or upon any land, the atmosphere, or any water course, body of water or wetland of any hazardous material present on the Premises caused by the actions or inaction of Tenant during the term of this Lease, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, and so-called "Super Fund" or "Super Lien" Law, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree relating to or imposing liability or standards of conduct concerning any hazardous material.

- (vii) Do or cause to be done any act, matter or thing in violation of any federal, state, county or local law, statute, regulation, rule or ordinance.
- (viii) Tenant shall have no right of access to the roof of the Premises or the Building and shall not install, repair or replace any aerial, fan, air conditioner or other device on the roof of the Premises or the Building without the prior written consent of Landlord. Any aerial, fan, air conditioner or other device installed without such written consent shall be subject to removal, at Tenant's expense, without notice, at any time.

C. Tenant Prescribed Conduct. At all times throughout the Lease Term, Tenant shall:

- (i) Comply with any and all requirements of any public authorities, boards, commissions and governments and with the terms of any state or federal statute or local ordinance or regulation applicable to Tenant or its use, safety, cleanliness or occupation of the Premises, and save Landlord harmless from penalties, fines, costs, expenses or damages resulting from Tenant's failure to do so or otherwise arising from Tenant's use of the Premises whatsoever.
- (ii) Give Landlord prompt written notice of any accident, fire, pest infestation, or damage occurring on or to the Premises.
- (iii) Load and unload goods or other items at such times in the areas and through such entrances as may be designated for delivery. Delivery trailers or trucks shall be permitted to remain parked overnight in the



parking lot of the leased property for up to 1 week prior to and following any election. Any unlawful use of fire lanes may result in the towing of the offending vehicle and subject the owner or user thereof to all applicable fines established by the City of Flagstaff or Landlord.

- (iv) Conduct its business on the Premises in all respects in a dignified manner and in accordance with high standards.
- (v) Comply with all reasonable rules and regulations of Landlord in effect at the time of execution of this Lease, or at any time or times promulgated by Landlord which Landlord, in its sole discretion, shall deem necessary in connection with the Premises or the Project.
- (vi) Take all reasonable steps to ensure adequate security on the Premises. This includes taking reasonable steps to ensure compliance with all local, state, and federal rules, regulations, ordinances, statutes, and laws.

- D. No Co-Tenancy Requirement. Landlord reserves the right to enter into such tenancies in the Project as Landlord, in the exercise of its reasonable business judgment, shall determine, provided that such tenancies do not impair Tenant's quiet enjoyment of the Premises. Tenant is not relying on the fact, nor does Landlord represent, that any specific tenant or kind of tenant or number of tenants shall, during the term of this lease, occupy any space in the Project.

## 7. COMMON AREAS

- A. Use of Common Areas. All facilities furnished by Landlord in the Project for the general common use of occupants, including Tenant hereunder, its officers, agents, employees and customers, shall at all times be subject to the exclusive control of Landlord and/or its manager. Landlord shall have the right, from time to time, to change the area, level, location and arrangement of parking areas and other common area facilities and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance thereof. Landlord shall have the exclusive right at any and all times to close any portion of the common areas for the purpose of making repairs, changes or additions thereto; and may enter into agreements as Landlord deems appropriate for parking and/or ingress or egress, provided no such action shall impair Tenant's quiet enjoyment of the Premises.
- B. Parking Policy. All parking in parking areas of the Project shall at all times be under the control of Landlord, notwithstanding the fact that each tenant, its representatives or invitees shall have a right to park a vehicle therein. Landlord reserves the right to restrict the parking of, or entrance of, any vehicle in the parking areas of the Project, for any reason, including, but not limited to, the weight, dimensions, noise or exhaust of the vehicle. Landlord may, in its reasonable discretion, refuse and revoke existing and future parking privileges of any tenant or its representatives or invitees who violate any parking rule or regulation, as established by Landlord from time-to-time. At no time shall Tenant, its employees, representatives, vendors, customers, clients or invitees

park in an area immediately adjacent to the Premises such that snow or ice could fall onto parked vehicles or cause personal injury or death. Landlord is not responsible for falling snow or ice from roofs, gutters, or overhangs.

Each tenant, its employees, representatives, vendors, customers, clients or invitees shall obey and comply with all posted signs throughout the parking areas of the Project. Landlord shall have the right with 30 day notice to the tenant to designate, change and/or convert, from time-to-time, the following parking areas of the Project: delivery and loading zones, guest and attendant parking areas, restricted, reserved and non-reserved areas, parking areas for motorcycles, bicycles and handicap persons. No tenant, its representatives or invitees shall block aisles, doorways, stairwells, driveways, fire lanes, fire hydrants or other vehicles located in the parking areas of the Project.

Landlord shall have the right (but not the duty) to implement an attendant parking system in any or all areas of parking in the Project. Landlord reserves the right to establish a card key access system in the parking area of the Project and Landlord may charge each tenant a reasonable refundable deposit for each card key. A tenant shall be responsible for the additional, separate cost of cleaning the parking lot if its vehicles or the vehicles of its employees or invitees drop excessive amounts of dirt or debris in the parking areas.

## 8. TAXES AND EXPENSES

- A. It is mutually intended and understood that the Rent set forth in paragraph 4.A., above, is gross rent to Landlord, based upon Landlord's Operating Costs of the Premises and the Project. These costs include, without limitation: common area utility expenses, common area water, personal property taxes, assessments, maintenance and repairs to common area elements and equipment, general common area maintenance & repair, property management, replacement of equipment, if any, maintenance and cleaning of the common areas of the Project, exterior gardening and landscaping, exterior repairs, exterior lighting, sanitary control, snow removal (when snowfall greater than 3 inches in a 24-hour period), exterior painting, roof repair, paving and line painting, and parking lot and yard maintenance (herein the "Operating Costs"). Tenant shall not be responsible for any Operating Costs or increases thereto. Additionally, Landlord shall pay all real property taxes and premiums on fire, extended insurance coverage, vandalism and liability insurance (herein "Real Property Taxes and Insurance").
- B. While Tenant shall not be responsible for any increases to Operating Costs, after the first year of the lease, beginning October 1, 2024. Tenant shall pay its Proportionate Share of any *increases* in Real Property Taxes and Insurance. This shall be additional rent and shall be paid in advance with annual Rent (hereinafter the "Additional Rent"). Landlord shall inform Tenant of the Additional Rent at such times as Landlord deems appropriate. Tenant's Proportionate Share shall be calculated as follows: Suite 180 is 9,304 square feet; divided by the overall square footage of the Project of 25,690 square feet

= 36.22%. By way of example, if Real Property Taxes and Insurance increase by \$4,000, Tenant shall pay Additional Rent of \$1,449 in 2024. Each calendar year, Landlord shall furnish Tenant a statement showing the Real Property Taxes and Insurance for the Project.

- C. Tenant shall pay any and all taxes or increases in taxes, levied or assessed, and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, and other personal property located in the Premises. In the event any or all of Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

## 9. **MAINTENANCE AND REPAIRS**

- A. **Tenant's Obligations.** During the Term hereof, Tenant shall keep and maintain in good order, condition and repair (including any such replacement, periodic painting and restoration as is required for that purpose) the interior Premises and every part thereof and any and all appurtenances thereto wherever located, including but not limited to, the interior water lines, faucets, valves, plumbing and sewage facilities, lines and fixtures, windows, plate glass, store front, doors, door checks, door locks, glazing, walls, ceiling and ceiling tiles, awnings, and the interior of the leased space in good, clean and sanitary order, condition and repair. Tenant shall also be responsible for any repairs required to be made due to burglary or other illegal entry into the Premises except when caused by the negligence or intentional misconduct of Landlord. Tenant shall maintain and bear the expense of the light fixtures and bulbs, air conditioning and evaporative cooler units and filters, heating unit or furnace, janitorial services, interior pest control, and the like. Landlord to bear the expense of replacement of HVAC units, as needed. Without limiting the foregoing, Tenant shall also contract for quarterly routine maintenance on the HVAC units servicing its Premises, including, without limitation, replacement of air filters.
- B. **Prohibited Acts.** Tenant will be responsible for any damage caused to the Premises by any acts of Tenant, its agent, servants, employees or contractors and shall keep the Premises (including both sides of all glass) clean, orderly and sanitary.
- C. **Rights of Landlord.** If Tenant refuses or fails to commence and complete repairs or maintenance required herein promptly and adequately, Landlord may, but shall not be required to, make and complete the repairs or perform the maintenance. The cost of such repairs or maintenance shall be paid within 30 days by Tenant to Landlord.
- D. **Repair by Landlord.** Landlord shall keep and maintain the foundation, exterior walls (excluding damage done by Tenant, its employees, agents, invitees,

contractors, etc.), and roof of the building in which the Premises are located exclusive of doors, door frames, door checks, door locks, windows and window frames located in exterior building walls, and any other items that which are the responsibility of the Tenant pursuant to section 9(A), above. Landlord shall not, however, be required to make any such repairs when such repairs are the result of misuse or neglect by Tenant, its agents, employees, invitees, licensees or contractors. Any repairs required to be made by reason of such Tenant misuse or neglect shall be the responsibility of Tenant. Except as provided herein, Landlord shall have no obligation to alter or modify the Premises, or any part thereof, or to repair and maintain any plumbing, heating, electrical, air conditioning or other mechanical installation in the Premises. Landlord shall be responsible for the replacement when necessary and capital repairs to building operating systems, to include main water and sewer lines, HVAC systems, and duct work. Landlord shall not be obligated to repair, replace or maintain any plate glass or door or window glass no matter what the cause, unless caused by landlord or landlord contractor. If Tenant shall fail, neglect, or refuses to do any repair or maintenance required by it under the terms of this Lease, Landlord may make such repairs and alterations, as it may in its discretion deem advisable at the expense of Tenant. Tenant shall pay Landlord's costs for making such repairs plus fifteen percent (15%) for overhead 30 days upon presentation of a bill therefore. Failure of Tenant to pay such amount immediately shall constitute a default.

- E. Landlord shall be responsible for snowplowing of the parking lot and snow shoveling to clear the walkways to the building and keep them clear of ice or other debris from storms, or inclement weather. Snowplowing shall be expedited in snowstorms to allow for use of parking lots and walkways cleared of snow by 7 am Arizona time and cleared throughout the day to safely allow for exit of vehicles parked on site, as conditions reasonably permit.
- F. Landlord shall be responsible to clear snow from the roof of the building and ice dams or overhanging ice and snow when it is deemed to be a hazard to vehicles or pedestrians in the area, or to the structural integrity of the building.

**10. TENANT'S CONSTRUCTION OF IMPROVEMENTS**

- A. Written Approval. Tenant shall not make or cause to be made any alterations, additions or improvements to the Premises, without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for any such proposed work and Landlord shall have ten (10) business days to approve any proposed alterations or improvements prior to any work being commenced. Landlord's failure to respond to any such request received from Tenant shall be deemed Landlord's approval. Landlord may condition its approval upon the requirement that Tenant, or its contractor, secure and bear the cost of a labor and materials payment bond. All alterations, improvements, additions and fixtures made or installed by Tenant shall remain upon the Premises at the expiration or earliest termination of this

Lease and shall become the property of the Landlord. All work to be performed by licensed contractors or otherwise approved in writing by landlord.

- B. Trade Fixtures. Tenant shall not cut or drill into or secure any trade fixtures, apparatus or equipment of any kind to any part of the Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. All furnishings, equipment and machines installed by Tenant and that are not trade fixtures in the Premises shall remain the property of Tenant subject to any lien provided Landlord by law and shall be removed at the expiration or earlier termination of this Lease, or any renewal or extension thereof; provided, Tenant shall not at such time be in default under any covenant or agreement contained in this Lease and provided further that in the event of such removal, Tenant shall promptly restore the Premises to its original order and condition. Any such furnishings, trade fixtures, equipment and machines not removed at or prior to such termination of this Lease shall be and become the property of Landlord.
- C. Alterations – Tenant’s Use of Contractors. All contractors, subcontractors and service people engaged by Tenant to do any work in the Project or at Tenant’s Premises shall be subject to Landlord’s approval, be licensed by the State of Arizona, bonded and shall provide to Landlord satisfactory evidence of worker’s compensation, liability and property damage insurance. Tenant shall instruct its contractors, subcontractors and service people to take the proper and necessary steps to prevent any damage to the Project, or any portion thereof, which may be caused by such persons’ presence or activities in the Project. Such preventive steps shall, at all times, be subject to Landlord’s approval and directives, and shall include, but shall not be limited to, the following standards: the use of pads to prevent any damage to flooring and walls, the use of floor runners to protect all floor coverings from damage, grease, and dirt; the broom cleaning, sweeping and vacuuming at the end of every work day of the common area and work area which have become soiled in any way due to such persons’ activities; and the use of janitorial sinks for rinsing only and not for the disposal of waste materials or fluids of any kind. Landlord reserves the right to establish from time-to-time such preventive steps as Landlord deems appropriate for the Project or Tenant’s alterations. Tenant shall make reasonable efforts to have all improvement completed during non-business hours, if Landlord determines in its reasonable discretion, that such work obstructs or interferes with the rights of other tenants. Landlord shall require as a condition to the construction of any improvements by Tenant, a set of as-built plans. No tenant shall mark, drive nails, screw or drill into the partitions’ woodwork or plaster of its premises or in any way deface its premises or any part hereof, except in accordance with the provisions of its lease, without written approval from the landlord. No construction materials may be stored in the Common Area of the Project. Landlord shall not be responsible for providing any storage sites. Landlord shall direct electricians where and how all wires and cables shall be placed, including, but not limited to computer cable, telephone and telegraph wires or cables, and same shall only be allowed with the prior written consent of Landlord, and then only as

Landlord may direct. No wiring or conduit shall be attached to the exterior of the building. The location of all telephones, call boxes and other office equipment affixed to Tenant's Premises shall be subject to the approval of Landlord. No HVAC equipment or ducting may be installed without the express written approval of the landlord. No plumbing vents, pipes, valves or other items may be extended through the roof or walls or be attached to the exterior of the building. Said equipment, wiring, ducting and all other facets of tenant build out and construction shall in no way negatively impact adjacent tenants of the overall building. Tenant and its contractors, material suppliers, laborers, architects, inspectors and all others associated with the tenant improvements shall not block any driveways or parking spaces in any way, including but not limited to, contractor vehicle or laborer vehicles, delivery or storage of supplies, or roll-off dumpsters and/or cargo containers.

- D. Tenant Improvements. Subject to the terms of this Lease, and the performance of the Tenant Improvements by Tenant, the Premises shall be delivered to Tenant in "AS IS" and "WHERE IS" condition. Any and all alterations and improvements to be completed at the Premises by Tenant shall be performed in accordance with the provisions herein. Should the City of Flagstaff or Coconino County (or any other governmental agency) require permitting or approval of the Tenant Improvements, Tenant, or its contractors, shall be responsible for obtaining the same before construction. All Tenant Improvements shall be designed, performed, coordinated and paid for solely by Tenant. Without limiting the foregoing, it is expressly understood and agreed that Tenant shall be solely responsible for the costs associated with the plan, design, coordination, permitting, construction, and installation of any and all improvements to the Premises which Tenant desires for its intended use. Tenant shall, in accordance with the terms of this Section 10, submit written plans to Landlord for approval of the Tenant Improvements and shall use licensed contractors for all work. Upon completion of the Tenant Improvements by Tenant, Landlord agrees to credit Tenant thirty-percent (30%) of the actual bona fide out-of-pocket costs of any and all such approved Tenant Improvements – not to exceed the total sum of Seventy Thousand Dollars (\$70,000) – by providing Tenant with a credit to the Rent set forth in paragraph 4.A., above. The credit shall be divided and credited equally against the annual Rent for each of the first seven (7) years of this Lease. By way of example, if the Tenant's spends \$210,000 on Tenant Improvements, it shall receive a credit equal to \$9,000 per year for each of the first seven (7) years of the Term. By way of further example, if Tenant spends \$320,000 on Tenant Improvements, it shall receive a credit equal to \$10,000 per year for each of the first seven (7) years of the Term. Tenant shall provide Landlord with documentation of any and all amounts paid to third parties in connection with the Tenant Improvements.
- E. Landlord agrees that the County will be making improvements, alterations, and/or additions to the Premises at its own expense. If Landlord terminates the lease, for through no fault or breach of tenant, but not including termination by tenant pursuant to the Government Agency Clause set forth below, prior to

the expiration of the initial 7-year term, Landlord agrees to reimburse the County for any such alterations, improvements or additions according to the following schedule:

Lease Termination	% Reimbursed	Amount Reimbursed
<1 Year	100%	971,175
<2 Years	86%	826,610
<3 Years	71%	579,793
<4 Years	57%	\$324,782
<5 Years	43%	\$135,356
<6 Years	29%	\$36,353
<7 Years	14%	\$3,689
7+ Years	0%	\$0

**11. TENANT OBLIGATIONS**

- A. Payment by Tenant. Tenant shall pay and discharge punctually as and when the same shall become due and payable, each and every cost, expense and obligation of every kind and nature, foreseen or unforeseen, arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises. Tenant shall also pay and discharge punctually, as and when the same shall become due and payable without penalty, personal property, business, occupation and occupational license taxes, water, sewer, refuse, electricity, natural gas, internet and telephone charges and fees. Utilities at the premises shall be metered by the Landlord for proper billing and Tenant shall pay only the utilities used by Tenant in its portion of the leased building. Upon Landlord’s request, Tenant shall furnish to Landlord within thirty (30) days thereafter proof of the payment of any obligations to be paid by Tenant. If any of the foregoing utilities are not separately monitored or metered, Tenant shall pay its proportionate share of the same based upon its proportionate share of the square footage served by said utility.
  
- B. Personal Property Taxes. Tenant shall be responsible for and shall pay before delinquency all taxes levied or assessed against any leasehold interest or personal property of any kind owned or placed in, upon or about the Premises by Tenant. Tenant hereby agrees to protect and hold harmless Landlord and Premises from any liability for Tenant’s share of any and all such taxes, assessments and charges together with any interest, penalties or other charges thereby imposed.
  
- C. Premises Utilities. Tenant shall be responsible for any and shall pay for all utilities used or consumed in or upon the Premises on or after July 1, 2023, as and when the charges shall become due and payable during the Term. Tenant shall make all appropriate applications to local utility companies and pay all required deposits in connection with obtaining utility service to the Premises. Landlord shall provide for metering of utilities at the building with utility

providers to ensure billing to Tenant is for only Tenant's utility use in Tenant occupied space of the premises.

## 12. LIENS

- A. No Liens. Tenant shall have no authority to do any act or make any contract which may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Landlord in the Premises or which would cause any document to be recorded against the Premises or the Project. Should Tenant cause any improvements or repairs to be made on the Premises, or cause any labor to be performed or materials to be furnished thereon, therein or thereto, neither Landlord nor the Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant shall be solely and wholly responsible to contractors, laborers, materialmen and suppliers for performing such labor and furnishing such material.
- B. Tenant's Obligations. The initial and any subsequent alterations or improvements made by Tenant to the Premises must be paid for by Tenant when such alterations or improvements are made. Nothing in this Lease shall be construed to authorize Tenant, or any person dealing with or under Tenant, to file a mechanics' lien or encumbrance of any kind, and under no circumstances shall Tenant be construed to be the agent or representative of the Landlord in the making of any such improvements or alterations to the Premises.
- C. Removal of Liens. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanics' lien, materialmen's, or other lien, charge or order for the payment of money shall be filed or recorded against the Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at its own expense, either cause the same to be discharged of record pursuant to A.R.S. § 33-1004, or otherwise cause such discharge, within thirty (30) days after Tenant shall have received notice of the filing thereof.

## 13. INSURANCE REQUIREMENTS FOR TENANT

- A. Project Insurance. Landlord bears the risk of and may insure as a common area expense as practical or as required by Landlord or its Lender, the operation of the Project as a whole or the common areas thereof. Such insurance may include, but is not limited to, general liability, umbrella excess liability, bodily injury, public liability, property damage liability, fire and extended coverage in amounts not less than one hundred percent (100%) of the replacement cost of the Project, sign insurance and the like, in coverage limits selected by Landlord.



- B. Tenant's Property. Tenant agrees that all property owned by it in, on, or about the Premises or Project shall be at the risk and hazard of the Tenant. Landlord shall not be liable or responsible for any loss or damage to Tenant, or anyone claiming under or through Tenant, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, gas leakage, plumbing, electricity or electrical causes, unless originating in the Premises, or Building or from the fault, mistake, or negligence of the Landlord or their contractor. Tenant shall require all policies of risk insurance carried by it on its property in the Premises to contain or be endorsed with the provision by which the insurer designated therein shall waive its right of subrogation against Landlord and Management.
- C. Tenant's Operations. All operations by Tenant shall be at Tenant's risk. In addition, Tenant shall procure insurance for its operations as follows: Tenant shall keep in force at its own expense public liability insurance and comprehensive general liability insurance, including contractual liability insurance sufficient to cover all phases and aspects of the operation and conduct of its business, with minimum combined limits of \$3,000,000.00 for bodily injuries to or death of one or more persons as a result of any one accident or disaster, and \$1,000,000.00 as a result of damage to property, including plate glass coverage for all windows and doors of the Premises
- D. Certificate of Insurance. Tenant shall provide to Landlord upon execution hereof, and thereafter annually, a Certificate of Insurance listing Landlord and Management as an additional named insured under the Tenant's policies of insurance, to include any and all insurance policies covering the premises and/or tenant's property.
- E. Insurance Companies. The policies affording the insurance required by this Lease shall be with companies authorized to do business in the State of Arizona and shall be in a form reasonably satisfactory to Landlord, shall provide replacement cost coverage, on the building and improvements with lessor named as loss payee. shall name Landlord as additional insured for general liability, auto liability and pollution liability, and shall provide for payment of losses thereunder to Landlord and Tenant as their interests may appear.
- F. Failure to Procure Insurance. In the event Tenant shall (i) fail to procure insurance required under this Lease, (ii) fail to maintain the same in force continuously during the Term, or any option period or extension hereof, or (iii) fail to provide Landlord proof of such insurance as is required hereunder, Landlord shall notify Tenant of this deficiency and after 30 day notice with failure to cure, Landlord shall be entitled to procure such insurance and Tenant shall, upon demand reimburse Landlord for such premium expense or Landlord may declare Tenant in default under this Lease.
- G. Repair. In the event of loss under any such tenant insurance policy or policies, Tenant shall promptly proceed with the repair and restoration of the damaged

or destroyed improvements in accordance with this Lease. The insurance proceeds, shall be paid to Tenant for application to such repair, restoration or remediation, so long as (a) Tenant is not then in default under this Lease, and (b) Tenant expressly covenants in writing with Landlord to expend such funds for the repair, restoration or remediation of the Premises and the improvements therein, and to furnish Landlord with documentation evidencing such expenditure of funds for work and improvements incorporated in the Premises within thirty (30) days following completion of such repair, restoration or remediation. All insurance proceeds described in this Section shall be paid upon architects' certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repair, restoration or remediation of the damage. If at any time such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair, restoration or remediation, Tenant shall upon demand of Landlord pay a sufficient portion of such cost so that it shall appear to the reasonable satisfaction of Landlord that the amount of insurance money in the hands of Tenant or Landlord, as applicable, shall at all times be sufficient to pay for the completion of the repairs, restoration or remediation free and clear of all liens. Upon the completion of the repairs, restoration or remediation, free and clear of all liens, any surplus of insurance monies shall be paid to Tenant, provided that Tenant is not then in default hereunder. In the event that this Lease shall have been terminated for any default of Tenant under any of the terms and provisions contained in this Lease, all proceeds of insurance in the hands of Tenant or Landlord and all claims against insurers shall be and become the absolute property of Landlord.

- H. Subrogation Waiver. All policies of insurance hereunder shall include a mutual waiver.

**14. DAMAGE OR DESTRUCTION**

- A. Tenant Obligations. In the event of damage to or destruction of any of the improvements on the Premises by fire or other casualty, Tenant shall give Landlord immediate notice thereof and shall, at Tenant's own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the improvements shall be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.
- B. Lease Termination. Notwithstanding anything to the contrary contained herein, if the Premises should be rendered untenable by fire or other casualty to the extent of fifty percent (50%) or more of the replacement cost of the Premises or if Tenant's right of quiet enjoyment is impaired, Tenant shall have the option to terminate this Lease by notice to Landlord within sixty (60) days after the occurrence of such damage or destruction. Upon termination, this Lease and the Term hereof shall cease and come to an end as of the effective

date of such notice (which shall be not less than thirty (30) nor more than ninety (90) days after the notice as shall be specified in the notice).

- C. Should this lease terminate under this provision, Tenant shall be entitled to reimbursement of any and all unearned, prepaid rent. Should the Premises be untenable for any period of time covered by this provision of the lease, Landlord agrees to reimburse Tenant for any and all unearned, prepaid rent until the Premises are repaired and the Premises become tenantable. Reimbursement will be made within thirty (30) days of the date Tenant regains full tenancy. Tenant shall list Landlord as lost-payee on property insurance as the landlord's interest may appear for the building improvements and premise arising out of damage or destruction to the improvements covered by the hazards insured against on the insurance policy.

## 15. **EASEMENTS**

Landlord expressly reserves all rights in and with respect to the use of the Project as provided herein, including (without in any way limiting the generality of the foregoing) the rights of Landlord to establish common areas and grant parking easements to others and to enter upon the Premises and give easements to others for the purpose of installing, using maintaining, renewing and replacing such overhead or underground water, gas, sewer, and other pipe lines and telephone, electric and power lines, cables and conduits as Landlord may deem desirable in connection with the development or use of the other property in the Project or any other property in the neighborhood thereof, whether owned by Landlord or not.

## 16. **INDEMNIFICATION**

- A. By Tenant. Excepting any responsibility allocated to Landlord by reason of its negligence, Tenant shall indemnify, defend, and hold Landlord and Management harmless for, from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against Landlord and Management by reason of the negligent or intentional acts or omissions of Tenant, its agents, employees, contractors, suppliers, licensees, invitees and guests under its control and/or the occurrence of any of the following during the Term: (i) any use, nonuse or condition of the Premises or any part thereof; (ii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (iii) any failure on the part of Tenant to perform or comply with any of the provisions of this Lease; (iv) performance of any labor or services or the furnishing of any materials or other property in respect to the Premises or any part thereof (excluding any such matters performed or furnished by or at the request of Landlord and unrelated to a default of Tenant under this Lease); or (iv) any failure on the part of Tenant to clean up and/or dispose of any Hazardous Materials, as described above, in accordance with the requirements of this Lease and applicable law. In the event Landlord and/or Management should be made a

defendant in any action, suit or proceeding brought by reason of any such occurrence, Tenant shall, at its own expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by legal counsel designated by Tenant but approved by Landlord, with such approval not to be unreasonably withheld. If any such action, suit or proceeding should result in a final judgment against Landlord and/or Management, Tenant shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Tenant under this Section arising by reason of any such occurrence taking place while this Lease is in effect shall survive the termination of this Lease.

- B. By Landlord. Excepting any responsibility allocated to Tenant by reason of its negligence, Landlord shall indemnify, defend, and hold Tenant harmless for, from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against Tenant by reason of the negligent or intentional acts or omissions of Landlord, its agents, employees, contractors, suppliers, licensees, invitees and guests under its control and/or the occurrence of any of the following during the Term: (i) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Project or any part thereof; (ii) any failure on the part of Landlord to perform or comply with any of the provisions of this Lease; (iii) performance of any labor or services or the furnishing of any materials or other property in respect to the Premises or any part thereof (excluding any such matters performed or furnished by or at the request of Tenant and unrelated to a default of Tenant under this Lease); or (iv) any failure on the part of Landlord to clean up and/or dispose of any Hazardous Materials, as described above, in accordance with the requirements of this Lease and applicable law. In the event Tenant should be made a defendant in any action, suit or proceeding brought by reason of any such occurrence, Landlord shall, at its own expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by legal counsel approved by Tenant. If any such action, suit or proceeding should result in a final judgment against Tenant, Landlord shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Landlord under this Section arising by reason of any such occurrence taking place while this Lease is in effect shall survive the termination of this Lease.
- C. Waiver of Claims. Except for claims arising from the negligence, intentional misconduct omissions of the Landlord or the Landlord's agents, employees, contractors, suppliers, licensees, invitees and guests under Landlord's control during the Term or Landlord's failure to perform any obligation under this contract, the Landlord and its agents, contractors, or employees shall not be liable for, and Tenant hereby releases all claims for, damage to persons and property sustained by Tenant or any person claiming through Tenant. resulting from any theft, fire, accident, occurrence or condition in, on or about the Premises or building of which they are a part, including, but not limited to, such

claims for damage resulting from (i) any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring or installation thereof, water pipes, stairs, railings or walks; (ii) any equipment or appurtenances needing repair; (iii) the bursting, leaking or running of any tank, wash stand, water closet, waste pipe, drain or any other pipe or tank in or about the Premises; (iv) the backing up of any sewer pipe or down spout; (v) the escape of steam or hot water; (vi) water, snow or ice being upon or coming through the roof, parking lot, walkways or any other place upon or near the Premises or otherwise, including, without limitation, walkways, drives, parking areas, and all areas of the Project immediately adjacent to the Premises; (vii) the falling of any fixture, plaster or stucco; and (viii) broken glass. Without limiting the foregoing, Tenant acknowledges that at no time shall Tenant, its employees, representatives, vendors, customers, clients or invitees park in an area immediately adjacent to the Premises such that snow or ice could fall onto parked vehicles or cause personal injury or death. Landlord is responsible for placing signage upon the property warning of falling ice or snow.

**17. EMINENT DOMAIN**

If any part of the Premises shall be taken for public or quasi-public use by the right of eminent domain, or transferred by agreement in connection with such public or quasi-public use, with or without any condemnation action or proceeding being instituted (without improvement of Tenant's quiet enjoyment), and a part of the Premises remains which is reasonably adequate for the conduct of Tenant's business, this Lease, as to the part so taken or transferred, shall terminate as of the date title shall vest in the condemnor and the minimum guaranteed rental thereafter to be paid shall be proportionately reduced. However, in the event of such taking or transfer, Landlord shall have the option to terminate this Lease as of the date title shall vest in the condemnor, but if this option is not exercised, Landlord, at its sole expense, shall restore the part of the Premises remaining after such taking or transfer to as near its former condition as circumstances will reasonably permit. If all of the Premises shall be so taken or transferred, or such part thereof be so taken or transferred that there does not remain a portion reasonably adequate for the conduct of Tenant's business, this Lease shall thereupon terminate. If all or part of the Premises be so taken or transferred, each of Landlord and Tenant may seek compensation or damages awarded upon such taking or transfer as their interest appear.

**18. TENANT'S WAIVER**

In the event of any termination of the Term (or any repossession of the Premises), Tenant so far as permitted by law, waives (i) any notice of reentry or of the institution of legal proceedings to that end.

**19. WAIVER OF PERFORMANCE**

No failure by Landlord to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Landlord of full or partial rent during

the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease (which shall continue in full force and effect), or the respective rights of Landlord or Tenant with respect to any other then-existing or subsequent breach.

**20. REMEDIES CUMULATIVE**

Each right, power and remedy provided for in this Lease now or hereafter existing at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided for in this Lease shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

**21. CONVEYANCE BY LANDLORD**

In the event Landlord or any successor Landlord shall convey or otherwise dispose of the Premises, the conveying or disposing landlord shall thereupon be released from all liabilities and obligations upon prior landlord under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then new landlord of the Premises.

**22. NO PERSONAL LIABILITY TO LANDLORD**

Tenant shall look solely to Landlord's interest in the Premises for the satisfaction of any judgment or decree requiring the payment of money by Landlord based upon any default under this Lease, and no other property or assets of Landlord, or any partner, member, manager, or shareholder in, Landlord, shall be subject to levy, execution or other enforcement procedures for satisfaction of any such judgment or decree.

**23. ATTORNEYS' FEES**

In the event Landlord retains an attorney to enforce its rights under this Lease or to bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term of this Lease, or in the event Tenant should bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Lease, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and other expenses, which shall be deemed to have accrued due to the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**24. PROVISIONS SUBJECT TO APPLICABLE LAW**

All rights, powers and remedies provided herein shall be exercised only to the extent that the exercise thereof shall not violate any applicable law and are intended to be limited to the extent necessary so that they shall not render this Lease invalid or

unenforceable under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

**25. RIGHT TO CURE DEFAULTS**

In the event Tenant shall breach any term, covenant or provision of this Lease, Landlord may at any time, upon not less than ten (10) days written notice, cure such breach for the account. If Landlord at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, incurred in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights under this Lease or otherwise, the sum or sums so paid by Landlord, with all interest and court costs, if any, shall be deemed to be additional charges and shall be paid by Tenant to Landlord on the first day of the month following the incurring of such expenses or the payment of such sums and shall include interest at the rate of fifteen percent (15%) per annum from the date Landlord makes a payment.

**26. NOTICES**

Any notice to be given by Landlord or Tenant shall be given in writing or by certified or registered mail, postage prepaid, or sent via email communication, to the address(es) indicated above, unless the party giving any such notice has been notified, in writing, of a change of address. Any such notice shall be deemed effective (a) upon receipt or refusal to accept delivery, if personally delivered; (b) on the next business day following delivery to an overnight courier; (c) in the case of certified mailing, on the date of actual delivery as shown by the addressee's receipt or upon the expiration of three (3) business days following the date of mailing, whichever occurs first; or (d) in the case of email transmission, upon receipt (a written confirmation of successful transmission from the transmitting computer being prima facie evidence of such receipt).

**27. SIGNS**

Tenant shall not place, alter, exhibit, inscribe, paint or affix any sign, awning, canopy, advertisement, notice or other lettering on any part of the outside of the Premises, or of the building of which the Premises is a part, or inside the Premises if visible from the outside, without first obtaining Landlord's written approval thereof, which shall not be unreasonably withheld, and if so approved, Tenant shall maintain the same in good condition and repair. All signs shall comply with applicable ordinances or other governmental restrictions and with all applicable rules and regulations then in force or as may be put in force and effect from time to time by any governmental authority or by Landlord. Tenant agrees to abide by and hold Landlord harmless for any modifications or changes required by city, state or governmental agencies regarding changes in signage, existing as of the effective date of this contract and any related issues past, present, or future of signage. No sign may be erected or placed on the Premises without the prior consent of Landlord. All signs to be of uniform

specifications, design, size and color as determined by the Landlord. Cost of any signage to be paid for by Tenant. Tenant will bear its own cost for fabrication and installation of their monument sign panel(s), if any.

**28. LANDLORD'S INSPECTIONS**

- A. Inspection. Landlord reserves the right to, at all reasonable times and upon reasonable notice, by itself or by its duly authorized agents, employees and contractors, upon reasonable notice to Tenant, go upon and inspect the Premises and every part thereof, to enforce or carry out the provisions of this Lease, to make, at its option, repairs, installations, alterations, and improvements to the Premises or the Building of which the Premises are a part, to perform any defaulted obligation of Tenant or for any other proper purposes. Landlord also reserves the right to install or place upon or affix to the roof and exterior walls of the Project equipment, signs, displays, antennae and any other object or structure of any kind, provided the same shall not interfere with Tenant's occupancy or materially impair the structural integrity of the Building or Premises.
  
- B. Presenting for Sale or Lease. Landlord hereby may request to enter the Premises, to show the Premises, with the exception of the high-security designated area, for purposes of sale, lease, or mortgage, and during the last six (6) months of the Term of this Lease, or any extension hereof, to exhibit the same to any prospective tenant, and to display appropriate signage for such sale or lease during normal business hours and upon not less than forty-eight (48) hour prior notice, and comply with Tenant's reasonable security requirements. The request must not be unreasonably withheld, ensuring a fair and transparent process for granting access to the Landlord.

**29. ESTOPPEL CERTIFICATE**

Tenant will execute, acknowledge and deliver to Landlord, within ten (10) days following request therefore, a certificate certifying (a) that this Lease is unmodified and in full force (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the modifications); (b) the dates, if any, to which rent, additional charges and other sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; and (d) this Lease is and shall be subordinate to any existing or future deed of trust, mortgage or security agreement placed upon the Premises or the Project by the Landlord or owner of the property provided that Tenant receives a subordination non-disturbance and attornment agreement (SNDA) from Lender. Any claim of Tenant in contradiction of any of the foregoing matters must be set forth with specificity in the certificate. Any such certificate may be relied upon by any prospective purchaser or encumbrancer of the Premises or any part thereof. Tenant's failure to deliver such certificate within the time permitted hereby shall be conclusive upon Tenant that this Lease is in full force and effect, except to the extent any modification has been represented by Landlord, and there are no uncured defaults in Landlord's performance.



**30. WAIVER OF TRIAL BY JURY, JURISDICTION, AND VENUE**

Landlord and Tenant both hereby waive all rights to trial by jury in any claim, action, proceeding, or counterclaim brought by either party against the other on any matters arising out of or in any way connected with this lease. The parties agree that exclusive jurisdiction for all legal actions shall be in the Coconino County Superior Court.

**31. RECORDATION**

The County agrees not to record this Lease with the Coconino County Recorder's Office without prior written consent of Landlord. Should the County record the Lease, Landlord will have the option to terminate the lease by providing the County with no less than ninety (90) day's written notice of his intention to exercise this right.

**32. SUBORDINATION**

This Lease is hereby declared to be subject and subordinate to the lien of any present or future encumbrance or encumbrances upon the Premises or the Project, irrespective of the time of execution or the time of recording of any such encumbrance or encumbrances. The subordination is subject to the right of Tenant upon a foreclosure or other action taken under any mortgage by the holders thereof to have this Lease and the rights of Tenant hereunder not be disturbed but to continue in full force and effect so long as Tenant shall not be in default hereunder. Landlord shall cause any lender to deliver a subordination, non-disturbance and attornment agreement in favor of Tenant.

**33. MISCELLANEOUS**

- A. Definition of Tenant. The Term "Tenant" shall include legal representatives, successors and permitted assigns. All covenants herein shall be made binding upon Tenant and construed to be equally applicable to and binding upon its agents, employees and others claiming the right to be in the Premises or in the building or in the building through, under or above Tenant. If more than one individual, firm, or corporation shall join as Tenant, singular context shall be construed to be plural wherever necessary and the covenants of Tenant shall be the joint and several obligations of each party signing as Tenant and when the parties signing as Tenant are partners, it shall be the obligation of the firm and the individual members thereof.
- B. Gender and Number. Whenever from the context it appears appropriate, each item stated in the singular shall include the plural and vice versa and the masculine, feminine, or neuter form shall include the masculine, feminine and neuter forms.
- C. Modifications and Waivers. No change, modification, or waiver of any provision of this Lease shall be valid or binding unless it is in writing dated after the date hereof and signed by the parties intended to be bound. No waiver of

any breach, term or condition of this Lease by either party shall constitute a subsequent waiver of the same or any other breach, term, or condition.

- D. Implied Warranties. OTHER THAN AS SET FORTH IN THIS LEASE, TENANT AND LANDLORD EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE SET FORTH IN THIS LEASE.
- E. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. This provision shall not be deemed to grant Tenant any right to assign this Lease the Premises or any part thereof other than as provided in this Lease.
- F. Severability. To the fullest extent possible each provision of this agreement shall be interpreted in such fashion as to be effective and valid under applicable law. If any provision of this Lease is declared void or unenforceable with respect to particular circumstances, such provision shall remain in full force and effect in all other circumstances. If any provision of this Lease is declared void or unenforceable, such provision shall be deemed severed from this Lease, which shall otherwise remain in full force and effect.
- G. Entire Agreement. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to the Tenant, or the Lease term herein specified, and correctly sets forth the obligations of the Landlord and Tenant to each other as of its date. Any agreements or representations by the Landlord to the Tenant not expressly set forth in this instrument are void and unenforceable. All prior agreements and understandings of the parties, whether written or oral, with respect to such subject matter are hereby superseded. No representations, promises, agreements, or understandings contained in this Lease regarding the subject matter hereof shall be of any force or effect unless in writing, executed by the party to be bound, and dated on or subsequent to the date hereof. Captions and headings are for convenience only and shall not alter any provision or be used in the interpretation of this Lease.
- H. Time is of the Essence. Time is of the essence of this Lease and each and every provision hereof. Any extension of time granted for the performance of any duty under this Lease shall not be considered an extension of time for the performance of any other duty under this Lease.
- I. No Presumption. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same as it is the product of arm's length negotiation and both parties shall have had the opportunity to have had this Lease reviewed by counsel prior to execution.

- J. No Partnership. It is expressly understood that Landlord does not, in any way or for any purpose, become partner of Tenant in the conduct of its business or otherwise, or a member of a joint enterprise with Tenant.
- K. Brokers. Tenant represents and warrants that it has been represented solely by Susan Weitzman, Linton Real Estate, in this transaction and the broker will be paid per a separate written commission agreement. Stephen Thompson is representing Landlord in this transaction, is an Arizona licensed real estate salesperson with Jackson Associates, and is an immediate family member of the Landlord's member. Tenant has not entered into any agreement with, nor otherwise had any dealings with, any other brokers or agents in connection with execution of this Lease that could form the basis of any claim by any such broker or agent for a brokerage fee, commission, finder's fee, or any other compensation of any kind or nature in connection with this Leasehold.
- L. Americans with Disabilities Act. Neither Landlord nor Tenant shall violate any requirements imposed by the Americans with Disabilities Act and shall bear their own costs and expenses of meeting all current or future regulations imposed by this law. Lessor shall be responsible for any ADA upgrades necessary to the exterior of the building to bring it into compliance with current ADA requirements prior to September 30, 2023.
- M. Government Agency Clause. Tenant's payment of Rent is subject to the annual appropriation of funds by the Coconino County Board of Supervisors. If no funds are appropriated by the Board for payment of Rent, Tenant may terminate this agreement without penalty by giving thirty (30) days written notice of termination to the Landlord, provided that to be effective, such notice of termination must include reasonable evidence and supporting documentation therewith confirming lack of appropriation of funds for this lease. Notwithstanding the foregoing, the early termination right granted in this paragraph would only be available to Tenant if Coconino County no longer appropriates any funding for facilities as used by the department occupying the Premises under this Lease.

**34. Cancellation of Agreement**

Pursuant to A.R.S. 38-511, the County, within three years after execution of this Agreement, may cancel it without further penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is at any time while the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party, of the contract with respect to the subject matter of the Agreement. A cancellation made pursuant to this provision shall be effective when any party receives written notice of the cancellation unless the notice specifies a later time.

**35. Immigration and Scrutinized Business**

Pursuant to A.R.S. 41-4401, Coconino County, as a political subdivision of the State of Arizona, is required to include in all contracts the following requirements:

- a. The Landlord and each of its subcontractors warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-314(A).
- b. A breach of warranty under paragraph (a) above shall be deemed a material breach of the contract and is subject to penalties up to and including termination of the contract.
- c. The County retains the legal right to inspect the papers of the Independent Contractor or an of its subcontractors who work on the contract to ensure that Independent Contractor or its subcontractor(s) is complying with the warranty provided under paragraph (a) above.
- d. False certifications may result in the termination of this contract.

**36. Non-discrimination**

Landlord agrees that it will comply with State Executive Order Nos. 2023-01, 2009-09, and all other applicable Federal and State laws, rules and regulations prohibiting discrimination.

**37. Certification Pursuant to A.R.S. § 35-393.01**

If Landlord engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Landlord certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

**38. Certification Pursuant to A.R.S. § 35-394**

If Landlord engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Landlord certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Landlord becomes aware during the term of the contract that it is not in compliance with the written certification, Landlord shall notify the County within five business days after becoming aware of the noncompliance. If the Landlord does not provide the County with a written certification that the Landlord has remedied the noncompliance within 180 days after notifying the County of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminates on the Contract termination date.

IN WITNESS WHEREOF the parties hereto have executed this commercial Lease Agreement as of the date(s) indicated below.

**LANDLORD:**

**Woodlands Business Center, LLC**

Stephen Thompson,

By \_\_\_\_\_  
Stephen Thompson  
Manager of Woodlands Business Center, LLC

Date \_\_\_\_\_

**TENANT:**

**Coconino County Board of Supervisors**

By \_\_\_\_\_  
Patrice Horstman  
Chairwoman of the Board

Date \_\_\_\_\_

By \_\_\_\_\_  
Lindsay Daley  
Clerk of the Board

Date \_\_\_\_\_

Approved as to Form

By \_\_\_\_\_  
Deputy County Attorney

Date \_\_\_\_\_

**DATE:** June 20, 2023

**TO:** Honorable Chair and Members Flood Control District Board of Directors

**FROM:** Lucinda Andreani, Deputy County Manager/Flood Control District Administrator

**SUBJECT:** Consideration and possible action to approve a budget authority & expenditure limit increase to the Flood Control District in the amount of \$3,150,000 from response reimbursement funds provided by the Arizona Dept. of Forestry and Fire Management (DFFM).

**RECOMMENDED MOTION:**

Consideration and possible action to approve a budget authority & expenditure limit increase to the Flood Control District in the amount of \$3,150,000 from response reimbursement funds provided by the Arizona Dept. of Forestry and Fire Management (DFFM).

**BACKGROUND:**

As a result of the 45 major flood events that took place during the 2022 monsoon season, the District expended in excess of \$9 million on response and short-term mitigation. The District and the Emergency Management Dept. worked closely with the AZ Dept. of Forestry and Fire Management to secure reimbursement for \$5,283,988.51 toward those response and short-term mitigation costs. This level of reimbursement had not been anticipated. These reimbursed funds are now available to utilize for covering some of the costs that are not grant eligible associated with the current construction season as well as costs to prepare the District's existing infrastructure for the upcoming flood season. The District estimates that the current ineligible and flood preparation costs that will need to be paid with FY2023 funds is approximately \$3,150,000.

To support the District with the ineligible costs and ability to maintain cash flow through the long-term mitigation projects underway, Finance recommended that the District request budget authority to expend a portion of the DFFM reimbursement funds received by the District, which would total \$3,150,000 out of the \$5,283,988.51. The remaining balance of \$2,123,988 has already been allocated to the Flood Control District in FY24 to be used for other ineligible costs related to the Schultz/Pipeline flood mitigation.

On October 25, 2022, the Flood Control District Board of Directors approved a \$10,500,000 loan to the Flood Control District from the General Fund to help cover expenses related to costs incurred by the District as a result of the Schultz/Pipeline flood events during the summer of 2022 as well as to fund fall and early spring projects. This loan was in addition to the original emergency loan request from the General Fund of \$5,000,000 on July 22, 2022. Utilization now of a portion of the DFFM funds will **not** impact the District's planned repayment of the loans

made to the District by the General Fund. Repayment of the loans, as planned and presented to the Board many times (including during the recent FCD FY2024 Budget Hearing), will be initiated in FY2025 and total \$3.1 million per fiscal year for five years. The repayment of the loan will come from the District's property tax revenues.

To date, the District has utilized \$13,182,642 from the \$15.5 million General Fund loans. The loan funds covered the entire response costs as well as the fall/early spring project costs. The District anticipates utilizing the remainder of the loan funds, \$2,317,357, in FY2024 to also cover the long-term flood mitigation costs that are not eligible under the federal grants. If additional funds are necessary to complete the mitigation largely funded by federal grants, then District and County leadership will discuss an additional loan from the General Fund at that time. A loan from the General Fund incurs the least cost to the District and County and does not impact the County's Expenditure Limit thus this is believed to be the best option if additional funding is needed. Since early FY2023, ineligible costs have been estimated to be approximately \$10 - \$12 million over the two to three years as noted in all financial presentations since that time.

**ALTERNATIVES:**

The following alternatives are available to the Board of Directors:

- Approve the Budget Authority request
- Decline the request

**FISCAL IMPACT:**

The budget authority & expenditure limit increase would be allocated to the following fund:

- 1132.42.4408.7294.0000.637. - Schultz/Pipeline Response

**ATTACHMENTS:**

1 – Staff Report