

## EXHIBIT A

### COMMERCIAL LEASE

**THIS COMMERCIAL LEASE** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2019, (“Lease”) by and between the **CITY OF STEAMBOAT SPRINGS** (hereinafter referred to as “Landlord” or “City”), and **EN-R-G FOODS, LLC** (hereinafter referred to as “Tenant” or “EN-R-G”).

**WHEREAS**, Landlord and Tenant wish to enter into this Commercial Lease (“Lease”) for the purpose of Landlord leasing to Tenant and Tenant leasing from Landlord, the Lease Premises (defined below); and

**WHEREAS**, Section 13.6 the City’s home rule Charter authorizes the Steamboat Springs City Council to approve this Lease Agreement by adoption of an ordinance and to execute it no sooner than thirty (30) days after adoption of this ordinance; and

**WHEREAS**, the City Council on \_\_\_\_\_, 2019 approved this Lease by the adoption of Ordinance No. \_\_\_\_\_.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

#### WITNESSETH:

#### SECTION 1 LEASE OF PREMISES

A. Landlord does hereby lease to Tenant and Tenant does hereby rent and take from Landlord certain premises known as a portion of the terminal building (“Terminal Building”) at the Steamboat Springs Airport — Bob Adams Field, with an address of 3495 Airport Cir, Steamboat Springs, CO 80487 (“Airport”), containing approximately 17,837 +/- square feet, as is delineated on the building floor plan attached as Exhibit A hereto (the “Leased Premises”). Landlord represents that it owns the Leased Premises in fee simple and has the right to lease the same to Tenant. Landlord agrees to deliver the Leased Premises to Tenant on the Commencement Date (defined below) free from tenancy of any person or party other than Tenant;

B. The Lease Premises shall also include, and Landlord shall also make available to Tenant for exclusive and unlimited use, no less than 90 parking spaces adjacent to the Terminal Building, which Landlord shall provide access to, and Tenant may use 24 hours per day. Tenant anticipates that Tenant’s initial parking needs may not require the full allotment of ninety (90) spaces and that Tenant will require the full allotment of ninety (90) spaces by the end of the Initial Term of the lease. The City intends to expand the available parking at the Terminal Building to provide parking for City uses at the Airport. The parties agree to cooperate to permit City use of Tenant spaces that are not needed by Tenant pending the City’s expansion of the parking at the Terminal Building. Such use by the City shall be in Tenant’s sole discretion.

**SECTION 2  
TERM OF LEASE**

A. Initial Term. The term of this Lease (the "Initial Term") shall commence at twelve o'clock noon on the later to occur of (a) the expiration of sixty (60) days following the date the existing tenant in the Leased Premises fully vacates and surrenders the Premises back to Landlord (provided that Tenant may elect to occupy the Leased Premises sooner upon five (5) business days prior written notice) or (b) the thirtieth (30<sup>th</sup>) day following the adoption of an ordinance approving this Lease (the "Commencement Date") and shall terminate at twelve o'clock noon on \_\_\_\_\_, 202\_ (the "Termination Date"). Notwithstanding the forgoing, in the event that the Leased Premises are not made available to Tenant on, or before, December 31, 2020, then Tenant may elect to terminate this Lease without any liability whatsoever.

B. Extension Option. Notwithstanding the provisions of Section 2(A), Tenant shall have the right to extend the term of this Lease for a maximum of five (5) successive one (1) year periods (each, a "Renewal Term", and together with the Initial Term, the "Term"), and the Termination Date as defined in Section 2(A) shall be deemed extended to a date that is one (1) year after the then applicable Termination Date, by providing notice to Landlord of such election not less than sixty (60) days prior to the then applicable Termination Date (an "Extension Notice"). Tenant shall be under no obligation to extend the Term of this Lease and in the event that Tenant does not timely deliver an Extension Notice to Landlord, then this Lease shall expire as of the then scheduled Termination Date. In no event shall this Lease extend beyond \_\_\_\_\_, 20\_\_.

C. Early Termination. Tenant may terminate this lease during the Initial Term by giving no less than twelve (12) months' prior written notice to the City. The obligations of the parties hereunder shall terminate on the date given in such notice and this lease shall thereafter be of no further force or effect.

D. Holdover. Any "holding over" by Tenant after the expiration of the Term shall be construed as a month-to-month extension and such tenancy may be terminated by either party upon thirty (30) days' written notice given to the other party. Rent during such period shall be equal to 150% of the last month's rent under the then current Term of this Lease.

**SECTION 3  
RENT**

A. Commencing on the Commencement Date, the Tenant shall pay rent to the City ("Rent") equal to Eighteen Thousand Five Hundred Twenty-Seven and 25/100 Dollars (\$18,527.25) per month through the first anniversary of the Initial Lease Year (defined below).

B. Commencing on the first anniversary of the initial Lease Year, Tenant shall pay the Rent as adjusted pursuant to Paragraph C, below, entitled "Adjustment to Rent." As used herein, "Lease Year" shall mean each twelve (12) month period during the Term hereof, the first Lease Year beginning on the Commencement Date and ending on the first anniversary thereof.

C. Adjustment of Rent.

1. Rent payable by the Tenant for a Lease Year during the Term of this Lease shall be adjusted annually by the most recent annual percentage reported by the Index. The Rent so adjusted shall be the Rent for the respective Lease Year. In no event shall the Rent for any Lease Year increase by more than three percent (3%) over the Rent for the immediately preceding Lease Year; nor shall the Rent for any Lease Year decrease.

2. As used in this Section 3(D), the term "Index" shall mean the Consumer Price Index CPI-All Urban Consumers/All Items, City Average as determined by the Bureau of Labor and Statistics. If the Bureau of Labor and Statistics shall discontinue the issuance of the Index, then the rental readjustments provided for in this Lease shall be made on the basis of changes in the most comparable and recognized cost-of-living index then issued and available that is published by the United States government.

D. Except for those instances where Tenant pays utilities and other costs directly hereunder, this is a "gross lease" and not a "triple net lease", and all services typically provided to the Leased Premises and the Property on which it is located, including without limitation those matters listed in Section 4, below, shall be provided by Landlord at no additional cost to Tenant. The Tenant shall pay to the Landlord at Landlord's address as set forth herein or at such other place or places as the Landlord shall designate from time to time in writing, Rent without deduction, offset, prior notice or demand, except as otherwise herein set forth, in lawful money of the United States in monthly installments in advance, commencing on the Commencement Date and then on the first calendar day of every month thereafter during the Term hereof. In the event the Commencement Date occurs on a date that is other than the first calendar day of any month, monthly Rent shall be abated in proportion to the portion of such month actually occurring following the Commencement Date.

E. The Rent shall be paid to the Landlord by delivery to the Director of Finance at Steamboat Springs City Hall, located at 137 10th Street, Steamboat Springs, Colorado 80477 or by mailing to the Director of Finance, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477, or such other addresses as shall be designated in writing by Landlord. Payments made by mail shall be deemed paid when actually received by Landlord.

F. Late Payments. If any amount payable by Tenant pursuant to this Lease is not paid and received by Landlord within ten (10) calendar days after receipt of written notice from Landlord that such amount is past due, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the date such payment was due until paid, and in addition, Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of the amount not timely paid, payable on demand. Nothing in this paragraph (F) shall limit any right of Landlord with respect to any default by Tenant or be construed, as granting Tenant a grace period or right to cure, not otherwise herein set forth. All amounts received by Landlord from Tenant shall be applied first to amounts paid by Landlord on Tenant's behalf pursuant to this Lease, next to any amounts other than rent owing by Tenant to Landlord hereunder, including interest, late charges, and the remainder shall be applied to the rent payable hereunder.

**SECTION 4**  
**ITEMIZATION OF FINANCIAL OBLIGATIONS**  
**TO BE PAID BY LANDLORD AND BY TENANT**

A. Financial Obligations to be Paid by Tenant:

1. All reasonable and actual expenses directly incurred by Tenant in the management, operation, maintenance, repair and security of the non-structural portions of the interior of the Leased Premises, including signage erected or installed by Tenant pursuant to Section 7.D. of this Lease, and including the removal of such signage and restoration of the site of such signage, (except to the extent that Landlord is obligated to repair or maintain any such item pursuant to the terms and conditions of this Lease);

2. During the Term hereof, Tenant shall pay, prior to delinquency, all sales and use taxes, personal property taxes and other taxes, charges, notes, duties and assessments levied, and rates or fees imposed, charged, or assessed against or in respect of Tenant's occupancy of the Leased Premises or in respect of the personal property, trade fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Leased Premises, and shall hold Landlord harmless from and against all payment of such taxes, charges, notes, duties, assessments, rates and fees, and against all loss, costs, charges, and expenses occasioned by or arising therefrom. If applicable, Tenant shall use commercially reasonable efforts to cause said fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real and personal property of Landlord (and Landlord shall reasonably cooperate in connection therewith);

3. The parties acknowledge that the City was not assessed property taxes for the Leased Premises during the occupancy of the City's previous tenant. In the event that real property tax is levied against the City for the Leased Premises at any time for a tax year occurring during the term of this Lease, the Landlord and Tenant shall each be responsible for 50% of the real property taxes levied against the Leased Premises. Upon receipt of the statement of taxes due and owing for a tax year occurring during the term of this lease, the City shall within ten (10) days provide notice of such statement to Tenant and Tenant shall be obligated to pay its 50% share of the real property tax due in equal monthly installments over the next twelve (12) month period. Either party may protest the assessment of real property taxes levied against the Lease Premises and the City shall cooperate in any protest made by Tenant;

4. All of Tenant's accounting, legal, janitorial, maintenance, guard and other services (to the extent hired and performed by Tenant), and Tenant's insurance; and

5. Costs incurred due to a violation of any applicable laws, ordinances, or other legal requirements pertaining to the Premises (including any requirements imposed by the Americans with Disability Act ("ADA")) only to the extent that: (i) such violations did not exist as of the Commencement Date; and (ii) such violations are caused by Tenant's specific use of the Premises or the type of improvements performed within the Premises by Tenant.

B. Financial Obligations to be Paid by Landlord:

1. Any expense of Landlord incurred in connection with any remediation or abatement of asbestos containing materials ("ACM's") or any petroleum or petroleum products, used oil, explosives, toxic materials or substances defined as hazardous wastes, hazardous materials or hazardous substances under any federal, state or local law or regulation;
2. Any costs or expenses incurred by the Landlord, including any leasing commissions, attorney fees, or other expenses incurred by Landlord, provided, however, Tenant may be obligated to reimburse Landlord for such costs and expenses pursuant to an Early Termination Notice defined in Section 2.C;
3. The costs of all repairs to the roof and HVAC system, provided that the damages and needed repairs were not caused by the negligence or willful misconduct of Tenant;
4. Costs incurred due to: (i) a violation by Landlord of any applicable laws, ordinances, or other legal requirements pertaining to the Terminal Building, Airport or other portions of the Leased Premises; or (ii) a failure of the Leased Premises to comply with any applicable laws, regulations and/or ordinances (except as provided in Section 4(A)(5) above).
5. Any costs and expenses incurred in complying with all applicable laws relating to the ownership of the Terminal Building, Airport or other portions of the Leased Premises (including, without limitation, the costs of retrofitting or otherwise altering the Terminal Building or the real property on which the Terminal Building is located to comply with energy conservation, carbon footprint or greenhouse gas mitigation, or similar requirements);
6. Repairs and other work to the Terminal Building occasioned by fire, windstorm or other casualty regardless of whether Landlord or Landlord's mortgagee are entitled to be paid through insurance or condemnation proceeds, except to the extent caused by the negligence or willful misconduct of Tenant;
7. The costs of Landlord's general overhead and general administrative expenses;
8. Any expenses in connection with the operation and maintenance of sidewalks, driveways and parking facilities/lots, including cleaning, restriping, patching, repaving and general maintenance;
9. Costs or expenses incurred by Landlord associated with retrofitting of the Terminal Building's HVAC system to bring such system in compliance with the Federal Clean Air Act or other laws;
10. Notwithstanding any other provisions herein, repairs resulting from any defect in the original design or construction of the Terminal Building or the Terminal Building's equipment; or repairs necessitated by the negligence of Landlord, its agents or contractors or required to cure violations of laws, easements, or covenants applicable to the Terminal Building or the real property on which the Terminal Building is situated in effect on the lease execution date and any penalties or interest incurred or accumulated for any such violation;

11. Costs of maintaining, repairing, and replacing all roof systems, foundations, exterior walls, windows, window frames, plate glass, doors, structural components of the building, building entrances, drainage systems and other exterior fixtures and utility systems in a state of reasonable appearance, operability and repair; provided, however, that the costs of maintaining, repairing and replacing the above-referenced items were not the result of the negligence or willful conduct of Tenant or Tenants employees, agents, or contractors;

12. Costs or maintenance and replacement of landscaping, including irrigation, replacement of trees, landscaping materials, shrubbery, plantings and lawns in a reasonable and presentable condition;

13. Snow and ice removal by 8:00 a.m. every day during the Term hereof from sidewalks, driveways and parking areas to permit reasonable and regular access to the Terminal Building and to needed parking for Tenant's operations; and

14. Any other costs allocated to Landlord pursuant to this Lease (including, but not limited to, those set forth in Section 16 below)

Subject to Tenant's payment obligations expressly set forth in this Lease and Tenant's performance of Tenant's other obligations hereunder, Landlord shall, at its sole cost and expense, pay all expenses relating to the ownership, use, maintenance and development of the Terminal Building (and any other portion of the Leased Premises), including without limitation the items set forth above in this Section 4, in a timely manner.

## **SECTION 5 UTILITIES**

Water and sewer utility charges shall be included in the Rent and paid by Landlord. Electric and gas utility charges shall be separately metered to the Leased Premises and paid by Tenant. The Landlord shall contract for and pay the cost of trash removal resulting from the Tenant's occupancy of the Leased Premises for office purposes, as such use is defined in Section 7, below. If Tenant has trash removal needs over and above those for ordinary office use, Tenant shall be responsible for separately contracting for and paying those extraordinary trash removal costs.

## **SECTION 6 CONDITION OF LEASED PREMISES**

Landlord agrees that it will provide the Leased Premises with facilities for delivery to the Leased Premises of gas, water, electric and sewage collection adequate for Tenant's use of the Leased Premises for office space, provided that, in the event any such utilities are disrupted for a period longer than two (2) business days, which disruption is not due to the negligence or willful misconduct of Tenant, Rent shall be abated for the period of such disruption occurring after such two (2) business day period. Subject to the terms and conditions hereof (including, but not limited to, any representations of Landlord set forth herein), Tenant acknowledges that it has inspected the Leased Premises and is satisfied that the Leased Premises shall be served on the Commencement Date by phone/data lines sufficient for their business needs. Landlord warrants and represents to Tenant that: (i) use of the Leased Premises is in compliance with all applicable

state or federal, laws, regulations, ordinances or governmental rules or regulations now in force, including, but not limited to, the provisions of the City of Steamboat Springs Community Development Code (“CDC”) and the ADA; (ii) all of the building/mechanical systems and fixtures in the Leased Premises (including, but not limited to, the water, sewer, electrical, mechanical, fire safety, and heating, ventilation, and air conditioning systems) are currently operable and in a state of good order and repair, and sufficient for Tenant’s use, and (c) the structure of the Terminal Building (including, but not limited to, the walls, columns, beams, footings, foundation, roof, windows and doors) is currently in a state of good repair,. The City has submitted a letter to the Federal Aviation Administration (“FAA”) advising the FAA of this Lease. Landlord shall not construct or authorize the construction by others of any new structures within 15’ of the Leased Premises. Tenant, by taking possession of the Leased Premises as of the Commencement Date, shall be deemed to have agreed that the Leased Premises were, as of the date of taking possession, in good order, repair and condition, except for any latent defects that were not reasonably discoverable by Tenant prior to taking possession of the Leased Premises, which latent defects are the Landlord’s responsibility to repair, and except for any adverse condition with respect to the Leased Premises about which Tenant had given Landlord notice prior to the Commencement Date hereof, which matters remain the Landlord’s responsibility to repair. Subject to the terms and conditions hereof (including, but not limited to, any representations of Landlord set forth herein), Tenant accepts the Leased Premises in “as is” condition.

## **SECTION 7 USE OF LEASED PREMISES**

A. Use. Unless otherwise agreed by Landlord, which approval shall not be unreasonably withheld, Tenant agrees to use the Leased Premises only for office purposes, and such other lawful uses that are necessary or convenient in connection with such uses, and for no other activities unless associated with this use. Unless Landlord agrees otherwise, which agreement shall not be unreasonably withheld, delayed or conditioned, Tenant shall not use the Leased Premises or permit the use of the Leased Premises for any other activities, including, without limitation, the manufacture or assembly of any products.

B. Hazardous Use. Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Leased Premises any articles, which Tenant knows are prohibited by an insurance policy in force from time to time covering the Leased Premises.

C. No Waste. Tenant shall not commit, suffer or permit any waste, damage, disfiguration, or injury to the Leased Premises or the common areas or the fixtures and equipment located therein or thereon, or permit to suffer any overloading of the floors thereof, without first obtaining the written consent of Landlord and shall not use or permit to be used any part of the Leased Premises for any dangerous or noxious trade or business, and shall not cause or permit any nuisance in, at, or on the Leased Premises.

D. Protection Against Insurance Cancellation. If any insurance policy shall be canceled or if cancellation shall be threatened, or if the coverage thereunder shall be reduced or be threatened to be reduced, in any way by reason of the use or occupation of the Leased Premises or any part thereof by Tenant, any assignee or subtenant of Tenant, or by anyone

permitted by Tenant to be upon the Leased Premises, and if Tenant fails to remedy the condition giving rise to the cancellation, threatened cancellation, reduction, or threatened reduction of coverage, Tenant shall, subject to the notice provisions set forth in Section 17 hereof, be in default of its obligations hereunder. Landlord represents and warrants that the permitted use (as described in Section 7) will not trigger any cancellation of Landlord's insurance and Tenant shall have no obligations or liability under this Section 7D if Tenant is using the Leased Premises for a use permitted hereunder.

E. Signs and Advertising.

1. Tenant shall not install, paint, display, inscribe, place, or affix any sign, awning, picture advertisement, notice, lettering, or direction in the interior or exterior of the Leased Premises which is visible from the outside of the Terminal Building, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Landlord consents to Tenant's joint use with Landlord of the monument sign or the use of other signage located at the entry to the Airport that identifies Tenant's use of the Terminal Building separately from Landlord's airport use. Modifications to the monument sign or the installation of other signage located at the entry to the Airport shall be at Tenant's expense and shall comply with all applicable laws, regulations, or ordinances including, but not limited to, any FAA regulations and the City's sign code.

2. Landlord shall, subject to its compliance with all applicable laws, regulations or ordinances (including, but not limited to, any FAA regulations and the City's sign code), cooperate with Tenant with respect to the placement of advertising signage, at Tenant's sole cost and expense, on the Airport property. Such signage shall be removed by Tenant at the end of the term of this Lease and the site of the signage shall be restored to its original condition by Tenant at Tenant's expense.

3. Tenant may name or re-name the Terminal Building during the term of this Lease with the prior written consent of Landlord (such consent not to be unreasonably withheld, conditioned or delayed).

F. Entry by Landlord. Landlord and its agents shall have the right to enter the Leased Premises at reasonable times during normal business hours upon reasonable advance notice (not less than two business days) for the purpose of examining or inspecting the same, to show same to prospective purchasers or tenants during the final six (6) months of the Term of the Lease, and to make any repairs to, or to undertake any other maintenance of, the Leased Premises to the extent that such repairs or maintenance is required to be undertaken by Landlord pursuant to the terms of this Lease. Landlord shall use its best efforts on any such entry not to unreasonably interrupt or interfere with Tenant's use and occupancy of the Leased Premises. In the event any such alterations, repairs, improvements or additions unreasonably interfere with Tenant's use of all or part of the Leased Premises, rent shall be abated in proportion to the area of the Leased Premises so affected.

**SECTION 8  
ALTERATIONS**

A. Alterations. Except as otherwise provided in this Section 8, Tenant shall not, without the prior written consent of Landlord (such consent not to be unreasonably withheld, delayed or conditioned), make any alterations, improvements or additions to the Leased Premises, including but not limited to, partitions, wall coverings, floor coverings, and special lighting installations, improvements, or additions, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the requirements and limitations as provided in this Section 8, Tenant may at its own cost and expense, make such leasehold improvements to the Leased Premises as are necessary for the operation of Tenant's business. Tenant shall first submit to Landlord plans and specifications therefore and obtain Landlord's written approval thereof (such approval not to be unreasonably withheld, delayed or conditioned) prior to commencing any such work. Notwithstanding the foregoing or anything to the contrary provided herein, Tenant shall be permitted to make any alterations, improvements or additions to the Leased Premises without the consent of Landlord if the estimated cost of the same does not exceed Fifty Thousand Dollars (\$50,000.00). All alterations, improvements, or additions to the Leased Premises, whether temporary or permanent in character, made by Landlord or Tenant in or upon the Leased Premises shall be Landlord's property and Tenant shall not have the option to remove the same at or prior to the termination of this Lease, without the express written permission of and agreed upon compensation paid to Landlord. Notwithstanding the foregoing, Tenant shall have the right to remove Tenant's movable office furniture, trade fixtures, and office and professional equipment and all other items of Tenant's personal property ("Tenant FF&E") from the Leased Premises at any time at or prior to the termination of this Lease; provided, however, that Landlord shall have the right to require Tenant to remove such Tenant FF&E at Tenant's cost upon the termination of this Lease. The repair of any damage caused to the Leased Premises as a result of any such removal shall be paid for by Tenant. The work necessary to make any repairs required pursuant to this Section, or to make any alterations, improvements, or additions to the Leased Premises to which Landlord may consent pursuant hereto, shall be done only under written contract approved in writing by Landlord, and subject to all conditions Landlord may reasonably impose. Any such consent of the Landlord shall not be unreasonably withheld (or delayed) nor shall such conditions be unreasonably imposed. Tenant shall promptly pay for the cost of all such work and Tenant shall defend and hold Landlord and the Leased Premises, harmless from all reasonable, documented and out-of-pocket costs, damages, liens for labor, services, or materials relating to such work, and shall defend and hold Landlord harmless from all costs, damages, liens, and expenses related thereto including attorney fees. In the event that Landlord incurs any documented and out of pocket expenses as a result of Tenant's work or Tenant's contractors' or subcontractors work then Tenant agrees it shall reimburse Landlord immediately upon demand, in addition to the Rent set forth above, to the extent such costs are reasonable.

B. Protection Against Liens. At least five (5) days prior to the commencement of any work on the Leased Premises, Tenant shall notify Landlord of the names and addresses of the persons supplying labor and materials for the proposed work so that Landlord may avail itself of the provisions of statutes such as Section 38-22-105(2) of the Colorado Revised Statutes. During the progress of any such work on the Leased Premises, Landlord or its representatives shall have the right to go upon and inspect the Leased Premises at reasonable times during normal business hours and upon reasonable advance notice, and shall have the right to post and keep posted thereon such notices as Landlord shall deem proper.

C. Condition on Surrender. Tenant shall, at the termination of this Lease, surrender the Leased Premises to Landlord in substantially the same condition as it existed as of the Commencement Date, loss by ordinary wear and tear, fire, and other insured against casualty excepted, and in the state of broom cleanliness.

D. Damage by Tenant. If any part of the Leased Premises or other Property of Landlord becomes damaged or are destroyed through the negligence, carelessness, or misuse of Tenant, its servants, agents, employees, then the cost of necessary repairs, replacements, or alterations shall be borne by Tenant, who shall, on demand, forthwith pay the same to Landlord in addition to the Rent set forth above, except to the extent that the cost of such repairs, replacements, or alterations are covered by any property insurance policy maintained (or required to be maintained) by Landlord.

## **SECTION 9 INSURANCE**

A. Tenant shall during the entire Term of this Lease, at its sole cost and expense, obtain, maintain, and keep in full force and effect the following types of insurance.

1. Fire and extended coverage insurance (“all-risk”), including coverage for vandalism, malicious mischief, theft, and sprinkler leakage, covering the Tenant FF&E in an amount not less than the full replacement cost of such property without the deduction for depreciation;

2. Comprehensive general liability insurance with limits no less than \$2,000,000.00, each occurrence, combined single limit bodily injury and property damage including contractual liability, personal injury, products and completed operations coverage, with respect to all claims, demands, or actions by any person, firm, or corporation, in any way arising from, related, or connected with the conduct and operation of Tenant’s business in the Leased Premises or Tenant’s use of the Leased Premises. Said policy shall name Landlord as an additional insured;

3. [Intentionally Omitted];

4. Worker’s compensation with employer’s liability limits not less than required by applicable law and any other forms of insurance as the mortgagees of Landlord may reasonably require from time to time, in amounts and for insurance risks against which a prudent tenant would protect itself; and

5. All such policies shall be primary insurance to any other insurance available to Landlord. All policies shall be taken out with insurers acceptable to Landlord, such acceptance to be not unreasonably withheld, and in a form satisfactory from time to time to Landlord. Tenant agrees that certificates of insurance or, if required by Landlord or the mortgagees of Landlord, certified copies of each insurance policy will be delivered to Landlord upon request. All policies shall require that at least ten (10) days prior written notice be

delivered to Landlord by the insurer prior to termination, cancellation, or material change in such insurance.

B. Landlord at its sole cost and expense shall obtain, maintain and keep in full force and effect (i) fire and extended coverage “all risk” insurance including coverage for vandalism, malicious mischief, theft, and sprinkler leakage for the Terminal Building and the Leased Premises (which coverage shall include Tenant’s leasehold improvements) in an amount not less than the full replacement cost of such building without deduction for depreciation and (ii) comprehensive general liability insurance with limits no less than \$2,000,000.00, each occurrence, combined single limit bodily injury and property damage, personal injury, with respect to all claims, demands, or actions by any person, firm, or corporation, in any way arising from, related, or connected with the conduct and operation of Landlord's business in or around the Terminal Building (said policy shall name Tenant as an additional insured).

C. Nothing contained in this Lease shall be construed as a waiver, in whole or in part, of the City’s rights under the Colorado Governmental Immunity Act, §24-10-101 et seq. C.R.S.

D. Notwithstanding anything contained in this Lease to the contrary, to the maximum extent permitted by law, Tenant shall have the right to self-insure any of the insurance required to be carried by Tenant hereunder. Tenant shall promptly provide Landlord with notice of its election to self-insure any of the insurance required to be carried by Tenant hereunder.

## **SECTION 10 SUBROGATION**

Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby mutually waive all rights of recovery against each other for any loss in or about the Leased Premises from perils insured against under their respective property insurance policies (or which would have been insured against had Landlord and Tenant carried the property insurance required hereunder), whether due to negligence or any other cause. Both parties shall undertake in good faith to obtain from their respective insurance companies, approval of the waiver of subrogation as provided hereunder. Either party shall, at the request of the other, execute and deliver a waiver of subrogation, consistent with this paragraph and otherwise in the form and content as requested by such party’s insurance carrier.

## **SECTION 11 EMINENT DOMAIN**

If all or any part of the Leased Premises shall be lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, at Tenant’s option, the Term of this Lease shall end upon, and not before, the date of the taking of possession by the condemning authority, and the award shall be apportioned between Landlord and Tenant as provided by law. If the Lease is not so terminated, monthly Rent shall be abated in proportion to that portion of the Leased Premises so taken or condemned. Current Rent shall be apportioned as of the date of such termination. In the event of termination of this Lease pursuant to this Section 11 by eminent domain proceedings prosecuted by the City of

Steamboat Springs or any authority or other entity which owns and/or operates the Airport, or of which the City is a member, Landlord shall pay to Tenant in addition to any condemnation award Tenant may otherwise receive, within ninety (90) days of taking possession of the Leased Premises, a relocation fee equal to the lesser of (a) \$120,000, or (b) Tenant's actual cost to relocate.

## **SECTION 12 DUTY TO DEFEND/INDEMNITY**

A. Tenant to Defend. In the event that any action or proceeding shall be brought against Landlord by reason of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, its agents or employees, or arising from the keeping of dogs on the Leased Premises by Tenant or Tenant's directors, officers, agents, contractors, employees, or other representatives regardless of any act by or negligence of Tenant, then Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord; provided, however, Tenant's obligations shall be limited to the extent of its insurance coverage and to the extent of the liability limits set forth in the Colorado Governmental Immunity Act.

B. Landlord to Defend. In the event that any action or proceeding shall be brought against Tenant by reason of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any act or negligence of Landlord, its agents, or employees, then Landlord upon notice from Tenant, shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant; provided, however, Landlord's obligation shall be limited to the extent of its insurance coverage and to the extent of the liability limits set forth in the Colorado Governmental Immunity Act. The parties do not intend by this provision to waive any immunities that may be available to Landlord under the Colorado Governmental Immunity Act, §24-10-101 et seq. C.R.S.

C. In addition, each party (as the "Indemnifying Party") agrees to indemnify and hold harmless the other party and its members and their respective equity-holders, directors, officers, employees, agents, attorneys, successors and assigns (collectively, the "Indemnified Party") from and against any and all liabilities, obligations, claims, damages, costs and expenses (including reasonable attorney's fees) (except to the extent the Indemnified Party is compensated by insurance maintained by Landlord or Tenant and except for such of the foregoing as arise from the negligence, recklessness or willful misconduct of Indemnified Party) incurred by an Indemnified Party by reason of: (a) the negligent acts or omissions of the Indemnifying Party or its affiliates; (b) any failure on the part of the Indemnifying Party to perform or comply with any of the terms of this Lease, or (c) with respect to Tenant's obligation to indemnify, the keeping of pets on the Leased Premises by Tenant or Tenant's directors, officers, agents, contractors, employees, or other representatives. Each party's obligation to indemnify the other party pursuant to this Subsection 12.C shall be limited to the extent of its insurance coverage and to the extent to the liability limits set forth in the Colorado Governmental Immunity Act. The parties do not intend by this provision to waive any immunities that may be available to Landlord under the Colorado Governmental Immunity Act §24-10-101 et seq. C.R.S.

**SECTION 13  
RIGHT OF LANDLORD TO PERFORM  
TENANT'S OBLIGATIONS**

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense, and without any abatement of Rent, except as otherwise herein set forth. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after written notice thereof by Landlord (provided that such cure period shall be extended for so long as is reasonably necessary to effectuate a cure provided that Tenant has commenced its cure within such thirty (30) day period and is diligently pursuing the same to completion), Landlord may, but shall not be obligated to do so, and without waving or releasing Tenant from any obligations of Tenant, made make any such payment or perform any such other act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the same rate as is provided herein for late rent payments, from the date of such payment by Landlord, shall be payable to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have as Landlord's sole remedy for non-payment by Tenant for any such amounts the right to sue for recovery of damages.

**SECTION 14  
IMPACT FEES**

The City acknowledges that there will be no impact fees assessed against the Tenant for the change in use or for the improvements constructed on the Leased Premises (however, Tenant acknowledges that for purposes of this sentence, so called "tap fees" shall not be deemed to constitute "impact fees"). Notwithstanding the foregoing, Tenant acknowledges the obligation to pay any and all normal and customary costs associated with obtaining a building permit and commencing construction within the City of Steamboat Springs, including, without limitation, application fees, plan check fees, excise taxes, use taxes, and any other fees, costs and taxes associated with construction.

**SECTION 15  
SECURITY FOR TENANT'S OBLIGATIONS**

Tenant shall provide a security deposit in the amount of the first and last month's rent ("Security Deposit"). For purposes of determining the amount of the Security Deposit only, the last month's rent shall be determined without reference to the adjustments described in Section 3.C, *supra*. If Tenant shall default in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) apply all, or any portion of, the Security Deposit to the damages sustained by Landlord as a result of or to cure such default. Upon the expiration or termination of this Lease, Landlord shall promptly return the Security Deposit (or remaining portion thereof) to Tenant.

Tenant shall provide an additional security deposit in the amount of the first month's rent ("Additional Security Deposit"). Landlord may apply all, or any portion of, the Additional

Security Deposit for cleaning, maintenance, or repairs to the Leased Premises related to the keeping of pets on the Leased Premises by Tenant and Tenant's directors, officers, contractors, agents, employees, or other representatives.

## **SECTION 16 REPAIRS, MAINTENANCE AND DESTRUCTION**

Subject to Section 4 hereof, Tenant agrees, at all times during the Term hereof or any extension thereof and at its own expense, to (a) maintain in good condition, and promptly and diligently repair any damage to, the interior of the Leased Premises and every part thereof, except to the extent: (i) such damage existed on the Commencement Date; or (ii) such damage is attributable to normal wear and tear, or to the negligence or the intentional act or omission of Landlord, or fire or other insurable casualty or Act of God or the elements, or the negligence or acts of adjacent tenants or their customers or invitees, or water leakage or utility failure not caused by Tenant; (b) promptly and diligently repair any damage to the Leased Premises attributable to the negligence or the intentional act or omission of Tenant or its subtenants, employees or agents; and (c) maintain in good condition, and promptly and diligently repair any damage to (or replace if reasonably necessary in the circumstances), any of Tenant's Trade Fixtures installed in or attached to the Leased Premises.

Landlord shall be required to repair, restore or reconstruct the Leased Premises and the building of which the Leased Premises is a part (excluding inventory and Tenant's Trade Fixtures) to correct damage thereto or destruction thereof caused by fire or other insurable casualty or Act of God or the elements, or the negligence or acts of adjacent tenants or their customers or invitees, or water leakage or utility failure not caused by Tenant. Further, subject to Section 4B and Section 8D above, Landlord shall maintain and promptly and diligently repair any damage to or destruction of the roof, exterior walls (including windows and doors) and other structural parts, including the structural floor and interior supporting walls, columns and beams, of the Leased Premises and any and all pipes, plumbing, wires, lighting, heating and cooling systems and conduits within the walls of the Leased Premises. Landlord further agrees to maintain the exterior parking areas, walkways, drives, and landscaping in place from time to time on Landlord's property at the Airport and to remove snow from drives, sidewalks, entryways, and parking areas to provide access and parking to Tenant. Landlord agrees to paint the exterior of the building of which the Leased Premises is a part when necessary or appropriate. Landlord shall also take any other actions required by Section 4B above. All maintenance, repairs and/or alterations performed by, or on behalf of, Landlord shall be completed expeditiously, in a good and workmanlike manner, in compliance with all legal and insurance requirements, and with as little interference with Tenant's business as possible.

In the event Landlord fails satisfy any of its obligations pursuant to this Section 16 within thirty (30) days after receipt of written notice from Tenant, Tenant may perform such obligations on Landlord's behalf, and Landlord shall reimburse Tenant for all costs and expenses incurred by Tenant in connection therewith upon written demand by Tenant within ten (10) days of receipt of Tenant's written demand.

In the event Landlord does not reimburse Tenant for such costs and expenses as provided above, Tenant may set-off the obligation to pay Rent hereunder in an amount equal to all costs and expenses incurred by Tenant in the performance of Landlord's obligations hereunder.

With respect to Landlord's repair obligations hereunder, if the interior of the Leased Premises is damaged by fire or other insurable casualty or Act of God or the elements, or negligence or acts of adjacent tenants or their customers or invitees, or water leakage or utility failure not caused by Lessee, or if the roof, exterior walls and other structural parts of the Leased Premises are damaged or destroyed from any cause except the negligence or the intentional act or omission of Tenant or its subtenants, employees or agents, then Landlord shall execute diligence in commencing the repair and reconstruction and in prosecuting the same to completion, and during the period after such damage or destruction to completion of repair and restoration, Rent shall entirely abate and shall not be due. Further, Tenant shall not be liable for any Rent during any period after any damage or destruction in which customary ingress and egress to the Leased Premises is materially impeded, by reason of such damage or destruction or by reason of the repair or restoration of the Terminal Building.

In the event Tenant fails to satisfy any of its obligations pursuant to this Section 16 within thirty (30) days after receipt of written notice from Landlord, Landlord may perform such obligations on Tenant's behalf, and Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection therewith upon written demand by Landlord within ten (10) days of receipt of Landlord's written demand. In the event Tenant does not reimburse Landlord for such costs and expenses as provided above, Landlord may treat the unpaid amounts due Landlord as unpaid Rent and exercise any remedy available to Landlord for nonpayment of Rent.

Notwithstanding anything elsewhere set forth herein, if repairs cannot be made within one hundred twenty (120) days after the occurrence of damage or destruction to the Leased Premises, Landlord shall notify Tenant within thirty (30) days of the date of occurrence of such damage as to such fact and that either party may, by written notice to the other, cancel this Lease as of the date of occurrence of such damage. In the event of such termination, Tenant shall have no further liability to the Landlord for any rent payments, and if the Lease is terminated by Landlord, Tenant shall recover from Landlord Tenant's actual moving costs less insurance payments received by Tenant for its actual moving costs. The maximum contribution by the Landlord to Tenant's actual moving costs, as reduced by insurance payments, shall be \$20,000.

Landlord shall be entitled at all reasonable times (upon not less than two (2) business days prior written notice) to enter onto and upon the Leased Premises and shall have all such rights as may enable it to promptly, efficiently and economically carry on any work or repair, reconstruction or restoration as to which it is obligated hereunder.

## **SECTION 17 DEFAULT; REMEDIES**

If Tenant defaults in the payment of any rental or other sum due hereunder or defaults in the performance of any of the covenants or obligations of Tenant herein, Landlord shall give to Tenant written notice of such default. If Tenant does not cure a default in the performance of an obligation not involving payment of Rent within thirty (30) days after the giving of such written notice (or, if such default is of such a nature that it cannot be completely cured within such 30 days, if Tenant does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Landlord's sole and exclusive remedy shall be to obtain equitable relief by injunction and restraining order against Tenant or to sue Tenant for recovery of damages for any amount not paid. If Tenant does not cure a default in payment of Rent within fifteen (15) days after the giving of such written notice, then Landlord's sole and exclusive remedy shall be one of the following, as selected by Landlord:

- a. Surrender of Possession to Landlord. Landlord may require Tenant to surrender possession and Landlord may re-enter and take possession of the Leased Premises on not less than ten (10) days' written notice to Tenant (such notice to be in addition to any other notice and cure periods set forth herein), which notice shall be sent by certified mail, return receipt requested, and on the last day of the month in which such ten (10) days after notice occurs, Tenant shall surrender possession of the Leased Premises to Landlord, but Tenant shall remain liable to Landlord for all amounts due under the Lease, until (a) the end of the existing Lease Term, or (b) the reletting or occupancy of the Leased Premises by Landlord, whichever shall first occur. Landlord shall mitigate its damages by making reasonable efforts to relet the Premises on reasonable terms. Landlord shall credit any Rent received from a new tenant against the Rent due by Tenant to a maximum of the Rent received from the new tenant. In no event shall Tenant be entitled to any money if the Rent paid by the new tenant exceeds the Rent due from Tenant. If the City occupies the Leased Premises, the City shall be deemed to be the "new tenant" under the previous sentence and the credit against Rent shall be deemed to be the full amount of Rent payable by Tenant hereunder. If Tenant's right to possession of the Leased Premises ends as set forth in this Section, Landlord may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Tenant or other occupants and their effects; or
- b. Suit. Without terminating this Lease and without re-entering any part of the Premises, and whether or not Tenant has vacated or abandoned or attempted to surrender the Premises, Landlord may maintain Tenant's right to possession and may enforce by suit for money judgment the obligations of Tenant to pay rentals and other sums as and when they fall due.
- c. Termination. Landlord may terminate this Lease on not less than ten (10) days' written notice to Tenant (such notice to be in addition to any other notice and cure periods set forth herein), which notice shall be sent by certified mail, return receipt requested, and on the last day of the month in

which such ten (10) days after notice occurs, the Term of this Lease shall terminate and Tenant shall quit and surrender the Leased Premises to Landlord, but Tenant shall remain liable to Landlord for all amounts due and accrued and payable under the Lease up to the date of termination. If this Lease is so terminated by Landlord, Landlord may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Tenant or other occupants and their effects.

In the event Landlord shall terminate this Lease after Tenant's default as above provided, as opposed to the Landlord exercising its option to retake possession of the Leased Premises without terminating the Lease, then Tenant shall have no liability whatsoever to Landlord for any sum, amount, charge, deficiency, cost, penalty, damage, rental or otherwise, accruing or claimed to accrue after the date of such termination or the vacation of the Leased Premises by Tenant, whichever is later. Notwithstanding anything to the foregoing provided herein, Landlord has an affirmative obligation hereunder to mitigate its damages and in the event Landlord successfully relets the Leased Premises, then Landlord shall credit to Tenant such rental amounts not in excess of Rent payable hereunder. **EXCEPT AS TO DAMAGES CAUSED TO LANDLORD BY REASON OF TENANT'S HOLDING OVER AFTER THE EXPIRATION OF THE TERM OF THIS LEASE, NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED HEREIN, IN NO EVENT SHALL TENANT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT TENANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

If Landlord defaults in the payment of any sum to Tenant hereunder, or if Landlord defaults in the performance of any of the covenants or obligations of Landlord herein, then Tenant shall give to Landlord written notice of such default and if Landlord does not cure any payment obligation within fifteen (15) days, or other default within thirty (30) days after the giving of such written notice (or if such other default is of such a nature that it cannot be completely cured within such 30 days, if Landlord does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Tenant shall have all remedies at law for damages and in equity for specific performance or injunctive relief. In addition, if Landlord defaults in the performance of its covenants and obligations contained in this Lease, then in addition to the above remedies, Tenant may terminate this Lease on not less than thirty (30) days' written notice to Landlord, which notice shall be sent by certified mail, return receipt requested, and on the last day of the month in which such 30th day after notice occurs, the Term of this Lease shall terminate and Tenant shall quit and surrender the demised premises to Landlord, but Tenant shall remain liable to Landlord for all unpaid amounts due hereunder and accrued and payable up to the date of Landlord's default, but Tenant shall have no liability for liquidated damages and no liability whatsoever to Landlord for so terminating or for any sum, amount, charge, deficiency, cost, penalty, damage, rental or otherwise accruing or claimed to accrue after the date of such Landlord's default.



With a copy to

Fitzpatrick, Lentz & Bubba, P.C.  
Attn: Ken Charette, Esq.  
4001 Schoolhouse Lane  
Center Valley, PA 18034  
Email: KCharette@flblaw.com

### **SECTION 18 ATTORNEY'S FEES**

In the event of any litigation or arbitration between Tenant and Landlord to enforce any provision of this Lease or any right of either party hereto, the substantially successful party to such litigation or arbitration shall be awarded its reasonable, documented and out-of-pocket legal fees and costs as against the substantially unsuccessful party.

### **SECTION 19 ESTOPPEL CERTIFICATE**

Tenant and Landlord shall, at any time and from time to time, upon not less than ten (10) days prior written request from the other party to this Lease, execute, acknowledge, and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Rent and other charges are paid (the "Estoppel Certificate"), provided that neither party to this Lease shall be obligated to deliver an Estoppel Certificate more than two (2) times per calendar year. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Terminal Building or by any other person to whom it is delivered. The failure of either party to deliver such statement within such time shall be conclusive upon such party that this Lease is in full force and effect, without modification except as may be represented by the requesting party, that there are no uncured defaults in the requesting party's performance, and that no more than two (2) months rental has been paid in advance.

### **SECTION 20 RIGHT OF FIRST OFFER**

Tenant shall have a right of first offer to purchase the Premises in the event Landlord desires to sell (or otherwise transfer) the same. Should Landlord desire to sell (or otherwise transfer) the Premises during the Term of the Lease, Landlord shall provide Tenant written notice thereof prior to engaging any brokerage services or otherwise marketing the Premises or soliciting offers. Tenant shall have thirty (30) days from receipt of such notice in which to submit an offer to purchase to Landlord. If Landlord accepts such offer, the closing of such purchase and sale shall occur on or before the sixtieth (60<sup>th</sup>) day after Landlord's acceptance of the offer. If Landlord does not accept Tenant's offer, Landlord may proceed to sell the Premises to any other party for any amount that is not less than ninety-five percent (95%) of the amount offered by Tenant. The right of first offer set forth in this Section 20 shall expire and be of no further force or effect upon the expiration or termination of this Lease (unless Tenant shall have received notice of Landlord's desire to sell, or otherwise transfer, the Leased Property prior to

such expiration or termination, in the which case, the terms of this Section 20 shall continue to apply to such notice).

Solely in the event that either (i) Landlord receives an unsolicited offer for the purchase of the Premises that Landlord intends to accept or (ii) Landlord intends to accept an offer to purchase the Premises that is less than 95% of the amount offered by Tenant, Tenant shall have a right of first refusal to purchase the Premises on the same terms as offered by Landlord. In either case, Landlord shall give Tenant written notice of Landlord's intent to accept the offer to purchase. Tenant shall have thirty (30) days from the receipt of such notice to give Landlord written notice of Tenant's intent to purchase the property at the price and on the terms set forth in the offer received by Landlord. In the event Tenant timely gives such notice, Landlord shall be obligated to enter into a contract with Tenant for the purchase and sale of the Lease Premises at the price and on the terms set forth in the offer received by Landlord.

## **SECTION 21 ASSIGNMENT AND SUBLETTING**

A. Limitation on Assignment or Subletting. Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Leased Premises, or any part thereof, or any right or privilege appurtenant thereto, or shall not suffer any other person to occupy or use the Leased Premises or any portion thereof, without the written consent of Landlord first had and obtained, (which consent shall not be unreasonably withheld, conditioned or delayed) if Landlord is reasonably satisfied that the assignee or subtenant has a current net worth at least twenty (20) times the then current annual rent as certified by an independent certified public accountant. Any assignment, subletting or occupancy without Landlord's prior written consent shall be void and shall at the option of Landlord, constitute a default under this lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law without the written consent of Landlord, which consent may not be unreasonably withheld. Notwithstanding the foregoing or anything to the contrary provided herein, Tenant shall have the right to assign the Lease or sublet the Leased Premises (without Landlord's consent), or any portion thereof, to an entity controlling, controlled by, or under common control with the Tenant, a parent or a subsidiary of Tenant or to any entity with which Tenant has merged or consolidated, or any entity which acquires all, or substantially all of, the assets or equity-interests of Tenant.

B. Acceptance of Performance No Waiver. If this Lease be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect the Rent from the assignees, subtenant, or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed an acceptance of the assignee, subtenant or occupant as the Tenant hereof, or constitute a release of Tenant from further performance by Tenant of covenants on the part of Tenant herein contained. Consent by Landlord to any one assignment or subletting shall not in any way be construed as relieving Tenant from obtaining the Landlord's express written consent to any further assignments or subletting. Notwithstanding the consent of Landlord to any subletting assignment, Tenant shall not be relieved from its obligations hereunder to Landlord. Notwithstanding anything elsewhere set forth in this Section 21, the merger of Tenant with another corporation where Tenant is the surviving corporation shall not be deemed an assignment hereunder.

C. Landlord to Approve Documents. All documents utilized by Tenant to evidence any subletting or assignment to which Landlord has consented shall be subject to reasonable prior approval by Landlord or its attorney. Tenant shall pay on demand all Landlord's costs and expenses, including reasonable attorney's fees, incurred in determining whether or not to consent to any requested subletting or assignment and in reviewing and approving such documentation.

## **SECTION 22 MISCELLANEOUS PROVISIONS**

A. The term "Landlord", as used in this Lease, means only the landlord from time to time, and upon conveying or transferring its interest, Landlord shall be relieved from any further obligation or liability pursuant to this Lease, except as otherwise provided in Section 23 hereof.

B. Time is of the essence of this Lease and of each and all of its provisions.

C. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution by both Landlord and Tenant.

D. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.

E. This Lease shall be governed by and construed pursuant to the laws of the State of Colorado.

F. All rights and remedies of Landlord under this Lease or those, which may be provided by law, may be exercised by Landlord in its own name individually, or in its name by its agent. Landlord and Tenant each represent to the other that each has full power and authority to execute this Lease and to make and perform the agreements herein contained, and Tenant expressly stipulates that any rights or remedies available to Landlord, either by the provisions of this Lease or otherwise, may be enforced by Landlord in its own name individually or in its name by its agent.

G. The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

H. This Lease embodies and constitutes the entire understanding between Landlord and Tenant with respect to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Lease. Tenant and Landlord acknowledge that there are no covenants, representations, warranties, agreements, or conditions, expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease except as expressly set out in this Lease and the attachments hereto, and that the terms and provisions of this Lease may not be modified or amended except by written instrument signed by both Landlord and Tenant.

I. Tenant represents and warrants to Landlord that Tenant has the authority to execute this Lease and that all authorizations, approvals and consents necessary for the proper execution of this Lease have been obtained in accordance with law.

J. The parties acknowledge that the Charter of the City of Steamboat Springs requires that any lease of an interest in real property, including this Lease, be authorized by the adoption of an ordinance and shall not be effective until thirty days after passage.

K. All obligations of the City under this contract are expressly conditioned upon (a) the City Council passing an ordinance adopting and ratifying this Lease and authorizing and ratifying the signature of the City Council President or President Pro Tem as the binding obligation of the City to lease the Leased Premises; and (b) the passage of 30 days after the passage of the ordinance without the filing of a petition of referendum, lawsuit, or other challenge to the ordinance so adopted. If an ordinance adopting, ratifying and authorizing this contract and the City Council President's signature hereon is not passed and adopted by the City Council by \_\_\_\_\_, this Lease shall be null and void and of no further affect.

L. The Tenant acknowledges that despite the location of the Leased Premises immediately adjacent to the Airport Operations Area ("AOA") of the Airport, Tenant is prohibited from entering the AOA from the Leased Premises. Tenant, its employees, agents, contractors, invitees, customers and clients may only access the AOA through the City's FBO operation in accordance with the rules and regulations adopted by the City, from time to time, intended to regulate and supervise such access.

M. Notwithstanding anything to the contrary provided herein, Landlord hereby expressly authorizes Tenant to permit its employees, agents, officers, directors, contractors or other representatives to bring dogs, cats or other similar "household pets" onto the Leased Premises (provided that Tenant shall be responsible for any damages to the Leased Premises caused by such pets).

### **SECTION 23 SALE BY LANDLORD**

In the event of a sale or conveyance or transfer by Landlord of its interest in the Leased Premises, or in this Lease, Landlord shall continue to be liable for performance of the obligations of Landlord, expressed or implied, herein contained in favor of Tenant. This Lease shall not be affected by any such sale, conveyance, or transfer, and Tenant agrees to attorn to such purchaser or transferee.

### **SECTION 24 QUIET ENJOYMENT**

Subject to the terms and provisions of this Lease, Landlord covenants and agrees that Tenant, upon complying with all of the obligations of Tenant hereunder, and subject to the terms and provisions hereof, shall peaceably and quietly enjoy the Leased Premises and Tenant's rights hereunder the Term hereof, without hindrance by Landlord or any persons claiming under Landlord; provided, however, that the Tenant acknowledges that the Leased Premises are immediately adjacent to the Airport and that airplanes and helicopters frequently land at the

Airport and that there are associated noises, vibrations, and other inconveniences associated with that proximate location. The noise, vibrations, and other inconveniences associated with the proximate location of the Leased Premises to the Airport shall not be a basis for claiming a breach of this covenant of peaceable and quiet enjoyment of the Leased Premises.

**SECTION 25  
NOTICE**

Any notice from Landlord to Tenant or from Tenant to Landlord shall be in writing and may be served personally or by mail. If served by mail, it shall be mailed by registered or certified mail, return receipt requested, addressed to Tenant at the address set forth hereafter, or to Landlord at the place from time to time established for the payment of Rent. Notices served in person shall be served in the same manner as required for personal service under the Colorado Rules of Civil Procedure.

**SECTION 26  
SUCCESSORS AND ASSIGNS**

Subject to the terms and provisions of this Lease, the covenants and conditions herein contained shall apply to and bind the respective heirs, successors, executors, administrators, and assigns of the parties hereto, and the terms "Landlord" and "Tenant" shall include the successors and assigns of either such party, whether immediate or remote.

**[Signature Page Follows]**

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

LANDLORD:

CITY OF STEAMBOAT SPRINGS

By: \_\_\_\_\_  
Jason Lacy  
City Council President

ATTEST:

\_\_\_\_\_  
Julie Franklin, City Clerk

TENANT:

EN-R-G FOODS, LLC

By: \_\_\_\_\_

ATTACHMENTS:

1. Exhibit A – Description of the Leased Premises

EXHIBIT A

Attached to and made a part of that Commercial Lease dated \_\_\_\_\_, 20\_\_\_\_ between the City of Steamboat Springs (“Landlord”) and EN-R-G FOODS, LLC (“Tenant”).

DESCRIPTION OF ORIGINAL LEASED PREMISES

See floor plan attached.

