



Urban Renewal Agency Agenda

Monday, June 2, 2025, 11:00 AM

**** SPECIAL MEETING ****

Council Chambers
203 Main Avenue East, Twin Falls, Idaho

Commissioners: Rudy Ashenbrener, Dan Brizee, Jan Rogers, JJ McBride, Dave McAlindin, Eric Smallwood, Jennifer Colvin

- 1) Confirmation of Quorum/Call Meeting to Order
- 2) Conflict of Interest Declaration
- 3) Reports/Updates
 - a) Executive Director's Report
- 4) Items of Consideration
 - a) **ACTION ITEM:** Review of RFP responses and consideration to lease Agency-owned property at 237 and 251 Maxwell Avenue.
By: Shawn Barigar, Executive Director
- 5) Public Input and Announcements
 - a) Plaque Presentation and Recognition of Service to Rudy Ashenbrener for seven years and nine months on the Urban Renewal Agency Board of Commissioners.
By: Shawn Barigar, Executive Director
- 6) Upcoming Meeting(s)

The previously scheduled June 17, 2025, meeting has been canceled.

 - a) Monday, June 16, 2025 - **Canceled**
 - b) Monday, July 21, 2025, @ 12:00 pm.
- 7) Executive Session
 - a) **ACTION ITEM:** Convene in Executive Session per Idaho Code 74-206(1)(f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.
(The meeting will not return to open session.)
- 8) Adjournment

Any person(s) needing special accommodations to participate in the above-noticed meeting could contact Lorrie Bauer (208) 735-7313 at least two working days before the meeting. Si desea esta información en Español, por favor llame a Josh Palmer al teléfono (208) 735-7312.



Date: Monday, June 2, 2025
To: Urban Renewal Agency of the City of Twin Falls
From: Shawn Barigar, Executive Director

Executive Director's Report

1. Interviews with applicants for the upcoming vacant seat on the Urban Renewal Agency Board have been completed, and Mayor Ruth Pierce will bring forward a recommendation to appoint Andy Hohwieler to the seat at tonight's City Council meeting.
2. The budget committee will be meeting following today's board meeting to begin work on drafting a budget to bring back to the board at the July meeting.
3. Information regarding the proposed plan amendment to Revenue Allocation Area 4-3 to remove a parcel of property from the area has been transmitted to the City of Twin Falls and the overlapping taxing districts. The process is on track for review by the City Planning and Zoning Commission at their meeting on June 4, 2025. It is scheduled for a public hearing before the City Council for their consideration on July 7, 2025.

Attachments:

None



Date: Monday, June 2, 2025
To: Urban Renewal Agency of the City of Twin Falls
From: Shawn Barigar, Executive Director

ACTION ITEM

Request:

Review of RFP responses and consideration to lease Agency-owned property at 237 and 251 Maxwell Avenue.

Background:

Agency staff was contacted in April by Colter Heck, owner of Heck Roofing, inquiring about a possible purchase of agency-owned property adjacent to his business operation on Maxwell Avenue. Staff shared that the Agency is not interested in selling any of these properties as they were acquired for anticipated future redevelopment. However, since those future plans are not imminent, leasing the property could be an option.

Staff negotiated several general lease terms with Colter Heck for approximately 10,000 square feet of undeveloped vacant property at 237 and 251 Maxwell Avenue, outlined in the drafted Commercial Lease Agreement included in the agenda packet.

Idaho Code 50-2011 requires the Agency to solicit competing lease proposals, to advise the public of the intent to dispose of the Premises by lease to Tenant, to seek public comment on the planned disposition, and to invite competing proposals for consideration prior to executing a lease. Staff has completed these requirements by soliciting competing proposals through a Request for Proposal process. The deadline for submissions was May 28, 2025, and no competing proposals were received.

Approval Process:

Majority vote of a quorum of the Agency Commissioners present at the meeting.

Budget Impact:

Annual base rent from the lease will be \$3,900 to the Agency.

Regulatory Impact:

N/A

Conclusion:

Staff recommends that the board approve the Commercial Lease Agreement with Colter Heck, Heck Roofing, and authorize the chair to sign the agreement.

Attachments:

1. 2025 Lease - Heck Roofing 20250529

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement (“**Lease**”) is made and entered into by and between The Urban Renewal Agency of the City of Twin Falls, an independent public body corporate and politic, organized under the laws of Idaho (“**Landlord**”) and Colter Heck, dba Heck Roofing (“**Tenant**”). Landlord and Tenant may each be referred to herein as a “**party**” or the “**parties**,” as the case may be. The “**Effective Date**” of this Lease is the date last signed by both parties below.

1. SUMMARY OF BASIC TERMS

This Section 1 is a summary of certain basic terms of this Lease for reference purposes.

- 1.1 Property** The real property described on Exhibit A.
- 1.2 Premises** Entire Lot: RPT4401001035A = 237 Maxwell Ave (Lot 35 +/-, Block 1), 0.116 ac,

Approximately 5,000 SF of the Westernmost Portion of the Parcel: RPT4401001036A = 251 Maxwell Ave (Lots 36-38+/-, Block 1), 0.49 ac

As generally shown on Exhibit B (the “**Premises**”)
- 1.3 Address of Premises** 237 & 251 Maxwell Ave., Twin Falls, Idaho 83301
Parcel Nos. RPT4401001035A (entire parcel) and RPT4401001036A (portion of parcel).
- 1.4 Permitted Use** Outdoor storage and parking, as permitted in M-2 zone (See Section 7.1)
- 1.5 Commencement Date** The “**Commencement Date**” will be June 2, 2025.
- 1.6 Initial Term** 12 months commencing on the Commencement Date.
- 1.7 Extension Terms** Tenant will have the option to extend the Initial Term of this Lease for periods of 12 months each until the Lease is terminated (each an “**Extension Term**” and collectively, the “**Extension Terms**”). (See Section 3.3)
- 1.8 Term** The Initial Term and any exercised Extension Terms. (See Article 3)

1.9 Base Rent	Months	Monthly Base Rent	Annual Base Rent
	1 - 12	\$ 325.00	\$ 3,900.00

Base Rent during the Extension Term will be determined as mutually agreed to in writing by Tenant and Landlord.

1.10	Security Deposit	N/A
1.11	Addresses	Landlord: 203 Main Ave. E, PO Box 1907, Twin Falls, Idaho 83303 Tenant: 219 Maxwell Ave., Twin Falls, Idaho 83301
1.12	Termination	The Lease may be terminated for any reason, without penalty or further liability, by either party on sixty (60) days' prior written notice.
1.13	Contingency	This Lease is subject to and contingent upon the Landlord's statutory requirement to solicit competing lease proposals in accordance with Idaho Code § 50-2011, to advise the public of the intent to dispose of the Premises by lease to Tenant, to seek public comment on the planned disposition, and to invite competing proposals for consideration prior to disposing of the Premises by lease to Tenant.

EXHIBITS:

EXHIBIT A Property
EXHIBIT B Premises

2. PREMISES AND DELIVERY

2.1 Premises. In consideration of Tenant's payment of Base Rent and Tenant's performance of the other agreements in this Lease, Landlord leases to Tenant and Tenant leases from Landlord, the Premises for the Term, subject to the terms and conditions of this Lease. Tenant will have access to the Premises twenty-four (24) hours per day, subject to closures for emergencies, repairs, similar matters, and matters outside Landlord's reasonable control. Tenant will comply with any conditions, covenants, restrictions, and easements affecting the Property which now exist, and, also, which may hereafter be entered into by Landlord, including any amendments thereof, so long as such amendments do not affect Tenant's ability to use the Premises as contemplated herein. As used in this Lease, "**Applicable Law**" means all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances, including, without limitation, building, zoning, subdivision, health and safety, and other land use laws, including, without limitation, the Americans with Disabilities Act of 1990, Public Law No. 101-336, 42 USC 12101, et. seq. and Environmental Laws (as defined in Section 8.7.1). Applicable Law shall also mean the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (the "**Urban Renewal Law**") and the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (the "**Act**").

2.2 Delivery and Acceptance of Premises. Tenant acknowledges and agrees to the following: (a) Tenant will be responsible for investigating and establishing the suitability of the Premises for Tenant's intended use thereof, and (b) Tenant is leasing the Premises in "AS IS" condition based on its own inspection and investigation and not in reliance on any statement, representation, inducement, or agreement of Landlord or any agent of Landlord.

2.3 [Reserved].

2.4 Rules and Regulations. Tenant will comply with the rules and regulations established from time to time for the Premises by the Landlord. Landlord shall provide Tenant with a written list of rules and regulations, should such rules and regulations apply.

2.5 No Smoking. Tenant acknowledges that the Premises has been designated by Landlord as a “**No Smoking**” area. Tenant agrees to timely enforce such restriction with respect to its employees, contractors, agents, invitees, and licensees who occupy the Premises.

3. LEASE TERM

3.1 Enforceability. Notwithstanding that the Commencement Date and Tenant’s right to occupy the Premises will occur after the Effective Date, the Parties agree that this is a fully binding and enforceable agreement from and after the Effective Date.

3.2 Initial Term. The Initial Term of this Lease and Tenant’s right to use and occupy the Premises will commence on the Commencement Date.

3.3 Extension Terms

3.3.1 Exercise. Tenant and Landlord will have the option (the “**Extension Option**”) to extend the Initial Term of this Lease for each of the Extension Terms. The Extension Option will be exercised, if at all, upon Tenant’s satisfaction of the following conditions:

(a) Tenant will deliver to Landlord a written notice (the “**Extension Notice**”) irrevocably exercising the Extension Option at least sixty (60) days before the last day of the Initial Term or then-applicable Extension Term;

(b) The Lease must be in full force and effect at the time the Extension Notice is delivered to Landlord and continuously thereafter until the last day of the Initial Term or then-applicable Extension Term;

(c) Tenant will not be in default under any provision of the Lease beyond any applicable cure period at the time Tenant delivers the Extension Notice or continuously thereafter until the last day of the Initial Term or then-applicable Extension Term; and

(d) Tenant will not have been given notice of default of Tenant’s Lease obligations more than two (2) times during the Term of the Lease.

Tenant’s election to exercise an Extension Option is solely within the discretion of Landlord, and Landlord has no obligation to extend the Lease for any Extension Option beyond the Initial Term. Provided that Tenant has exercised the Extension Option and Landlord has approved such Extension Option, in accordance with the terms of this Section 3.3, then the applicable Extension Term will commence on the expiration of the Initial Term or then-applicable Extension Term, and will be subject to all the terms, covenants, conditions, and provisions of the Lease. The failure of Tenant to exercise the Extension Option in accordance with the terms of this Section 3.3 will terminate the rights of Tenant with respect to the then-current and all future Extension Terms. Rent for the Extension Term will be determined as mutually agreed to in writing by Landlord and Tenant.

4. **BASE RENT**

Commencing on the Commencement Date and continuing on the first day of each month thereafter for the remainder of the Term, Tenant will pay to Landlord the Base Rent identified in Section 1.9 in advance, without offset, set off, abatement, deduction, or demand. The Base Rent will be paid to Landlord at the address identified in Section 1.11, or at such other address as Landlord may specify from time to time by notice to Tenant. All charges payable by Tenant, other than Base Rent, and directly to a third party, are referred to in this Lease as “**Additional Rent**,” whether or not so denominated. Unless this Lease provides otherwise, Tenant will pay all Additional Rent then due with the next monthly installment of Base Rent. The term “**rent**” or “**Rent**” means Base Rent and Additional Rent. Rent for any partial month will be prorated, and the Base Rent for the first full calendar month will be paid on execution of this Lease by Tenant and applicable to the first installment of Base Rent due hereunder. Tenant may also pay to Landlord the base Rent and Additional Rent on an annual basis upon execution of this Lease and upon any Extension Option, pursuant to future Extension Terms. Landlord will have all of the same remedies for Tenant’s failure to pay Additional Rent as for failure to pay Base Rent.

5. **[Reserved]**

6. **OPERATING EXPENSES**

6.1 “Real Property Taxes” will mean all current and future real property taxes, governmental charges, and assessments (including LIDs, ULIDs, CRIDs, etc.) levied on the Property and the improvements thereto; any taxes in addition to or in lieu of, in whole or in part, such taxes; any tax upon leasing or rents of the Property; any other governmental charge such as payments for transit or environmental facilities; and all costs and expenses incurred by Landlord in connection with the attempt to reduce any of the foregoing, whether by negotiation or contest. Tenant will pay Real Property Taxes, if any, to Landlord as Additional Rent. “Real Property Taxes” will not include any inheritance, single business, transfer, capital, franchise, or state income tax, estate tax, or other similar tax and will not include any late payment penalties, surcharges, or interest if Tenant has paid the amounts due under Section 1 as and when due.

6.2 Utilities. Tenant will pay, directly to the appropriate supplier, the cost of any of the following services which are separately metered or submetered: water, sewer, natural gas, solid waste/garbage, power, and other utilities. To the extent Tenant desires telephone, cable, internet, or other utilities or services to the Premises, then Tenant will contract directly with the providers thereof, and will be solely responsible for the payment thereof. Tenant will provide adequate trash containers and regularly scheduled trash disposal consistent with other first-class mixed-use projects. Tenant will use best efforts to dispose of trash in a manner that minimizes odors, stains, and other objectionable nuisances. In addition, Landlord may impose rules from time to time to reduce any adverse impact of Tenant’s trash containers and/or disposal.

6.3 Net Lease. This Lease and the Rent payable hereunder are intended to be fully net of expenses incurred by Landlord in connection with the Premises.

7. **USE AND EXCLUSIVES**

7.1 Permitted Use. Tenant may use the Premises only for the Permitted Use identified in Section 1 and for no other use whatsoever without Landlord’s prior written consent, which consent

will be in Landlord's sole discretion. Tenant agrees that any failure to conduct its business in the Premises pursuant to the Permitted Use would result in irreparable damage to Landlord and that Landlord will have the right immediately to obtain an injunction ordering Tenant to operate the Premises consistent with the Permitted Use.

7.2 Use Restrictions. Tenant agrees that neither it nor any successor, assign, concessionaire, sublessee, or assignee will use the Premises conflicting with or prohibited by the recorded conditions, covenants, and restrictions and/or other governing documents identified in this Lease, if any, attached hereto and incorporated herein. Landlord will have the right to supplement, modify, or amend the Permitted Use by notice to Tenant from time to time, provided that such modifications do not prevent Tenant from engaging in the Permitted Use at the Premises.

7.3 Actions that Injure the Premises. Tenant will not cause or permit the Premises to be used in any way which (a) violates Applicable Law, including City of Twin Falls codes and regulations, (b) which in the reasonable judgment of Landlord would constitute a nuisance, or would materially disturb or endanger persons within or adjacent to the Property, or unreasonably interfere with their use of their respective premises; or (c) adversely impacts Landlord's Insurance. A Tenant breach will be any violation of the Lease or as otherwise reasonably determined by Landlord in its sole discretion.

7.4 Non-Discrimination. Notwithstanding anything to the contrary in the Lease, neither Landlord nor Tenant shall discriminate against or segregate any persons on account of race, color, national origin, ancestry, creed, religion, gender, gender identity, gender expression, sexual orientation, genetic information, marital status, familial status, age, source of income, immigration status, citizenship, primary language, handicap, disability, or any other protected classification under Applicable Law with respect to (i) anyone entering the Property or the Premises, as applicable, (ii) any sublessees or assignees of Tenant's interest in this Lease or transferees of Landlord's interest in this Lease, or (iii) any vendor providing services to Landlord or Tenant, respectively.

8. TENANTS OPERATIONS

8.1 Contract Services. Tenant will cause all contractors and service providers engaged to perform maintenance and repair services to the Premises to maintain insurance coverage reasonably acceptable to Landlord, which insurance will name Tenant and Landlord as insureds, and all such contractors and service providers will be licensed and subject to Landlord's reasonable approval. If reasonably requested by Landlord, Tenant will utilize the same contractors as selected by Landlord for similar services to other portions of the Property.

8.2 Pest Control. At Landlord's request, Tenant will hire a certified pest control contractor to service the Premises. Tenant will provide Landlord with a copy of such pest control contract, which contract will list all chemicals being used and indicate what the chemicals are intended to treat. Such pest control contract will be subject to Landlord's reasonable approval. Tenant will provide Landlord with copies of all pest control service reports within ten (10) days after the Premises are treated by the pest control contractor. If Landlord reasonably determines that the Premises, areas adjacent to the Premises, or its trash container(s) are being affected by insects, rodents, vermin, or other pests as a result of Tenant's failure to exterminate such pests, Tenant will, upon Landlord's request, cause its pest control contractor to treat such adjacent areas to eliminate

such pests. Notwithstanding the foregoing, Landlord may have its own contractors perform pest control and will have the right to allocate the entire expense thereof to Tenant as Additional Rent.

8.3 Hazardous Substances.

8.3.1 Definitions. For purposes of this Section 8.3, the term “**Hazardous Substances**” will mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product, or substance, including without limitation, asbestos, polychlorinated biphenyl, petroleum (including crude oil or any fraction or by-product thereof), underground storage tanks, and any material the exposure to or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, remediation, or handling of which is prohibited, controlled, or regulated by any Environmental Law (except for normal quantities of standard cleaning or office supplies); and the term “**Environmental Laws**” will mean any federal, state, regional, county, or local governmental statute, law, regulation, ordinance, order or code, or any consent decree, judgment, permit, license, code, or other requirement presently in effect or hereafter created, issued, or adopted pertaining to protection of the environment, health or safety of persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water, and groundwater).

8.3.2 Tenant Covenants. Tenant covenants and agrees that Tenant will: (a) not cause or permit any Hazardous Substances to be generated, produced, brought upon, used, stored, treated, released, discharged, or disposed of in or about the Premises by Tenant in violation of Environmental Laws; (b) comply with all Environmental Laws; (c) promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any Hazardous Substances has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Premises; and (d) if any Hazardous Substances are discharged, released, or disposed of by Tenant, Tenant immediately take such action as is necessary to detain the spread of, remove, and dispose of such Hazardous Substances to the complete satisfaction of Landlord and in compliance with all Environmental Laws at Tenant’s own cost and expense.

8.3.3 Tenant Indemnity. Tenant agrees to indemnify, defend, and hold Landlord free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (excluding consequential damages), disbursements or expenses of any kind (including reasonable attorneys’ fees and costs incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord or any of them in connection with or arising from or out of any Hazardous Substances released, discharged, or disposed of by Tenant on, in, under, or affecting all or any portion of the Premises, or any claim or action arising from a breach of Tenant’s covenants. The provisions of this Section will be in addition to any and all obligations and liabilities Tenant may have to Landlord under other terms of this Lease and at common law and will survive the expiration of the Term or earlier termination of this Lease.

8.4 [Reserved]

8.5 Compliance/Permits. Tenant, at its own expense, will obtain and pay for all permits related to its business and/or its specific use of the Premises. At its expense, Tenant will comply with Applicable Law and with any lawful direction made pursuant to Applicable Law of any public

officer with respect to the Premises or the use thereof, including any obligation to make alterations in the Premises required as a condition of Tenant's occupancy.

8.6 Tenant's Taxes. Tenant will pay, prior to delinquency, all personal property taxes on Tenant's personal property located within or used in connection with the Premises.

9. MAINTENANCE

9.1 Tenant's Obligations. Tenant will keep and maintain all portions of the Premises in good order, condition, and repair, as well as the trash dumpsters and enclosures which Tenant uses for its refuse. Tenant's repair and maintenance responsibility will include repair of damage by vandalism or casualty (unless such damage is covered by insurance that Landlord is required to maintain under this Lease) and replacement of equipment and other portions of the Premises which can no longer be brought into good operating condition. If any part of the Property is damaged by any act or omission of Tenant, its agents, employees or invitees, Tenant will pay the cost of repairing or replacing the damage. It is the intention of Landlord and Tenant that at all times Tenant will maintain the portions of the Premises which Tenant is obligated to maintain in an attractive, first-class, and fully operative condition, this includes general cleaning and upkeep. Notwithstanding the foregoing, Landlord may elect to assume portions of Tenant's above repair and maintenance obligations, and the costs thereof will otherwise be billed to Tenant and will be payable within thirty (30) days after receipt of the invoice. Tenant will reimburse Landlord for any extra cleaning which Landlord undertakes to keep the dumpsters and trash enclosures used by Tenant clean and odor free to the extent reasonable in the circumstances.

9.2 Landlord's Right to Cure. Whether Tenant has satisfied its repair, maintenance, and replacement obligations will be determined by Landlord using its commercially reasonable judgment. If Tenant fails to maintain, repair, or replace the Premises as required by this Section, Landlord may, upon ten (10) days' prior notice to Tenant (except no notice is required in an emergency), enter the Premises and perform Tenant's obligations on behalf of Tenant, and Tenant will reimburse Landlord for all costs incurred within ten (10) days after receipt of an invoice from Landlord therefor.

9.3 Interruption of Service. Landlord does not warrant that any utilities or services will be free from interruption, including by reason of accident, repairs, alterations, computer programming weaknesses, or other causes. No utility interruption will be deemed an eviction or disturbance of Tenant, or render Landlord liable to Tenant for damages, or relieve Tenant from the full and complete performance of all of Tenant's obligations under this Lease, other than such matters as are solely and directly the result of Landlord's gross negligence or willful misconduct, not covered by insurance, which Tenant is required to carry hereunder, and result in Tenant being unable to operate from the Premises for a period of forty-eight (48) consecutive hours or more, in which event Base Rent will abate for the period Tenant is unable to operate as Tenant's sole and exclusive remedy.

10. ALTERATIONS

10.1 Alterations Procedures. Tenant will not make any alterations, additions, or improvements to the Premises (collectively, "**Alterations**") without Landlord's prior written consent, which consent will not be unreasonably withheld or conditioned. Landlord may condition

its consent on various matters, including Tenant agreeing to remove the Alterations and repair any resulting damage on Lease termination at Tenant's cost, Tenant posting security for the estimated removal/repair cost and Landlord's approval of the plans and specifications for the work. All Alterations which Landlord does not require Tenant to remove will become Landlord's property and will be surrendered to Landlord on termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Premises. Tenant will repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery or equipment. Landlord may require Tenant to provide payment and performance bonds for the alterations and/or lien waivers. All Alterations will be done in a good and workmanlike manner, in conformity with Applicable Law, and by a contractor approved by Landlord. Upon completion of any such work, Tenant will provide Landlord with "as built" plans; copies of all construction permits, contracts and approvals; and proof of payment for all labor and materials.

10.2 Liens. Tenant will have no express or implied authority to place any lien or encumbrance upon, or bind, Landlord's interest in the Premises or to burden the Rent for any claim in favor of any person dealing with Tenant, including those who furnish materials or perform labor for any construction or repairs, and each such claim will attach, if at all, only to Tenant's leasehold interest. Tenant will cause to be paid when due all sums owed for any labor performed or materials furnished in connection with any work performed on the Premises for Tenant. Tenant agrees to and will indemnify and save Landlord free and harmless against liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under Tenant. In the event that as a result of any work of improvement undertaken by Tenant, including, without limitation, any Alterations, any mechanics' lien or other lien is filed against the Premises, and Tenant fails to discharge, bond over, or otherwise cause the release of any lien or claim within fifteen (15) days after the filing or recordation thereof, Landlord will have the right (but not the obligation), in addition to any other rights or remedies of Landlord, to cause such lien or claim to be rescinded, discharged, compromised, dismissed, bonded over, or removed in which event any sums paid by Landlord, including attorneys' fees, will be immediately due and payable to Landlord by Tenant. Tenant will immediately provide written notice to Landlord of any lien or claim against the Property or any action affecting title to the Property. Landlord may require Tenant to post a notice of Landlord's non-responsibility with respect to the work.

10.3 Condition Upon Surrender. Upon the expiration or earlier termination of the Lease, Tenant will remove all of its personal property and surrender the Premises to Landlord, in the same condition as received or, if improved, in the improved condition and with all maintenance obligations complete except for ordinary wear and tear, which Tenant was not otherwise obligated to remedy under this Lease. Telecommunications and data cabling installed by Tenant, if any, will not be considered part of the real estate and Landlord may elect either to require Tenant to remove it or leave it in place. Any property left on the Premises after the expiration or termination of the Term will be deemed to have been abandoned and to have become the property of Landlord to dispose of as Landlord deems expedient. Tenant will be liable for all costs associated with the disposal of such property. Tenant hereby waives all claims for damages that may be caused by Landlord's reentering and taking possession of the Premises or removing and disposing of Tenant's property as herein provided, and Tenant will indemnify and hold Landlord harmless therefrom. No such reentry will be considered or construed to be a forcible entry. Tenant will indemnify Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by a succeeding tenant founded on such delay.

10.4 Changes to the Property. Landlord will have the right and privilege at all times of determining the nature and extent of any changes to the Property and/or the Premises and/or related improvements and of making such changes, rearrangements, additions, and reductions therein from time-to-time as deemed desirable, including, without limitation, the location, relocation, enlargement, reduction, addition, and/or elimination of driveways, entrances and exits, automobile parking spaces, the direction and flow of traffic, establishment of protected areas, fencing, and landscaped areas, and the right at any time to locate on the Premises permanent and/or temporary building(s) and/or other improvements of any type and the right at any time to enclose or un-enclose any portions of the Premises. Landlord will have the right (a) to close temporarily all or any portion of the Property not included in the Premises to discourage non-customer use, (b) to use portions of the Property not included in the Premises while engaged in making additional improvements, repairs, or alterations to the Premises, and (c) to do and perform such other acts in, to, and with respect to the Property not included in the Premises as Landlord will determine, in its business judgment, to be appropriate for the Property. Notwithstanding any contrary provision contained in this Lease, services and facilities may be discontinued, and access to the Property (but not the Premises) is restricted, in whole or in part, during such times as the Property is not open for business and any other times as are necessary for temporary purposes such as repairs, alterations, strikes, and other reasonable purposes. Landlord has no obligation to, and has made no representations that it will alter, remodel, improve, renovate, decorate, demolish, and/or add improvements to the Property or the Premises.

11. INSURANCE/INDEMNITY

11.1 Tenant's Insurance. Tenant, at its cost, will maintain the following insurance on the Premises at all times from and after the Commencement Date:

11.1.1 CGL. Commercial general liability insurance policy (“**Tenant's CGL**”) (or equivalent ISO form in use from time to time in the State in which the Property is located), providing coverage against any and all claims for bodily injury and property damage occurring in or on the Premises and/or arising out of or in any way related to the use and occupancy of the Premises by Tenant and including broad form blanket contractual coverage covering Tenant's obligations under this Lease. Tenant's CGL will have a limit of not less than \$1,000,000 per occurrence with a general aggregate limit of not less than \$2,000,000. Such insurance will be primary with regard to the Premises (not contributory with Landlord's coverage). Landlord (and upon request, Landlord's property manager and/or Landlord's mortgagees) will be named as an additional insured on the Tenant's CGL and all other liability coverage.

11.1.2 Worker's Compensation. Worker's compensation insurance as required by the laws of the State in which the Property is located.

11.1.3 Property. Property insurance insuring against loss or damage resulting from perils covered by the causes of loss – special form (“**Tenant's Property Insurance**”) (or the equivalent ISO form in use from time to time in the State in which the Property is located) related to Tenant's personal property. Tenant's Property Insurance will be written for the full replacement value of all furniture, fixtures, equipment, and Alterations located in the Premises, together with such business interruption coverage as Tenant desires and does not wish to assume the risk for. Landlord (and upon request, Landlord's property manager and/or Landlord's mortgagees) will be named as a loss payee on Tenant's Property Insurance as their interests may appear.

11.1.4 General. All insurance required to be maintained by Tenant will (a) be on an occurrence basis; (b) provide primary coverage and not contributory with Landlord's insurance coverage; (c) require thirty (30) days prior written notice to the named insured or loss payees of any cancellation or reduction in coverage; (d) be written by responsible insurance companies licensed to do business in the State in which the Property is located; and (e) contain a waiver of subrogation with regard to Landlord and any additional insureds. Such insurance may be provided by a blanket policy covering additional locations. Tenant will provide Landlord with evidence of the required insurance as well as a copy of the additional insureds' endorsement on or before the Commencement Date and thereafter as reasonably requested by Landlord from time to time.

11.1.5 Adjustments. Landlord, upon thirty (30) days prior written notice to Tenant, may change the limits and requirements of the insurance required to be maintained by Tenant to reflect changes in insurance standards and customary requirements for similar mixed use real estate developments. If Tenant fails to provide the insurance required by this Section 11.1 within ten (10) days after the date of receipt of written notice from Landlord, in addition to any other remedies available for such default, Landlord may obtain such insurance and keep the same in force and effect, and Tenant will pay Landlord, as Additional Rent, upon demand for the cost thereof plus Default Interest from the date of Landlord's payment to the date of Tenant's reimbursement.

11.2 Landlord's Insurance. Landlord will maintain the following insurance at all times:

11.2.1 CGL. Commercial general liability insurance (or the equivalent ISO form in use from time to time in the State in which the Property is located) covering the activities of Landlord at the Property in a combined single limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the aggregate.

11.2.2 Rent Loss. Loss of rents coverage in a form and amount determined by Landlord, in its sole discretion.

11.2.3 Other. Such other insurance as Landlord deems necessary and prudent or as may be required by any lienholder holding a mortgage or security interest in the Property (or any portion thereof).

11.2.4 General. All insurance required to be maintained by Landlord will (a) be on an occurrence basis; and (b) as to the Premises or acts or omissions of Tenant, be excess, secondary, and non-contributory; and (c) contain a waiver of subrogation with regard to Tenant and any additional insureds. Such insurance may be provided by a blanket policy covering additional locations.

11.3 Indemnity. Subject to Landlord's release in Section 11.4.2, Tenant will indemnify and defend (using legal counsel acceptable to Landlord) Landlord from any claims, costs (including attorneys' fees and other litigation costs), or damages arising in connection with (a) the occupancy or use of the Premises by Tenant and customers, including any work undertaken or contracted for by Tenant; (b) Tenant's breach of this Lease, (c) any negligent or wrongful act or omission of Tenant or customers; and (d) any accident, injury, occurrence, or damage in or about the Premises. Subject to Tenant's release in Section 11.4.1, Landlord will indemnify and defend (using legal counsel acceptable to Tenant) Tenant (defined below) from any claims, costs (including attorneys' fees and

other litigation costs), or damages arising in connection with (a) any work undertaken or contracted for by Landlord; (b) Landlord's breach of this Lease; and (c) any negligent or wrongful act or omission of Landlord, except in each event caused by the negligent or wrongful or omission of Tenant or customers. This indemnity is not contingent upon insurance coverage, is not limited to the amount of any insurance proceeds, and operates independently of the insurance provisions of this Lease. "**Landlord**" will mean Landlord, any mortgagees, the property manager, and Landlord's respective officers, directors, shareholders, members, managers, partners, or other owners and affiliates, subsidiaries, successors, and assigns. "**Tenant**" means Tenant, Tenant's shareholders, members, managers, partners, or other owners, Tenant's affiliates and subsidiaries, and any directors, officers, employees, sublessees, licensees, invitees, agents, contractors, and successors and/or assigns of such persons or entities.

11.4 Waivers.

11.4.1 Tenant Waiver. Tenant hereby releases, waives, and discharges Landlord from any and all claims Tenant might otherwise now or hereafter possess associated with any loss covered by insurance (or which would have been covered by the insurance Tenant is required to carry hereunder), including the deductible portion thereof, maintained and/or required to be maintained by Tenant pursuant to this Lease.

11.4.2 Landlord Waiver. Landlord hereby releases, waives, and discharges Tenant from any and all claims Landlord might otherwise now or hereafter possess associated with any loss covered by insurance (or which would have been covered by the insurance Landlord is required to carry hereunder), including the deductible portion thereof, maintained and/or required to be maintained by Landlord pursuant to this Lease.

11.4.3 Acknowledgment. Because this Section precludes the assignment of any claim mentioned in it by way of subrogation or otherwise to an insurance company or any other person, each Party to this Lease agrees immediately to give to each insurance company which has issued to it policies of insurance covering all risk of direct physical loss written notice of the terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waiver contained in this Section. Landlord and Tenant acknowledge that the waivers and releases set forth in this Section are intended to result in any loss or damage which is covered or coverable by insurance being borne by the insurance carrier of Landlord or Tenant, as the case may be, or by the Party having the insurable interest if such loss is not covered by insurance and this Lease required such Party to maintain insurance to cover such loss. Landlord and Tenant agree that such waivers and releases were freely bargained for and willingly and voluntarily agreed to by Landlord and Tenant and do not constitute a violation of public policy.

11.5 Survival. The provisions of this Section 11 will survive expiration or termination of this Lease.

12. ASSIGNMENT AND SUBLETTING

12.1 Assignment or Sublease. Tenant will not assign this Lease or sublet the whole or any part of the Premises (each a "**Transfer**" and any assignee or sublessee a "**Transferee**") without Landlord's prior written consent, which will not be unreasonably withheld or delayed. To assist

Landlord in determining whether to consent to a Transfer, Tenant will submit the following to Landlord as well as any other information reasonably requested by Landlord (a) the name and legal entity of the Transferee; (b) a description of the proposed use of the Premises by the Transferee; (c) the terms of the proposed Transfer; (d) current financial statements; (e) a current credit check for the Transferee in date and form approved by Landlord or consent for Landlord to perform a credit check, in Landlord's discretion; (f) the most recent filed federal income tax return of the proposed Transferee; and (g) the proposed Transfer documents. No Transfer will release Tenant from its obligations under this Lease. Consent to any Transfer will not operate as a waiver of the necessity of a consent to any subsequent Transfer. The cumulative transfer of an aggregate of fifty percent (50%) or more of the voting or equitable interests in a Tenant entity, including by creation or issuance of new ownership interests, will be deemed a Transfer of this Lease; and any transfer of this Lease by merger, consolidation, or liquidation of Tenant will be deemed a Transfer of this Lease. Any Transfer in violation of this Section 12 is void and constitutes an Event of Default.

12.2 Transferee Obligation. Any Transferee will be required to assume, in writing for the specific benefit of Landlord, all obligations of Tenant and will be primarily, jointly, and severally liable with Tenant for the payment of Base Rent and Additional Rent and the performance of all of Tenant's obligations under this Lease. Tenant will provide Landlord fully executed copies of all instruments of assignment, sublease, or assumption. Any sublessee shall be required to assume all obligations of Tenant to the extent they relate to the subleased premises. If the Transferee defaults, Landlord may, without affecting any other rights of Landlord, proceed against Tenant or any Transferee or any other person liable for Tenant's obligations hereunder. Tenant will provide the notice address for any Transferee to Landlord prior to the effective date of the Transfer, and if it is not provided, the applicable notice address for the Transferee will be deemed to be the Premises.

12.3 Fees. Any request for consent to a Transfer will be accompanied by payment of a non-refundable fee of \$1,000 to compensate Landlord for the administrative burden of processing the request. In addition, Tenant will reimburse Landlord for any out-of-pocket costs incurred by Landlord in connection with the request which will not exceed \$1,000. Tenant's payment of a fee and reimbursement of Landlord's costs is independent of, and does not represent or guarantee, Landlord's approval of a Transfer.

13. DAMAGE OR DESTRUCTION

13.1 Notice of Damage. Tenant will notify Landlord in writing immediately upon the occurrence of any material damage to the Premises. Subject to Section 13.2, if the insurance proceeds available to Tenant are sufficient to pay for the necessary repairs, this Lease will remain in effect and Tenant will repair the damage as soon as is reasonably practicable, and Tenant will repair/replace any damage to Alterations and to Tenant's inventory, equipment, trade fixtures, furnishings, and other personal property.

13.2 Decision. If (a) the insurance proceeds received by Tenant are not sufficient to pay the entire cost of repair or if the cause of the damage is not covered by Tenant's insurance or (b) if Landlord considers the damage to be significant, then Landlord may elect either to (1) repair the damage as soon as reasonably practicable, in which case this Lease will remain in full force and effect or (2) terminate this Lease. Landlord will notify Tenant of Landlord's decision within thirty (30) days after the date of damage. If the damage affects more than thirty-five percent (35%) of the Premises, Tenant will have the option to terminate this Lease upon written notice given to Landlord

within fifteen (15) days after the date of damage. If Landlord elects to repair the damage, then rent owed by Tenant will be equitably abated in proportion to the reduction in the usability of the Premises.

14. CONDEMNATION

14.1 Entire Taking. If all of the Premises, are taken by eminent domain or conveyance in lieu thereof (a “**Taking**”), this Lease will automatically terminate as of the date title vests in the condemning authority, and all Rent will be prorated to that date. A sale by Landlord under a threat of condemnation, or while condemnation proceedings are pending, will be deemed a Taking.

14.2 Partial Taking. In the event of a Taking of a part of the Premises, Landlord or Tenant may terminate this Lease by notifying the other Party of such termination within thirty (30) days following the date of such Taking. Upon notification, this Lease will terminate on the date specified in the notice, but no sooner than thirty (30) days from the date of such notice, and the Rent hereunder will be prorated as of such date.

14.3 Awards and Damages. Landlord reserves all rights to damages to the Premises for any Taking, and Tenant will make no claim against Landlord or the condemning authority for damages for termination of the leasehold interest. Tenant will have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be entitled for Tenant’s moving expenses, business interruption, or Taking of property of Tenant (not including Tenant’s leasehold interest) to the extent that such loss is awarded separately in the eminent domain proceeding and not out of or as part of the damages recoverable by Landlord.

15. DEFAULT

15.1 Events of Default. Each of the following will be deemed a material default by Tenant and a material breach of this Lease (each an “**Event of Default**”):

15.1.1 Payment. Failure by Tenant to pay when due any Rent hereunder if such failure will continue for a period of five (5) days after written notice thereof has been given to Tenant; provided, however, Tenant is not entitled to more than two (2) written notices for monetary defaults during any twelve (12) month period; or

15.1.2 Misrepresentation. Any misrepresentation or material omission of information made by Tenant orally to Landlord or in any documents or other materials provided by Tenant to Landlord in connection with this Lease; or

15.1.3 Operating Covenant. Tenant’s failure to comply with the Permitted Use under Section 7.1, where such failure continues for a period of fifteen (15) days after notice of such failure from Landlord; or

15.1.4 Abandonment. Any prolonged absence by Tenant from the Premises, or an absence from the Premises of five (5) days or more when any Rent is due and unpaid, regardless of whether there is an Event of Default under Section 15.1.1; or

15.1.5 Execution. This Lease, any part of the Premises, or any property of Tenant’s are taken upon execution or by other process of law directed against Tenant, or are taken

upon or subject to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within fifteen (15) days after its levy; or

15.1.6 Voluntary Bankruptcy. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved, or makes an assignment for the benefit of creditors; or

15.1.7 Involuntary Bankruptcy. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant are instituted against Tenant or a receiver or trustee is appointed for all or substantially all of the property of Tenant and such proceeding is not dismissed or such receivership or trusteeship vacated within thirty (30) days after such institution or appointment; or

15.1.8 Liens. The doing or permitting to be done by Tenant of any act which creates a mechanic's or other lien or claim against the land of which the Premises are a part and the same is not released or otherwise provided for by indemnification satisfactory to Landlord within fifteen (15) days thereafter; or

15.1.9 Insurance. If a Tenant fails to maintain the insurance it is required to carry under Section 11.1, and such failure continues for a period of five (5) days after the date the failure first occurs; or

15.1.10 Estoppel and Subordination. If Tenant fails to provide the required estoppel certificate (Section 16.3) or subordination agreement (Section 16.1) within the time period required, and such failure continues for a period of three (3) days after receipt of a second request from Landlord; or

15.1.11 Other. Tenant's failure to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant and not subject to Section 15.1.1 through Section 15.1.10, where such failure will continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant or such additional period of time thereafter as may be reasonably necessary under the circumstances to cure such failure on the condition that Tenant commences to cure such failure within said thirty (30) period and thereafter diligently proceeds to cure such default; provided, however if Tenant fails to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant more than three (3) times in any 12 month period (although Tenant will have cured any such previous breaches after notice from Landlord, and within the applicable cure period), then any fourth failure in such 12 month period will constitute an Event of Default without further notice.

15.2 Remedies. Upon an Event of Default, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right or remedy at law or in equity, take any or all of the following actions:

15.2.1 Maintain Lease. Maintain this Lease in full force and effect and recover the Rent as it become due (or alternatively, if Landlord exercises the right to accelerate the Rent as set forth below, recover all Rent due as a result of acceleration) without terminating Tenant's right to possession irrespective of whether Tenant has abandoned the Premises. In the event

Landlord elects to maintain this Lease in full force and effect as aforesaid, Landlord will nevertheless have the right to attempt to re-let the Premises at such rent, terms, and conditions as Landlord determines and do all things Landlord deems necessary to maintain or preserve the Premises, including removal of all persons from the Premises and removal of all property from the Premises to a public warehouse or storage facility at the cost of and for the account of Tenant; and if Tenant fails to pay for storage, then the contents of the storage facility may be sold at public auction and the proceeds of such sale applied first to payment of such storage fees, second to the expenses of such sale, third to amounts due Landlord, and the balance, if any, to Tenant. In the event of any re-letting, Tenant's right to possession of the Premises and this Lease will automatically terminate upon the new tenant taking possession of the Premises, provided, that Tenant's liability for damages as set forth in Section 15.2.6 will survive such termination. Notwithstanding that Landlord may have elected to maintain the Lease under this Section 15.2.1, Landlord reserves the right to thereafter terminate the Lease by written notice in accordance with Section 15.2.2.

15.2.2 Terminate Lease. Terminate this Lease by written notice to Tenant, in which case Tenant's right to possession of the Premises ceases and this Lease be terminated, except as to Tenant's liability under this Lease, which will survive such termination.

15.2.3 Re-entry. Without further demand or notice, re-enter and take possession of the Premises or any part of the Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, damage, or otherwise and without being deemed guilty of any manner of trespass or breach of the peace. No such re-entry by Landlord will be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. In the event of a re-entry without termination, Landlord will nevertheless have the right to attempt to re-let the Premises at such rent, terms, and conditions as Landlord determines and do all things Landlord deems necessary to maintain or preserve the Premises, including removal of all persons from the Premises and removal of all property from the Premises to a public warehouse or storage facility at the cost of and for the account of Tenant, and if Tenant fails to pay for storage, then the contents of the storage facility may be sold at public auction and the proceeds of such sale applied first to payment of such storage fees, second to the expenses of such sale, third to amounts due Landlord, and the balance, if any, to Tenant. In the event of any re-letting, Tenant's right to possession of the Premises and this Lease will automatically terminate upon the new tenant taking possession of the Premises, provided, that Tenant's liability for damages as set forth in Section 15.2.6 will survive such termination. Notwithstanding that Landlord may have elected to re-enter the Premises without termination, Landlord reserves the right to thereafter terminate the Lease by written notice in accordance with Section 15.2.2.

15.2.4 Cure. Without further demand or notice, cure any Event of Default, and charge Tenant as Additional Rent the cost of effecting such cure, including, without limitation, reasonable attorneys' fees and interest on the amount so advanced at the lesser of eighteen percent (18%) per annum or the maximum interest rate allowed by Applicable Law, provided that Landlord has no obligation to cure any such Event of Default.

15.2.5 Acceleration of Rent. Accelerate the payment of all Rent payable by Tenant for the balance of the Term by notice to Tenant, discounted to present value using a

discount factor equal to the Federal Reserve Re-discount Rate as established from time to time by the 12th Federal Reserve District. Such amount will be immediately due and payable in full. In the event that Landlord terminates this Lease as provided in this Section 15.2.5 or as otherwise permitted by law, all Rent payable by Tenant for the balance of the Term will be deemed accelerated and discounted in accordance with this Section as of the date of termination.

15.2.6 Damages. Recover from Tenant any and all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's default or which in the ordinary course of events would be likely to result therefrom, including, without limitation: (a) all Rent due and unpaid; (b) all Rent payable by Tenant for the balance of the Term as provided in Section 15.2.5; (c) the costs and expenses of repairing, remodeling, and otherwise making the Premises ready for a new tenant; (d) administrative costs and expenses of Landlord as a result of the Event of Default; and (e) leasing commissions for any leasing agent engaged to re-let the Premises; (f) attorneys' fees; (g) the unamortized balance of the tenant allowance, if any; and (h) late charges and interest as provided in Sections 15.3 and 15.4, respectively.

15.2.7 Other Remedies. Exercise any other right or remedy at law or in equity.

15.3 Late Charges. Tenant acknowledges that late payment of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which are now and would be extremely difficult to ascertain. Accordingly, if any Rent is not received by Landlord within five (5) days after such Rent is due, Tenant will pay to Landlord a late charge of \$75.00. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord will not constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

15.4 Interest. All Rent not paid within five (5) days after such Rent is due will bear interest from the date due at the lesser of eighteen percent (18%) per annum or the maximum interest rate allowed by Applicable Law (the "**Default Rate**").

15.5 Default by Landlord. Landlord will not be in default under this Lease unless Landlord fails to cure such breach within thirty (30) days after written notice from Tenant of such breach specifying in detail the matters for which breach is claimed; provided that if the default cannot reasonably be cured within that time period, Landlord will have such additional time as is reasonably necessary to cure the default so long as Landlord is diligently pursuing the cure to completion. If Landlord fails to cure the default within such time period, Tenant will have all rights and remedies available at law and in equity, other than the right to terminate the Lease or any offsets against Rent; provided, however, that if Landlord fails or refuses to effect a cure as provided and if Tenant may reasonably effectuate a cure of such default, then Tenant will undertake to cure such default, and Landlord, upon demand, will repay to Tenant any amounts so expended within ten (10) days after Tenant's demand therefor. Such payment will not be in lieu of any damages that may apply to Landlord's default. Tenant will give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee, or beneficiary under any deed of trust encumbering the Premises whose name and address has been furnished to Tenant in writing, and such parties will have the right but no obligation to cure the default on Landlord's behalf within the same timeframe provided to Landlord; provided that such time frame will not begin

until Tenant provides notice to such person that Landlord has not commenced the cure within the thirty (30) days period first identified above.

15.6 Holding Over. If Tenant fails to surrender possession of the Premises upon termination or expiration of this Lease, and if Tenant obtains Landlord's written consent to Tenant's continued occupancy, then Tenant's occupancy will be deemed to be a month to month periodic tenancy, with Base Rent due at a rate one and one half times the Base Rent payable by Tenant hereunder during the calendar month immediately preceding such termination or expiration (the "**Latest Rate**"), and either Party may terminate such tenancy upon thirty (30) days' written notice to the other Party. If Tenant fails to surrender possession of the Premises upon termination or expiration of this Lease and if Tenant does not obtain Landlord's written consent to Tenant's continued occupancy, then Tenant will be deemed a trespasser and will be liable to Landlord for all damages sustained by Landlord as a result thereof, together with Base Rate at a rate double the Latest Rate. Tenant will indemnify Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by a succeeding tenant founded on such delay.

15.7 Statutory Requirements. To the extent that any remedies or actions above require statutory notice or are limited or modified by the statutes of the State in which the Property is located, Landlord and Tenant will follow the statutory requirements of such State, and the Lease is deemed to include such requirements and amend any terms which conflict with such statutes.

15.8 Termination for Convenience. The Lease may be terminated for any reason, without penalty or further liability, by either party on sixty (60) days' prior written notice.

16. PROTECTION OF LENDERS; ESTOPPEL

16.1 Subordination. This Lease will be subordinate to any financing now existing or hereafter placed upon the Property by Landlord and to any and all advances to be made thereunder and to interest thereon and all modifications thereof (each a "**Mortgage**"). This provision will be self-operative. Tenant will execute and deliver, within fifteen (15) days after Landlord's request therefor, any reasonable subordination agreement required by the holder of a Mortgage, but only if any such subordination agreement provides that so long as Tenant is not in default under this Lease beyond any applicable cure period, Tenant will have the continued enjoyment of the Premises free from any disturbance or interruption by any holder of a Mortgage or any purchaser at a foreclosure or private sale of the Property.

16.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, holder of a Mortgage, or purchaser at a foreclosure sale, or transferee thereof, Tenant will attorn to the transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

16.3 Estoppel Certificates. Tenant will, within ten (10) days after Landlord's request therefor, execute and deliver to Landlord a written statement certifying: (a) the commencement and the expiration date of the Term; (b) the amount of Base Rent and the date to which it has been paid; (c) that this Lease is in full force and effect and has not been assigned or amended in any way (or

specifying the date and terms of each agreement so affecting this Lease) and that no part of the Premises has been sublet (or to the extent such is not the case, a copy of any sublease); (d) that to Tenant's knowledge, Landlord is not in default under this Lease (or if such is not the case, the extent and nature of such default); (e) on the date of such certification, to Tenant's knowledge, there are no existing defenses or claims which Tenant has against Landlord (or if such is not the case, the extent and nature of such defenses or claims); and (f) any other information that Landlord or a mortgagee or purchaser may reasonably request. It is intended that any such statement will be binding upon Tenant and may be relied upon by Landlord and prospective purchasers or mortgagees. If Tenant fails to provide the requested estoppel within fifteen (15) days after receipt of the request, in addition to the provisions of Section 15.2, Tenant will be deemed to have given a certificate as above provided, without modification, and will be conclusively deemed to have admitted the accuracy of any information supplied by landlord to a prospective purchaser or mortgagee contained in any statement provided to Tenant for verification as above provided. The estoppel certificate will run to the benefit of all those Landlord specifies as addressees in the estoppel certificate.

17. LIABILITY

17.1 Landlord's Liability. The liability of Landlord to Tenant will be limited to the amount of Rent paid by Tenant to Landlord for the Initial Term or the then-applicable Extension Term. Tenant agrees to look solely to the Rent paid for the Premises for the Initial Term or the then-applicable Extension Term for the recovery of any judgment against Landlord, and Landlord and its owners will not be personally liable for any such judgment. If Landlord sells or otherwise transfers the Property to a new owner, the transferring Landlord will not thereafter be named or sought after in any matter related to the Property relating to the time period after the transfer and responsibility for those matters will automatically transfer to the new owner.

17.2 Tenant's Business Loss or Interruption. Notwithstanding any other provision of this Lease, and to the fullest extent permitted by law, Tenant hereby agrees that Landlord will not be liable for injury to Tenant's personal property or its business or any loss of income therefrom, whether such injury or loss results from conditions arising upon the Premises or the Property, or from other sources or places including any interruption of services and utilities or any casualty, condemnation, whether the cause of such injury or loss of the means of repairing the same is inaccessible to Landlord or Tenant, and that it therefore assumes the risk of or insures such risks of loss as it determines in its discretion.

18. MISCELLANEOUS

18.1 No Right to Relocation. Upon expiration of the Term or any Extension Option, or upon termination based on Event of Default or pursuant to any other provisions contained in this Lease, Tenant shall have no right to relocation assistance by the Landlord. Tenant will be solely responsible for ensuring its relocation from the Premises.

18.2 Notices. All notices required or permitted to be given under this Lease will be in writing and will be given by: (a) hand delivery, in which event such notice will be deemed received upon the delivery or refusal to accept delivery thereof; (b) U.S. Certified Mail, return receipt requested, with postage prepaid, in which event such notice will be deemed received upon the earlier of the date of actual receipt, the date of delivery as shown on the return receipt, or the third day after deposit in the mail; or (c) a nationally-recognized overnight delivery service (e.g., FedEx), in which

event such notice will be deemed received upon the earlier of the actual date of receipt or the second day after deposit with the nationally-recognized overnight delivery service. All such notices will be addressed to Landlord and the Tenant at the addresses identified above or at such other address as a Party may specify from time to time by notice to the other Party. Notwithstanding the foregoing, actual notice, however given and from whomever received, will always be effective, and any notice given by a Party's attorneys will, for all purposes, be deemed to have been given by such Party.

18.3 Non-Waiver/Accord. Failure of Landlord or Tenant to insist, in any one or more instances, upon strict performance of any term of this Lease or to exercise any election herein contained will not be construed as a waiver or a relinquishment, but the same will continue and remain in full force and effect. Neither Party will be deemed to have waived any provision of this Lease unless expressed in writing and signed by such Party. Tenant specifically acknowledges that where Tenant has received a notice of default (whether Rent or non-rent), no acceptance by Landlord of Rent will be deemed a waiver of such notice and, including no acceptance by Landlord of partial Rent, will be deemed to waive or cure any Rent default. Landlord may, in its discretion, after receipt of partial payment of Rent, refund the same and continue any pending action to collect the full amount due or may modify its demand to the unpaid portion. In either event, the default will be deemed uncured until the full amount is paid in good funds. Payment by Tenant or receipt by Landlord of a lesser amount than the Rent and other charges stipulated herein will be deemed to be on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any payment will be deemed an accord and satisfaction, and Landlord's acceptance of such check or payment will be without prejudice to Landlord's right to recover the balance of the amount due or pursue any other remedy to which it is entitled.

18.4 Brokers. The Parties represent and warrant to each other that neither has worked with or consulted any broker, agent, or finder to act in its behalf in connection with this Lease. Each Party agrees to indemnify, defend, and hold harmless the other from and against any and all liability, claims, costs, damages, judgments, and proceedings of any kind arising from any claim for brokerage commissions, finder's commissions, or other such compensation by any broker or other person based upon a claimed obligation or liability (whether valid or not) of the indemnifying Party.

18.5 Integration. This Lease is the complete, entire, final, and exclusive agreement among the Parties hereto and supersedes all prior and contemporaneous negotiations, agreements, and understandings between the Parties, whether written, oral, implied, course of conduct, or any combination thereof, with respect to the subject matter contained herein. It is expressly warranted by the Parties that no promise or inducement has been offered except as set forth herein and that this Lease is executed without reliance upon any promise, inducement, or representation not set forth herein. This Lease is fully integrated, and the terms hereof will not be amended, added to, subtracted from, changed, or modified by evidence of any prior or contemporaneous agreement.

18.6 Amendment. This Lease may not be amended or modified in any way except by an instrument in writing executed by all Parties hereto.

18.7 Remeasurement. Landlord reserves the right, from time to time, to remeasure and adjust the rentable or useable square footage of the Property, provided such remeasurement and adjustment is made in accordance with industry standards uniformly applied. If a remeasurement and adjustment is made, Tenant's Base Rent will be automatically adjusted based on the

remeasurement and adjustment, provided in no event will any remeasurement and adjustment be applied retroactively.

18.8 Construction. The captions and headings of this Lease are for reference only and will not be deemed to define or limit the scope or intent of any of the terms or provisions of this Lease. Whenever the context so requires, the singular will include the plural, the plural will include the singular, and the use of gender will include all other genders. When used in this Lease, the phrase “including” (or a word of similar import) will mean “including, but not limited to,” and words such as “herein,” “hereinafter,” “hereof,” “hereto,” and “hereunder” refer to this Lease as a whole, unless the context otherwise requires. The Parties acknowledge that each Party and, if they should so choose, their attorneys, have reviewed and revised this Lease and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation and enforcement of this Lease.

18.9 Incorporation by Reference. All Exhibits and Addendums to this Lease are true, correct, material, and are hereby incorporated by reference as if set forth herein. However, in the event of a conflict between such Exhibits or the Addendums and the text of this Lease, the Exhibits and Addendums will control.

18.10 Force Majeure. No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Lease, for any failure or delay in fulfilling or performing any term of this Lease (except for Tenant’s obligation to pay Rent hereunder, which is not excused by a Force Majeure Event) when and to the extent such Party’s (the “**Impacted Party**”) failure or delay is not caused by the Impacted Party and instead is caused by or results from the following events that affect the Impacted Party: (a) acts of God; (b) floods, fires, earthquakes, or explosions; (c) declarations of pandemic or epidemic by a governmental or quasi-governmental agency (e.g. the World Health Organization); (d) governmentally-declared quarantines, self-isolation orders, or stay-at-home orders; (e) wars, invasions, terrorist threats or acts, riots, or other civil unrest; (d) government orders, laws, or actions; or (e) inability to obtain labor or materials or reasonable substitutes thereof (each a “**Force Majeure Event**”). The Impacted Party will give notice to the other Party of the Force Majeure Event as soon as reasonably practicable after the occurrence thereof, stating the period of time the occurrence is expected to continue (which will not be binding on the Impacted Party). The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable after the occurrence of the Force Majeure Event ceases.

18.11 Successors. Subject to the restrictions on Tenant’s ability to Transfer as set forth in Section 12, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

18.12 Authority. The individual executing this Lease on behalf of each Party represents and warrants to the other Party that such individual is duly authorized to execute and deliver this Lease on behalf of the signing Party and that this Lease is binding upon the signing Party in accordance with its terms.

18.13 Governing Law. This Lease will be interpreted and enforced in accordance with the laws of the State in which the Property is located without giving effect to any choice or conflict

of law provision or rule (whether in the State in which the Property is located or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State in which the Property is located.

18.14 Landlord's Access. Landlord or its agents may enter the Premises to show the Premises to potential lenders, tenants, or other parties; to make repairs, alterations, or improvements, to inspect and conduct tests in order to monitor Tenant's compliance with this Lease and Applicable Law; or for any other purpose Landlord deems necessary, provided that Landlord will use commercially reasonable efforts to minimize interference to Tenant's use of the Premises. Landlord will give Tenant twenty-four (24) hours' prior notice of such entry, except in the case of emergency, in which event no prior notice is required. Landlord may place customary "For Sale" or "For Lease" signs in and about the Property and in and about the Premises within the last month of the Term or after a default and failure to cure as provided for under Section 15.

18.15 Landlord Acting Through Agent. Any action permitted or required of Landlord under this Lease may, at Landlord's election, be performed by Landlord's property manager or other agent on Landlord's behalf.

18.16 Quiet Enjoyment. If Tenant pays the Rent and complies with all other terms of this Lease, Tenant may occupy the Premises for the Term against any person claiming by, through, or under Landlord but not, otherwise, subject to the provisions of this Lease.

18.17 No Recordation. Tenant will not record this Lease without prior written consent from Landlord. However, Landlord may require that a memorandum of this Lease executed by both Parties be recorded.

18.18 Survival. The obligations of each Party applicable to time periods prior to the termination or expiration of this Lease will survive termination or expiration of this Lease, including Landlord's right to indemnification and defense from claims arising from matters occurring prior to termination even though the claim is asserted against Landlord after termination and payment of amounts not finally calculated by the expiration/termination date.

18.19 Relationship Among the Parties. No agency, employment agreement or relationship, joint venture, or partnership is created between the Parties by this Lease and neither Party will be deemed to be an agent of the other nor either Party have the right or power of authority to act for the other in any manner or to create any obligations, contracts, or debts binding upon the other Party.

18.20 Severability. This Lease will be enforced to the fullest extent permitted by Applicable Law. If for any reason any provision of this Lease is held to be invalid or unenforceable to any extent, then: (a) such provision will be interpreted, construed, or reformed to the extent reasonably required to render the same valid, enforceable, and consistent with the original intent underlying such provision and (b) such invalidity or unenforceability will not affect any other provision of this Lease.

18.21 Time. All time periods in this Lease will be deemed to refer to calendar days. If the last date on which to perform any act, give any notice, or be deemed to have received any notice under this Agreement will fall on a Saturday, Sunday, or holiday observed by the state courts sitting

in the County where the Property is located, such act or notice will be deemed timely if performed or given, or notice will be deemed received, on the next succeeding day that is not a Saturday, Sunday, or holiday observed by the state courts sitting in the County in which the Property is located. Time is of the essence with respect to each and every covenant and obligation under this Lease.

18.22 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, TENANT AND LANDLORD HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS LEASE, ANY RELATED DOCUMENT, OR UNDER ANY OTHER DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith, OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS LEASE, AND AGREE THAT ANY SUCH ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY; THIS PROVISION IS A MATERIAL INDUCEMENT FOR TENANT AND LANDLORD ENTERING INTO THIS LEASE.

18.23 Attorneys' Fees. In the event of any controversy, claim, or action being filed or instituted between the Parties to interpret or enforce the terms of this Lease, or arising from the breach of any provision hereof, the prevailing Party will be entitled to receive from the non-prevailing Party all costs, damages, and expenses, including, without limitation, reasonable attorneys' fees incurred by the prevailing Party (whether incurred prior to trial, at trial, on appeal, and/or during any post-judgment collection activities).

18.24 Counterparts. This Lease may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same document. The signature pages may be detached from each counterpart and combined into one document. This Lease may be signed electronically and delivered by facsimile or via email in PDF or other similar format, each of which will be effective as an original.

[Remainder of page intentionally left blank; signature page follows.]

EXECUTED EFFECTIVE by Landlord and Tenant as of the Effective Date.

LANDLORD:

The Urban Renewal Agency of the
City of Twin Falls

By: _____
Name: Rudy Ashenbrener
Its: Chair

Date: _____

TENANT:

Colter Heck dba Heck Roofing

By: _____
Name: Colter Heck
Its: _____

Date: _____

EXHIBIT A

PROPERTY

RPT4401001035A = 237 Maxwell Ave (Lot 35 +/-, Block 1), 0.116 ac

RPT4401001036A = 251 Maxwell Ave (Lots 36-38 +/-, Block 1), 0.49 ac

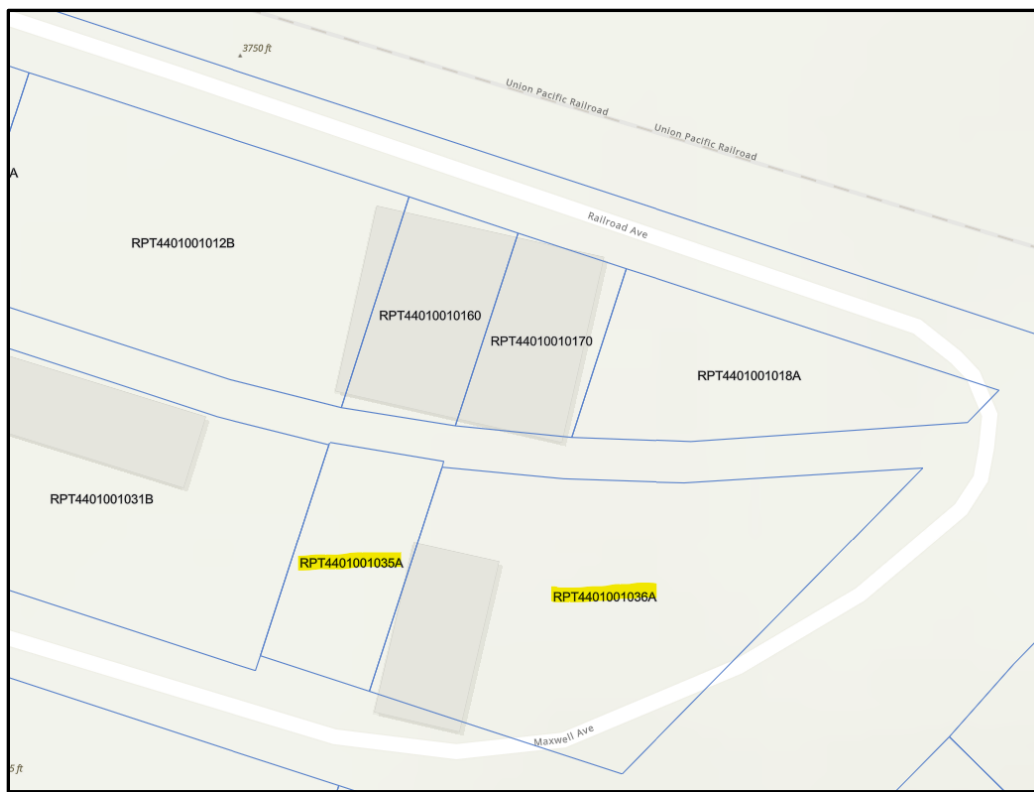


EXHIBIT B

PREMISES

RPT4401001035A = 237 Maxwell Ave (Lot 35 +/-, Block 1), 0.116 ac, (entire lot)

RPT4401001036A = 251 Maxwell Ave (Lots 36-38 +/-, Block 1), 0.49 ac
(approximately 5,000 SF of the westernmost portion of the parcel)

