CITY COUNCIL COMMUNICATION
AGENDA ITEM 10C

City of Louisville
COLORADO • SINCE 1878

SUBJECT: RESOLUTION NO. 105, SERIES 2025 – A RESOLUTION APPROVING A LEASE AGREEMENT WITH AVID4 ADVENTURE, INC., FOR LEASE OF CITY PROPERTY LOCATED AT 1501 EMPIRE ROAD

DATE: DECEMBER 16, 2025

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PRESENTED BY: VANESSA ZARATE, CECD, ECONOMIC VITALITY MANAGER

SUMMARY:
The City of Louisville owns property at 1501 Empire Road, the former public works facility. In 2020, the City of Louisville entered into an agreement with AVID4 Adventure, Inc. (AVID), to lease the property. Their current lease concludes on December 31, 2025 and we are proposing a new 18-month lease for the property.

In addition, Staff is currently getting an appraisal for the property for potential sale.

BACKGROUND / PRIOR DISCUSSIONS:
The City of Louisville owns property at 1501 Empire Road; the property was formerly the Public Works facility. By Resolution No. 1, Series 2020, adopted on January 7, 2020, the City Council approved a Lease Agreement and a form sublease (Attachment 3) with AVID for them to use the property, while maintaining an easement for access to the wastewater facility. The lease has been amended twice, first to reduce the rent to 25% of the amount due in months 5-12 of the lease (June 1, 2020 through January 1, 2021), and then to reduce the monthly per-square-foot amount of rent for the remainder of the lease term and abate the excess rent payments due from AVID to the City until January 1, 2022

The current AVID lease expires December 31, 2025, and staff has worked with the tenant to negotiate a new 18-month lease for AVID to continue to rent the property. This 18-month lease will allow AVID to continue to use the space while Staff obtains an appraisal of the property to help determine next steps for the property.

The current lease requires AVID to pay the City both a base lease rate and 50% of excess rent for indoor and outdoor subleases. The lease payment is due in advance on the first day of each calendar month; the excess rent payment is due within 30 days after receipt by AVID of rent from its sublessees.

The City has received the following amounts from AVID in payment for excess rent during the lease term:

2022 $41,815.50
2023 $15,489.97
2024 $17,880.39
2025 $16,017.57 (paid on December 1, 2025)

The payment received from AVID on December 1, 2025, did not include any amount for excess rent for subleased areas not contained within a building (outdoor storage). Based on the subleases that have been provided to the City, the Finance Director has calculated the amount of excess rent due for 2025 is $22,258.49. AVID has paid $16,017.57, leaving a balance of $6,240.92.

It also appears that AVID's excess rent payments have not included subleases for outdoor storage in some previous years. At some point, based on discussions with Economic Vitality staff, AVID determined it was no longer required to pay excess rent on outdoor storage, despite the lease requirement. (See the last sentence of Section 8.4: "For purposes of this Section 8.4, the full amount of rent or other economic consideration received by TENANT for any portion of the Premises not contained within a building shall be considered excess rent.")

AVID also started executing subleases that did not meet the form approved by the City Council, and it used these modified subleases to calculate excess rent in lower amounts than were due. These modified subleases were provided to the City for approval, and City staff had them executed without reviewing to confirm they were in the form approved by the City Council.

In connection with this new lease, AVID is requesting City Council forgive its outstanding obligation to pay excess rent on the outdoor storage under the current lease. AVID disputes the Finance Director's calculations and has provided its own calculations that do not correspond with the subleases provided by AVID to the City. Verifying amounts paid for excess rent has been an ongoing challenge for City staff due to lack of documentation provided by AVID. AVID has presented a draft resolution (Attachment 5), which would entirely waive the obligation to pay excess rent on outdoor storage under the current lease.

If the Council decides to waive or reduce the amount of excess rent due, the City Attorney's recommendation is for the City Council to direct the City Attorney to prepare a lease amendment and to limit the waiver or reduction to lease year 2025. The draft resolution prepared by the City Attorney (Attachment 1) provides the City Council with options to address this outstanding and overdue excess rent obligation for 2025.

As of the date of this Council Communication, AVID has also not provided a Certificate of Insurance that complies with the requirements of the current lease. The resolution drafted by the City Attorney also contains a condition to address this requirement, authorizing the Mayor to sign the new lease only upon receipt of a complying Certificate of Insurance.

ANALYSIS:
Should the City move forward with the new lease, Council would need to approve the attached new lease for AVID or provide feedback/direction for the lease. The existing lease expires December 31, 2025. Section 12.2 of the current lease provides that if AVID continues to occupy the property after December 31, 2025, with or without the City's consent, the rent due is 150% of the current rent.

Due to the conflicts that have arisen regarding the requirement in the current lease for payment of excess rent for subleases, the new proposed 18-month lease removes the obligation for AVID to remit to the City 50% of amounts received from sublesees of the property for excess rent and increases the base monthly rate to account for this revenue.

2025 COUNCIL WORK PLAN:
This lease supports Economic Vitality goals by generating additional income for property not currently being used by City services.

FISCAL IMPACT:
The fiscal impact to the City is positive from gained lease revenue and is impacted by the City's maintenance and replacement responsibilities on the property.

ALTERNATIVE(S):
The alternative is to not move forward with a new lease, make amendments to the lease and provide direction on the 2025 outdoor storage excess rent payment.

RECOMMENDATION:
Staff recommends that the City Council review the lease and provide direction to staff. In addition, staff is requesting direction from City Council on how to address the excess rent for outdoor storage for 2025.

ATTACHMENT(S):
1. Resolution No. 105, Series 2025
2. Proposed New AVID Lease
3. LINK to January 7, 2020, Council meeting packet materials with Resolution No. 1, Series 2020
4. Current executed AVID Lease, including First and Second Amendments
5. AVID's proposed resolution for outdoor storage (provided to convey AVID's request to waive the requirement to pay excess rent on outdoor storage)

RESOLUTION NO. 105
SERIES 2025

A RESOLUTION APPROVING A LEASE AGREEMENT WITH AVID4 ADVENTURE, INC., FOR LEASE OF CITY PROPERTY LOCATED AT 1501 EMPIRE ROAD

WHEREAS, the City of Louisville, Colorado (the “City”) is a home rule municipal corporation and is owner of property formerly used as the City Shops Facility, such property consisting of three enclosed buildings, totaling 20,104 square feet, associated sheds, parking and other improvements situated upon approximately 3.63 acres, located at 1501 Empire Road in Louisville (the “Property”); and

WHEREAS, by Resolution No. 1, Series 2020, adopted by the City Council on January 7, 2020, the City Council approved a Lease Agreement with Avid4 Adventure, Inc. for the premises described in Exhibit A to such Lease Agreement, which Lease Agreement expires December 31, 2025; and

WHEREAS, by Resolution No. 44, Series 2020, the City Council approved a First Amendment to Lease Agreement and by Resolution No. 1, Series 2021, the City Council approved a Second Amendment to Lease Agreement (the Lease Agreement, as amended by the First and Second Amendments, is referred to herein as the “Current Lease Agreement”)

WHEREAS, Avid4 Adventure, Inc. has negotiated with the City a new Lease Agreement for lease of the Property, excluding one building as set forth in Section 1.1 of the proposed Lease Agreement and depicted in Exhibit A attached thereto, a copy of which new Lease Agreement accompanies this Resolution; and

WHEREAS, the City is authorized to enter into lease agreements for City property pursuant to its home rule charter and other City ordinances, and desires by this Resolution to approve same and authorize its execution; and

WHEREAS, the Council hereby finds and determines that execution of the proposed Lease Agreement, subject to the conditions set forth herein, is appropriate and necessary to the functions and operations of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The proposed Lease Agreement (the “Lease”) between the City of Louisville and Avid4 Adventure, Inc. (“Lessee”), for the lease of the approximately 3.63 acre Premises located at 1501 Empire Road in Louisville, including two (2) enclosed buildings, is hereby approved in essentially the same form as the copy of such Lease accompanying this Resolution, subject to the following conditions:

A. Receipt by the City of certificate(s) of insurance meeting the requirements of Article 7 of the Lease.

B. Option 1: Payment by Lessee to the City of $6,240.92, representing the remaining amount due for excess rent under the Current Lease Agreement.

OR

Option 2: Approval by City Council of an amendment to the Current Lease Agreement and execution of the same by the parties, which amendment waives the remaining amount due for excess rent for lease year 2025 under the Current Lease Agreement.

C. Revision of Exhibit A to the Lease to remove the enclosed building not included as part of the leased premises (the Brown Storage Building).

Section 2. Upon satisfaction of the condition set forth in Section 1 of this Resolution, the Mayor is authorized to execute the Lease on behalf of the City, and the Mayor is hereby further granted the authority to negotiate and approve such revisions to said Lease prior to execution as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Lease are not altered.

Section 3. The Mayor, City Manager and City Staff are further authorized to execute and deliver all documents necessary in connection with the leasing of the Premises and to do all things necessary on behalf of the City to perform the obligations of the City under the Lease approved by this Resolution.

PASSED AND ADOPTED this _____ day of _____________, 2025.

____
Christopher M. Leh, Mayor

ATTEST:

____
Genny Kline, City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation ("LANDLORD" or "City") and **AVID4 ADVENTURE, INC.**, a Delaware corporation ("TENANT").

ARTICLE 1 – GRANT, TERM AND RENT

1.1 DEMISED PREMISES. In consideration of the rents, covenants, and agreements herein set forth, LANDLORD hereby leases to TENANT and TENANT hereby rents from LANDLORD certain premises located at and having a street address of 1501 Empire Road, Louisville, Colorado, 80027, including the following two (2) enclosed buildings:

Main Building	17,272 sf
Secondary Building	1,920 sf

Totaling 19,192 leasable square feet, upon approximately 3.63 acres of property, together with all appurtenances thereto, including but not limited to any parking spaces on the property, all of which, inclusive of the buildings, is hereinafter collectively "the Premises" or "Leased Premises," and are further depicted on Exhibit A attached hereto and incorporated herein by reference. LANDLORD retains full and exclusive use of the Brown Storage Building located on the property, approximately 912 square feet in size, which is not a part of the Leased Premises.

1.2 TERM. This lease shall commence on **January 1, 2026** and end on **June 30, 2027**.

1.3 RENT. The initial rent under this Lease shall be $21,287.13 per month, payable in advance on the first day of each month. Rent shall be due and payable in advance on the first day of each calendar month at the office of LANDLORD specified herein. LANDLORD may assess a late charge of ten percent (10%) of any monthly rent installment or any other payment called for in this Lease that is delinquent ten (10) days or more if Tenant fails to pay any amount due to the LANDLORD within ten (10) days after such amount is due on more than one (1) occasion in any 12-month period. In addition, all rent in arrears and all amounts collectible as provided for in this Lease shall accrue interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid. If the Initial Term commences or terminates on a day other than the first or last day of a calendar month respectively, then the rent for such month or months shall be prorated and the prorated amount shall be paid in advance.

1.4 TAXES & OTHER CHARGES. TENANT shall be responsible for the payment of all taxes attributable to the Premises, including but not limited to all ad valorem property taxes and special assessments imposed upon the Premises; all sales, excise, rental, and use taxes imposed by law on the rent due hereunder; and all sales, use or excise taxes due as a result of any work or operations performed by TENANT in or upon the Premises.

1.5 SECURITY DEPOSIT. TENANT shall maintain on deposit with LANDLORD at all times during the terms of this Lease, the sum of nineteen thousand two hundred sixty-six dollars and 33/100 ($19,266.33) for the purposes hereinafter set forth. If at any time TENANT shall be in default in the performance of any of the terms, provisions, covenants and conditions of this Lease on the part of TENANT to be done and performed, LANDLORD shall have the right to apply the said deposit, or so much thereof as may be necessary, toward the reimbursement of LANDLORD for any expense incurred by it by reason such default in performance, and toward the payment of any damage suffered by LANDLORD by reason of such default including collection and reasonable attorneys' fees; and in the event such deposit shall be diminished or depleted by any such payment from or application of the same, TENANT shall and will forthwith pay to LANDLORD such sum as shall be necessary to restore said deposit to the original amount thereof above mentioned. If the amount of said discharge shall exceed such expenses and damages, TENANT shall be and remain liable for the balance thereof remaining unpaid and forthwith shall pay the amount of such balance and deficiency to LANDLORD. The said deposit shall not bear any interest to TENANT, and LANDLORD shall return to TENANT such part or portion of said deposit as shall not be required to pay, discharge and reimburse the said expenses and damages.

ARTICLE 2 - UTILITIES

2.1. TENANT TO OBTAIN. TENANT shall contract in its own name and shall promptly pay when due all charges for all electric, telephone, gas, sewer, water, trash hauling, and all other utilities furnished to or used in connection with the Premises.

2.2 NON-LIABILITY. LANDLORD shall have no liability for damage or loss suffered by the business or occupation of TENANT arising from the lack, insufficiency, or failure of any utilities servicing the Premises, unless such failure of utilities is caused by LANDLORD.

ARTICLE 3 - CONDUCT OF BUSINESS BY TENANT

3.1 USE OF LEASE PREMISES. The Premises shall be used by TENANT solely for office/industrial/storage purposes (the "Permitted Use"). TENANT shall operate its business in an efficient and reputable manner, and shall employ adequate and competent personnel in attendance during TENANT's standard hours of operation. TENANT shall keep the Premises neat, clean, sanitary and reasonably free from dirt, rubbish, insects and pests at all times. TENANT shall not operate an incinerator or burn trash or garbage within the Premises. Any use of the Premises for or involving sale, cultivation, consumption, storage, manufacture or other activities involving recreational or medical marijuana is prohibited. TENANT shall not permit any objectionable or unpleasant odors to emanate from the Premises, nor, except as approved in writing by the LANDLORD, place or permit any antenna, radio, or other projections on the roof or outside the Premises; nor take any other action that in the reasonable judgment of LANDLORD would constitute a nuisance. TENANT additionally covenants not to perform any act on or about the Premises prohibited by law nor omit to perform any act required by law in connection with the use or operation of the Premises; nor to use or maintain the Premises in such a manner as to constitute an actionable nuisance to LANDLORD or any third party; and not to commit or permit waste of the Premises. TENANT shall comply with and observe all easements and all restrictive covenants and conditions that may affect or apply to the Premises, or any portion thereof, from time to time. Except as may be otherwise provided herein, TENANT shall procure, at its sole cost and expense, all approval, permits, and licenses required for the operation of the Permitted Use in the Premises and the placement of any improvements in the Premises and, in the event TENANT is unable to obtain said permits on terms acceptable to TENANT, TENANT may terminate this Lease. TENANT shall otherwise comply with all applicable laws, ordinances and governmental regulations. Any community events, special events, retail service or consumption of alcoholic beverages, outdoor recreational activities or temporary uses held on the Premises shall comply with all applicable laws, ordinances and governmental regulations, including without limitation requirements to obtain any necessary special events permits, temporary use permits and state and local liquor permits and to comply with the requirements of such permits, including but not limited to time restrictions, required off-street parking, and permit provisions to control noise and nuisance effects. Should TENANT desire to expand the use of the Premises to include uses not currently allowed by zoning, TENANT must follow all applicable laws, ordinances and governmental regulations to request and seek approval for such use on the Premises.

3.2 GOVERNMENTAL REGULATION. TENANT shall, at its expense, comply with all Federal, State and local laws, ordinances, orders, rules and regulations pertaining to the use and operation of the Premises pursuant to this Lease, as now or hereafter in force. In the event that TENANT's use of the Premises constitutes a violation of any of the foregoing, then such violation, if continued uncured, shall constitute a default hereunder.

3.3 QUIET ENJOYMENT. TENANT shall have the right of quiet enjoyment of the Premises subject to the terms, conditions, and covenants of this Lease.

ARTICLE 4 - LIENS

4.1 PAYMENT FOR WORK. TENANT shall be solely responsible for and shall promptly pay for all services, labor, or materials furnished to the Premises at the instance of TENANT.

4.2 LIENS. TENANT shall have no power to subject LANDLORD's interest in the Premises to mechanic's or materialmen's liens of any kind. TENANT further acknowledges that under state law public property is not subject the existence of any such lien, and any lien that is not discharged by TENANT or bonded off within thirty (30) days shall be a material breach of this Lease. All persons performing work, labor or supplying materials at the Premises on behalf of TENANT shall look solely to the interest of the TENANT and not to that of the LANDLORD for any payment or any claim, expenses, legal fees, or court costs. LANDLORD shall have the right, but not the obligation to discharge or transfer to bond any lien filed against the Premises by the TENANT's contractor that has not been discharged or transferred to bond within thirty (30) days from the filing thereof, and any discharge by LANDLORD may be with funds from the deposit received under Section 1.6. Any cost or expense, including reasonable attorneys' fees, incurred by LANDLORD as a result thereof shall immediately be due and payable and if not paid by TENANT within fifteen (15) days shall constitute a default under this Lease. LANDLORD in its discretion shall have the right to post the property and provide notice to any contractors of LANDLORD's non-liability for work, labor or materials supplied on behalf of TENANT, and, further, to advise contractors that mechanic's or materialmen's liens may not be asserted against public property.

ARTICLE 5 - MAINTENANCE OF PREMISES

5.1 **MAINTENANCE BY TENANT.** Except for LANDLORD's responsibilities as set forth in Section 5.3 below, TENANT shall at all times keep and maintain, at its sole cost and expense, the Premises, and all improvements (including buildings) located thereon, including exterior entrances, roofing, and all glass and windows, all floors, and all partitions, doors, fixtures, equipment and appurtenances thereof, including lighting, electrical equipment, plumbing fixtures and equipment, heating, ventilating and air conditioning equipment, in as good order and repair as existed upon commencement of this Lease, reasonable wear and tear excepted, and in a clean and sanitary condition, and shall at its sole cost and expense make all necessary repairs, including all necessary replacements, alterations and additions, using material and equipment of similar kind and quality to the original improvements, unless changes in material and quality are approved in writing by LANDLORD in advance, which approval may not be unreasonably withheld.

5.2 **FAILURE TO MAINTAIN.** If TENANT fails to maintain the Premises as required hereunder to the reasonable satisfaction of LANDLORD, then thirty (30) days after TENANT's receipt of written request from LANDLORD (except in the event of an emergency, in which event no more than twenty-four (24) hours notice shall be required), LANDLORD shall have the right to enter the Premises and to make such repairs at TENANT's expense, and upon completion thereof TENANT shall pay as additional rent LANDLORD's reasonable costs for making such repairs upon presentation of the bill therefor. Such payment shall be due within thirty (30) days after TENANT's receipt of an invoice therefor.

5.3 **LANDLORD MAINTENANCE OBLIGATIONS**. Notwithstanding anything to the contrary in Section 5.1 above, LANDLORD shall be responsible for (a) replacement of the roof of the Premises, HVAC equipment, and electrical or plumbing equipment, (b) structural or exterior replacements or additions to any improvements on the Premises (excluding doors or windows), and (c) any other capital replacements or improvements, except to the extent that the same were necessitated by the negligent or wrongful actions or omissions of TENANT, its employees, agents or licensees, all as the City in its reasonable discretion may deem necessary (collectively, “Capital Expenses”). The cost of such Capital Expenses shall be amortized over the useful life of such Capital Expenses and the annual amortized cost shall be invoiced by LANDLORD to TENANT annually, with such invoices payable within thirty (30) days of receipt by TENANT.

ARTICLE 6 - OWNERSHIP OF IMPROVEMENTS, EXTERIOR APPEARANCE

6.1 OWNERSHIP OF IMPROVEMENTS. Any or all installations, alterations, additions, partitions and fixtures other than TENANT’S furniture, trade fixtures, and equipment in or upon the Premises, whether placed there by TENANT or LANDLORD, shall, immediately upon such placement, become the property of LANDLORD without compensation therefor to TENANT. Notwithstanding anything herein contained, LANDLORD shall be under no obligation to repair, maintain or insure such installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of TENANT.

6.2 TERMINATION. This Lease shall terminate upon expiration of the term set forth in Section 1.2 or at such earlier time as this Lease may be terminated by LANDLORD or TENANT as provided herein. Upon expiration or termination of this Lease, TENANT shall at its sole expense perform all obligations of TENANT set forth in Section 12.1 and shall surrender and deliver up the Premises to LANDLORD clear of TENANT’s personal property and any personal property of TENANT’S sublessees. In the event TENANT fails to remove such items from the Premises or fails to perform any other obligations of TENANT set forth in Section 12.1, TENANT shall be in breach and, in addition to all remedies in Section 9.3, the LANDLORD shall have the right but not the obligation to remove such items at TENANT’s expense. At LANDLORD’s election, any such items which TENANT has failed to remove from the Premises upon said expiration or termination hereof shall become the property of LANDLORD. All remedies for breach of this Section 6.2 and Section 12.1 shall be cumulative, and all rights and all provisions of this Section 6.2 and Section 12.1 shall survive any termination or expiration of this Agreement.

6.3 TERMINATION FOR LANDLORD USE. LANDLORD is a municipality and has an obligation to provide necessary services to its residents. Notwithstanding the notice period set forth in Section 1.2, should the Premises be needed by LANDLORD for its purposes and no other land owned by LANDLORD can satisfy the need, as determined by the LANDLORD in its sole discretion, LANDLORD may terminate this Lease by giving TENANT one hundred fifty (150) days written notice of the day TENANT must vacate the Premises.

ARTICLE 7 - INSURANCE AND INDEMNITY

7.1 <u>INSURANCE.</u> TENANT shall at its own expense procure and maintain a policy or policies of insurance providing for the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the LANDLORD. All coverages shall be continuously maintained from the date of commencement of the Lease to cover all liability, claims, demand, and other obligations arising from or assumed by the TENANT under this Lease. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The TENANT shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Lease by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.2 <u>REQUIRED COVERAGES.</u> The minimum insurance coverages required of TENANT shall be as follows:

(a) Comprehensive General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS ($2,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent TENANT's, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(b) Property casualty insurance sufficient and reasonably acceptable to LANDLORD to insure all buildings on the Premises against loss or damage by fire and such other hazards as are currently embraced in the standard coverage endorsements, on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing.

(c) Worker's compensation or employer's liability insurance as may be required by law.

7.3 <u>GENERAL.</u> The policies required above shall be endorsed to include the LANDLORD and its elected and appointed officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the LANDLORD, its officers, or its employees, shall be excess and not contributory insurance to that provided by TENANT. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The TENANT shall be solely responsible for any deductible losses under each of the policies required above. Certificates of insurance shall be completed by the TENANT's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be provided to LANDLORD before

TENANT occupies the Premises. All insurance policies are subject to review and approval by the LANDLORD. Each certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the LANDLORD. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The LANDLORD reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of the TENANT to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the LANDLORD may terminate this Lease, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the LANDLORD shall be repaid by TENANT to the LANDLORD upon demand. Self-insurance shall not constitute compliance with the minimum insurance coverages required by this Section.

7.4 TENANT’S GENERAL INDEMNIFICATION. TENANT shall be solely responsible for any damages suffered by the LANDLORD or others as a result of TENANT's use and occupancy of the Premises. TENANT agrees to indemnify and hold the LANDLORD, its elected and appointed officers, agents, and employees harmless from and against all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of, resulting from, or in any way connected with (a) TENANT’s use and occupancy of the Premises; (b) any liens or other claims made, asserted or recorded against the Premises as a result of TENANT’s use or occupancy thereof; or (c) the rights and obligations of the TENANT under this Lease.

ARTICLE 8 - ASSIGNMENT AND SUBLETTING

8.1 CONSENT REQUIRED. TENANT may not sell, assign, sublet, or transfer (“Transfer”) this Lease, or any right or privilege granted hereunder, or sublet all or any portion of the Premises, or permit any business to be operated in or from the Premises by any licensee or concessionaire, without the prior written consent of LANDLORD, which consent shall not be unreasonably withheld or denied. Any Transfer which is not in compliance with the provisions of this Article shall, at the option of LANDLORD, be void and of no force or effect. Any Transfer of TENANT's interest in this Lease or the Premises by operation of law, regardless of whether the same is characterized as voluntary or involuntary, shall be construed as an "assignment" prohibited by this Article. Upon such permitted Transfer, assignee or sublessee shall assume all obligations of TENANT under this Lease provided that any assignee has first executed an assumption agreement as provided in Section 8.2. Further, LANDLORD's written consent to any one Transfer shall not act as a waiver of the requirements of consent with respect to any subsequent Transfer. Notwithstanding the foregoing, TENANT may make a collateral assignment of its interest in this Lease for security purposes to the holders of deeds of trust or mortgages on TENANT’s improvements or as security in connection with corporate refinancing without requiring LANDLORD consent; provided, however, that no such collateral assignment shall encumber or purport to encumber any real property constituting the Premises.

8.2 ASSUMPTION AGREEMENT. Any assignee including a collateral assignee of TENANT shall execute and deliver to LANDLORD an assignment agreement in a form satisfactory to LANDLORD prior to the effective date of the proposed assignment. Any Transfer made in violation of this Article 8 shall be considered void and of no force or effect.

8.3 INFORMATION TO LANDLORD. TENANT shall provide for any proposed Transfer all information reasonably requested by LANDLORD, including (i) the name and address of the proposed subtenant, assignee, pledgee, mortgagee or transferee, (ii) a reasonably detailed description of such person or entity's business, (iii) reasonably detailed financial references for such person or entity, (iv) a true and complete copy of the proposed sublease, assignment, pledge, mortgage or other conveyance and all related documentation, and (v) such other information as LANDLORD may reasonably require.

8.4 NO RELEASE. No Transfer, occupancy, or collection of rent from any proposed transferee shall be deemed a waiver on the part of LANDLORD, or the acceptance of a transferee as TENANT, and no Transfer shall release TENANT from TENANT's obligations under this Lease or alter the primary liability of TENANT to pay rent and to perform all other obligations to be performed by TENANT hereunder. LANDLORD may require that any transferee remit directly to LANDLORD on a monthly basis, all monies due TENANT by said transferee, and each sublease shall provide that if LANDLORD gives said sublessee written notice that TENANT is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by LANDLORD, which payments will be credited against any payments due under this Lease. TENANT hereby irrevocably and unconditionally assigns to LANDLORD all rents and other sums payable under any sublease of the Premises; provided, however, that LANDLORD hereby grants TENANT a license to collect all such rents and other sums so long as TENANT is not in default under this Lease. Consent by LANDLORD to one Transfer shall not be deemed consent to any subsequent Transfer. In the event of a default by any Transferee of TENANT or any successor of TENANT in the performance of any of the terms hereof, LANDLORD may proceed directly against TENANT without the necessity of exhausting remedies against such transferee or successor. LANDLORD may consent to subsequent Transfers of the Lease or amendments or modifications to the Lease with assignees of TENANT, without notifying TENANT, or any successor of TENANT, and without obtaining its or their consent thereto, and any such actions shall not relieve TENANT of liability under this Lease.

ARTICLE 9 - DEFAULT OF TENANT OR LANDLORD

9.1 DEFAULT OF TENANT. TENANT shall be deemed in default of its obligations under this Lease upon the occurrence of any of the following:

(a) TENANT's failure to pay rent within ten (10) days after written notice from LANDLORD that such sums are due and owing;

(b) TENANT's continued failure to perform any other covenant, promise, or obligation of this Lease for a period of more than thirty (30) days after written notice thereof by LANDLORD to TENANT, unless such failure can not reasonably be cured within thirty (30) days and in that event TENANT shall commence to cure said failure within the thirty (30) day period and thereafter diligently continue to cure the failure;

(c) The bankruptcy of, or appointment of a receiver or trustee for, TENANT;

(d) TENANT voluntarily petitions for relief under, or otherwise seeks the benefit of, any bankruptcy, reorganization, or insolvency law;

(e) TENANT's making of any general assignment of this Lease for the benefit of creditors;

(f) Any sale, transfer, assignment, sublease, or other disposition prohibited herein; or

(g) TENANT doing or permitting to be done anything that creates a lien upon the Premises if TENANT fails to obtain the release of any such lien or bond off any such lien within a commercially reasonable time period.

9.2 LANDLORD'S REMEDIES. If TENANT fails to cure any default described in 9.1 within twenty (20) days, LANDLORD may exercise any one or all of the following options, provided that such is not in conflict with the Default and Remedy laws of the State of Colorado:

(a) Terminate TENANT's right to possession under this Lease and reenter and take possession of the Premises and relet or attempt to relet the Premises on behalf of TENANT, at such rental and upon such terms and conditions as LANDLORD may, in the exercise of LANDLORD's reasonable discretion, deem best under the circumstances for the purpose of reducing TENANT's liability. LANDLORD shall not be deemed to have thereby accepted a surrender of the Premises and TENANT shall remain liable for all rental and other charges due under this Lease and for all damages suffered by LANDLORD because of TENANT's breach of any of the covenants of this Lease. At any time during such repossession or reletting, LANDLORD may, by delivering written notice to TENANT, elect to exercise its option under the following subparagraph to accept a surrender of the Premises, terminate and cancel this Lease and retake possession and occupancy of the Premises on behalf of LANDLORD.

Notwithstanding the foregoing, LANDLORD will seek to mitigate its damages caused by TENANT as required under Colorado law.

(b) Provide written notice that the Lease is terminated and LANDLORD has the right to reenter upon and take possession of the Premises within twenty (20) days of such notice, whereupon the term hereby granted and all right, title, and interest of TENANT in the Premises shall terminate. Such termination shall be without prejudice to LANDLORD's right to collect from TENANT any rent or other charges or sums that have accrued prior to such termination, together with all damages suffered by LANDLORD because of TENANT's breach of any covenant contained in this Lease.

(c) Exercise any and all rights, remedies, and privileges that LANDLORD may have under applicable law or in equity, or under this Lease.

9.3 DEFAULT OF LANDLORD. Except as otherwise provided in this Lease, LANDLORD shall be in default under this Lease if LANDLORD fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after written notice from TENANT to LANDLORD (unless such failure cannot reasonably be cured within thirty (30) days and in that event LANDLORD shall commence to cure said failure within the thirty (30) day period and thereafter diligently continue to cure the failure). TENANT shall have no right of setoff against rent. TENANT may pursue as a remedy damages, recoupment, or counterclaims for any damages that TENANT may have sustained by reason of LANDLORD's failure to perform any of the terms, covenants or conditions contained in this Lease.

ARTICLE 10 - ACCESS BY LANDLORD

LANDLORD or LANDLORD'S agents shall have the right to enter the Premises upon reasonable notice to examine and inspect the same, to show the Premises to prospective purchasers, to determine compliance with the terms of this Lease, to make alterations, repairs, improvements or additions as LANDLORD may deem necessary or desirable, or to conduct such other inspections and activities of LANDLORD, provided the same do not unreasonably interfere with TENANT’s use and enjoyment of the Premises. Nothing herein contained shall be deemed or construed to impose upon LANDLORD any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises, nor any part thereof or any improvements, fixtures or property located thereon, except as otherwise specifically provided herein.

ARTICLE 11 - TENANT'S PROPERTY

11.1 TAXES ON TENANTS PROPERTY. TENANT shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the term of this Lease against personal property of any kind owned by or placed in, upon or about the Premises by the TENANT.

11.2 <u>LOSS OR DAMAGE.</u> Except as provided herein, LANDLORD shall not be liable for any loss or damage to property of TENANT or of others located on the Premises, by theft or otherwise. LANDLORD shall not be liable for any claims arising from damage to property located in or on the Premises resulting from fire, explosion, gas or electrical malfunction, water damage or leakage; nor shall LANDLORD be liable for any damages caused by other persons in the Premises, or by public or quasi-public work on adjacent property, excepting only liability to the extent resulting from gross negligence or willful and wanton acts or omissions of LANDLORD. It is acknowledged and understood by TENANT that the safety and security of any property of TENANT is the sole responsibility and risk of TENANT.

ARTICLE 12 - SURRENDER OF PREMISES, HOLDING OVER

12.1 <u>SURRENDER OF PREMISES.</u> Upon the expiration or termination of this Lease as provided herein, TENANT shall surrender possession of the Premises with all personal property of TENANT and any of TENANT'S sublessees removed. Any items of personal property not removed shall, at LANDLORD's option, become the property of the LANDLORD, and TENANT shall execute and deliver to the LANDLORD a Bill of Sale for such items of personal property. Any fixtures, structures, or improvements installed by TENANT or located on the leased Premises at the time of termination shall be deemed the property of the LANDLORD.

12.2 <u>HOLDING OVER.</u> This Lease and the tenancy created shall cease and terminate at the end of the term hereof without the necessity of notice, and TENANT hereby waives notice and agrees that LANDLORD shall be entitled to summary recovery of the Premises. Any holding over after the expiration of the term hereof, with or without the consent of LANDLORD, shall be construed to be a tenancy at sufferance, and LANDLORD shall be entitled to collect rental as provided by law for such tenancy, but not less than one hundred fifty percent (150%) of the monthly rental rate set forth in Article 1, together with all other rent and charges due hereunder.

ARTICLE 13 – CONDEMNATION

If during the term of this Lease or any renewal hereof, the whole of the Premises are condemned or taken in any manner for public use, or if a portion of the Premises is condemned or taken in any manner for public use to an extent that constitutes an unreasonable interference with TENANT's business operations, then in either event TENANT may elect to terminate this Lease as of the date of the vesting of title in such public authority. LANDLORD shall be entitled to that portion of condemnation award attributable to LANDLORD's interest in the Premises. TENANT shall be entitled to that portion of the condemnation award attributable to TENANT's leasehold interest in the Premises, the loss of all improvements, trade fixtures and other personal property on the Premises, all business losses and relocation costs.

ARTICLE 14 - DESTRUCTION OF PREMISES

14.1 <u>TOTAL DESTRUCTION.</u> If the Premises are totally destroyed by fire or other casualty or if the Premises are partially destroyed to an extent that constitutes an unreasonable interference in TENANT's business operations, then TENANT shall have the option of terminating this Lease upon written notice to LANDLORD within thirty (30) days after such casualty loss, in which event rent and all other payment obligations herein shall cease as of the date of such casualty, and neither LANDLORD nor TENANT shall have any further obligations or rights hereunder except with respect to those provisions which expressly survive termination of this Agreement.

14.2 <u>PARTIAL DESTRUCTION.</u> In the event of fire or other casualty and TENANT elects to continue under this Lease as provided in Section 14.1, then TENANT shall restore the Premises to the same or better condition as existed prior to such fire or other casualty. TENANT shall commence restoration of the Premises as soon as reasonably possible and thereafter proceed with diligence to complete such restoration as soon thereafter as is practical. During any restoration hereunder, TENANT shall receive a proportionate reduction in the rent until all facilities are restored, unless TENANT is unable, in its reasonable discretion, to continue operating the Premises, in which event all rent shall abate until TENANT re-opens for business.

14.3 <u>NON-LIABILITY.</u> LANDLORD shall not be liable for any inconvenience or interruption of business of TENANT occasioned by fire or other casualty, except to the extent of abatement by TENANT of all rent obligations hereunder.

14.4 <u>NOTICE BY TENANT.</u> TENANT shall give immediate notice to LANDLORD in case of fire or other casualty or accident on the Premises.

ARTICLE 15 – SIGNS

TENANT shall have the right to affix such signs as customarily are used in its business upon the windows, doors, interior and exterior walls of the Premises, and such free-standing signs as may seem appropriate to TENANT and are authorized by any governmental authority having jurisdiction over the Premises. Nothing herein shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use, sign, or building codes for the placement of any signage.

ARTICLE 16 – ACCEPTANCE & TENANT IMPROVEMENTS

16.1 <u>GENERAL ACCEPTANCE.</u> LANDLORD shall deliver the Premises to TENANT upon commencement of the term of this Lease. The taking of possession of the Premises shall be deemed an acceptance of the same by TENANT in its "AS IS" and present condition whether patent or latent, without representation or warranty or representation of any kind as to the condition thereof, and without any obligation of

LANDLORD to modify, repair, replace, improve or maintain the Premises for TENANT. Landlord agrees the existing HVAC, roof, electrical, lighting and plumbing systems shall be placed in good working order at the time of delivery. TENANT shall be responsible at its expense for any upgrades to such existing systems, excluding necessary replacements in accordance with Section 5.3 above.

16.2 <u>TENANT'S IMPROVEMENTS.</u> TENANT shall be responsible for construction, alterations, replacements, additions, repairs, fixtures, and improvements to the Premises required for TENANT's Permitted Use, all of which shall be at TENANT's sole cost and expense except as expressly provided in Section 5.3 hereof. TENANT's work shall not be commenced unless and until final written plans and specifications have been submitted to and approved by LANDLORD, which approval may not be unreasonably withheld; provided, however, that LANDLORD approval shall not be required for TENANT work with a cost of less than $5,000 for any individual project that does not involve structural work or roof penetrations. Any such plans and specifications shall include a site plan, elevations, and all other information required for issuance of a building permit, and shall be prepared and submitted to LANDLORD at least sixty (60) days prior to the date of commencement of the work. LANDLORD shall have thirty (30) days from receipt thereof to disapprove of such plans and specifications. If LANDLORD does not respond within thirty (30) days of receipt, LANDLORD shall be deemed to have approved the work. All work shall be completed in compliance with all codes, ordinances, rules and regulations of any authority, in a good and workmanlike manner by licensed contractors with appropriate building permits. TENANT agrees that all contractors performing work on the Premises shall maintain commercial liability insurance of at least Two Million and No/100 Dollars ($2,000,000.00). All entries on the Premises and all work done by or on behalf of the TENANT shall be at TENANT's sole risk. Nothing herein shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use or building codes for approval of any work upon the Premises.

All materials and equipment furnished by TENANT in its improvement of the Premises shall be new unless otherwise specified in the approved plans and specifications. All of TENANT's work to be performed on the Premises shall be of good and workmanlike quality, free from faults and defects, and in accordance with the approved plans and specifications and legal requirements. Any of TENANT's work not conforming to the above standards shall be considered defective.

LANDLORD hereby approves TENANT work in the nature of (i) addition of three (3) compartment sinks, washer and dryers to the back North Facing warehouse; and (ii) adding exterior beautification (i.e., turf or grass), provided that the same comply with all applicable codes and regulations.

ARTICLE 17 - REPRESENTATIONS AND WARRANTIES

17.1 TENANT. TENANT hereby represents and warrants to LANDLORD that: (a) TENANT is a duly authorized and existing Delaware corporation; (b) TENANT has the full right and authority to enter into this Lease; (c) each of the persons executing this Lease on behalf of TENANT is authorized to do so; and (d) this Lease constitutes a valid and legally binding obligation of TENANT, enforceable in accordance with its terms.

17.2 LANDLORD. LANDLORD represents and warrants to TENANT that: (a) LANDLORD has the full right and authority to enter into this Lease; (b) each of the persons executing this Lease on behalf of LANDLORD is authorized to do so; and (c) this Lease constitutes a valid and legally binding obligation on LANDLORD, enforceable in accordance with its terms.

ARTICLE 18 - NOTICES

Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be deemed to be delivered (a) whether or not actually received, three (3) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (b) when received (or when receipt is refused) if delivered personally, sent by facsimile transmission, or sent by a nationally recognized overnight courier, all charges prepaid, at the addresses of LANDLORD and TENANT as set forth in this Section. Such address may be changed by written notice to the other party in accordance with this Section.

If to LANDLORD:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, CO 80027

With a copy to:
City of Louisville
Attn: City Attorney
749 Main Street
Louisville, CO 80027

If to TENANT:

Avid4 Adventure Inc.
Attn: Paul Dreyer
1501 Empire Road
Louisville, CO 80027

With a copy to:
Hutchinson, Black & Cook LLC
Attn: Justin C. Konrad
921 Walnut Street, Suite 200
Boulder, CO 80302

ARTICLE 19 - ESTOPPEL CERTIFICATE

At any time and from time to time either party, upon request of the other party, will execute, acknowledge and deliver an instrument, stating, if the same be true, that this Lease is a true and exact copy of this Lease between the parties hereto, and, if true at the time requested, there are no amendments hereof (or stating what amendments there may be), that the same is then in full force and effect and that, to the best of its knowledge, there are no offsets, defenses or counterclaims with respect to the payment of Rent reserved hereunder or in the performance of the other terms, covenants and conditions hereof on the part of TENANT or LANDLORD, as the case may be, to be performed, and that as of such date no default has been declared hereunder by either party or if not, specifying the same.

ARTICLE 20 - HAZARDOUS SUBSTANCES

20.1 <u>HAZARDOUS SUBSTANCES INDEMNITY.</u> TENANT shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on, in or about the Premises without obtaining LANDLORD's prior written consent. If any Hazardous Substance is used, stored, generated, or disposed of on, in, or about the Premises except as permitted above, or if the Premises become contaminated in any manner as a result of any breach of the foregoing covenant or any act or omission of TENANT or any of its employees or contractors, TENANT shall indemnify, defend and hold harmless LANDLORD from any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants', and experts' fees), liabilities, losses (, and expenses arising during or after the term of this Lease and arising as a result of such contamination. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if TENANT causes or permits the presence of any Hazardous Substance on, in, or about the Premises that results in contamination, TENANT, at its sole expense, shall promptly take any and all necessary actions to return the Premises to the same condition that existed prior to the presence of any such Hazardous Substance on, in, or about the Premises. TENANT shall first obtain LANDLORD's approval for any such remedial action, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, this indemnification shall only apply to contamination by Hazardous Substances resulting from TENANT'S use and operation of the Premises. Nothing herein contained shall be held to indemnify LANDLORD from liability for Hazardous Substances contamination resulting from LANDLORD'S ownership, use or operation, or the use or operation by any third party in, on or under the Premises or arising out of conditions existing on the Premises prior to the commencement of TENANT’s first possession of the Premises.

20.2 <u>DEFINITION.</u> As used herein, the term "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State in which the Premises are located, or the United States government. "Hazardous Substance" includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous Substance" includes, but is not limited to, asbestos, polychlorobiphenyls and petroleum. The provisions under this entire Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 21 - FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (hereinafter "Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within ten (10) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act or performance of work due to a Permitted Delay shall be sixty (60) days.

ARTICLE 22 - ADDITIONAL TERMS

22.1 PLUMBING. Plumbing facilities shall not be used for any other purpose than that for which they were constructed, and no foreign substance other than those generally used during the operation of office uses shall be deposited therein. The cost and expense of any breakage, stoppage or damage resulting from a violation of this provision shall borne by TENANT.

22.2 SECURITY. TENANT shall have full responsibility for protecting the Premises and the property located therein from theft and robbery and shall keep all doors and windows securely fastened when not in use.

22.3 GARBAGE. TENANT shall pay all costs associated with disposal of its garbage, including but not limited to, costs of pick up, containers and deposits.

22.4 VIOLATIONS. Governmental penalties, fines or damages imposed on any portion of the Premises as a result of the acts of TENANT, its employees or agents, shall be paid by TENANT within thirty (30) days after receipt of said notice by TENANT, unless reasonably contested by TENANT.

22.5 APPROVALS. Nothing in this Lease is intended or shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use, sign or building codes for approval of any development, work, signs, or improvements upon the Premises.

22.6 NO WAIVER OF IMMUNITY. LANDLORD is relying on and does not waive or intend to waive by any provision of this Lease the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as from time to time amended, or otherwise available to LANDLORD and its officers and employees.

22.7 SUBJECT TO ANNUAL APPROPRIATIONS. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of LANDLORD not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of LANDLORD hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year. TENANT understands and agrees that any decision of the City Council to not appropriate funds shall be without recourse, penalty or liability to the City.

22.8 <u>SUBORDINATION.</u> This Lease and the rights of TENANT hereunder shall be and are hereby made subject and subordinate to the lien of any bond, loan, indenture, borrowing or other instrument of any kind now or hereafter existing against the property encompassing the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof and to all advances made, or hereafter to be made, upon the security thereof. Although such subordination shall be self operating, TENANT, or its successors in interest, shall upon LANDLORD's request, execute and deliver upon the demand of LANDLORD any and all instruments desired by LANDLORD, subordinating, in the manner reasonably requested by LANDLORD, this Lease to any such bond, loan, indenture, borrowing or other instrument.

22.9 <u>NO STORAGE AREAS.</u> TENANT acknowledges that the areas depicted as No Storage Areas on Exhibit A are areas with underground utilities. TENANT agrees that is shall not construct or install within the No Storage Areas any buildings, structures, or hardscape improvements, or place or store within the No Storage Areas any immobile shipping or storage containers or any other items that cannot be moved from the No Storage Area immediately upon demand. In the event access to or work upon the utilities within the No Storage Areas requires disturbance of any items placed by TENANT within the No Storage Areas, LANDLORD shall not be required to repair or replace any such disturbance.

22.10 <u>RESERVED STORAGE SPACE OF LANDLORD.</u> LANDLORD and TENANT agree that LANDLORD shall have the reserved right throughout the term to install and utilize cabinet space within what is currently Office 113 of the Main Building for installation and operation of City of Louisville IT equipment. TENANT agrees to pay for the electricity supplied for the IT equipment (i.e., such use will not be separately metered or billed to the LANDLORD). TENANT shall allow LANDLORD access to the IT cabinet during business hours and after hours via a key or other entry system mutually agreed by the parties, and LANDLORD shall use reasonable efforts to provide advance notice to and coordinate access to the cabinet with TENANT. LANDLORD is responsible for all costs associated with the IT cabinet except electricity charges.

ARTICLE 23 - MISCELLANEOUS

23.1 <u>WAIVER.</u> The waiver by LANDLORD or TENANT of any breach or default of any term, covenant or condition shall not be deemed to be a waiver of any subsequent breach or default of the same or any other term, covenant or condition, nor shall the acceptance of Rent be deemed to be a waiver of any such breach or default of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by LANDLORD or TENANT, unless such waiver is in writing.

23.2 <u>ACCORD AND SATISFACTION.</u> No payment by TENANT or acceptance by LANDLORD of a lesser amount than sums herein stipulated shall be deemed to be other than on account of the due sums, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment prejudice LANDLORD's right to recover the balance or such rent or pursue any other remedy provided in this Lease, unless otherwise agreed to by LANDLORD.

23.3 CAPTIONS AND SECTION NUMBERS. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of, such sections.

23.4 ENTIRE AGREEMENT. This Lease and any attachments hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions, and understandings between LANDLORD and TENANT concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon LANDLORD or TENANT until reduced to writing and signed by LANDLORD and TENANT.

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

23.6 SURVIVAL. All of the terms and conditions of Sections 6.2 and 12.1 of this Lease, and all other terms and conditions of this Lease concerning release, indemnification, termination, remedies, and enforcement, shall survive termination of this Lease.

23.7 APPLICABLE LAW & VENUE. The parties hereto shall be bound by and this Lease shall be construed according to the laws of the State of Colorado. Venue for any litigation concerning this Lease shall be in the District Courts of Boulder County, Colorado.

23.8 RECORDING. A memorandum of this Lease may be recorded by LANDLORD or TENANT in the public records at the recording party's expense.

23.9 COSTS OF ENFORCEMENT. In the event that LANDLORD shall bring an action to recover any sum due hereunder or for any breach hereunder and shall obtain a judgment in its favor, or in the event that LANDLORD shall retain an attorney for the purpose of collecting any sum due hereunder or enforcing any of the terms or conditions hereof or protecting its interest in any bankruptcy, receivership, or insolvency proceeding or otherwise against the TENANT, the LANDLORD shall be entitled to recover all reasonable costs and expenses incurred, including reasonable attorneys' and legal assistants' fees, and costs and expenses, including expert witness fees and expenses.

23.10 <u>CONSENT.</u> Wherever in this Lease LANDLORD or TENANT is required to give its consent or approval, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

23.11 <u>TRANSFER OF LANDLORDS INTEREST.</u> The term "LANDLORD" shall mean only the owner, for the time being, of the Premises, and in the event of the transfer by such owner of its interest in the Premises, then notwithstanding anything to the contrary contained herein, such owner shall thereupon automatically be released and discharged from all covenants and obligations of the LANDLORD thereafter accruing, but such covenants and obligations shall be binding during the term of this Lease upon each new owner for the duration of such owner's ownership. Notwithstanding the foregoing, any such owner shall remain obligated to TENANT for any and all deposits paid by TENANT hereunder until such time as said deposits are transferred to and accepted by any new owner and notice given to TENANT.

23.12 <u>SUCCESSORS.</u> All rights and liabilities herein given to or imposed upon the parties hereto shall inure to the benefit of and be binding upon their respective heirs, executors, administrators, successors and assigns and, except as may be otherwise set forth herein, if there shall be more than one TENANT, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of TENANT unless such assignment has been approved by LANDLORD in writing as provided elsewhere in this Lease.

23.13 <u>COUNTERPARTS.</u> This Lease may be executed in counterparts; each counterpart constitutes a complete and binding agreement but all of such counterparts, taken together, form one and the same agreement.

IN WITNESS WHEREOF, LANDLORD AND TENANT have executed this Lease effective as the day and year first above and written.

LANDLORD:
CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: ___________________________________
Christopher M. Leh, Mayor

ATTEST:

By:_____________________________
Genny Kline, City Clerk

TENANT:
AVID4 ADVENTURE, INC .
a Delaware corporation

By: ________________________________
Paul Dreyer, CEO

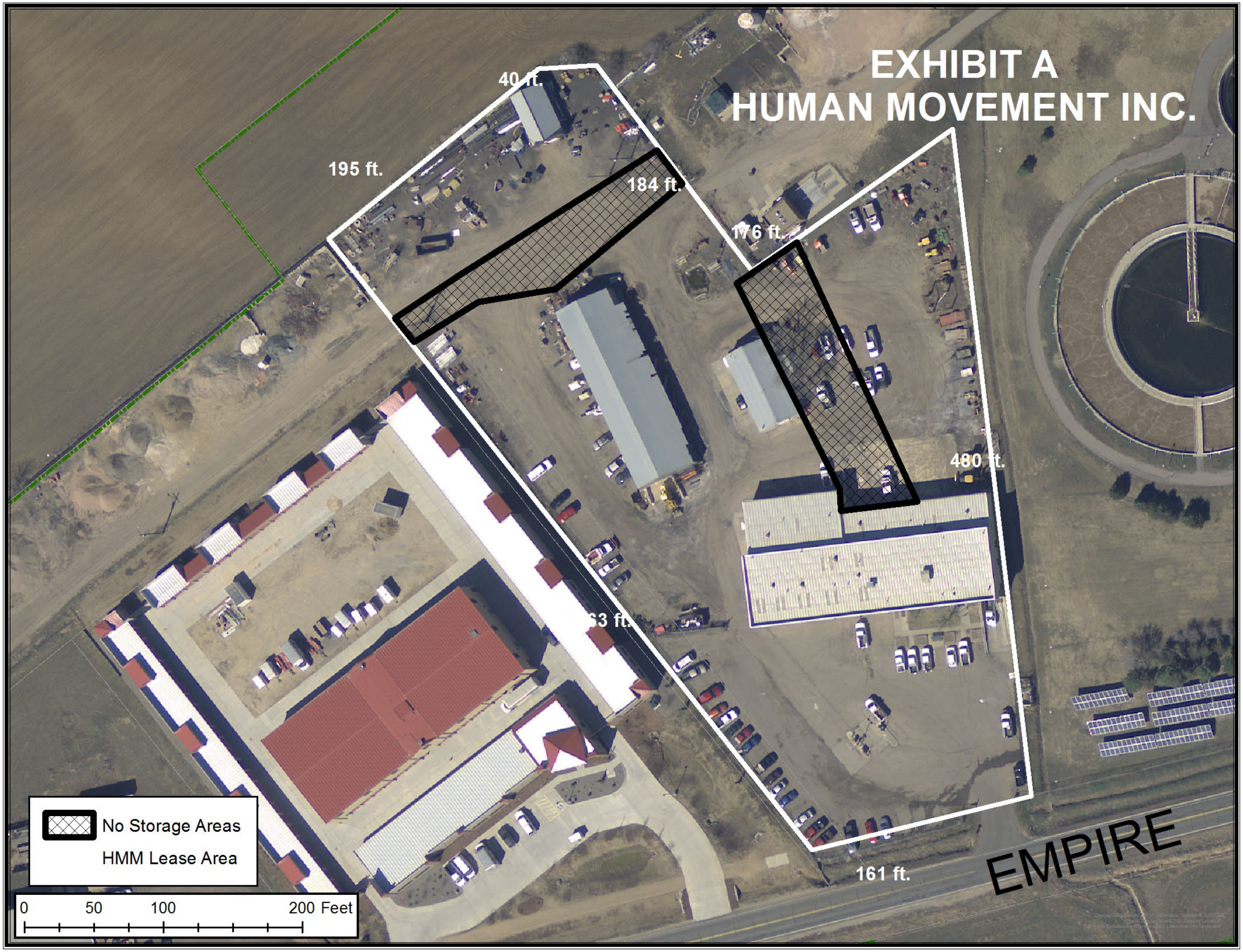
EXHIBIT A
HUMAN MOVEMENT INC.
40 ft.
195 ft.
184 ft.
176 ft.
480 ft.
63 ft.
161 ft.
EMPIRE
No Storage Areas
HMM Lease Area
0
50
100
200 Feet

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation ("LANDLORD" or "City") and **AVID4 ADVENTURE, INC.**, a Delaware corporation ("TENANT").

ARTICLE 1 – GRANT, TERM AND RENT

1.1 <u>DEMISED PREMISES.</u> In consideration of the rents, covenants, and agreements herein set forth, LANDLORD hereby leases to TENANT and TENANT hereby rents from LANDLORD certain premises located at and having a street address of 1501 Empire Road, Louisville, Colorado, 80027, containing three (3) enclosed buildings:

Main Building	17,272 sf
Secondary Building	1,920 sf
Brown Storage Building	912 sf

totaling 20,104 leasable square feet, upon approximately 3.63 acres of property, together with all appurtenances thereto, including but not limited to any storage sheds or parking spaces on the property, all of which inclusive of the buildings is hereinafter collectively "the Premises" or "Leased Premises," and are further depicted on Exhibit A attached hereto and incorporated herein by reference.

1.2 <u>TERM.</u> Unless sooner terminated as provided herein, this Lease shall be for a term commencing on February 1, 2020 and ending on December 31, 2025 ("Initial Term").

1.3 <u>RENT.</u> In consideration of said demise, TENANT agrees to pay to LANDLORD for the Premises rent in equal monthly installments for the Initial Term as set forth in the following table:

Month	Rate PSF	Monthly Gross Rent	Annual Gross Rent
Months 1-4	$8.00	$13,402.67	$160,832.00*
5-12	$8.00	$13,402.67	$160,832.00
13-24	$11.00	$18,428.67	$221,144.00
25-36	$11.33	$18,981.53	$227,778.32
37-48	$11.67	$19,550.97	$234,611.67
49-60	$12.02	$20,137.50	$241,650.02
61-72	$12.38	$20,741.63	$248,899.52

* Notwithstanding anything to the contrary contained in this Lease, and as set forth in the Lease Termination Agreement executed by LANDLORD, TENANT, and Human Movement, Inc., LANDLORD agrees not to demand or collect from TENANT monthly gross rent for the first four (4) months of the Initial Term (the "Abatement Period") (collectively, the "Rent Abatement"). The Rent Abatement afforded by this Section will be of no force or effect if there has occurred, as of the date on which any installment of Monthly Gross Rent would otherwise be due during the Abatement Period, (i) a default beyond any applicable notice and cure period, or

(ii) an assignment of the Lease has occurred or a sublease of all or any portion of the Premises exists, for which the City's prior approval has not been obtained. Except for such Rent Abatement, all of the terms and conditions of this Lease will be applicable during the Abatement Period. Following the Abatement Period, rent shall be due and payable in advance on the first day of each calendar month at the office of LANDLORD specified herein. LANDLORD may assess a late charge of ten percent (10%) of any monthly rent installment or any other payment called for in this Lease that is delinquent ten (10) days or more if Tenant fails to pay any amount due to the LANDLORD within ten (10) days after such amount is due on more than one (1) occasion in any 12-month period. In addition, all rent in arrears and all amounts collectible as provided for in this Lease shall accrue interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid. If the Initial Term commences or terminates on a day other than the first or last day of a calendar month respectively, then the rent for such month or months shall be prorated and the prorated amount shall be paid in advance.

1.4 RENEWAL OPTION. LANDLORD hereby grants to TENANT an option to renew this Lease for one (1) five (5) year period ("Renewal Term"), subject to the parties' rights of termination herein. The Renewal Term shall be upon the same terms, covenants and conditions as set forth in this Lease as they exist at the time of such renewal, except that the rent for the initial year of each Renewal Term shall be set at the then-current market rate for industrial/flex space within the Colorado Technology Center and each successive year of the Renewal Term shall be increased by three percent (3%) over the rent for the prior year. The Initial Term and Renewal Term are collectively referred to herein as the "term" and are subject to parties' rights of termination as set forth herein. If TENANT wishes to exercise its option to renew this Lease for any Renewal Term, it shall give written notice with its intent to LANDLORD no less than one hundred and eighty (180) days prior to the expiration date of the Lease. Should LANDLORD exercise its rights to terminate this Lease as provided in Section 6.3, any future renewal options afforded under this Section will not be allowed.

1.5 TAXES & OTHER CHARGES. TENANT shall be responsible for the payment of all taxes attributable to the Premises, including but not limited to all ad valorem property taxes and special assessments imposed upon the Premises; all sales, excise, rental, and use taxes imposed by law on the rent due hereunder; and all sales, use or excise taxes due as a result of any work or operations performed by TENANT in or upon the Premises.

1.6 SECURITY DEPOSIT. TENANT shall place and maintain on deposit with LANDLORD at all times during the terms of this Lease, the sum of nineteen thousand two hundred sixty-six dollars and 33/100 ($19,266.33) for the purposes hereinafter set forth. If at any time TENANT shall be in default in the performance of any of the terms, provisions, covenants and conditions of this Lease on the part of TENANT to be done and performed, LANDLORD shall have the right to apply the said deposit, or so much thereof as may be necessary, toward the reimbursement of LANDLORD for any expense incurred by it by reason such default in performance, and toward the payment of any damage suffered by LANDLORD by reason of such default including collection and reasonable attorney's fees; and in the event such deposit shall be diminished or depleted by any such payment from or application of the same, TENANT shall and will forthwith pay to LANDLORD such sum as shall be necessary to restore said deposit to the original amount thereof above mentioned. If the amount of said discharge shall exceed such expenses and damages, TENANT shall be and remain liable for the balance thereof remaining unpaid and forthwith shall pay the amount of such balance and deficiency to LANDLORD. The said deposit shall not bear any interest to TENANT, and LANDLORD shall return to TENANT such part or portion of said deposit as shall not be required to pay, discharge and reimburse the said expenses and damages.

ARTICLE 2 - UTILITIES

2.1. TENANT TO OBTAIN. TENANT shall contract in its own name and shall promptly pay when due all charges for all electric, telephone, gas, sewer, water, trash hauling, and all other utilities furnished to or used in connection with the Premises.

2.2 NON-LIABILITY. LANDLORD shall have no liability for damage or loss suffered by the business or occupation of TENANT arising from the lack, insufficiency, or failure of any utilities servicing the Premises, unless such failure of utilities is caused by LANDLORD.

ARTICLE 3 - CONDUCT OF BUSINESS BY TENANT

3.1 USE OF LEASE PREMISES. The Premises shall be used by TENANT solely for office/industrial/storage purposes (the "Permitted Use"). TENANT shall operate its business in an efficient and reputable manner, and shall employ adequate and competent personnel in attendance during TENANT's standard hours of operation. TENANT shall keep the Premises neat, clean, sanitary and reasonably free from dirt, rubbish, insects and pests at all times. TENANT shall not operate an incinerator or burn trash or garbage within the Premises. Any use of the Premises for or involving sale, cultivation, consumption, storage, manufacture or other activities involving recreational or medical marijuana is prohibited. TENANT shall not permit any objectionable or unpleasant odors to emanate from the Premises, nor, except as approved in writing by the LANDLORD, place or permit any antenna, radio, or other projections on the roof or outside the Premises; nor take any other action that in the reasonable judgment of LANDLORD would constitute a nuisance. TENANT additionally covenants not to perform any act on or about the Premises prohibited by law nor omit to perform any act required by law in connection with the use or operation of the Premises; nor to use or maintain the Premises in such a manner as to constitute an actionable nuisance to LANDLORD or any third party; and not to commit or permit waste of the Premises. TENANT shall comply with and observe all easements and all restrictive covenants and conditions that may affect or apply to the Premises, or any portion thereof, from time to time. Except as may be otherwise provided herein, TENANT shall procure, at its sole cost and expense, all approval, permits, and licenses required for the operation of the Permitted Use in the Premises and the placement of any improvements in the Premises and in the event TENANT is unable to obtain said permits on terms acceptable to TENANT, TENANT may terminate this Lease. TENANT shall otherwise comply with all applicable laws, ordinances and governmental regulations. Any community events, special events, retail service or consumption of alcoholic beverages, outdoor recreational activities or temporary uses held on the Premises shall comply with all applicable laws, ordinances and governmental regulations, including without limitation requirements to obtain any necessary special events permits, temporary use permits and state and local liquor permits and to comply with the requirements of such permits, including but not limited to time restrictions, required off-street parking, and permit provisions to control noise and nuisance effects. Should TENANT desire to expand the use of the Premises to include uses not currently allowed by zoning, TENANT must follow all applicable laws, ordinances and governmental regulations to request and seek approval for such use on the Premises.

3.2 GOVERNMENTAL REGULATION. TENANT shall, at its expense, comply with all Federal, State and local laws, ordinances, orders, rules and regulations pertaining to the use and operation of the Premises pursuant to this Lease, as now or hereafter in force. In the event that TENANT's use of the Premises constitutes a violation of any of the foregoing, then such violation, if continued uncured, shall constitute a default hereunder.

3.3 QUIET ENJOYMENT. TENANT shall have the right of quiet enjoyment of the Premises subject to the terms, conditions, and covenants of this Lease.

ARTICLE 4 - LIENS

4.1 PAYMENT FOR WORK. TENANT shall be solely responsible for and shall promptly pay for all services, labor, or materials furnished to the Premises at the instance of TENANT.

4.2 LIENS. TENANT shall have no power to subject LANDLORD's interest in the Premises to mechanic's or materialmen's liens of any kind. TENANT further acknowledges that under state law public property is not subject the existence of any such lien, which lien is not discharged by TENANT or bonded off within thirty (30) days, shall be a material breach of this Lease. All persons performing work, labor or supplying materials at the Premises on behalf of TENANT shall look solely to the interest of the TENANT and not to that of the LANDLORD for any payment or any claim, expenses, legal fees, or court costs. LANDLORD shall have the right, but not the obligation to discharge or transfer to bond any lien filed against the Premises by the TENANT's contractor that has not been discharged or transferred to bond within thirty (30) days from the filing thereof, and any discharge by LANDLORD may be with funds from the deposit received under Section 1.6. Any cost or expense, including reasonable attorney's fees, incurred by LANDLORD as a result thereof shall immediately be due and payable and if not paid by TENANT within fifteen (15) days shall constitute a default under this Lease. LANDLORD in its discretion shall have the right to post the property and provide notice to any contractors of LANDLORD's non-liability for work, labor or materials supplied on behalf of TENANT, and, further, to advise contractors that mechanic's or materialmen's liens may not be asserted against public property.

ARTICLE 5 - MAINTENANCE OF PREMISES

5.1 MAINTENANCE BY TENANT. Except for LANDLORD's responsibilities as set forth in Section 5.3 below, TENANT shall at all times keep and maintain, at its sole cost and expense, the Premises, and all improvements (including buildings) located thereon, including exterior entrances, roofing, and all glass and windows, all floors, and all partitions, doors, fixtures, equipment and appurtenances thereof, including lighting, electrical equipment, plumbing fixtures and equipment, heating, ventilating and air conditioning equipment, in as good order and repair as existed upon commencement of this Lease, reasonable wear and tear excepted, and in a clean and sanitary condition, and shall at its sole cost and expense make all necessary repairs, including all necessary replacements, alterations and additions, using material and equipment of similar kind and quality to the original improvements, unless changes in material and quality are approved in writing by LANDLORD in advance, which approval may not be unreasonably withheld.

5.2 **FAILURE TO MAINTAIN.** If TENANT fails to maintain the Premises as required hereunder to the reasonable satisfaction of LANDLORD, then thirty (30) days after TENANT's receipt of written request from LANDLORD (except in the event of an emergency, in which event no more than twenty-four (24) hours notice shall be required), LANDLORD shall have the right to enter the Premises and to make such repairs at TENANT's expense, and upon completion thereof TENANT shall pay as additional rent LANDLORD's reasonable costs for making such repairs upon presentation of the bill therefor. Such payment shall be due within thirty (30) days after TENANT's receipt of an invoice therefor.

5.3 **LANDLORD MAINTENANCE OBLIGATIONS**. Notwithstanding anything to the contrary in Section 5.1 above, LANDLORD shall be responsible for (a) replacement of the roof of the Premises, HVAC equipment, and electrical or plumbing equipment, (b) structural or exterior replacements or additions to any improvements on the Premises (excluding doors or windows), and (c) any other capital replacements or improvements, except to the extent that the same were necessitated by the negligent or wrongful actions or omissions of TENANT, its employees, agents or licensees, all as the City in its reasonable discretion may deem necessary (collectively, "Capital Expenses"). The cost of such Capital Expenses shall be amortized over the useful life of such Capital Expenses and the annual amortized cost shall be invoiced by LANDLORD to TENANT annually, with such invoices payable within thirty (30) days of receipt by TENANT.

ARTICLE 6 - OWNERSHIP OF IMPROVEMENTS, EXTERIOR APPEARANCE

6.1 **OWNERSHIP OF IMPROVEMENTS.** Any or all installations, alterations, additions, partitions and fixtures other than TENANT'S furniture, trade fixtures, and equipment in or upon the Premises, whether placed there by TENANT or LANDLORD, shall, immediately upon such placement, become the property of LANDLORD without compensation therefor to TENANT. Notwithstanding anything herein contained, LANDLORD shall be under no obligation to repair, maintain or insure such installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of TENANT.

6.2 **TERMINATION.** This Lease shall terminate upon expiration of the term set forth in Section 1.2 or Section 1.4 or at such earlier time as this Lease may be terminated by LANDLORD or TENANT as provided herein. Within thirty (30) days after expiration or termination of this Lease, TENANT shall at its sole expense perform all obligations of TENANT set forth in Section 12.1 and shall surrender and deliver up the Premises to LANDLORD clear of TENANT's personal property. In the event TENANT fails to remove such items from the

Premises or fails to perform any other obligations of TENANT set forth in Section 12.1, TENANT shall be in breach and, in addition to all remedies in Section 9.3, the LANDLORD shall have the right but not the obligation to remove such items at TENANT's expense. At LANDLORD's election, any such items which TENANT has failed to remove from the Premises within thirty (30) days of said expiration or termination hereof shall become the property of LANDLORD. All remedies for breach of this Section 6.2 and Section 12.1 shall be cumulative, and all rights and all provisions of this Section 6.2 and Section 12.1 shall survive any termination or expiration of this Agreement.

6.3 **TERMINATION FOR LANDLORD USE.** LANDLORD is a municipality and has an obligation to provide necessary services to its residents. Should the Premises be needed by LANDLORD for its purposes and no other land owned by LANDLORD can satisfy the need, as determined by the LANDLORD in its sole discretion, LANDLORD may terminate this Lease by giving TENANT one hundred fifty (150) days written notice of the day TENANT must vacate the Premises. In the event of such a termination occurring during the Initial Term, LANDLORD shall reimburse TENANT for TENANT'S actual relocation costs, defined as those actual and reasonable expenses associated with transportation, such as moving trucks, reasonable labor and temporary storage of TENANT'S trade fixtures, equipment and inventory, and, if within a fifteen mile radius of the Premises, transport of such items to a new premises designated by TENANT, subject to the cap provided for herein. TENANT'S reasonable and necessary expenses for moving such trade fixtures, equipment and inventory shall be preapproved by LANDLORD prior to the relocation, and shall be paid by LANDLORD within thirty (30) days of LANDLORD'S receipt of invoices for such relocation expenses up to a maximum amount of fifty thousand dollars ($50,000). The maximum amount of relocation expenses paid by LANDLORD shall be reduced 10% for each year this Lease is in effect, and no relocation expenses shall be paid by LANDLORD during any renewal term unless specifically provided for as part of the terms and conditions of a renewal. (Therefore, for example, if LANDLORD terminates the Lease pursuant to this Section 6.3 in year four of the Lease, the maximum amount of relocation expenses paid by LANDLORD shall be $30,000.) LANDLORD'S obligation to pay any amount of relocation expenses is limited solely to a LANDLORD termination pursuant to this Section 6.3.

6.4 **TENANT IMPROVEMENT ALLOWANCE. Omitted**

ARTICLE 7 - INSURANCE AND INDEMNITY

7.1 **INSURANCE.** TENANT shall at its own expense procure and maintain a policy or policies of insurance providing for the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the LANDLORD. All coverages shall be continuously maintained from the date of commencement of the Lease to cover all liability, claims, demand, and other obligations arising from or assumed by the TENANT under this Lease. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The TENANT shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Lease by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.2 <u>REQUIRED COVERAGES.</u> The minimum insurance coverages required of TENANT shall be as follows:

(a) Comprehensive General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS ($2,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent TENANT's, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(b) Property casualty insurance sufficient and reasonably acceptable to LANDLORD to insure all buildings on the Premises against loss or damage by fire and such other hazards as are currently embraced in the standard coverage endorsements, on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing.

(c) Worker's compensation or employer's liability insurance as may be required by law.

7.3 <u>GENERAL.</u> The policies required above shall be endorsed to include the LANDLORD and its elected and appointed officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the LANDLORD, its officers, or its employees, shall be excess and not contributory insurance to that provided by TENANT. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The TENANT shall be solely responsible for any deductible losses under each of the policies required above. Certificates of insurance shall be completed by the TENANT's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be provided to LANDLORD before TENANT occupies the Premises. All insurance policies are subject to review and approval by the LANDLORD. Each certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the LANDLORD. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The LANDLORD reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of the TENANT to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the LANDLORD may terminate this Lease, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the LANDLORD shall be repaid by TENANT to the LANDLORD upon demand. Self-insurance shall not constitute compliance with the minimum insurance coverages required by this Section.

7.4 TENANT'S GENERAL INDEMNIFICATION. TENANT shall be solely responsible for any damages suffered by the LANDLORD or others as a result of TENANT's use and occupancy of the Premises. TENANT agrees to indemnify and hold the LANDLORD, its elected and appointed officers, agents, and employees harmless from and against all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of, resulting from, or in any way connected with (a) TENANT's use and occupancy of the Premises; (b) any liens or other claims made, asserted or recorded against the Premises as a result of TENANT's use or occupancy thereof; or (c) the rights and obligations of the TENANT under this Lease.

ARTICLE 8 - ASSIGNMENT AND SUBLETTING

8.1 CONSENT REQUIRED. TENANT may not sell, assign, sublet, or transfer ("Transfer") this Lease, or any right or privilege granted hereunder, or sublet all or any portion of the Premises, or permit any business to be operated in or from the Premises by any licensee or concessionaire, without the prior written consent of LANDLORD, which consent shall not be unreasonably withheld or denied. Any Transfer which is not in compliance with the provisions of this Article shall, at the option of LANDLORD, be void and of no force or effect. Any Transfer of TENANT's interest in this Lease or the Premises by operation of law, regardless of whether the same is characterized as voluntary or involuntary, shall be construed as an "assignment" prohibited by this Article. Upon such permitted Transfer, assignee or sublessee shall assume all obligations of TENANT under this Lease provided that any assignee has first executed an assumption agreement as provided in Section 8.2. Further, LANDLORD's written consent to any one Transfer shall not act as a waiver of the requirements of consent with respect to any subsequent Transfer. Notwithstanding the foregoing, TENANT may make a collateral assignment of its interest in this Lease for security purposes to the holders of deeds of trust or mortgages on TENANT's improvements or as security in connection with corporate refinancing without requiring LANDLORD consent; provided, however, that no such collateral assignment shall encumber or purport to encumber any real property constituting the Premises.

8.2 ASSUMPTION AGREEMENT. Any assignee including a collateral assignee of TENANT shall execute and deliver to LANDLORD an assignment agreement in a form satisfactory to LANDLORD prior to the effective date of the proposed assignment. Any Transfer made in violation of this Article 8 shall be considered void and of no force or effect.

8.3 INFORMATION TO LANDLORD. TENANT shall provide for any proposed Transfer all information reasonably requested by LANDLORD, including (i) the name and address of the proposed subtenant, assignee, pledgee, mortgagee or transferee, (ii) a reasonably detailed description of such person or entity's business, (iii) reasonably detailed financial references for such person or entity, (iv) a true and complete copy of the proposed sublease, assignment, pledge, mortgage or other conveyance and all related documentation, and (v) such other information as LANDLORD may reasonably require.

8.4 ADDITIONAL CONDITIONS; EXCESS RENT. A condition of LANDLORD's consent to any Transfer shall be the delivery to LANDLORD of a true copy of the fully executed instrument of assignment, sublease, or transfer, in form and substance reasonably satisfactory to LANDLORD. In addition, beginning January 1, 2021, TENANT shall pay to LANDLORD as additional rent within thirty (30) days after receipt thereof, without affecting or reducing any other obligations of TENANT hereunder, fifty percent (50%) of any rent or other economic consideration received by TENANT as a result of any Transfer that exceeds, in the aggregate: (i) the total rent which TENANT is obligated to pay LANDLORD under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) for the applicable period, plus (ii) any reasonable brokerage commissions and attorneys' fees actually paid by TENANT in connection with such Transfer, which commissions and fees shall, for purposes of the aforesaid calculation, be amortized on a straight-line basis over the term of such Transfer. For purposes of this Section 8.4, the full amount of rent or other economic consideration received by TENANT for any portion of the Premises not contained within a building shall be considered excess rent.

8.5 NO RELEASE. No Transfer, occupancy, or collection of rent from any proposed transferee shall be deemed a waiver on the part of LANDLORD, or the acceptance of a transferee as TENANT, and no Transfer shall release TENANT from TENANT's obligations under this Lease or alter the primary liability of TENANT to pay rent and to perform all other obligations to be performed by TENANT hereunder. LANDLORD may require that any transferee remit directly to LANDLORD on a monthly basis, all monies due TENANT by said transferee, and each sublease shall provide that if LANDLORD gives said sublessee written notice that TENANT is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by LANDLORD, which payments will be credited against any payments due under this Lease. TENANT hereby irrevocably and unconditionally assigns to LANDLORD all rents and other sums payable under any sublease of the Premises; provided, however, that LANDLORD hereby grants TENANT a license to collect all such rents and other sums so long as TENANT is not in default under this Lease. Consent by LANDLORD to one Transfer shall not be deemed consent to any subsequent Transfer. In the event of a default by any Transferee of TENANT or any successor of TENANT in the performance of any of the terms hereof, LANDLORD may proceed directly against TENANT without the necessity of exhausting remedies against such transferee or successor. LANDLORD may consent to subsequent Transfers of the Lease or amendments or modifications to the Lease with assignees of TENANT, without notifying TENANT, or any successor of TENANT, and without obtaining its or their consent thereto, and any such actions shall not relieve TENANT of liability under this Lease.

ARTICLE 9 - DEFAULT OF TENANT OR LANDLORD

9.1 DEFAULT OF TENANT. TENANT shall be deemed in default of its obligations under this Lease upon the occurrence of any of the following:

(a) TENANT's failure to pay rent within ten (10) days after written notice from LANDLORD that such sums are due and owing;

(b) TENANT's continued failure to perform any other covenant, promise, or obligation of this Lease for a period of more than thirty (30) days after written notice thereof by LANDLORD to TENANT, unless such failure can not reasonably be cured within thirty (30) days and in that event TENANT shall commence to cure said failure within the thirty (30) day period and thereafter diligently continue to cure the failure;

(c) The bankruptcy of, or appointment of a receiver or trustee for, TENANT;

(d) TENANT voluntarily petitions for relief under, or otherwise seeks the benefit of, any bankruptcy, reorganization, or insolvency law;

(e) TENANT's making of any general assignment of this Lease for the benefit of creditors;

(f) Any sale, transfer, assignment, sublease, or other disposition prohibited herein; or

(g) TENANT doing or permitting to be done anything that creates a lien upon the Premises if TENANT fails to obtain the release of any such lien or bond off any such lien within a commercially reasonable time period.

9.2 LANDLORD'S REMEDIES. If TENANT fails to cure any default described in 9.1 within twenty (20) days, LANDLORD may exercise any one or all of the following options, provided that such is not in conflict with the Default and Remedy laws of the State of Colorado:

(a) Terminate TENANT's right to possession under this Lease and reenter and take possession of the Premises and relet or attempt to relet the Premises on behalf of TENANT, at such rental and upon such terms and conditions as LANDLORD may, in the exercise of LANDLORD's reasonable discretion, deem best under the circumstances for the purpose of reducing TENANT's liability. LANDLORD shall not be deemed to have thereby accepted a surrender of the Premises and TENANT shall remain liable for all rental and other charges due under this Lease and for all damages suffered by LANDLORD because of TENANT's breach of any of the covenants of this Lease. At any time during such repossession or reletting, LANDLORD may, by delivering written notice to TENANT, elect to exercise its option under the following subparagraph to accept a surrender of the Premises, terminate and cancel this Lease and retake possession and occupancy of the Premises on behalf of LANDLORD. Notwithstanding the foregoing, LANDLORD will seek to mitigate its damages caused by TENANT as required under Colorado law.

(b) Provide written notice that the Lease is terminated and LANDLORD has the right to reenter upon and take possession of the Premises within twenty (20) days of such notice, whereupon the term hereby granted and all right, title, and interest of TENANT in the Premises shall terminate. Such termination shall be without prejudice to LANDLORD's right to collect from TENANT any rent or other charges or sums that have accrued prior to such termination, together with all damages suffered by LANDLORD because of TENANT's breach of any covenant contained in this Lease.

(c) Exercise any and all rights, remedies, and privileges that LANDLORD may have under applicable law or in equity, or under this Lease.

9.3 **DEFAULT OF LANDLORD.** Except as otherwise provided in this Lease, LANDLORD shall be in default under this Lease if LANDLORD fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after written notice from TENANT to LANDLORD (unless such failure cannot reasonably be cured within thirty (30) days and in that event LANDLORD shall commence to cure said failure within the thirty (30) day period and thereafter diligently continue to cure the failure). TENANT shall have no right of setoff against rent. TENANT may pursue as a remedy damages, recoupment, or counterclaims for any damages that TENANT may have sustained by reason of LANDLORD's failure to perform any of the terms, covenants or conditions contained in this Lease.

ARTICLE 10 - ACCESS BY LANDLORD

LANDLORD or LANDLORD'S agents shall have the right to enter the Premises upon reasonable notice to examine and inspect the same, to show the Premises to prospective purchasers, to determine compliance with the terms of this Lease, to make alterations, repairs, improvements or additions as LANDLORD may deem necessary or desirable, or to conduct such other inspections and activities of LANDLORD, provided the same do not unreasonably interfere with TENANT's use and enjoyment of the Premises. Nothing herein contained shall be deemed or construed to impose upon LANDLORD any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises, nor any part thereof or any improvements, fixtures or property located thereon, except as otherwise specifically provided herein.

ARTICLE 11 - TENANT'S PROPERTY

11.1 **TAXES ON TENANTS PROPERTY.** TENANT shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the term of this Lease against personal property of any kind owned by or placed in, upon or about the Premises by the TENANT.

11.2 **LOSS OR DAMAGE.** Except as provided herein, LANDLORD shall not be liable for any loss or damage to property of TENANT or of others located on the Premises, by theft or otherwise. LANDLORD shall not be liable for any claims arising from damage to property located in or on the Premises resulting from fire, explosion, gas or electrical malfunction, water damage or leakage; nor shall LANDLORD be liable for any damages caused by other persons in the Premises, or by public or quasi-public work on adjacent property, excepting only liability to the extent resulting from gross negligence or willful and wanton acts or omissions of LANDLORD. It is acknowledged and understood by TENANT that the safety and security of any property of TENANT is the sole responsibility and risk of TENANT.

ARTICLE 12 - SURRENDER OF PREMISES, HOLDING OVER

12.1 <u>SURRENDER OF PREMISES.</u> Within thirty (30) days after the expiration or termination of this Lease as provided herein, TENANT shall at its sole expense remove from the Premises any and all personal property. Any items of personal property not removed shall, at LANDLORD's option, become the property of the LANDLORD, and TENANT shall execute and deliver to the LANDLORD a Bill of Sale for such items of personal property. Any fixtures, structures, or improvements installed by TENANT or located on the leased Premises at the time of termination shall be deemed the property of the LANDLORD.

12.2 <u>HOLDING OVER.</u> This Lease and the tenancy created shall cease and terminate at the end of the original term hereof, unless extended as provided herein, without the necessity of notice, and TENANT hereby waives notice and agrees that LANDLORD shall be entitled to summary recovery of the Premises. Any holding over after the expiration of the term hereof, with or without the consent of LANDLORD, shall be construed to be a tenancy at sufferance, and LANDLORD shall be entitled to collect rental as provided by law for such tenancy, but not less than one hundred fifty percent (150%) of the monthly rental rate set forth in Article 1, together with all other rent and charges due hereunder.

ARTICLE 13 – CONDEMNATION

If during the term of this Lease or any renewal hereof, the whole of the Premises are condemned or taken in any manner for public use, or if a portion of the Premises is condemned or taken in any manner for public use to an extent that constitutes an unreasonable interference with TENANT's business operations, then in either event TENANT may elect to terminate this Lease as of the date of the vesting of title in such public authority. LANDLORD shall be entitled to that portion of condemnation award attributable to LANDLORD's interest in the Premises. TENANT shall be entitled to that portion of the condemnation award attributable to TENANT's leasehold interest in the Premises, the loss of all improvements, trade fixtures and other personal property on the Premises, all business losses and relocation costs.

ARTICLE 14 - DESTRUCTION OF PREMISES

14.1 <u>TOTAL DESTRUCTION.</u> If the Premises are totally destroyed by fire or other casualty or if the Premises are partially destroyed to an extent that constitutes an unreasonable interference in TENANT's business operations, then TENANT shall have the option of terminating this Lease upon written notice to LANDLORD within thirty (30) days after such casualty loss, in which event rent and all other payment obligations herein shall cease as of the date of such casualty, and neither LANDLORD nor TENANT shall have any further obligations or rights hereunder except with respect to those provisions which expressly survive termination of this Agreement.

14.2 <u>PARTIAL DESTRUCTION.</u> In the event of fire or other casualty and TENANT elects to continue under this Lease as provided in Section 14.1, then TENANT shall restore the Premises to the same or better condition as existed prior to such fire or other casualty. TENANT shall commence restoration of the Premises as soon as reasonably possible and thereafter proceed with diligence to complete such restoration as soon thereafter as is practical. During any restoration hereunder, TENANT shall receive a proportionate reduction in the rent until all facilities are restored, unless TENANT is unable, in its reasonable discretion, to continue operating the Premises, in which event all rent shall abate until TENANT re-opens for business.

14.3 <u>NON-LIABILITY.</u> LANDLORD shall not be liable for any inconvenience or interruption of business of TENANT occasioned by fire or other casualty, except to the extent of abatement by TENANT of all rent obligations hereunder.

14.4 <u>NOTICE BY TENANT.</u> TENANT shall give immediate notice to LANDLORD in case of fire or other casualty or accident on the Premises.

ARTICLE 15 – SIGNS

TENANT shall have the right to affix such signs as customarily are used in its business upon the windows, doors, interior and exterior walls of the Premises, and such free-standing signs as may seem appropriate to TENANT and are authorized by any governmental authority having jurisdiction over the Premises. Nothing herein shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use, sign, or building codes for the placement of any signage.

ARTICLE 16 – ACCEPTANCE & TENANT IMPROVEMENTS

16.1 <u>GENERAL ACCEPTANCE.</u> LANDLORD shall deliver the Premises to TENANT upon commencement of the term of this Lease. The taking of possession of the Premises shall be deemed an acceptance of the same by TENANT in its "AS IS" and present condition whether patent or latent, without representation or warranty or representation of any kind as to the condition thereof, and without any obligation of LANDLORD to modify, repair, replace, improve or maintain the Premises for TENANT. Landlord agrees the existing HVAC, roof, electrical, lighting and plumbing systems shall be placed in good working order at the time of delivery. TENANT shall be responsible at its expense for any upgrades to such existing systems, excluding necessary replacements in accordance with Section 5.3 above.

16.2 TENANT'S IMPROVEMENTS. TENANT shall be responsible for construction, alterations, replacements, additions, repairs, fixtures, and improvements to the Premises required for TENANT's Permitted Use, all of which shall be at TENANT's sole cost and expense except as expressly provided in Section 5.3 hereof. TENANT's work shall not be commenced unless and until final written plans and specifications have been submitted to and approved by LANDLORD, which approval may not be unreasonably withheld; provided, however, that LANDLORD approval shall not be required for TENANT work with a cost of less than $5,000 for any individual project that does not involve structural work or roof penetrations. Any such plans and specifications shall include a site plan, elevations, and all other information required for issuance of a building permit, and shall be prepared and submitted to LANDLORD at least sixty (60) days prior to the date of commencement of the work. LANDLORD shall have thirty (30) days from receipt thereof to disapprove of such plans and specifications. If LANDLORD does not respond within thirty (30) days of receipt, LANDLORD shall be deemed to have approved the work. All work shall be completed in compliance with all codes, ordinances, rules and regulations of any authority, in a good and workmanlike manner by licensed contractors with appropriate building permits. TENANT agrees that all contractors performing work on the Premises shall maintain commercial liability insurance of at least Two Million and No/100 Dollars ($2,000,000.00). All entries on the Premises and all work done by or on behalf of the TENANT shall be at TENANT's sole risk. Nothing herein shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use or building codes for approval of any work upon the Premises.

All materials and equipment furnished by TENANT in its improvement of the Premises shall be new unless otherwise specified in the approved plans and specifications. All of TENANT's work to be performed on the Premises shall be of good and workmanlike quality, free from faults and defects, and in accordance with the approved plans and specifications and legal requirements. Any of TENANT's work not conforming to the above standards shall be considered defective.

LANDLORD hereby approves TENANT work in the nature of (i) addition of three (3) compartment sinks, washer and dryers to the back North Facing warehouse; and (ii) adding exterior beautification (i.e. turf or grass), provided that the same comply with all applicable codes and regulations.

ARTICLE 17 - REPRESENTATIONS AND WARRANTIES

17.1 TENANT. TENANT hereby represents and warrants to LANDLORD that: (a) TENANT is a duly authorized and existing Delaware corporation; (b) TENANT has the full right and authority to enter into this Lease; (c) each of the persons executing this Lease on behalf of TENANT is authorized to do so; and (d) this Lease constitutes a valid and legally binding obligation of TENANT, enforceable in accordance with its terms.

17.2 LANDLORD. LANDLORD represents and warrants to TENANT that: (a) LANDLORD has the full right and authority to enter into this Lease; (b) each of the persons executing this Lease on behalf of LANDLORD is authorized to do so; and (c) this Lease constitutes a valid and legally binding obligation on LANDLORD, enforceable in accordance with its terms.

ARTICLE 18 - NOTICES

Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be deemed to be delivered (a) whether or not actually received, three (3) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (b) when received (or when receipt is refused) if delivered personally, sent by facsimile transmission, or sent by a nationally recognized overnight courier, all charges prepaid, at the addresses of LANDLORD and TENANT as set forth in this Section. Such address may be changed by written notice to the other party in accordance with this Section.

If to LANDLORD:

City of Louisville
Attn: Economic Vitality
749 Main Street
Louisville, CO 80027

If to TENANT:

Avid4 Adventure Inc.
Attn: Paul Dreyer
1501 Empire Road
Louisville, CO 80027

With a copy to:
Hutchinson, Black & Cook LLC
Attn: Justin C. Konrad
921 Walnut Street, Suite 200
Boulder, CO 80302

ARTICLE 19 - ESTOPPEL CERTIFICATE

At any time and from time to time either party, upon request of the other party, will execute, acknowledge and deliver an instrument, stating, if the same be true, that this Lease is a true and exact copy of this Lease between the parties hereto, and, if true at the time requested, there are no amendments hereof (or stating what amendments there may be), that the same is then in full force and effect and that, to the best of its knowledge, there are no offsets, defenses or counterclaims with respect to the payment of Rent reserved hereunder or in the performance of the other terms, covenants and conditions hereof on the part of TENANT or LANDLORD, as the case may be, to be performed, and that as of such date no default has been declared hereunder by either party or if not, specifying the same.

ARTICLE 20 - HAZARDOUS SUBSTANCES

20.1 **<u>HAZARDOUS SUBSTANCES INDEMNITY.</u>** TENANT shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on, in or about the Premises without obtaining LANDLORD's prior written consent. If any Hazardous Substance is used, stored, generated, or disposed of on, in, or about the Premises except as permitted above, or if the Premises become contaminated in any manner as a result of any breach of the foregoing covenant or any act or omission of TENANT or any of its employees or contractors, TENANT shall indemnify, defend and hold harmless LANDLORD from any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants', and experts' fees), liabilities, losses (, and expenses arising during or after the term of this Lease and arising as a result of such contamination. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if TENANT causes or permits the presence of any Hazardous Substance on, in, or about the Premises that results in contamination, TENANT, at its sole expense, shall promptly take any and all necessary actions to return the Premises to the same condition that existed prior to the presence of any such Hazardous Substance on, in, or about the Premises. TENANT shall first obtain LANDLORD's approval for any such remedial action, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, this indemnification shall only apply to contamination by Hazardous Substances resulting from TENANT'S use and operation of the Premises. Nothing herein contained shall be held to indemnify LANDLORD from liability for Hazardous Substances contamination resulting from LANDLORD'S ownership, use or operation, or the use or operation by any third party in, on or under the Premises or arising out of conditions existing on the Premises prior to the commencement of TENANT's first possession of the Premises.

20.2 **<u>DEFINITION.</u>** As used herein, the term "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State in which the Premises are located, or the United States government. "Hazardous Substance" includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous Substance" includes, but is not limited to, asbestos, polychlorobiphenyls and petroleum. The provisions under this entire Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 21 - FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (hereinafter "Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within ten (10) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act or performance of work due to a Permitted Delay shall be sixty (60) days.

ARTICLE 22 - ADDITIONAL TERMS

22.1 **PLUMBING.** Plumbing facilities shall not be used for any other purpose than that for which they were constructed, and no foreign substance other than those generally used during the operation of office uses shall be deposited therein. The cost and expense of any breakage, stoppage or damage resulting from a violation of this provision shall borne by TENANT.

22.2 **SECURITY.** TENANT shall have full responsibility for protecting the Premises and the property located therein from theft and robbery and shall keep all doors and windows securely fastened when not in use.

22.3 **GARBAGE.** TENANT shall pay all costs associated with disposal of its garbage, including but not limited to, costs of pick up, containers and deposits.

22.4 **VIOLATIONS.** Governmental penalties, fines or damages imposed on any portion of the Premises as a result of the acts of TENANT, its employees or agents, shall be paid by TENANT within thirty (30) days after receipt of said notice by TENANT, unless reasonably contested by TENANT.

22.5 **APPROVALS.** Nothing in this Lease is intended or shall be construed to obligate the City of Louisville, acting in its administrative or quasi-judicial capacity, to approve any application of TENANT submitted under the City's land use, sign or building codes for approval of any development, work, signs, or improvements upon the Premises.

22.6 **NO WAIVER OF IMMUNITY.** LANDLORD is relying on and does not waive or intend to waive by any provision of this Lease the monetary limitations (presently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as from time to time amended, or otherwise available to LANDLORD and its officers and employees.

22.7 **SUBJECT TO ANNUAL APPROPRIATIONS.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of LANDLORD not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of LANDLORD hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year. TENANT understands and agrees that any decision of the City Council to not appropriate funds shall be without recourse, penalty or liability to the City.

22.8 **SUBORDINATION.** This Lease and the rights of TENANT hereunder shall be and are hereby made subject and subordinate to the lien of any bond, loan, indenture, borrowing or other instrument of any kind now or hereafter existing against the property encompassing the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof and to all advances made, or hereafter to be made, upon the security thereof. Although such subordination shall be self operating, TENANT, or its successors in interest, shall upon

LANDLORD's request, execute and deliver upon the demand of LANDLORD any and all instruments desired by LANDLORD, subordinating, in the manner reasonably requested by LANDLORD, this Lease to any such bond, loan, indenture, borrowing or other instrument.

22.9 **NO STORAGE AREAS.** TENANT acknowledges that the areas depicted as No Storage Areas on Exhibit A are areas with underground utilities. TENANT agrees that is shall not construct or install within the No Storage Areas any buildings, structures, or hardscape improvements, or place or store within the No Storage Areas any immobile shipping or storage containers or any other items that cannot be moved from the No Storage Area immediately upon demand. In the event access to or work upon the utilities within the No Storage Areas requires disturbance of any items placed by TENANT within the No Storage Areas, LANDLORD shall not be required to repair or replace any such disturbance.

22.10 **RESERVED STORAGE SPACE OF LANDLORD.** LANDLORD and TENANT agree that LANDLORD shall have the reserved right throughout the term to install and utilize cabinet space within what is currently Office 113 of the Main Building for installation and operation of City of Louisville IT equipment. TENANT agrees to pay for the electricity supplied for the IT equipment (i.e., such use will not be separately metered or billed to the LANDLORD). TENANT shall allow LANDLORD access to the IT cabinet during business hours and after hours via a key or other entry system mutually agreed by the parties, and LANDLORD shall use reasonable efforts to provide advance notice to and coordinate access to the cabinet with TENANT. LANDLORD is responsible for all costs associated with the IT cabinet except electricity charges.

ARTICLE 23 - MISCELLANEOUS

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

23.2 **ACCORD AND SATISFACTION.** No payment by TENANT or acceptance by LANDLORD of a lesser amount than sums herein stipulated shall be deemed to be other than on account of the due sums, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment prejudice LANDLORD's right to recover the balance or such rent or pursue any other remedy provided in this Lease, unless otherwise agreed to by LANDLORD.

23.3 **CAPTIONS AND SECTION NUMBERS.** The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of, such sections.

23.4 **ENTIRE AGREEMENT.** This Lease and any attachments hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions, and understandings between LANDLORD and TENANT concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon LANDLORD or TENANT until reduced to writing and signed by LANDLORD and TENANT.

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

23.6 **SURVIVAL.** All of the terms and conditions of Sections 6.2 and 12.1 of this Lease, and all other terms and conditions of this Lease concerning release, indemnification, termination, remedies, and enforcement, shall survive termination of this Lease.

23.7 **APPLICABLE LAW & VENUE.** The parties hereto shall be bound by and this Lease shall be construed according to the laws of the State of Colorado. Venue for any litigation concerning this Lease shall be in the District Courts of Boulder County, Colorado.

23.8 **RECORDING.** A memorandum of this Lease may be recorded by LANDLORD or TENANT in the public records at the recording party's expense.

23.9 **COSTS OF ENFORCEMENT.** In the event that LANDLORD shall bring an action to recover any sum due hereunder or for any breach hereunder and shall obtain a judgment in its favor, or in the event that LANDLORD shall retain an attorney for the purpose of collecting any sum due hereunder or enforcing any of the terms or conditions hereof or protecting its interest in any bankruptcy, receivership, or insolvency proceeding or otherwise against the TENANT, the LANDLORD shall be entitled to recover all reasonable costs and expenses incurred, including reasonable attorneys' and legal assistants' fees, and costs and expenses, including expert witness fees and expenses.

23.10 **CONSENT.** Wherever in this Lease LANDLORD or TENANT is required to give its consent or approval, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

23.11 **TRANSFER OF LANDLORDS INTEREST.** The term "LANDLORD" shall mean only the owner, for the time being, of the Premises, and in the event of the transfer by such owner of its interest in the Premises, then notwithstanding anything to the contrary contained herein, such owner shall thereupon automatically be released and discharged from all covenants and obligations of the LANDLORD thereafter accruing, but such covenants and obligations shall be binding during the term of this Lease upon each new owner for the duration of such owner's ownership. Notwithstanding the foregoing, any such owner shall remain obligated to TENANT for any and all deposits paid by TENANT hereunder until such time as said deposits are transferred to and accepted by any new owner and notice given to TENANT.

23.12 <u>RIGHT OF FIRST REFUSAL TO PURCHASE PREMISES.</u> In the event LANDLORD desires to sell the Premises and LANDLORD receives from a third party a bona fide offer to purchase the Premises, and that offer is acceptable to LANDLORD, LANDLORD agrees to disclose the terms of such offer to TENANT, in writing, within fifteen (15) business days following receipt of the offer. Upon receiving written notice of the terms of the offer and upon receipt of a copy of that offer, TENANT shall have ten (10) business days in which to elect to purchase the Premises subject to that offer on terms identical to those offered by the third party. Such an election shall be made by written notice to the LANDLORD. Within thirty (30) days thereafter, the parties shall enter into a written contract of sale in a form approved by the Colorado Real Estate Commission expressly including and incorporating all of the terms of the third party offer made to the LANDLORD, except as the parties may mutually agree. Within three (3) days after the full execution of the Colorado Real Estate Commission contract, the TENANT shall deposit an earnest money check with a mutually agreed upon title company in the amount contained in the third party offer, to be applied to the purchase price. If the TENANT, after receiving notice of the third party offer, fails to exercise its right of first refusal to purchase the Premises subject to that offer, within the allotted ten (10) business day period, TENANT's right of first refusal to purchase the Premises subject to that offer shall terminate and TENANT shall thereafter have no further right to purchase the Premises subject to that offer, it being the parties' express intent that TENANT's right of first purchase shall be a one-time right only, irrespective of whether the Premises are sold to the third party pursuant to the offer submitted by the third party and accepted by the LANDLORD.

23.13 <u>SUCCESSORS.</u> All rights and liabilities herein given to or imposed upon the parties hereto shall inure to the benefit of and be binding upon their respective heirs, executors, administrators, successors and assigns and, except as may be otherwise set forth herein, if there shall be more than one TENANT, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of TENANT unless such assignment has been approved by LANDLORD in writing as provided elsewhere in this Lease.

23.14 <u>BROKERAGE.</u> That certain Lease Termination Agreement executed by LANDLORD, TENANT, and Human Movement, Inc. provides that Human Movement, Inc. shall pay for brokerage fees as set forth in such Lease Termination Agreement. LANDLORD and TENANT each represent that no other brokers, finders or similar fee or commission is due in connection with this Lease.

23.15 <u>COUNTERPARTS.</u> This Lease may be executed in counterparts; each counterpart constitutes a complete and binding agreement but all of such counterparts, taken together, form one and the same agreement.

IN WITNESS WHEREOF, LANDLORD AND TENANT have executed this Lease effective as the day and year first above and written.

LANDLORD:
CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: ______________________________
Ashley Stolzmann, Mayor

ATTEST:

By: ______________________________
Meredyth Muth, City Clerk

CITY OF LOUISVILLE
SEAL
COLORADO

TENANT:
AVID4 ADVENTURE, INC .
a Delaware corporation

By: Paul Dreyer
Paul Dreyer, CEO

Exhibit A

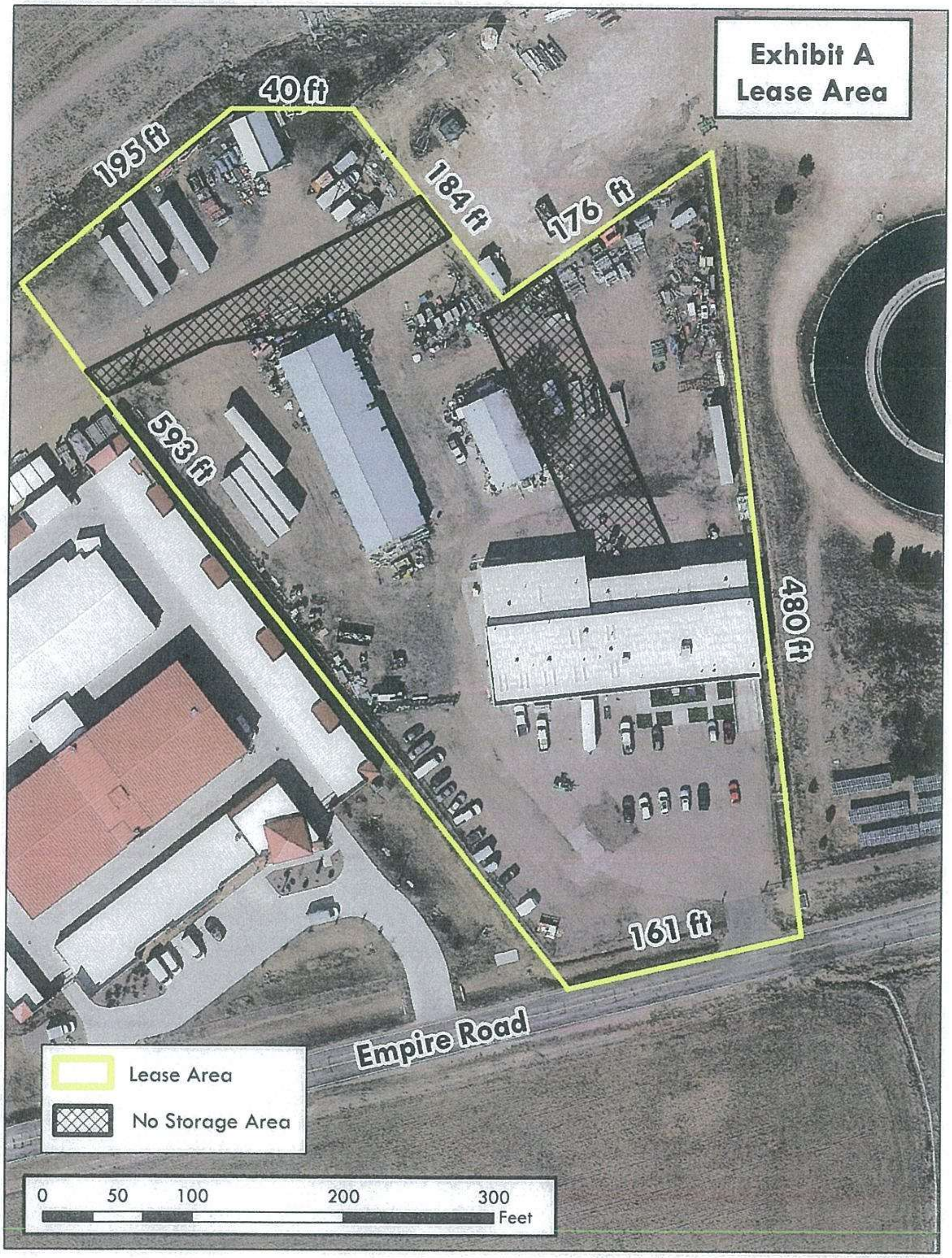
Exhibit A
Lease Area
40 ft
195 ft
184 ft
176 ft
593 ft
480 ft
161 ft
Empire Road
Lease Area
No Storage Area
0
50
100
200
300
Feet

RESOLUTION NO. 44
SERIES 2020

A RESOLUTION APPROVING A FIRST AMENDMENT TO A LEASE AGREEMENT WITH AVID4 ADVENTURE, INC.

WHEREAS, by Resolution No. 1, Series 2020, the City Council approved a Lease Agreement with AVID4 Adventure, Inc. for the City's property located at 1501 Empire Road; and

WHEREAS, due to financial difficulties incurred as a result of the COVID-19 Pandemic, AVID4 Adventure has requested the City reduce the rent due under the Lease Agreement beginning June 1 through the end of 2020, as set forth in the First Amendment to Lease Agreement, a copy of which accompanies this resolution; and

WHEREAS, the Council hereby finds and determines that execution of the proposed First Amendment to Lease Agreement is appropriate and necessary and serves the functions and operations of the City by preserving an established tenancy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The proposed First Amendment to Lease Agreement (the "First Amendment") between the City of Louisville and Avid4 Adventure, Inc., is hereby approved in essentially the same form as the copy of such First Amendment accompanying this Resolution.

Section 2. The Mayor is authorized to execute such First Amendment on behalf of the City, and the Mayor and the City Manager, or either of them, are hereby further granted the authority to negotiate and approve such revisions to said First Amendment as the Mayor or City Manager determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the First Amendment are not altered.

PASSED AND ADOPTED this 2nd day of June, 2020.

Ashley Stolzmann

Ashley Stolzmann, Mayor

ATTEST:

CITY OF LOUISVILLE SEAL COLORADO

Meredyth Muth, City Clerk

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("Lease") is entered into by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation ("LANDLORD" or "City") and **AVID4 ADVENTURE, INC.**, a Delaware corporation ("TENANT").

WHEREAS, LANDLORD and TENANT have entered into a Lease Agreement with an initial term commencing February 1, 2020 and ending on December 31, 2025; and

WHEREAS, such Lease Agreement provided for abatement of rent for the first four (4) months of the term, February 1 through May 31, 2020 ("Abatement Period"); and

WHEREAS, due to the financial impacts to its business caused by the COVID-19 Pandemic, TENANT has requested LANDLORD reduce rent payments by seventy-five percent (75%) for the remainder of 2020 following the Abatement Period; and

WHEREAS, LANDLORD has considered such request and agrees to provide such reduction in rent due pursuant to the Lease Agreement as set forth herein, on those terms and conditions provided in this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and other consideration as set forth herein, LANDLORD and TENANT agree as follows:

<u>Section 1.</u> Section 1.3 of the Lease Agreement is hereby amended to read as follows (words to be added <u>underlined</u>; words to be deleted ~~stricken~~):

1.3 <u>RENT.</u> In consideration of said demise, TENANT agrees to pay to LANDLORD for the Premises rent in equal monthly installments for the Initial Term as set forth in the following table:

Month	Rate PSF	Monthly Gross Rent	Annual Gross Rent
Months 1-4	$8.00	$13,402.67	$160,832.00*
5-12	$8.00	$13,402.67	$160,832.00
13-24	$11.00	$18,428.67	$221,144.00
25-36	$11.33	$18,981.53	$227,778.32
37-48	$11.67	$19,550.97	$234,611.67
49-60	$12.02	$20,137.50	$241,650.02
61-72	$12.38	$20,741.63	$248,899.52

* Notwithstanding anything to the contrary contained in this Lease, and as set forth in the Lease Termination Agreement executed by LANDLORD, TENANT, and Human Movement, Inc., LANDLORD agrees not to demand or collect from TENANT monthly gross rent for the first four (4) months of the Initial Term (the "Abatement Period") <u>and to accept as full payment for Months 5-12 twenty-five percent (25%) of the Monthly Gross Rent shown above (the "Rental Reduction</u>

Period") (collectively, the "Abatement Period" and the "Rental Reduction Period" are referred to herein as the "Rent Abatement"). The Rent Abatement afforded by this Section will be of no force or effect if there has occurred, as of the date on which any installment of Monthly Gross Rent would otherwise be due during the Abatement Period, (i) a default beyond any applicable notice and cure period, or (ii) an assignment of the Lease has occurred or a sublease of all or any portion of the Premises exists, for which the City's prior approval has not been obtained. Except for such Rent Abatement, all of the terms and conditions of this Lease will be applicable during the Abatement Period. Following the Abatement Period, rent shall be due and payable in advance on the first day of each calendar month at the office of LANDLORD specified herein. LANDLORD may assess a late charge of ten percent (10%) of any monthly rent installment or any other payment called for in this Lease that is delinquent ten (10) days or more if Tenant fails to pay any amount due to the LANDLORD within ten (10) days after such amount is due on more than one (1) occasion in any 12-month period. In addition, all rent in arrears and all amounts collectible as provided for in this Lease shall accrue interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid. If the Initial Term commences or terminates on a day other than the first or last day of a calendar month respectively, then the rent for such month or months shall be prorated and the prorated amount shall be paid in advance.

Section 2. Section 5.3 of the Lease Agreement is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

5.3 LANDLORD MAINTENANCE OBLIGATIONS. Notwithstanding anything to the contrary in Section 5.1 above, LANDLORD shall be responsible for (a) replacement of the roof of the Premises, HVAC equipment, and electrical or plumbing equipment, (b) structural or exterior replacements or additions to any improvements on the Premises (excluding doors or windows), and (c) any other capital replacements or improvements, except to the extent that the same were necessitated by the negligent or wrongful actions or omissions of TENANT, its employees, agents or licensees, all as the City in its reasonable discretion may deem necessary (collectively, "Capital Expenses"). Provided, however, with regard to capital improvements that may be necessary for normal operation of the Premises during the Rental Reduction Period, LANDLORD and TENANT shall each pay fifty percent (50%) of the cost of such improvements, subject to a cap of $25,000 for TENANT''s portion of such improvements. The cost of such Capital Expenses shall be amortized over the useful life of such Capital Expenses and the annual amortized cost shall be invoiced by LANDLORD to TENANT annually, with such invoices payable within thirty (30) days of receipt by TENANT.

Section 3. This First Amendment to Lease Agreement may be executed in counterparts; each counterpart constitutes a complete and binding agreement but all of such counterparts, taken together, form one and the same agreement.

Section 3. This First Amendment to Lease Agreement may be executed in counterparts; each counterpart constitutes a complete and binding agreement but all of such counterparts, taken together, form one and the same agreement.

Section 4. Except as amended by this First Amendment, the terms and conditions of the Least Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, LANDLORD AND TENANT have executed this Lease effective as of June 1, 2020.

LANDLORD:
CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: ______________________________
Ashley Stolzmann, Mayor

ATTEST:

By: ______________________________
Meredyth Muth, City Clerk

TENANT:
AVID4 ADVENTURE, INC .
a Delaware corporation

By: ______________________________
Paul Dreyer, CEO

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RESOLUTION NO. 1
SERIES 2021

A RESOLUTION APPROVING A SECOND AMENDMENT TO LEASE AGREEMENT WITH AVID4 ADVENTURE, INC.

WHEREAS, by Resolution No. 1, Series 2020, the City Council approved a Lease Agreement with Avid4 Adventure, Inc. for the City's property located at 1501 Empire Road; and

WHEREAS, due to financial difficulties incurred as a result of the COVID-19 Pandemic, Avid4 Adventure requested the City reduce the rent due under the Lease Agreement beginning June 1 through the end of 2020, which was approved by City Council in Resolution No. 44, Series 2020 on June 2, 2020; and

WHEREAS, Avid4 Adventure continues to experience financial difficulties from the pandemic due to the nature of its core business operations and has requested the City reduce the rent due under the Lease agreement beginning February 1, 2021 through December 31, 2021 as well as defer the Excess Rent provision of the lease until January 1, 2022; and

WHEREAS, the Council hereby finds and determines that execution of the proposed Second Amendment to Lease Agreement is appropriate and necessary and serves the functions and operations of the City by preserving an established tenancy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The proposed Second Amendment to Lease Agreement (the "Second Amendment") between the City of Louisville and Avid4 Adventure, Inc., is hereby approved in essentially the same form as the copy of such Second Amendment accompanying this Resolution.

Section 2. The Mayor is authorized to execute such Second Amendment on behalf of the City, and the Mayor and the City Manager, or either of them, are hereby further granted the authority to negotiate and approve such revisions to said Second Amendment as the Mayor or City Manager determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Second Amendment are not altered.

PASSED AND ADOPTED this 5th day of January, 2021.

Ashley Stolzmann

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk

CITY OF LOUISVILLE SEAL COLORADO

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Lease") is entered into by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation ("LANDLORD" or "City") and **AVID4 ADVENTURE, INC.**, a Delaware corporation ("TENANT").

WHEREAS, LANDLORD and TENANT have entered into a Lease Agreement with an initial term commencing February 1, 2020 and ending on December 31, 2025; and

WHEREAS, such Lease Agreement provided for abatement of rent for the first four (4) months of the term, February 1 through May 31, 2020 ("Abatement Period"); and

WHEREAS, due to the financial impacts to its business caused by the COVID-19 Pandemic, the LANDLORD approved a First Amendment to the Lease by Resolution No. 44, Series 2020 to reduce the amount of rent due in 2020; and

WHEREAS, due to the continuing economic circumstances created by the COVID-19 Pandemic, the TENANT has requested LANDLORD defer the per square foot rent increase scheduled to take effect on February 1, 2021 until February 1, 2022 and to defer payment of excess rent due for subleases or other Transfers until January 1, 2022; and

WHEREAS, LANDLORD has considered such request and agrees to amend the Lease Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and other consideration as set forth herein, LANDLORD and TENANT agree as follows:

<u>Section 1.</u> Section 1.3 of the Lease Agreement is hereby amended to read as follows (words to be added <u>underlined</u>; words to be deleted ~~stricken~~):

1.3 **<u>RENT.</u>** In consideration of said demise, TENANT agrees to pay to LANDLORD for the Premises rent in equal monthly installments for the Initial Term as set forth in the following table:

Month	Rate PSF	Monthly Gross Rent	Annual Gross Rent
Months 1-4	$8.00	$13,402.67	$160,832.00*
5-12	$8.00	$13,402.67	$160,832.00
13-24	~~$11.00~~ <u>$8.00</u>	~~$18,428.67~~ <u>$13,402.67</u>	~~$221,144.00~~ <u>$160,832.04</u>
25-36	~~$11.33~~ <u>$11.00</u>	~~$18,981.53~~ <u>$18,428.67</u>	~~$227,778.32~~ <u>$221,144.04</u>
37-48	~~$11.67~~ <u>$11.33</u>	~~$19,550.97~~ <u>$18,891.53</u>	~~$234,611.67~~ <u>$226,698.36</u>
49-60	~~$12.02~~	~~$20,137.50~~	~~$241,650.02~~

	$11.67	$19,550.97	$234,611.64
	~~$12.38~~	~~$20,741.63~~	~~$248,899.52~~
61-72	$12.02	$20,137.50	$241,650.00

* Notwithstanding anything to the contrary contained in this Lease, and as set forth in the Lease Termination Agreement executed by LANDLORD, TENANT, and Human Movement, Inc., LANDLORD agrees not to demand or collect from TENANT monthly gross rent for the first four (4) months of the Initial Term (the "Abatement Period") and to accept as full payment for Months 5-12 twenty-five percent (25%) of the Monthly Gross Rent shown above (the "Rental Reduction Period") (collectively, the "Abatement Period" and the "Rental Reduction Period" are referred to herein as the "Rent Abatement"). The Rent Abatement afforded by this Section will be of no force or effect if there has occurred, as of the date on which any installment of Monthly Gross Rent would otherwise be due during the Abatement Period, (i) a default beyond any applicable notice and cure period, or (ii) an assignment of the Lease has occurred or a sublease of all or any portion of the Premises exists, for which the City's prior approval has not been obtained. Except for such Rent Abatement, all of the terms and conditions of this Lease will be applicable during the Abatement Period. Following the Abatement Period, rent shall be due and payable in advance on the first day of each calendar month at the office of LANDLORD specified herein. LANDLORD may assess a late charge of ten percent (10%) of any monthly rent installment or any other payment called for in this Lease that is delinquent ten (10) days or more if Tenant fails to pay any amount due to the LANDLORD within ten (10) days after such amount is due on more than one (1) occasion in any 12-month period. In addition, all rent in arrears and all amounts collectible as provided for in this Lease shall accrue interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid. If the Initial Term commences or terminates on a day other than the first or last day of a calendar month respectively, then the rent for such month or months shall be prorated and the prorated amount shall be paid in advance.

Section 2. Section 8.4 of the Lease Agreement is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

8.4 ADDITIONAL CONDITIONS; EXCESS RENT. A condition of LANDLORD's consent to any Transfer shall be the delivery to LANDLORD of a true copy of the fully executed instrument of assignment, sublease, or transfer, in form and substance reasonably satisfactory to LANDLORD. In addition, beginning January 1~~, 2021,~~ 2022, TENANT shall pay to LANDLORD as additional rent within thirty (30) days after receipt thereof, without affecting or reducing any other obligations of TENANT hereunder, fifty percent (50%) of any rent or other economic consideration received by TENANT as a result of any Transfer that exceeds, in the aggregate: (i) the total rent which TENANT is obligated to pay LANDLORD under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) for the applicable period, plus (ii) any reasonable brokerage commissions and attorneys' fees actually paid by TENANT in connection with such Transfer, which commissions and fees shall, for purposes of the aforesaid calculation, be amortized on a straight-line basis over the term of such Transfer. For purposes of this Section 8.4, the full amount of rent or other economic consideration received by TENANT for any portion of the Premises not contained within a building shall be considered excess rent.

Section 3. This Second Amendment to Lease Agreement may be executed in counterparts; each counterpart constitutes a complete and binding agreement but all of such counterparts, taken together, form one and the same agreement.

Section 4. Except as amended by the First Amendment and this Second Amendment, the terms and conditions of the Least Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, LANDLORD AND TENANT have executed this Second Amendment effective as of January 1, 2021.

LANDLORD:
CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: Ashley Stolzmann
Ashley Stolzmann, Mayor

ATTEST:

By: ______________________
Meredyth Muth, City Clerk

TENANT:
AVID4 ADVENTURE, INC .
a Delaware corporation

By: Paul Dreyer
Paul Dreyer, CEO

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO, AMENDING SECTION 8.4 OF THE LEASE AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND AVID4 ADVENTURE, INC. REGARDING EXCESS RENT FOR NON-BUILDING PREMISES.

WHEREAS, the City of Louisville ("LANDLORD") and AVID4 ADVENTURE, INC. ("TENANT") are parties to a Lease Agreement (the "Lease") dated February 1, 2020, for the premises located at 1501 Empire Road, Louisville, Colorado; and

WHEREAS, Section 8.4 of the Lease, titled "ADDITIONAL CONDITIONS; EXCESS RENT," establishes conditions under which TENANT may be required to pay the LANDLORD a portion of rent or other economic consideration received from Transfers (subleases); and

WHEREAS, the second sentence of Section 8.4 specifically states that "the full amount of rent or other economic consideration received by TENANT for any portion of the Premises not contained within a building shall be considered excess rent" for the purpose of calculating 50% payment to the LANDLORD; and

WHEREAS, throughout a significant portion of the current Lease term, TENANT has operated under an understanding, informed by past guidance and interpretation, that this specific provision did not apply to sub-lease revenue generated from areas of the Premises not contained within a building (e.g., yard storage); and

WHEREAS, a recent clarification from City staff regarding the application and enforcement of this specific provision has indicated a requirement for TENANT to pay 50% of such non-building sub-lease revenue as excess rent, which constitutes a material financial impact and potential retroactive liability for TENANT; and

WHEREAS, the City Council desires to support its local businesses, foster predictable and stable operating environments, and maintain strong tenant relationships within the community; and

WHEREAS, for upcoming lease terms, specifically effective 2026, the City has elected to remove the "excess rent" clause for non-building space from the lease structure, opting instead for a revised, higher overall monthly lease rate that incorporates the value of the entire leased property; and

WHEREAS, to resolve the current misunderstanding, provide clarity, mitigate material financial impact to TENANT for the current Lease term, and align the spirit of the existing Lease with the City's forward-looking leasing strategy and a mutually beneficial tenant relationship, it is deemed to be in the best interest of the City to amend the application of Section 8.4 for the duration of the current Lease term;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO, THAT:

1. **Amendment to Section 8.4:** For the remaining duration of the Lease Agreement dated February 1, 2020, between the City of Louisville and AVID4 ADVENTURE, INC., the second sentence of Section 8.4 of said Lease, which states "For purposes of this Section 8.4, the full amount of rent or other economic consideration received by TENANT for any portion of the Premises not contained within a building shall be considered excess rent," shall be and is hereby **waived and rendered null and void.** Consequently, TENANT shall not be obligated to pay any excess rent to LANDLORD under Section 8.4 specifically derived from rent or other economic consideration received from sub-leases of areas of the Premises not contained within a building.
2. **Retroactive Application:** This amendment shall apply retroactively to the commencement date of the Lease, February 1, 2020, effectively waiving any prior, current, or future claim by the City for excess rent under the aforementioned clause.
3. **Other Provisions Unchanged:** All other terms, covenants, and conditions of the Lease Agreement not expressly amended herein shall remain in full force and effect.
4. **Authorization:** The City Manager is hereby authorized and directed to take all necessary actions and execute any and all documents, including a formal Lease Amendment, to implement this Resolution.

INTRODUCED, READ, AND ADOPTED THIS [Day] DAY OF [Month], 2025, BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO.

CITY OF LOUISVILLE, COLORADO

By: ________________________________
Dennis Maloney
Mayor

ATTEST:

By: ________________________________
Genny Kline
City Clerk