

RESOLUTION NO. 31167

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN OFFICE LEASE WITH NURTURE THE NEXT, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE USE OF THREE HUNDRED ELEVEN (311') SQUARE FEET OF OFFICE SPACE AT THE FAMILY JUSTICE CENTER AT 5705 UPTAIN ROAD, IDENTIFIED AS TAX MAP NO. 157M-A-012, WITH AN EFFECTIVE DATE OF JULY 1, 2022, FOR THE TERM OF SIX (6) MONTHS, WITH THE OPTION TO RENEW FOR TWO (2) ADDITIONAL TERMS OF THREE (3) MONTHS EACH, AT THE RENT OF TWO HUNDRED EIGHTY-FIVE AND 08/100 DOLLARS (\$285.08) PER MONTH.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into an Office Lease with Nurture the Next, in substantially the form attached, for the use of 311 square feet of office space at the Family Justice Center at 5705 Uptain Road, identified as Tax Map No. 157M-A-012, with an effective date of July 1, 2022, for the term of six (6) months, with the option to renew for two (2) additional terms of three (3) months each, at the rent of \$285.08 per month.

ADOPTED: June 28, 2022

/mem

## OFFICE LEASE

THIS OFFICE LEASE (“Lease”) is entered into by and between the City of Chattanooga, Tennessee (“Landlord”) and Nurture the Next (“Tenant”), to be effective as of July 1, 2022, (“the “Effective Date”), when approved and authorized by the parties’ respective governing body or legal entity, and in compliance with applicable laws, signed by the parties, and approved by their respective attorneys, as follows:

1. Definitions.

“**Term**” shall have that meaning ascribed to it in Section 3 of this Lease.

“**Rent**” shall have that meaning ascribed to it in Section 4(B) of this Lease.

“**Building Operating Hours**” means between the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, with recognized legal holidays excepted.

“**Tenant Operating Hours**” means the hours of 8:00 a.m. to 6:00 p.m. and 8:00 a.m. to 8:00 p.m. two days per week, Monday through Friday, with recognized legal holidays excepted.

“**Building**” means the entire Building comprising approximately 32,310 square feet, or any additions thereto, commonly known as The Family Justice Center located at 5705 Uptain Road, Chattanooga, Tennessee.

“**Premises**” means the approximately 311± rentable square feet comprising the entire Tenant space in the Building, as shown on the premises floor plan attached as **Exhibit A** and incorporated herein by reference.

“**Facility**” means the Building, Premises, Employee and Public Parking Areas, landscaping, walks and associated improvements commonly known as The Family Justice Center located at 5705 Uptain Road, Chattanooga, Tennessee.

“**Employee and Client Parking Area**” means the adjacent parking lot located on the northwest corner of the Building and the “head-in” parking off of Debra Road at the rear of the Building. Employee and Client Parking Area is for the nonexclusive use by Tenant’s employees, clients, and guests during Tenant Operating Hours. No leasehold estate is created by this Lease, or otherwise, for the Employee and Client Parking Areas or any portion of it.

“**Public Parking Area**” means the adjacent parking lot along Eastgate Loop Road and Uptain Road and is for the temporary use of Tennant’s customers and vendors in support of their business operations and shall be limited to 2-hour maximum parking. Tenants and their employees are precluded from using the Public Parking Area during Building Operating Hours.

**“Facility Rules and Regulations”** means the rules and regulations which may hereafter be adopted by the Landlord for the care, protection, cleanliness, and operation of the Facility, and any reasonable modifications or additions to such rules and regulations adopted by Landlord so long as the same does not negatively impact the Facility or Tenant’s use, occupancy, and enjoyment thereof or Tenant’s rights under this Lease. Notwithstanding the foregoing, Landlord and Tenant agree that the terms and conditions of this Lease shall control the rights and responsibilities of the parties and shall supersede any and all provisions of the Facility Rules and Regulations which may now or in the future conflict with the terms and conditions of this Lease. Landlord shall not be responsible to Tenant for failure of any other tenant(s) or occupant(s) of the Building to observe or comply with any of the Facility Rules and Regulations except to the extent that Landlord’s contribution to any such failure to observe or comply with any of the Facility Rules and Regulations exceeds the contribution of any other tenant(s) or occupant(s) of the Building. The term “Facility Rules and Regulations” shall be deemed to include any and all reasonable amendments made by Landlord to the Facility Rules and Regulations after the date of this Lease as Landlord may deem necessary, in Landlord’s reasonable discretion, for the proper and efficient operation and maintenance of the Facility. Such rules and regulations may include, without limitation requirements and or restrictions in Building Operating Hours during which the Building will be open for use so long as the same does not negatively impact the Facility or Tenant’s use, occupancy, and enjoyment thereof or Tenant’s rights under this Lease.

**“Hazardous Material”** means:

A. Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant,” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 2601 et seq.); the Toxic Substances Control Act (15 U.S.C. § 9601 et seq.); the Hazardous Material Transportation Act (49 U.S.C. §1801 et seq.); or under any other applicable environmental law;

B. Those substances within the definitions of “Oil” or a “Hazardous Substance” listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;

C. Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

D. Pesticides, regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.;

E. Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.;

F. Any radioactive material, including without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel,” or “transuranic waste,” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §2011, et seq., the Nuclear Waste Policy Act, 42 U.S.C. §10101 et seq.;

G. Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);

H. Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations;

I. Any material, waste or substance that is:

- (i) a petroleum or refined petroleum product;
- (ii) asbestos;
- (iii) polychlorinated biphenyl;
- (iv) designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317;
- (v) a flammable explosive; and
- (vi) a radioactive material;

J. Substances defined, or as may be defined, as “hazardous substances,” “hazardous materials,” or “toxic substances” in the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), any and all amendments and recodifications of the foregoing laws and any rules or regulations adopted and publications promulgated pursuant to said laws; and

K. (i) Any other substance which results in liability to any person or entity from exposure to such substance under any statutory or common law theory; (ii) any matter or substance which is in excess of relevant and appropriate levels set forth in any applicable federal, state, or local laws or regulations pertaining to the regulation of any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires the removal, treatment or remediation; (iii) asbestos; (iv) urea formaldehyde foam insulation; (v) transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls (PCBs) in excess of fifty (50) parts per million; or (vi) any other chemical material, or substance, to which exposure is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Facility or the owners of the Property adjacent to the Facility.

L. Medical waste is not included in this definition of “Hazardous Material” and is to be disposed of per governing laws and regulations.

**“Internet Access Agreement”** means the Agreement executed by Landlord and Tenant contemporaneous with this Lease evidencing Landlord’s agreement to provide nonexclusive, dedicated high-speed Internet access to Tenant during the term of the Lease, a copy of which is attached as **Exhibit B** and incorporated herein by reference. Landlord and Tenant agree that the terms and conditions of this Lease shall control the rights and responsibilities of the parties and shall supersede any and all provisions of the Internet Access Agreement which may now or in the future conflict with the terms and conditions of this Lease.

2. Lease of the Premises. Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord.

3. Term. Unless sooner terminated pursuant to the terms of this Lease, the initial term of this Lease shall be for a period of six (6) months (the “Initial Term”) beginning on the Effective Date of this Lease, and shall not renew automatically, but may be renewed for two additional terms of three (3) months each (each, a Renewal Term) upon mutual written agreement of the parties.

A. Termination. Either party may terminate this Lease upon thirty (30) days’ written notice to the other party.

4. Rent.

A. Base Rent. Tenant shall, during the Term, pay to Landlord rent in the amount of Two Hundred Eighty-five and 08/100 Dollars (\$285.08) per month beginning on the Effective Date of this Lease. The funds deemed appropriated by Landlord to Tenant during the Term shall be based upon a fair market rental value of approximately Twenty-two and 27/100 Dollars (\$22.27) per square foot (311± square feet) less Base Rent (defined below) paid by Tenant (\$6,842.00) for a total appropriated amount of \$7,009.94 (the “Appropriated Funds”). Rent shall be paid to the Landlord by check and delivered personally or by First Class Mail to Landlord at City of Chattanooga, Attention: Public Works Administration, 101 E. 11<sup>th</sup> Street, Suite G4 Chattanooga, TN 37402.

B. Common Area Costs. Included in the calculation of Base Rent as defined by Section A shall be Tenant’s pro rata share (the “Tenant Share”) of the Landlord’s operating expense of the Common Areas of the Facility. The Tenant Share shall be calculated by dividing the rentable square footage of the Premises for each Tenant by the total rentable square footage of the Facility as indicated on the premises floor plan to calculate a percentage Common Area Cost allocation to be multiplied by the Landlord’s operating expense of the Facility. (i.e. Tenant A with a Premises rentable square footage of 5,000 square feet divided by the total rentable square footage of 20,000 shall have a Common Area Cost allocation of 25% of the Landlord’s operating expense of the facility) The direct “Operating Expenses” (defined below) shall be adjusted to reflect one hundred percent (100%) occupancy of the Building.

- i. Operating Expenses Defined. “Operating Expenses” shall mean the reasonable cost of insurance required and obtained by Landlord pursuant to this Lease, and the aggregate of all costs and expenses payable by Landlord in connection with the ownership, operation, management, maintenance, cleaning, and repair of the Facility. Operating Expenses shall include without limitation, the costs of: (a) landscaping, repaving, resurfacing, repairing, replacing, painting, lighting, cleaning, pest control, and removing trash and similar items with respect to the Common Areas; (b) all taxes; (c) utilities, including water, electricity, phone, and internet access; (d) trash disposal service; (e) operating, repairing, and maintaining life-safety systems, including, without limitation, sprinkler systems; (f) operating, repairing, and maintaining the heating and air conditioning (“HVAC”) system and elevator services; (g) painting, window washing, general cleaning, and janitorial services for the Facility; (h) monitoring services, if provided by Landlord, including, without limitation, monitoring or control devices used by Landlord in regulating the parking areas; (i) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, and repair of the Facility or Common Areas; (j) energy allocation, energy use surcharges, or environmental charges; (k) municipal inspection fees or charges; (l) any other costs or expenses incurred by Landlord in connection with the Common Areas which are not otherwise reimbursed directly by tenants; (m) management fees; (n) that part of office rent or rental value of space used or furnished by Landlord to enhance, manage, operate, and maintain the Facility; (o) accounting, consulting, and legal fees and expenses incurred in connection with the operation and maintenance of the Facility or any other costs related thereto; (p) water quality fees; (q) debt retirement; and (r) any additional services which Landlord reasonably deems necessary in connection with the management or operation of the Facility. The computation of Operating Expenses shall be made in accordance with generally accepted accounting principles consistently applied. Charges for any services, goods, or materials furnished by Landlord at Tenant’s request and charges for services, goods, and materials furnished by Landlord as a result of uses or demands by Tenant in excess of those charges which are normally furnished to other tenants in the Facility, and all other sums payable by Tenant under this Lease shall not be included in Operating Expenses, but shall be payable by Tenant within sixty (60) days after Landlord delivers a statement for such services, goods, or materials to Tenant. Operating Expenses shall not include any brokerage fees or costs with respect to the Facility, or costs of acquisition of new land or construction of new Buildings, any expenditures for which Landlord is reimbursed from any source (e.g., other reimbursements from tenants for common expenses),

including, without limitation, insurance and condemnation proceeds, and expenses in connection with services or other benefits of a type that are not provided to another tenant or occupant of the Facility.

- ii. Operating Expense Exclusions. Operating Expenses shall expressly exclude the following without limitation:
- (a) Repairs or other work to the Facility occasioned by any uninsured fire, windstorm, or other casualty;
  - (b) Leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants or prospective tenants or other occupants of the Facility;
  - (c) Costs of Landlord's general administrative expenses, which costs would not be charged to the Operating Expenses of the Facility in accordance with generally accepted Governmental Accounting Standards Board (GASB) accounting principles, consistently applied;
  - (d) Costs incurred due to the violation by Landlord or any tenant of the terms and conditions of any lease pertaining to the Facility of any valid, applicable Facility code, regulation or law or incurred due to the Facility being in violation of any such code, regulation, or law;
  - (e) The management fee, overhead, and/or profit increments paid to subsidiaries or affiliates of Landlord for services on or to the Facility, to the extent the costs of such services exceed reasonable costs for such services rendered by unaffiliated or entities of similar skill, competence, and experience;
  - (f) Any compensation paid to clerks, attendants, or other persons in commercial concessions, if any, operated by Landlord;
  - (g) Landlord's costs of general electricity and other services sold to tenants, which services are not standard for the Facility;
  - (h) Any other expenses which, under generally accepted Governmental Accounting Standards Board (GASB) accounting principles, consistently applied, would not be rendered as a normal maintenance or operating expense of the Facility;

- (j) The cost of any repair necessitated by a total or partial taking by eminent domain, excluding any costs of any repair necessitated by a total or partial taking.
    - (i) Insurance premiums to the extent of any refunds thereof; and
    - (j) Any expenses for repairs or maintenance which are reimbursed through warranties or service contracts.
  - iii. Disputed Landlord's Statement. If Tenant disputes a Landlord's Statement, Tenant may at any time deliver to Landlord a written notice of such dispute ("Dispute Notice"). The Dispute Notice shall specify the items in the Landlord's Statement claimed to be incorrect. If Landlord disagrees with the Dispute Notice, Landlord and Tenant shall mutually agree on an independent certified public accountant (a "Neutral Accountant") not compensated on a contingency fee or similar basis relating to the results of such audit. Tenant shall pay the Neutral Accountant's costs and fees unless in the Neutral Accountant's opinion the Tenant is found to have overpaid items as disputed by Tenant and such Neutral Accountant's costs and fees shall be paid by the Landlord. The Neutral Accountant shall review Landlord's Statement and any pertinent supporting documentation and render an opinion regarding the items in dispute. The Neutral Accountant's opinion shall be deemed correct and shall be conclusively binding on both Landlord and Tenant. If Tenant is found to have overpaid items disputed in the Landlord's Statement, the amount of overpayment, plus interest at the rate of eight percent (8%) per annum, shall be credited against Tenant's obligations to pay Rent next becoming due, or reimbursed to Tenant if no such amounts shall become owing. If Tenant is found to have underpaid items disputed in the Landlord's Statement, Tenant shall pay the amount of such underpayment to Landlord plus interest at the rate of eight percent (8%) per annum within sixty (60) days after receipt of the Neutral Accountant's opinion.

C. Delinquent Rent.

- i. Grace Period. No Rent or other monetary obligation of Tenant's under this Lease shall be delinquent until after the fifth (5<sup>th</sup>) day following the applicable payment's due date. All late charges allowed under this Lease shall be calculated as of the due date of the applicable payment and not from the date of expiration of any grace period.
- ii. Interest. Any amount due from Tenant to Landlord which is not paid when due shall bear interest at eight percent (8%) per annum from the date such payment was due until paid.



- iii. Late Charges. Tenant acknowledges that in addition to lost interest, the late payment by Tenant to Landlord of Rent or any other sums due hereunder will cause Landlord to incur other costs not contemplated in this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such other costs include, but are not limited to, processing, administrative, and accounting costs. Accordingly, if any installment of Rent or other sum due from Tenant to Landlord shall pay to Landlord as Additional Rent, a late charge equal to four percent (4%) of such delinquent amount. The parties agree that: (a) such late charge represents a fair and reasonable estimate of the costs Landlord will incur in processing such delinquent payment by Tenant; (b) such late charge shall be paid to Landlord as liquidated damage for each delinquent payment; and (c) the payment of late charges and the payment of interest are distinct and separate from one another in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for the additional administrative expense incurred by Landlord in handling and processing delinquent payments.
  
- iv. No Waiver. Neither assessment nor acceptance of interest or late charges by Landlord shall constitute a waiver of Tenant's breach or default with respect to any overdue amount, nor prevent Landlord from exercising any of its other rights and remedies under this Lease. Nothing contained in this Section 4(E) shall be deemed to condone, authorize, sanction, or grant to Tenant an option for the late payment of Rent or other sums due hereunder. This section shall not enlarge the rights and remedies of Landlord as set forth in this Lease, by law, or otherwise.

D. Returned Checks. Any checks returned by Tenant's bank shall be assessed a handling charge not to exceed thirty (\$30.00) dollars.

5. Improvements.

- A. Improvements or Renovations by Tenant. Tenant shall not make any alterations, improvements, renovations, or additions to or install any fixtures on or in the Facility without Landlord's written consent where necessary under the **Facility Rules and Regulations**. Any fixtures, alterations, improvements, renovations, or additions consented to by Landlord shall be constructed without cost to Landlord in a first-class, good, workmanlike and defect-free manner by licensed contractors with experience in construction of tenant improvements in Class-A office buildings and approved by Landlord, which approval may be withheld by Landlord in its reasonable discretion. Tenant shall obtain all required permits or licenses required by applicable governmental authorities and Tenant shall be solely responsible for the effect of any alterations made by Tenant on the Premises or the Facility, regardless of Landlord's consent to such alterations.

Excepting improvements to the Premises made by Landlord, in no event shall Landlord be responsible for repair of or liability to Tenant for any defects in any alterations, improvements or additions to the Premises made or caused to be made by Tenant, except to the extent Landlord damages or otherwise devalues such alterations, improvements, or additions. Tenant shall give Landlord fifteen (15) days advance notice before beginning any work on alterations to allow Landlord time to file a “Notice of Non-responsibility” and take any other actions in anticipation of such work. Upon completion of the alterations, Tenant shall provide Landlord with a complete set of “as-built” plans. A list of mutually agreed upon décor and wall hangings permitted by Landlord is attached hereto as **Exhibit C** and incorporated by reference.

- B. Alterations by Landlord. Landlord may make alterations or other changes to the Premises which Landlord determines in its sole and absolute discretion are necessary or desirable without notice to or consent of Tenant provided the same does not negatively impact or interrupt the Facility or the Premises or Tenant’s use, occupancy, and enjoyment thereof or Tenant’s rights under this Lease. Tenant shall reasonably cooperate with Landlord if Landlord elects to make alterations or other changes to the Facility.
- C. Removal of Personal Property. Tenant, at its sole expense, shall remove from the Premises all of Tenant’s personal property (except such items as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord) on or before the expiration of the Term or renewal thereof, or as soon as practicable after the expiration or earlier termination of this Lease, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Tenant shall pay to Landlord rent calculated on a per diem basis using the Base Rent in effect just prior to such expiration or earlier termination for any period of time needed to remove Tenant’s personal property after the expiration or earlier termination of this Lease. Tenant shall repair any damage to the Premises, or the Facility caused by such removal, including, without limitation, patching, and filling holes. Tenant shall not be responsible for normal wear and tear. Notwithstanding the foregoing, Tenant shall not remove or be required to remove, any HVAC systems, restroom fixtures, flooring, plumbing, ceilings, walls, or utility or electrical components. Any of Tenant’s personal property that remains on the Premises after the expiration or earlier termination of this Lease, or within thirty (30) days following an earlier termination date, may at the option of Landlord, be deemed to have been abandoned, and in such case any such items may be retained by Landlord as its property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant’s expense.

6. Signs. Tenant may attach its usual signs and the signs of its sub-tenants on or about the Premises, providing such signs comply with all legal requirements, with the prior written approval of Landlord. Tenant agrees, that upon the termination of this Lease, to remove any

signs which Tenant may have painted or erected upon or attached to the Premises, and Tenant further agrees to repair any damage to the Premises because of the removal of the signs.

7. Use.

- A. Permitted Use. Tenant represents and warrants to Landlord that Tenant shall use the Premises only as general office and uses related to the operation of its business as of the Effective Date. Landlord recognizes that Tenant's business necessarily involves providing for the needs of children and their families, guidelines and/or regulations who are often required to be on the Premises, and while Tenant will use its best efforts to ensure those individuals comply with the requirements of this provision, the presence and/or behavior of those individuals may not constitute an interference, nuisance, annoyance, or other violation by Tenant with regard to this provision or any other provision of this Lease unless such behavior constitutes a violation of a federal, state or local law.
- B. Additional Use Limitations. Tenant shall not permit the occupancy of the Premises at any time during the Term to exceed that allowed by the applicable codes and regulations concerning occupancy. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Facility or injure or unreasonably annoy them or use or allow the Premises to be used for any unlawful purpose. Tenant's use and occupancy of the Premises shall not create a nuisance. Tenant shall not commit or permit to be committed any waste in or upon the Premises.
- C. Compliance with Laws, Covenants and Requirements. Tenant shall comply with, and shall not use the Premises in any way, or permit or suffer anything to be done in or about the Premises, which will conflict with: (i) any law, rule, or regulation applicable to Tenant and affecting the Premises, now in force or which may hereafter be promulgated, including, without limitation, the provisions of any city or county zoning codes regulating the use of the Facility or any transportation management program established by any governmental or quasi-governmental entity that is either voluntarily or involuntarily made applicable to the Facility; (ii) any covenant, condition or restriction of public record and now in force affecting the Facility, including, without limitation, any notices, letters or other such documentation affecting the Facility; (iii) the Americans with Disabilities Act, including, without limitation, the architectural barrier removal requirements of said Act; or (iv) any licensing requirements of any city, county, or other governmental or quasi-governmental entity regulating Tenant's use of the Premises (collectively referred to as "Applicable Laws, Covenants and Requirements"). If at any time during the term of this Lease or renewal thereof Tenant becomes subject to the Tennessee Open Records Act ("TORA"), Tenant shall promptly notify Landlord and will provide Landlord with true, correct, and legible copies of all records which are deemed "public records" under TORA

within the time period set forth therein. Tenant shall, at its sole cost and expense, promptly comply with all Applicable Laws, Covenants and Requirements insofar as they relate to the specific manner of Tenant's use and occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Applicable Laws, Covenants and Requirements, shall be conclusive of the fact as between Landlord and Tenant. The Building is a non-smoking Building and Tenant shall use reasonable efforts to ensure that its employees, agents, contractors, subcontractors, clients, invitees do not smoke in the Premises or anywhere on the Facility except for areas designated for smoking. Any areas designed for smoking shall be at least 50 feet from any entrance to the Building.

D. Hazardous Material.

- i. Except with respect to commercially packaged products used and stored by Tenant at the Leased Premises, such as common cleaning fluids and supplies, neither Tenant nor Tenant's agents, employees, contractors, invitees, or licensees shall engage in any activity in, on or about the Premises, nor permit others to engage in any such activity, which will result in the Premises containing any Hazardous Substance. For purposes of this Lease, "**Hazardous Substance**" shall have the meaning set forth at 42 U.S.C. Section 9601 (14), as well as the meaning(s) set forth in any applicable state law or regulation. If at any time after the Commencement Date it is determined that Tenant or Tenant's agents, employees, contractors, invitees or licensees, have been responsible for the Leased Premises containing any Hazardous Substance, then Tenant shall be solely responsible for and shall pay for all costs incurred in connection with the removal of the Hazardous Substance to the extent directly or indirectly caused or allowed by Tenant, or any agent, employee, contractor, invitee or licensee of Tenant. The obligations set for in this Section 7D shall survive the expiration or the earlier termination of this Lease.
- ii. In addition to any other indemnity contained in this Lease, Tenant shall defend, indemnify, and hold Landlord harmless from and against any and all losses, liabilities, general, special, consequential and/or incidental damages, injuries, costs, expenses, claims of any and every kind whatsoever, including without limitation court costs, reasonable attorneys' fees, damages to any person or the Premises incurred or suffered by or asserted against Landlord with respect to, or as a direct or indirect result of (i) the breach by Tenant of any of the covenants set forth in this Section 6D or (ii) the presence on, under or the escape, seepage, leakage, spillage, discharge, emission, release from, onto or into the Leased Premises, of any Hazardous Substance to the extent directly or indirectly caused or allowed by Tenant, or any agent, employee, contractor, invitee or licensee of

Tenant after the Effective Date. Tenant's indemnification obligations under this Section 7D shall survive the expiration or the earlier termination of this Lease.

- E. Compliance with Americans with Disabilities Act and Other Disability, Health, and Safety Requirements. Tenant shall comply with all applicable requirements of the ADA, Title 24 and any other Applicable Laws, Covenants and Requirements relating to disabled access and safety regulations (collectively, "Disability and Safety Laws") with respect to the Premises, including, any future tenant improvement work performed by Tenant. Notwithstanding the foregoing, compliance with all Disability and Safety Laws with respect to the shell and core of the Premises and all portions of the Facility other than the Premises shall be solely the responsibility of the Landlord. Tenant shall indemnify, defend and hold Landlord harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorneys' fees and court costs to the extent directly arising out of or in any manner connected with Tenant's failure to comply with Disability and Safety Laws, including, without limitation, the costs of making any alterations, renovations or accommodations required by Disability and Safety Laws or any governmental enforcement agency, to the extent compliance is directly related to tenant improvement work performed by Tenant. Tenant's indemnification obligations under this Section 7E shall survive the expiration or earlier termination of this Lease except for circumstances that become noncompliant after the expiration or earlier termination of this Lease.
- F. Annual Reporting Requirements; Appropriation of Funds. Lessee shall comply with all federal, state, and local laws governing annual reporting requirements of Tenant's business affairs and transactions, which includes, but is not limited to, compliance with T.C.A. § 6-54-111 and Chattanooga City Code Sec. 2-526 as to City of Chattanooga appropriations, outlining the procedures for receiving appropriations from governmental entities. All reports required by state and local law shall be submitted by March 1 of each year annually during the term of this Lease and any holdovers or renewals. During the Term of this Lease, Tenant must, within ninety (90) days after the end of each fiscal year submit to Landlord a copy of its annual audited financial report for that fiscal year. For the purposes of this section, the amount of funds deemed appropriated to Tenant shall be based upon net of a fair market rental value of approximately \$22.27 per square foot (311± square feet constituting usable leased space) less the Base Rent per square foot paid by Tenant. For the Term, the Appropriated Funds are \$7,009.94.
- G. Additional Prohibited Actions of Tenant. Tenant shall not commit or suffer the commission of any acts on the Premises or in the Facility, nor use or allow the use of the Premises or the Facility in any way that increases the existing rates for, or causes cancellation of, any fire, casualty, liability, or other insurance policy insuring the Facility or its contents. The service or sale of alcohol on the Premises is prohibited unless Tenant and any sublessees approved by Landlord and/or

vendors hold a State of Tennessee A.B.C. Liquor and Wine License and a current City of Chattanooga Beer License.

H. Facility Rules and Regulations. Tenant shall use its best efforts to cause its agents, servants, employees, invitees, and licensees to observe and comply fully and faithfully with the Facility Rules and Regulations. Landlord shall not be responsible to Tenant for failure of any other tenant or occupant of the Facility to observe or comply with any of the Facility Rules and Regulations, except to the extent that Landlord was the primary cause of any such failure to observe or comply with any of the Facility Rules and Regulations.

I. Inspection of Premises. With prior notice Landlord may enter upon the Premises at all reasonable times for the purpose of inspecting the condition of the Premises and to determine whether Tenant is complying with its obligations hereunder, to supply any service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, mortgagees or tenants, to post notices of nonresponsibility, and to repair the Premises and any other portion of the Facility, without abatement of rent, and may for that purpose erect scaffolding and other necessary structures that are reasonably required by the character of the work to be performed by Landlord, provided that the business of Tenant shall not be interfered with unreasonably. With prior notice, Landlord may at all times access the cable trays, wireways and conduit above the ceiling and within walls and floor areas of the Premises. Landlord acknowledges the sensitive and confidential nature of Tenant's operations and shall take all steps reasonably necessary to ensure that access to the cable trays, wireways and conduit above the ceiling and within walls and floor areas of the Premises, does not unreasonably interfere with Tenant's operations. For each of the aforesaid purposes, Landlord shall have and retain a key with which to unlock all of the doors in, upon and about the Premises, in the event of any emergency. Any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. Any such inspections shall be performed with as little disturbance and inconvenience to Tenant as reasonably possible.

8. Landlord Warranties and Duties.

A. Compliance. Landlord warrants and represents that the Facility is in compliance with all laws, rules, and regulations, including, without limitation, all environmental laws, and the Americans with Disabilities Act of 1990, as amended, and shall be responsible hereafter for any legal requirements applicable to the Facility.

9. Services and Utilities.

- A. Utilities. Landlord shall furnish to the Premises, during Tenant Operating Hours, water, and electricity suitable for Tenant's permitted use of the Premises, and HVAC required in Landlord's reasonable judgment for the comfortable use and occupation of the Premises, all of which shall be subject to the Facility Rules and Regulations, as well as any governmental requirements or standards relating to, among other things, energy conservation. Tenant may request that Landlord provide HVAC to the Premises at any time outside of Tenant Operating Hours., HVAC shall be provided outside Tenant Operating Hours upon request at Landlord's standard charge, which shall be no more than is reasonably necessary to cover the costs of providing such HVAC by Landlord.
- B. Energy Provider. Tenant acknowledges and agrees that the decision whether to change the provider of electricity to the Facility and the selection of the provider of electricity to the Facility shall be made by Landlord in its sole and absolute discretion. Tenant shall cooperate with Landlord (including providing Landlord upon request at no charge with information regarding Tenant's electrical consumption) to facilitate Landlord's decision-making process. Tenant shall cooperate with Landlord in any present or future government-mandated conservation requirements.
- C. Breaks in Utility Services. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of Landlord's failure to furnish any utilities and services, including, without limitation, electricity, water and HVAC, when such failure is caused by any of the following and to the extent beyond the reasonable control of Landlord: (i) accidents, breakage or repairs; (ii) strikes, brownouts, blackouts, riots, civil disturbances, lockouts, or other labor disturbances or labor disputes of any character; (iii) governmental regulation, moratorium or other governmental action; (iv) limitation, rationing, curtailment or restriction on the use of water, electricity, gas heating, cooling or other forms of service or utility provided to the Premises; or (v) by any other cause, similar or dissimilar, and beyond the reasonable control of Landlord, nor shall such failure under such circumstances be construed as a constructive or actual eviction of Tenant.

10. Taxes. Real and personal property owned by the City are exempt from taxation; however, to the extent that as a result of this Lease any such taxes are levied against the Building, Tenant shall be responsible for (and shall pay prior to delinquency) all such taxes and assessments owed on the Premises, which shall be calculated by Landlord based on the number of square feet of real property. Tenant will only be responsible for paying its pro-rata portion of the total taxes owed on real property. Leasehold and personal property taxes of property owned by Tenant shall be the responsibility of Tenant and shall be paid prior to delinquency.

11. Maintenance.

- A. Landlord's Maintenance Obligations. Landlord shall keep the Facility in a neat, clean, and orderly condition at all times and shall not permit rubbish, waste, or garbage to accumulate at any time. Landlord shall not commit or permit any waste on the Premises or any acts to be done in violation of any law. Landlord shall repair and maintain, in a first-class manner, in accordance with the practices of other first-class office buildings located in Chattanooga, the structural portions of the Facility, the systems and equipment, the base-Facility plumbing, heating, ventilating, air conditioning and electrical systems, mechanical, fire/life safety systems, facilities and components (excluding those systems that are located in the Premises, solely serve the Premises, and are reasonably accessible to Tenant), the common areas of the Facility, and the windows, doors, plate glass and exterior surfaces of all walls that are adjacent to the common areas serving the Facility and not located in the Premises.
- B. Tenant's Maintenance of the Premises. Tenant shall keep the Premises in a neat, clean, and orderly condition, and shall not permit rubbish, waste, or garbage to accumulate at any time.
- C. Repair of the Premises. Tenant shall make all repairs and replacements to the Premises, as and when necessary to preserve in a first-class order, condition and repair (less normal wear and tear) the Premises and every part thereof, including, without limitation, all fixtures, interior walls, interior surfaces of exterior walls, ceilings, windows, doors, cabinets, draperies, window coverings, carpeting and other floor coverings and plate glass located within the Premises, and all utility systems and facilities located within and solely serving the Premises.
- D. Landlord's Right to Make Repairs. If Tenant fails to maintain the Premises in a first-class order, condition and repair as required by this Lease or fails to comply with any applicable laws, regulations or requirements as required by this Lease, then within a reasonable time following written notification to Tenant (except in the case of an emergency, in which case no prior notification shall be required), Landlord may, but shall not be obligated to, enter the Premises at a reasonable time and with an authorized Tenant escort to do such reasonable acts and expend such reasonable funds at the expense of Tenant as required to place the Premises in the condition required by this Lease. The amount so expended by Landlord shall be paid by Tenant within sixty (60) days after demand. Landlord shall have no liability to Tenant for any reasonable inconvenience or interference with Tenant's use of the Premises resulting from Landlord's performance of such maintenance or repair work. Landlord recognizes that the urgent and confidential nature of Tenant's business must be considered in determining the reasonableness of any inconvenience or interference caused by Landlord's performance of any maintenance or repair work.



12. Casualty Damage and Casualty Insurance.

- A. Non-insured Casualties. If the Premises or Facility, or any portion thereof, is materially damaged or destroyed by any casualty not covered by Landlord's insurance, then Landlord may, at its option, either (i) rebuild or restore the Premises or Facility, as the case may be, and repair the damaged portions thereof at Landlord's own expense; or (ii) terminate this Lease effective as of the date the damage or destruction occurred. Within sixty (60) days after the material damage or destruction occurs, Landlord shall notify Tenant of its election to either rebuild or restore the Premises and repair the damaged portions thereof, or to terminate this Lease. Notwithstanding the foregoing, unless Tenant's actions or omissions are the primary cause of the damage, Tenant may terminate this Lease upon thirty (30) days prior written notice if Landlord elects to perform such repair or restoration and either: (1) such repair or restoration cannot be completed within one hundred eighty (180) days; or (2) the damage or destruction occurs within the last twelve (12) months of the Term. To the extent Tenant's actions or omissions are the cause of the damage, Tenant shall be liable to and shall reimburse Landlord for any and all damages caused thereby. If Landlord elects to rebuild or restore the Premises or Facility, as the case may be, it will use its best efforts to return the Premises or Facility to substantially the same condition as existed before the damage or destruction occurred.
- B. Minor Casualties. If the Premises are not rendered substantially unfit for the occupancy or use herein contemplated as a result of any insured casualty, Landlord shall promptly and diligently restore the Premises at Landlord's expense to the condition existing prior to the occurrence of the casualty, and the Rent shall be abated to the extent the Premises are not usable as contemplated by this Lease during such restoration period.
- C. Abatement of Rent. Provided this Lease is not terminated as provided in Sections (A) or (B), above, Tenant shall be entitled to an abatement of Rent by reason of the damage to or destruction of the Premises, only to the extent that: (i) the floor area of the Premises cannot be reasonably used by Tenant for the conduct of its business; or (ii) Tenant does not have the approximate area of the damaged or destroyed portion of the Premises bears to the total area of the Premises commencing upon the date the damage to or destruction of the Premises or Facility occurred until substantial completion of the repair of such damage or destruction.
- D. For any such casualty that occurs as described in this Section, Landlord shall be under no obligation to provide interim space for the operation of Tenant's business.

13. Insurance. At its sole expense, Tenant shall procure and maintain during the term of this Lease insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with this Lease.

- A. Commercial General Liability Insurance. Tenant agrees during the term of this Lease to maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) each occurrence for bodily injury, personal injury, and property damage. If such insurance contains a general aggregate limit, it will apply separately to this Lease, or be no less than two (2) times the occurrence limit. Tenant agrees to provide the insurance policies at its sole expense, with commercially reasonable increases in coverage, but in no event shall the insurance coverage be less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. Such insurance will:
- i. Contain or be endorsed to contain a provision that includes the Landlord, its officials, officers, and employees as insureds with respect to liability arising out of work or operations performed by or on behalf of Tenant including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the scope of protection afforded to the above listed insureds. Liability coverage can be provided in the form of an endorsement to Tenant's insurance or as a separate owner's policy; and
  - ii. For any claims related to this Lease, be primary insurance as respects the Landlord, its officials, officers, and employees. Any insurance or self-insurance programs covering the Landlord, its officials, officers, and employees will be in excess of insurance and will not contribute with it.
- B. Professional Liability Insurance Policy. Tenant agrees to provide professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Tenant shall obtain and maintain said E&O liability insurance during the term of this Lease and for one (1) year following the termination or expiration of this Lease.
- C. Sexual Abuse and Molestation Policy. Tenant agrees to provide Sexual Abuse and Molestation liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Tenant shall obtain and maintain said policy during the term of this Lease and for one (1) year following the termination or expiration of this Lease.
- D. Additional Insurance Requirements. Tenant shall include Landlord as additional insured on all business and property insurance. Proof of said insurance shall be provided to Landlord's Risk Manager.

- i. Prior to the Effective Date, furnish Landlord with original certificates of insurance and any amendatory endorsements effecting coverage required by this Section, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City Attorney and Risk Manager of Landlord;
- ii. If requested by Landlord, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance;
- iii. Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than AV; and
- iv. Require all contractors to maintain during the terms of this Lease, commercial general liability insurance, business automobile liability insurance and workers' compensation/employers' liability and furnish contractor's certificates of insurance to Landlord prior to the commencement of work.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by Landlord.

Landlord shall insure the Building against the risk of fire.

14. Indemnity. Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives all claims against Landlord for injuries or damage for any cause arising at any time to persons in or about said Premises where said injuries or damage occurs as a result of the use of the Premises by Tenant or from the failure of Tenant to keep the Premises in good condition and repair, as herein provided. Tenant will indemnify Landlord, its officials, employees, and agents and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Tenant of the Premises or any part thereof occasioned wholly or in part by any act or omission of Tenant, its invitees, agents, employees, or contractors unless such act or omission results is primarily caused by Landlord. Tenant further agrees to defend, pay all costs of defense, including attorney's fees, and/or any judgment or cost for any claim or suit brought against Landlord as a result of any claim brought against Tenant, its invitees, agents, employees, or contractors. Tenant and its approved sublessees and/or vendors shall hold Landlord and its officials, employees, and agents harmless from all costs, loss, and expenses, including reasonable attorneys' fees, arising out of any liability or claim for injury or damage to person(s) or property sustained or claimed to have been sustained as a result of alcohol consumption on the Premises. This indemnification of Landlord shall survive the expiration or sooner termination of this Lease, but such indemnification shall only apply to an injury, damage, or claim that occurred or arose before such expiration or termination of this Lease.

15. Catastrophic Funding Loss. Landlord understands and acknowledges that Tenant is a non-profit organization and receives its funding through fundraising and government grant sources. In the event Tenant experiences a catastrophic funding loss of fifty (50)% or greater of the Tenant's annual operating budget, Tenant shall have the right to terminate this Lease with thirty (30) days' written notice to Landlord. Written notice of pending loss should be provided to Landlord immediately upon knowledge of loss by Tenant.

16. Assignment and Sublease. Tenant may assign this Lease or sublease any portion of the Premises to any Tenant-related entity, subsidiary, or successor ("Affiliate"), without Landlord's consent, but with notice to Landlord. As to any person or entity that is not an Affiliate, Tenant shall not directly or indirectly, voluntarily or by operation of law, sublease, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or this Lease, without the prior written consent of Landlord, which may be withheld by Landlord in its reasonable discretion; provided, however, that Landlord shall not unreasonably withhold, condition, or delay the approval of any proposed assignment or sublease. Any assignment or sublease shall be subject to all of the terms and conditions of this Lease. In no event, shall any sublease, sale, assignment, encumbrance, pledge, transfer, or hypothecation relieve Tenant of its obligations hereunder. Tenant shall remain primarily liable for performance of Tenant's obligations hereunder, whether this Lease is assigned, sublet, and/or otherwise transferred, including, without limitation, the payment of Rent. No reasonable withholding of consent by Landlord shall give rise to any claim by Tenant or any proposed assignee, or entitle Tenant to terminate this Lease, to recover contract damages or to any abatement of Rent. Landlord shall not have to recapture right in the event of an assignment or sublease to an Affiliate or to a third-party assignee or sublessee. In connection with any assignment or sublease of the Premises to a third-party sublessee not heretofore mentioned, as a condition to Landlord's consent, Tenant shall pay to Landlord as Rent as and when received by Tenant an equal to fifty percent (50%) of all "Profit" (as hereinafter defined) derived from such assignment or sublease. "Profit" shall mean the difference between (i) the sum of any and all amounts payable by the proposed assignee or sublessee under the terms of the proposed assignment or sublease, and (ii) the sum of the Rent and other payment obligations payable to Landlord by Tenant under the terms of this Lease, less Tenant's costs incurred and related to the sublease, including, without limitation, tenant improvements, commissions, downtime if vacant, legal expenses, and other leasing concessions. For all purposes under this Section 16, a sub-sublease, assignment of sublease or any similar intent of the parties in negotiating this Lease was not to create any bonus value or allow Tenant to profit as a result of any favorable terms contained herein or any future changes in the market for the Premises. Tenant further acknowledges that any such value shall be shared with Landlord as set forth in this Section 16. Landlord reserves the right to review and approve financial statements of all prospective assignees and to approve the form of the assignment and/or sublease involved in each transaction, as a condition to the approval of any and all assignments and subletting. Any assignment or sublease must be to a governmental entity or an Internal Revenue Code Section 501(c)(3) entity, must maintain a tax-exempt status during the term of this Lease and must have the same or similar expertise necessary to perform and ensure the Tenant's obligations hereunder.

17. Eminent Domain.

- A. Total Taking. If all or substantially all of the Premises are condemned or taken in any manner for public or quasi-public use, including, without limitation, a conveyance or assignment in lieu of the condemnation or taking, or if so much of the Premises is so taken or condemned so as to render the remaining portion of the Premises unusable by Tenant for the conduct of Tenant's business, as determined by the condemning authority, this Lease shall automatically terminate on the earlier of the date on which actual physical possession is taken by the condemner or the date of dispossession of Tenant as a result of such condemnation or other taking.
- B. Partial Taking. If less than all or substantially all of the Premises is so condemned or taken, rendering the remaining portion of the Premises usable by Tenant for the conduct of its business as originally contemplated under this Lease, as determined by the condemning authority, this Lease shall automatically terminate only as to the portion of the Premises so taken as of the earlier of the date of which actual physical possession is taken by the condemner or the date of dispossession of Tenant as a result of such condemnation or taking. If such portion of the Facility is condemned or otherwise taken so as to require, in the reasonable opinion of the Landlord, a substantial alteration or reconstruction of the remaining portions thereof, this Lease may be terminated by Landlord, as of the date of which actual physical possession is taken by the condemner or dispossession of Tenant as a result of such condemnation or taking, by written notice to Tenant within sixty (60) days following notice to Landlord of the date on which such physical possession is taken or dispossession will occur. If in the reasonable opinion of the Tenant, the taking renders the remaining portion of the Premises unusable for Tenant to conduct its business, Tenant may terminate this Lease as of the date of which actual possession is taken by the condemnation or dispossession of Tenant as a result of such condemnation or taking, by written notice to Landlord within sixty (60) days following notice to Tenant on the date on which such physical possession is taken or dispossession will occur.
- C. Award. Landlord shall be entitled to the entire award of any condemnation proceeding or other proceeding for taking for public or quasi-public use, including, without limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or total taking shall be apportioned, and Tenant hereby assigns to Landlord any award that may be made in such condemnation or other taking, together with any and all rights of Tenant now or hereafter arising in or to the same of any part thereof. Although all damages in the event of any condemnation shall belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant may claim and recover from the condemner, but not from the Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of damage to Tenant's

business by reason of the condemnation and for or on account of damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur to remove Tenant's personal property, including, without limitation, furniture, fixtures, and equipment for the interruption of or other damage to Tenant's business.

- D. Rent Abatement. In the event of a partial condemnation or other taking that does not result in a termination of this Lease as to the entire Premises, the Rent and all other charges shall abate in proportion to the portion of the Premises taken by such condemnation or other taking. If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Section 16, all Rent and other charges payable by Tenant to Landlord hereunder and attributable to the Premises taken shall be paid up to the date upon which actual physical possession is taken by the condemner or the date of dispossession of Tenant.
- E. Temporary Taking. If all or any portion of the Premises is condemned or otherwise taken for public or quasi-public use for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform its obligations under this Lease; provided, however, the Rent and all other charges payable by Tenant to Landlord hereunder shall abate during such limited period in proportion to the portion of the Premises that is rendered unusable as a result of such condemnation or other taking. Landlord shall be entitled to receive the entire award made in connection with any such temporary condemnation or other taking.
- F. Transfer of Landlord's Interest to Condemner. Landlord may, without any obligation to Tenant, agree to sell and/or convey to the condemner the Premises, the Project, or any portion thereof, sought by the condemner, subject to this Lease and the rights of Tenant hereunder, without first requiring that any action or proceeding be instituted or, if instituted, pursued to a judgment.

18. Attorneys' Fees. If any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

19. Default.

- A. Tenant's Default. The occurrence of any one or more of the following shall constitute a default hereunder by Tenant:
  - i. Tenant abandons the Premises;

- ii. Tenant is delinquent three (3) times within a twelve (12) month period in paying any Rent or other charges required under this Lease.
- iii. Tenant fails to promptly and fully perform any other of its obligations contained in this Lease and such failure continued for thirty (30) days (or such shorter time provided herein) after written notice thereof from Landlord; provided, however, that if the obligation to be performed by Tenant is of such nature that the same cannot reasonably be performed within thirty (30) days and if Tenant commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same, then such failure shall not be a default hereunder.
- iv. A trustee, disbursing agent or receiver is appointed to take possession of all or substantially all of Tenant's assets or of Tenant's interest in this Lease and Tenant or any guarantor of Tenant's obligations under this Lease does not regain possession within sixty (60) days after such appointment; Tenant makes an assignment for the benefit of creditors; or all or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution and Tenant does not discharge the same within sixty (60) days thereafter;
- v. A petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute and, with respect to any such petition filed against it, Tenant or such guarantor fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same;
- vi. Immediately, in the event of any assignment, subletting or other transfer for which the prior written consent of Landlord has not been obtained;
- vii. Immediately, in the event of discovery or any false or misleading statement concerning financial information submitted by Tenant and/or any guarantor of Tenant's obligations to Landlord in connection with obtaining this Lease or any other consent or agreement by Landlord;
- viii. Immediately, in the event Tenant admits in writing its inability to pay its debts as they mature; or
- ix. Immediately, upon the suspension of Tenant's right to conduct its business, caused by the order, judgment, decree, decision or other act of any court or governmental agency.

In the event of default, Landlord may terminate this Lease. If Landlord terminates this Lease, Tenant shall immediately surrender the Premises, use of the Facility,

Parking Lot, and related assets of the Facility to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy Landlord may have either by law or by this Lease, enter upon the Premises and expel or removed Tenant and Tenant's personal property. Furthermore, Landlord may remove any approved sublessees without or without force and without being liable to Tenant or any approved sublessees in any manner whatsoever for damages. Tenant shall be responsible for Landlord's reasonable attorney's fees and costs for any legal action taken by Landlord due to Tenant's breach of any terms of this Lease.

20. Landlord Exclusive Control.

- A. Facility Alterations. Landlord shall have sole and exclusive control of the Facility, as well as the right to make changes to the Facility, provided the same does not negatively impact the Facility or Premises or Tenant's use, occupancy, and enjoyment thereof or Tenant's rights under this Lease. Landlord may, but shall not be obligated to: (i) restrain the use of the Facility by unauthorized persons; (ii) utilize from time to time any portion of the Facility (except the Premises without Tenant's prior written consent) for promotional and related matters; (iii) temporarily close any portion of the Facility (except the Premises without Tenant's prior written consent) for repairs, improvements or alterations; (v) change the location of improvements within the Facility (except the Premises without Tenant's prior written consent), including, without limitation, parking structures and other parking facilities, roadways, and curb cuts. Landlord may determine the nature, size, and extent of the common areas as well as make changes to the common areas from time to time which, in Landlord's opinion, are deemed desirable provided the same does not negatively impact the Facility or Premises or Tenant's use, occupancy, and enjoyment thereof or Tenant's rights under this Lease.
- B. Landlord's Rights. Landlord may install, use, maintain, repair, relocate, and replace pipes, ducts, conduits, wires, and appurtenant meters and equipment including in the Premises or outside the Premises, and install, use, maintain, repair, alter, or relocate, expand, and replace any common areas. Such rights of Landlord shall include, without limitation, temporarily designating from time-to-time certain portions of the common areas as exclusively for the benefit of certain tenants in the Facility.

21. Parking.

- A. Tenant Parking. Landlord shall provide nonexclusive parking spaces in the Employee Parking Area as indicated on the premises floor plan on a first-come first-served basis beginning on the Effective Date and for use throughout the Term.



- B. Use of Parking Spaces. All parking shall be on the terms and conditions set forth in any parking rules and regulations established by Landlord (the "Facility Rules and Regulations"). Landlord may establish such additional reasonable rules and regulations as may be deemed desirable, at Landlord's sole discretion, for the proper and efficient operation and maintenance of the Employee and Public Parking Areas. Nothing contained in this Lease shall be deemed to impose liability upon Landlord for personal injury or theft, for damage to any motor vehicle, or for loss of property from within any motor vehicle, which is suffered by Tenant or any of its employees, customers, service suppliers, or other invitees in connection with their use of parking spaces in the Employee or Public Parking Areas or elsewhere.
- C. Landlord Control of Parking Areas. Landlord shall at all times have the sole and exclusive control of the Parking Areas, and may at any time exclude and restrain any person from use or occupancy thereof, The rights of the Tenant and its employees shall at all times be subject to: (i) the rights of Landlord and other tenants in the Building to use the same in common with Tenant and its employees; (ii) the availability of parking spaces in the Parking Areas; and (iii) Landlord's right to change the location of any assigned reserved parking spaces, in Landlord's sole discretion.

22. Roof Rights. Tenant shall have the right, without rental or other charge, to use its pro-rata share of the roof of the Building, to the extent reasonably practicable, to install, operate, and maintain telecommunications antennas, microwave dishes, television satellite dishes, and other communications equipment, subject to such screening as may be required by Landlord and/or other governmental or quasi-governmental entities. Such use shall be subject to receipt of all required governmental approvals and shall not unreasonably interfere with the Building and shall not adversely affect the roof and/or the roof warranties provided to Landlord.

23. Access and Security. Tenant and Tenant's employees shall have access to the Premises, Building, and Parking Lot twenty-four (24) hours per day, seven (7) days per week, and fifty-two weeks per year. The Building shall be equipped with a card-key controlled access system for after-hours access.

24. Subordination. Tenant's leasehold interest hereunder shall be subordinate to any mortgages now on, or hereafter to be placed on, the Premises. Tenant shall comply with reasonable requests of Landlord's lenders, for execution of documentation to affect such subordination of Tenant's leasehold interest, including, without limitation, subordination, non-disturbance, and attornment agreements. Tenant shall obtain any and all non-disturbance agreements in favor of Tenant from the holders of all mortgages, deeds of trust, ground leases and other encumbrances against the Facility that Tenant, in its sole discretion, deems necessary.

25. Estoppel Certificates. Tenant, at any time and from time to time, upon not less than ten (10) days prior written notice from Landlord, shall execute and deliver to Landlord in a timely manner, a statement evidencing the status of this Lease by: (i) certifying that this Lease is

unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if they are claimed.

26. Financial Statements. Landlord has reviewed financial statements if so, requested of Tenant and has relied upon the truth and accuracy thereof with Tenant's knowledge and representations of the truth and accuracy of such statements and that said statements accurately and fairly depict the financial condition of Tenant as of the date of the Financial Statements so provided. Said financial statements are an inducing factor and consideration for the making of this Lease by Landlord with Tenant. Tenant shall, at any time and from time to time upon no less than thirty (30) days prior written notice from Landlord, furnish Landlord with Tenant's most current audited financial statements which accurately reflect Tenant's then financial condition.

27. Notices. Each notice required or permitted by this Lease shall be in writing and delivered in person to the other party or by a nationally recognized overnight courier such as FedEx, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses set forth below or to such other address as either party may designate in writing and deliver as provided in this Section.

Landlord:                   City of Chattanooga  
                                  ATTN: Real Property Office  
                                  101 E. 11<sup>th</sup> Street, Suite G-18  
                                  Chattanooga, TN 37402

Copy to:                    City of Chattanooga  
                                  Office of the City Attorney  
                                  100 E. 11<sup>th</sup> Street, Suite 200  
                                  Chattanooga, TN 37402

Tenant:                     Prevent Child Abuse Tennessee  
                                  ATTN: CEO  
                                  600 Hill Avenue, #202  
                                  Nashville, TN 37210

28. Force Majeure and Landlord Delay. Neither party shall be required to perform any obligation under this Lease so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, civil riot, and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

29. Holdover. Tenant may hold over beyond the expiration of this Lease for a period of up to three (3) months ("Initial Holdover Period") on a per diem basis under all the same terms and conditions of this Lease, including rental rate, by providing Landlord with ninety (90) days prior

written notice. Occupancy after the Initial Holdover Period shall be on a month-to-month basis at one hundred twenty five percent (125%) of the Base Rent in effect at the end of the Initial Holdover Period.

30. Contingencies. Notwithstanding the execution and delivery of this Lease, this Lease shall not be binding on either party unless and until the Chattanooga City Council approves and authorizes it.

31. General Conditions.

- A. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- B. Captions. The captions in this Lease are inserted for convenience of reference and in no way define, describe, or limit the scope or intent of this Lease or any provision of this Lease.
- C. Partial Invalidity. Any provision of this Lease which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Lease shall have no effect, but all the remaining provisions of this Lease shall remain in full effect.
- D. No Third-Party Rights. Nothing in this Lease, express or implied, is intended to confer any rights or remedies upon any person, other than the parties to this Lease and their respective successors and assigns.
- E. Time of Essence. Time is of the essence in this Lease.
- F. Relationship. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between Landlord and Tenant or between either or both of them and any third party.
- G. Exhibits Incorporated. All exhibits referred to in and attached to this Lease are hereby incorporated in this Lease.
- H. Further Assurances. Landlord and Tenant shall execute and deliver all such instruments and documents and to take all actions reasonably required by this Lease or otherwise to accomplish its intent.
- I. Entire Agreement. This Lease contains the entire understanding of the parties. There is no other written or oral understanding between the parties with respect to this Lease or the Premises. Each party has relied solely on the advice from its own attorneys and experts in entering into this Lease. No other party, agent, or attorney