



INTERDEPARTMENTAL MEMO

TO: Mayor David H. Bieter
Members of City Council

FROM: John Brunelle, Office of Economic Development

DATE: March 21, 2011

SUBJECT: Resolution R-125-11, Lease of 705 South 8th Street

ACTION REQUIRED: That the City Council and the Mayor consider Resolution R-125-11 and the accompanying lease document.

RECOMMENDATION: That the City Council adopt and the Mayor approve Resolution R-125-11 and the accompanying lease document.

FISCAL IMPACT/BUDGET IMPLICATIONS: Project will generate direct revenue via building fees and annual rent revenue that increases annually. The project will also eliminate any possible expenditure for removal of the warehouse building as contemplated. Some additional storage and parking costs may be incurred due to reallocation of this asset. The building has been the site of zero (0) jobs for many years; the planned sub-tenant will have 30 employees with an expanding job base anticipated in future years.

BACKGROUND: The Ground Lease and conversion of a city-owned warehouse for use as a headquarters building for an expanding Boise company is an example of how the City of Boise can work with the business community to support economic development. This project may also be a catalyst for enhancing the southern end of the Cultural District so that others will be motivated to make an investment in this area for jobs, retail and culture.

The tenant will be Boise, Idaho-based 9th & River LLC, which includes principals from Rocky Mountain Management & Development Company, and Boise-based Biomark Inc. The unsubordinated lease is for a term of 45 years, with 3 additional options at 5 years each. The city will retain a portion of the building for its own use for two years before the tenant takes the entire

building in Year 3. Rent is based on the city's desired Return on Land Value with an annual increase using a fixed percentage rate.

As stated in the agreement, a future land exchange involving this property is contemplated.

ATTACHMENTS: Resolution and lease document.

	RESOLUTION NO. _____
BY THE COUNCIL:	CLEGG, EBERLE, JORDAN, MCLEAN, SHEALY AND THOMSON

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST TO A GROUND AND BUILDING LEASE BY AND BETWEEN THE CITY OF BOISE CITY AND 9TH & RIVER, LCC FOR THE LEASE OF REAL PROPERTY OWNED BY THE CITY AND LOCATED AT 708 SOUTH 8TH STREET, BOISE, ADA COUNTY, IDAHO AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That the Ground and Building Lease by and between the City of Boise City and 9th & River, LLC, in the form attached hereto as Exhibit A and incorporated herein by reference, be, and the same is hereby, approved both as to form and content.

Section 2. That the Mayor and City Clerk be, and they hereby are, authorized to respectively execute and attest said Ground and Building Lease for and on behalf of the City of Boise City.

Section 3. That this resolution shall be in full force and effect immediately upon its adoption and approval.

ADOPTED by the Council of the City of Boise, Idaho, this _____ day of March 2011.

APPROVED by the Mayor of the City of Boise, Idaho this _____ day of March 2011.

APPROVED:

ATTEST:

David H. Bieter
Mayor

Craig Croner
Interim City Clerk

GROUND AND BUILDING LEASE

THIS GROUND AND BUILDING LEASE (the “Lease”) is made and entered into as of the “Effective Date” by and between **BOISE CITY**, an Idaho municipal corporation (“**Landlord**”), and **9TH & RIVER, LLC**, an Idaho Limited Liability Company (“**Tenant**”).

ARTICLE 1 DEMISE OF PREMISES

1.1 **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord 0.94 acres of land, including the approximate 30,000 square foot “**Old Shaver Warehouse**” (the “**Building**”) located at 705 South 8th Street, Boise, Idaho 83702, as depicted on **Exhibit A** attached to and made a part of this Lease and as more particularly described in **Schedule I** attached to and made a part of this Lease (the “**Premises**”). The Premises is currently part of a larger property with the Assessor’s Parcel No. R1749100426 (the “**Property**”). Tenant shall also have the right to use the drive aisles located on the Property and south of the Premises to access the Premises.

1.2 **Basement Area.**

(a) Defined. For not more than the first (1st) two (2) full Lease Years of the Initial Term, Landlord may continue to use the basement level of the Building (the “**Basement Area**”). The Basement Area shall also include the nonexclusive use of the parking spaces located to the east of the Building and the drive aisles on the Premises located to the east and south of the Building to access such parking spaces as depicted on **Exhibit A** (“**East Parking Area**”). The Basement Area shall not include, however, the common area within the basement such as the utility/electrical closet and also approximately two thousand (2,000) square feet that may be used by Tenant’s initial subtenant. Landlord may use all or part of the Basement Area in its current “As-is” condition at no cost to Landlord.

(b) Termination of Use. Tenant may elect to take possession of the Basement Area and Landlord shall vacate the Basement Area and deliver the same upon ninety (90) days prior written notice from Tenant to Landlord. Beginning on the third (3rd) full Lease Year, Landlord shall vacate the Basement Area and deliver the same to Tenant, and Tenant shall accept possession of the Basement Area, subject to the terms and conditions within this Lease.

(c) Continued Use of East Area Parking. After Tenant takes possession of the Basement Area, Landlord may continue to have nonexclusive use of the East Parking Area, subject to the following conditions: (1) Such use shall only be after 6:00 p.m., Monday through Friday, and all day Saturdays and Sundays, (2) No overnight parking, (3) Tenant may post the East Parking Area indicating that violators of the above restrictions may be towed at their expense, and (4) Tenant may revoke by written notice to Landlord such use of the East Parking Area if a user in the Building elects to use and operate all or a portion of the Leased Premises either after 6:00 p.m., Monday through Friday, or on Saturdays or Sundays.

ARTICLE 2 TERM

2.1 Term.

(a) Effective Date. The terms and conditions of this Lease are effective as of the “**Effective Date**” of this Lease, which shall be the date that each party has been provided a fully-executed original of this Lease and Landlord delivers the Premises to Tenant. Landlord shall deliver the Premises and a fully executed original of this Lease no later than five (5) business days after approval of the Lease by the Mayor and City Council of Boise City; provided, however, Friends of the Boise Public Library shall continue to have access to the Building for thirty (30) days after approval of the Lease in order to remove its inventory of books from the Building.

(b) Interim Term. The interim term of this Lease (“**Interim Term**”) shall commence upon the Effective Date of this Lease (“**Commencement Date**”) and shall terminate at midnight on the day immediately preceding the Rent Commencement Date, as defined in subparagraph (c) below.

(c) Initial Term. The initial term (“**Initial Term**”) of this Lease shall commence on the Rent Commencement Date and shall continue for a partial Lease Year and forty-five (45) full Lease Years thereafter, subject to extension as provided in Section 2.2. The “**Rent Commencement Date**” shall be the earlier of (i) the date that Tenant’s subtenant first opens for business in the Premises, or (ii) May 1, 2012. The first Lease Year shall be a partial Lease Year and shall commence on the Rent Commencement Date and shall end on December 31st of the calendar year in which the Rent Commencement Date occurs. Each successive full Lease Year shall be a calendar year.

2.2 **Extension Options**. Tenant shall have the right to extend the Initial Term by a total of three (3) successive periods of five (5) full Lease Years each (the “**Extension Periods**”). Each Extension Period shall be exercised by written notice of Tenant’s election to extend the Term given to Landlord at least ninety days (90) prior to the date of commencement of the Extension Period (“**Extension Notice**”). In no event shall Tenant’s right to extend the Initial Term or an Extension Period, as the case may be, expire until Landlord has provided written notice to Tenant indicating that Tenant’s notice period has lapsed but the Extension Period may still be exercised. Tenant shall then have fourteen (14) days following receipt of Landlord’s notice to exercise the Extension Period, failing which this Lease shall terminate upon the expiration of the Initial Term or the Extension Period, as the case may be. Each Extension Period shall be under the same terms and conditions as stated in this Lease, with the exception of the amount of Rent to be paid, which shall be as set forth in Article 3 below.

2.3 **Termination Options**. After the Initial Term and in any Extension Period, Tenant shall have the right and option, at Tenant's election, to terminate this Lease effective as of the last day of any month. If Tenant shall elect to exercise any such option, Tenant shall send written notice thereof to Landlord at least twelve (12) months prior to the date this Lease shall so terminate, but no notice shall be required to terminate this Lease upon the expiration of a Term.

2.4 **Definition of Term.** As used in this Lease, “Term” shall mean and include the Interim Term, the Initial Term and Extension Period(s).

ARTICLE 3 RENT AND OPERATING COSTS

3.1 **Rent.** Tenant shall pay to Landlord, without demand, deduction or setoff except as specifically provided in this Lease, at such place as Landlord shall designate in writing from time to time, Rent as described below. Rent shall be payable in advance, in equal monthly installments, on the first day of the calendar month during each calendar month during the Term and shall be proportionately reduced for any partial month during the Term.

3.2 **Base Rent.**

(a) **Initial Base Rent.** The Base Rent was established by the parties based on what the initial intended subtenant, Biomark, Inc., an Idaho corporation (“**Biomark**”), could pay to successfully operate its business from the Premises. The parties have researched the market and have concluded that the Base Rent reflects current market rents for the Premises. As an incentive to Landlord, Tenant will invest not less than One Million Two Hundred Thousand Dollars (\$1,200,000.00) in improvements, which includes both “hard” and “soft” construction costs, to Landlord’s Building. As set forth in this Lease, such improvements will be paid by Tenant and will become the property of Landlord upon the expiration or termination of this Lease because they are improvements to real property owned by Landlord. The annual Base Rent for the initial Lease Year shall consist of a donation to the Friends of the Library in the amount of Twelve Thousand Dollars (\$12,000.00). Commencing upon the commencement of the second full Lease Year, annual Base Rent shall increase to Thirty-six Thousand Eight Hundred Fifteen and 76/100 Dollars (\$36,815.76), payable in equal monthly installments.

(b) **Initial Extension Period Base Rent.** The Base Rent during the first Extension Period shall be based upon the fair market value of the underlying land with the then current building deemed to be the highest and best use of the Premises (“**Fair Market Value of the Land**”). The Fair Market Value of the Land shall be multiplied by a factor of six-percent (6.0%) to determine the Base Rent for the first (1st) Extension Period (“**Initial Extension Period Base Rent**”). The Initial Extension Period Base Rent shall be determined as follows:

(1) Within thirty (30) days after receipt by Landlord of the Extension Notice for the first (1st) Extension Period, the parties shall negotiate in good faith to determine the Initial Extension Period Base Rent.

(2) If the parties cannot agree upon the Initial Extension Period Base Rent during the applicable time period above, the parties shall hire an MAI appraiser approved by both parties and licensed in the State of Idaho to determine the Fair Market Value of the Land as of the expiration of the Initial Term. Within twenty (20) days of receiving such appraisal, Tenant may (A) provide written notice of acceptance of the Fair Market Value of the Land and the Initial Extension Period Base Rent shall be calculated accordingly (subject to subparagraph (3) below), or (B) provide written notice of rejection of the Fair Market Value of the Land and this Lease shall automatically

terminate as of the end of the Initial Term. Landlord and Tenant shall share equally the cost of such appraisal.

(3) Notwithstanding anything contrary to the foregoing, the Initial Extension Period Base Rent shall not exceed two (2) times the then current Base Rent as of the final Lease Year of the Initial Term.

(c) Rent Adjustment. The amount of Base Rent during the third full Lease Year and each Lease Year thereafter during the Term, including Extension Periods if exercised, shall be adjusted by an annual increase of one and 50/100 percent (1.5%) of the Base Rent during the preceding Lease Year. The increase shall apply commencing on the first day of the third full Lease Year and the first day of each Lease Year thereafter including Extension Periods exercised.

3.3 **Late Charge**. If any installment of Base Rent is received more than ten (10) days after the date it is due, Tenant shall pay to Landlord a late charge in the amount equal to five (5.0%) percent of the Rent payment(s) for each month that payments are delinquent.

3.4 **Payments are Rent**. All amounts payable under this Lease by Tenant to Landlord shall constitute Rent, including, without limitation, amounts payable as Base Rent or any other payments of any kind or nature.

3.5 **Net Lease**. Subject to Section 4.1 below, this Lease is intended to be a net lease and the Rent shall be absolute net to Landlord. Tenant shall pay all other costs incurred by Landlord relating to or arising out of the Premises. Tenant shall pay for all “Operating Costs” associated with the Premises. As used in this Lease, **Operating Costs** include, without limitation but subject to Section 4.1, electricity, gas, sewer, water, other utilities, insurance, grounds and parking lot maintenance, janitorial expense, room and building maintenance and repair including HVAC operation, maintenance and repair.

ARTICLE 4 TAXES

4.1 **Real Estate Taxes**. Section 63-602A(1) of the Idaho Code states that “The following property is exempt from taxation: property belonging ... to any ... municipal corporation ... within this state.” At all times during the Term of this Lease, Landlord shall own all real property improvements within the Premises, including the land and the Building. The parties interpret the above statute to indicate that real property taxes may not be assessed against the Premises. In the event, however, 1) state law is amended to permit all or part of the Premises to be taxed, or 2) any lawful authority successfully imposes a tax on all or part of the Premises, Tenant shall be responsible for all such real estate taxes and general and special assessments that may be levied or assessed by any lawful authority on the Premises (collectively, “**Real Estate Taxes**”). In the event Boise City, as the current Landlord, sales, conveys or transfers all or any portion of the Premises to a third-party, the new Landlord and successors and assigns thereof shall be responsible for and pay when due and owing all Real Estate Taxes from and after the

date of said sale, conveyance or transfer. Notwithstanding anything contrary to the foregoing, Landlord shall always be and remain responsible for all taxes and special assessments against the real property that may be levied or assessed by a local improvement district on the Premises. Tenant shall always be and remain responsible for all taxes and special assessments against the Building that may be levied or assessed by a local improvement district on the Premises.

4.2 **Rental Taxes.** Tenant shall pay all federal, state or local sales, use, transaction privilege, rental, or other excise taxes that are imposed or levied upon, or measured by Rent payable under this Lease.

4.3 **Personal Property Taxes.** Tenant shall pay when due all taxes assessed on Tenant's personal property on the Premises.

ARTICLE 5 CONDITIONS SUBSEQUENT TO LEASE

5.1 **Conditions.** Notwithstanding the execution of this Lease, Tenant may terminate this Lease without liability unless each of the following conditions subsequent set forth in Section 5.1(a) through 5.1(e) has been met or Tenant has waived said condition in writing. If Tenant has not waived said condition in writing within the applicable time periods set forth below in this Article, Landlord may at any time thereafter, so long as said condition has not been satisfied or waived in writing by Buyer, terminate this Lease upon five (5) business days' prior written notice to Tenant, and this Lease shall terminate if the condition or conditions specified in said notice of termination have not been satisfied or waived in writing by Tenant prior to expiration of said five (5) business day period. Landlord agrees to cooperate with Tenant and to execute any documents which may be necessary or convenient to the performance of these conditions.

(a) **Survey.** Landlord, at Landlord's expense, shall provide Tenant with a current ALTA certified boundary and topographic survey of the Premises prepared by a licensed surveyor ("**Survey**") which shall show that the Premises conform to the descriptions herein (it is agreed that if the legal description in the Survey differ from the legal description contained in this Lease, this Lease shall be amended to describe the Premises as set forth in the Survey), the Premises extends to all adjacent streets, alleys and rights-of-way, which streets, alleys and rights-of-way have been dedicated to, and accepted for public use by, the appropriate governmental authority, utilities are available to the Premises adequate to serve Tenant's initial intended purpose, and if the Premises contains more than one parcel, then all of the parcels together form one parcel and each parcel forming the larger parcel shares its interior boundary lines with the other parcel or parcels.

(b) **Title.** Title to the Premises shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except the "Permitted Exceptions" (as defined below). Tenant shall obtain a commitment for the issuance of a leasehold owner's policy of title insurance (the "**Commitment**") from First American Title Company, National

Commercial Services, 9465 W. Emerald Street, Suite 260, Boise, Idaho 83704, Phone: 532-5112, Fax: 327-5514, Attn: Erin Dixon – Escrow Officer, edixon@firstam.com, May Lin Carlsen – Title Officer, mcarlsen@firstam.com (the “**Title Company**”) for the Premises, which shall include legible copies of all documents referenced therein. During the Review Period (as defined below), Tenant shall examine the Commitment and the Survey and provide Landlord with written notice of any objection to matters shown on the same (“**Objections**”). Any matters appearing on the Commitment or the Survey that are not timely objected to by Tenant shall be deemed to be acceptable to Tenant (collectively the “**Permitted Exceptions**”). If Objections are so made, Landlord shall notify Tenant in writing within ten (10) days after receipt of the Objections (“**Landlord’s Title Notice**”), those matters Landlord intends to remove or cure and those matters Landlord does not intend to remove or cure. Failure by Landlord to send Landlord’s Title Notice shall be deemed election by Landlord to remove or cure all of the Objections. If Landlord fails or refuses to cure any Objection, then Tenant shall have the option to (i) waive such Objection, in which event such Objection shall become a Permitted Exception acceptable to Tenant, (ii) cure the Objection, or (iii) terminate this Agreement as set forth in this Article.

(c) Physical Inspections. Landlord, at Landlord’s expense, shall provide Tenant a Level I Environmental Study (completed in 2002) (“**Level 1**”) and all subsequent environmental documents. Landlord shall obtain a current Level 1 and also conduct an inspection and sampling and provide Tenant the results for lead based paint, asbestos containing material and vapor testing analysis prepared by a licensed environmental consultant. Together with the Level I and additional environmental information, Tenant may obtain additional surveys, soils tests, and engineering studies, prepared in accordance with Tenant’s requirements, which shall show the Premises to be free and clear of all underground storage tanks and all hazardous substances, pollutants, contaminants and hazardous wastes as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, as amended, or any other similar local, state or federal law, rule or regulation, including, without limitation, asbestos, PCB’s, petroleum and petroleum products, and urea-formaldehyde, and to be suitable, in Tenant’s sole opinion, for Tenant’s initial intended purpose, including, without limitation, a determination by Tenant that vehicular access, utility availability, and the physical condition of the property are such that Tenant’s initial intended purpose could be constructed and operated without incurring any extraordinary costs.

(d) Zoning/Approvals. The Premises is zoned and all studies, reports, permits, approvals and written agreements satisfactory to Tenant (including, but not limited to, site plan approvals, building and use permits, conditional use permits, variances, design review approvals and environmental reports and permits), required by the appropriate public or governmental authorities, including Capital City Development Corporation and Ada County Highway District, to permit the development of the Premises for Tenant’s initial intended purpose as general office and light manufacturing, and other similar uses (“**Government Approvals**”), have been finally adopted, all without conditions thereto which in Tenant’s reasonable opinion would cause construction and operation of the Premises to be economically unfeasible.

(e) Financing. Tenant shall determine that financing desired by Tenant is available for the development of the Premises for Tenant’s initial intended purpose. Landlord shall provide Tenant’s lender an estoppels certificate and enter into a non-disturbance and

attornment agreement with Tenant's lender upon terms reasonably acceptable to Landlord to permit Tenant to obtain financing.

(f) Review Period. Tenant shall perform its review of subparagraphs (a), (b) and (c) above within thirty (30) days of the Effective Date of this Lease ("**Review Period**"). On or before the expiration of the Review Period, Tenant may elect to extend the Review Period for one (1) period of thirty (30) days upon providing written notice to Landlord prior to expiration of the Review Period.

(g) Entitlement Period. Tenant shall perform its review of subparagraphs (d) and (e) above within one hundred eighty (180) days commencing upon the expiration of the Review Period ("**Entitlement Period**"). On or before the expiration of the Entitlement Period, Tenant may elect to extend the Entitlement Period for one (1) period of thirty (30) days upon providing written notice to Landlord prior to expiration of the Entitlement Period.

ARTICLE 6 USE

6.1 **Use of Premises**. Tenant's initial intended purpose of the Premises is to redevelop and/or expand the existing building and improvements for use by Biomark for general office, light manufacturing and related purposes. Tenant shall be permitted to make any lawful use of the Premises subject to Section 6.2 (Restrictions) and Article 8 (Assignment/Sublease).

6.2 **Restrictions**. The Premises may not be used as an adult entertainment facility, which shall include an adult bookstore or adult video store; for the sale of paraphernalia that is intended to be or commonly is utilized in connection with the use of illegal drugs.

ARTICLE 7 SIGNS

7.1 **Interior and Exterior Signs**. Subject to obtaining all appropriate government permits and approvals, Tenant, at Tenant's cost, may place and maintain during the Term of the Lease signage on the exterior and on the interior of the Premises. Tenant shall maintain such signs in good order and repair in compliance with all applicable governmental laws, rules, regulations or ordinances. All signage, interior and exterior (including any pylon or monument signage), shall remain the property of Tenant during the Term of this Lease.

ARTICLE 8 ASSIGNMENT/SUBLEASE

8.1 **By Tenant**. Tenant may assign this Lease or sublease all or any part of the Premises only with the Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, so long as such assignment or subletting does not

violate (i) any applicable governmental law, rule, regulation or ordinance, or (ii) any provision under this Lease, including Section 6.2 above. The assignment shall be conditioned upon the assignee expressly assuming all of the obligations of Tenant under this Lease and such assignment and consent by Landlord shall relieve the existing assignor of all obligations under this Lease. Notwithstanding the foregoing, Tenant may assign or sublease to an affiliate, subsidiary or strategic partner(s) without Landlord's consent so long as Tenant shall remain primarily responsible for the obligations under this Lease. Notwithstanding the foregoing, Landlord shall have five (5) business days in which to approve or disapprove of any sublease and the proposed use thereof. If Landlord fails to respond with the five (5) day period, the request shall be deemed approved. Upon execution of any sublease by Tenant (including the sublease with Biomark), Tenant shall immediately provide Landlord with either a redacted copy (excluding financial terms and other proprietary information) of the sublease or a memorandum of sublease for Landlord's records. Landlord and Tenant agree that Biomark's execution of a sub-lease and occupancy of the Premises for a term of no less than seven (7) years is additional consideration for execution of this Ground and Building Lease. Accordingly, Tenant shall provide Landlord with either a redacted copy (excluding financial terms and other proprietary information) of a fully-executed sub-lease or a memorandum of sub-lease between Tenant and Biomark within twenty-one (21) days of Landlord's governing body's approval of this Lease. Failure of Tenant to do so shall render this Lease null and void and of no further force and effect and shall terminate immediately and require no further action by Landlord to effectuate the termination.

8.2 **By Landlord.** Upon any transfer or sale of Landlord's interest in the Premises, the transferor shall be released from obligations arising after the transfer. Any transfer in violation in Article 17 (Exchange of Properties) shall be null and void.

ARTICLE 9 UTILITIES

9.1 **Utilities / Payment of Charges.** All utility charges of every kind and nature, including without limitation, electricity, gas, sewer, water, telephone and cable, shall be paid by Tenant on or before the time the same become due. Notwithstanding anything contrary to the foregoing, Landlord shall be responsible for all utility charges relating to the Basement Area for so long as Landlord is in possession of the Basement Area. In the event Landlord fails to occupy the Basement Area as provided in Article 1.2 above, Tenant shall be responsible for utility charges, if any, associated with the Basement Area.

9.2 **Interruption of Service.** Landlord shall have no liability for damage arising from failure or interruption of utility services.

ARTICLE 10 ALTERATIONS, REPAIRS AND MAINTENANCE

10.1 **Repairs and Maintenance.** Tenant shall maintain, repair, replace and reconstruct and keep in good condition all improvements on the Premises, including the building,
GROUND AND BUILDING LEASE—CITY OF BOISE/9TH & RIVER, LLC - 8

site improvements and all other improvements of any kind and nature. Notwithstanding anything contrary to the foregoing, Landlord shall be responsible for any repairs and maintenance caused by Landlord's use of the Basement Area.

10.2 **Alterations and Improvements.** Tenant, at Tenant's cost, may make alterations or improvements (collectively "Alterations") to the Premises. All Alterations shall be performed at Tenant's sole cost and expense, in a good workmanlike manner, and in accordance with all applicable laws and codes. Fee title to all Alterations shall be in Landlord and become a part of the Premises.

10.3 **Fixtures and Equipment.** Tenant may install on the Premises any trade fixtures and equipment Tenant deems desirable, and they shall remain Tenant's personal property. Tenant may remove any such trade fixtures and equipment at any time during the term of this Lease, but shall repair any damage to structural portions of the building caused by removal of such trade fixtures and equipment.

10.4 **Landscaping.** As a part of Tenant's development, it intends to landscape the Leased Premises and the areas within the public right-of-ways as depicted on **Exhibit A** attached hereto and incorporated herein by reference. Tenant shall maintain those landscaping improvements that are within the Leased Premises, while Landlord shall maintain the landscaping along 9th Street within the public right-of-way.

ARTICLE 11 INSURANCE

11.1 Required Coverages.

(a) Property Insurance. Tenant at all times shall maintain or cause to be maintained property insurance coverage on the Premises in such form and in such amounts as are acceptable to Landlord. Tenant's insurance shall cover the Premises, including Tenant's Alterations, personal property, or fixtures made to the Premises by Tenant.

(b) Landlord's Liability Insurance. Landlord at all times shall provide and keep in force, self insurance or a combination of self insurance and comprehensive general liability insurance to meet the minimum liability policy limits of five hundred thousand dollars (\$500,000.00) as specified in the Idaho Tort Claims Act, Title 6, Chapter 9 of the Idaho Code.

(c) Indemnification. Tenant agrees to indemnify Landlord and its respective officers, directors, officials, agents, employees and/or subdivisions (collectively the City) against all claims, demands, suits, damages of every kind, interest, attorney fees, and costs which arise out of or relate to injuries or death to persons or damage to property caused by or related to either Tenant's use, maintenance, or occupancy of the leased premises or the acts or omissions of its agents or employees. Such indemnification shall not include damage or loss occasioned by the sole negligence of Landlord's employees. Tenant shall give Landlord prompt notice of any claim or suit which in any way affects or might affect Landlord, and Landlord shall have the right to compromise and defend the same to the extent of its own interest. Tenant, waives its rights for all

GROUND AND BUILDING LEASE—CITY OF BOISE/9TH & RIVER, LLC - 9

claims, including subrogation claims, for recovery against Landlord, for any loss or damage to real and personal property or to its employees unless caused by Landlord, its officers, employees or agents.

(d) Insurance.

(i) Tenant shall maintain in force during the Term of this Lease commercial general liability, bodily injury and property damage insurance in comprehensive form including but not limited to blanket contractual liability coverage for liability assumed under this Lease and all contracts relative to this Lease, products, completed operations liability for the duration of the Lease, independent contractors coverage, broad form property damage with any excess liability in umbrella form, with such coverage and limits as reasonably may be required by Landlord from time to time, but in no event for less than the sum of Two Million Dollars (\$2,000,000) combined single limit. The insurance shall be issued by an insurer licensed to do business in the State of Idaho.

(ii) Tenant shall maintain in force during the Term business, automobile, liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of One Million Dollars (\$1,000,000) for bodily injury and property damage.

(iii) Tenant shall maintain in force during the Term workers compensation and employers liability coverage with limits consistent with the statutory requirements of the State of Idaho.

(iv) Concurrent with the execution of this Lease, Tenant shall provide proof of insurance coverage by providing a certificate of Tenant's insurance coverage, and if specifically requested by the Landlord: a copy of the declarations page of the insurance policy, and a copy of all endorsement(s) applicable to the insurance required herein. The certificate(s) of insurance, or endorsement(s) attached thereto, shall provide that

- (1) Landlord, and its agents, officers, servants, and employees are named as additional insureds; and
- (2) The policy shall be considered primary as regards any other insurance coverage Landlord may possess, including any self-insured retention or deductible Landlord may have, and any other insurance coverage Landlord may possess shall be considered excess insurance only; and
- (3) The limits of liability required therein are on an occurrence basis; and
- (4) The policy shall be endorsed with a severability of interest or cross-liability endorsement, providing that the coverage shall act for each insured and each additional insured, against whom a claim is or may be made in a manner as though a separate policy had been written for each insured

or additional insured; however, nothing contained herein shall act to increase the limits of liability of the insurance company.

(v) If the insurance coverage required herein is canceled, changed in coverage or reduced in limits, Tenant shall, within fifteen (15) days, but in no event later than the effective date of cancellation, change or reduction, provide to Landlord a certificate showing that insurance coverage has been reinstated or provided through another insurance company. Upon failure to provide such certificate, without further notice and at its option, Landlord may, in addition to all its other remedies procure insurance coverage at Tenant's expense whereupon Tenant promptly shall reimburse Landlord for such expense.

(vi) Landlord reserves the right to modify its insurance requirements to reflect commercially reasonable operational and market conditions.

(vii) The limits of Tenant's insurance policies shall not, be deemed in any manner, as a limitation to the Tenant's obligation to indemnify, protect, defend and hold harmless Landlord as specified in this Lease.

ARTICLE 12 DAMAGE OR DESTRUCTION

12.1 **Termination Rights.** If all or any substantial part of the Premises is rendered untenable by damage from fire or other casualty, Tenant may, at its election, terminate this Lease by sixty (60) days notice to Landlord. If Tenant does not elect to terminate this Lease, Tenant shall provide to Landlord, as soon as practicable after the casualty and in any event within sixty (60) days after the casualty, written notice setting forth the date by which, in Tenant's reasonable opinion, the Premises can be substantially repaired and restored (the "**Restoration Schedule**") to then-applicable laws and codes (a "**Restoration**"). If the Restoration Schedule provides that the Restoration will reasonably require more than one hundred twenty (120) days from the date of the casualty, then Tenant may elect to terminate this Lease as of the date of the casualty by written notice given to Landlord not later than thirty (30) days after receipt of the Restoration Schedule.

12.2 **Restoration.** If Tenant does not elect to terminate this Lease, or if the Restoration Schedule provides that Restoration will require one hundred twenty (120) days or less from the date of the casualty, or if Tenant does not exercise its right to terminate under Sections 12.1 or 12.4, Tenant shall restore the Premises using reasonable efforts to complete Restoration in a reasonable time. The time for Restoration shall be extended to the extent Tenant is delayed in Restoration because of factors or causes beyond Tenant's reasonable control.

12.3 **Abatement.** During any period of Restoration, the Rent and all other amounts payable under this Lease shall be proportionately reduced according to the extent of the loss of use of Premises by Tenant.

12.4 **Damage Late in Term.** If the casualty preventing Tenant from occupying the Premises occurs during the last three (3) years of the Term and the Restoration Schedule indicates that the Restoration will require more than one hundred twenty (120) days from the date of the casualty, then Tenant may elect to terminate this Lease as of the date of the casualty by written notice given to Landlord not later than thirty (30) days after receipt of the Restoration Schedule.

ARTICLE 13 EMINENT DOMAIN

13.1 **Entire Taking.** If the entire Leased Premises is taken by reason of condemnation or under eminent domain proceedings, Landlord or Tenant may terminate this Lease as of the date Tenant is deprived of possession pursuant to such taking. For purposes of this Lease, a taking under the power of eminent domain shall include conveyances or dedications made in settlement of or in lieu of condemnation proceedings.

13.2 **Partial Taking.** If under the power of eminent domain by one or more permanent takings by a governmental or quasi-governmental entity:

(a) a portion of the Building is taken to the extent that Tenant or any subtenant of Tenant shall not be able to conduct its business operations, as determined through the exercise of Tenant's reasonable business judgment; or

(b) a portion of the service areas, including loading areas and facilities, designed for use with the Building, is taken to the extent that Tenant or any subtenant of Tenant shall not be able to conduct its business operations, as determined through the exercise of Tenant's reasonable business judgment; or

(c) parking stalls in the Premises are taken to the extent that Tenant or any subtenant of Tenant shall not be able to conduct its business operations, as determined through the exercise of Tenant's reasonable business judgment; or

(d) direct vehicular ingress and egress to and from adjacent streets and roads is taken to the extent that Tenant or any subtenant of Tenant shall not be able to conduct its business operations, as determined through the exercise of Tenant's reasonable business judgment;

(“**Partial Taking**”) then, in any such event Tenant may terminate this Lease on sixty (60) days' notice given within thirty (30) days after Tenant or any subtenant of Tenant is deprived of possession and its business operations are materially and adversely impaired as provided above. If Tenant does not elect to terminate this Lease upon such Partial Taking, Tenant will repair the remainder of the Premises to the extent of the amount of the award funds, as soon as possible and to as close to its prior condition and design as is reasonably feasible. Tenant shall be entitled to the award in connection with any condemnation insofar as the same represents compensation for or damage to Tenant's fixtures, equipment and other property owned by Tenant, moving expenses, as well as the loss of leasehold estate (ie., the unexpired balance of the Term as of the

date of such taking). Landlord shall be entitled to the award insofar as the same represents compensation for or damage to the fee remainder.

13.3 **Rent Reduction.** In the event of a Partial Taking as provided in Section 13.2, and in response to which Tenant has elected not to terminate this Lease, all rents and additional charges payable by Tenant hereunder shall be reduced equitably to the extent that Tenant's or any subtenant of Tenant's business operations are materially and adversely impaired, as determined by the exercise of Tenant's reasonable business judgment, from and after the date Tenant is deprived of possession and said business operations are so impaired. In the event of a Partial Taking as provided herein in Section 13.2(a), and in response to which Tenant has elected not to terminate this Lease, all rents and additional charges payable by Tenant hereunder shall be reduced to not less than the proportion that the area of the Building so taken bears to the entire Building area.

13.4 **Defined Term.** For the purposes of this Article, the term "condemnation or under eminent domain proceedings" shall include conveyances and grants made in anticipation of or in lieu of such proceedings.

ARTICLE 14 DEFAULT AND REMEDIES

14.1 **Self Help.** If either party fails to perform an obligation imposed on it by this Lease within the applicable cure period provided in Section 14.2 or 14.5, as applicable, then the other party, without waiver of or prejudice to any other right or remedy it may have, shall have the right at any time thereafter to cure such default for the account of the defaulting party, and the defaulting party shall reimburse the other party for any amount paid and any expense or contractual liability so incurred, together with a service charge in the amount of ten percent (10%) of the amounts paid or incurred. The reimbursement shall be made within thirty (30) days after receipt of an invoice and reasonable supporting documentation.

14.2 **Default by Tenant.** Tenant fails to perform any material obligation under this Lease within thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from Landlord specifying in reasonable detail the nature of the default or failure, except that Tenant shall not be in default if the obligation cannot be fulfilled within thirty (30) days and Tenant is using diligent efforts to perform the obligation ("**Tenant Default**"). In the event of a Tenant Default involving an imminent threat to health or safety, Landlord may in its notice of breach reasonably reduce the period for cure to such shorter period as may be reasonable under the circumstances.

14.3 **Notice to Mortgagee.** Landlord shall provide concurrently to any mortgagee, provided the name and address of the mortgagee was previously provided to Landlord, a copy of any written notice of default that Landlord gives to Tenant. Landlord shall accept any cure of a default by Tenant made by a mortgagee if provided within thirty (30) days of receipt of such written notice of default to Mortgagee.

14.4 **Landlord's Remedies.** Upon the occurrence of a Tenant Default, Landlord, at any time thereafter without further notice or demand, may exercise any one or more of the following remedies concurrently or in succession:

- (a) Exercise its self-help remedy pursuant to Section 14.1;
- (b) Terminate Tenant's right to possession of the Premises by legal process, with or without terminating this Lease, and retake exclusive possession of the Premises;
- (c) From time to time relet in a bona fide arm's length transaction all or portions of the Premises, using reasonable efforts to mitigate Landlord's damages. In connection with any reletting, Landlord may relet for a period extending beyond the term of this Lease and may make alterations or improvements to the Premises. Upon a reletting of all or substantially all of the Premises, Landlord shall be entitled to recover all of its then prospective damages for the balance of the Lease Term measured by the net present value calculated using a discount rate of ten percent (10%) of the difference between amounts payable under this Lease and the anticipated net proceeds of reletting;
- (d) Recover all costs, expenses and reasonable attorneys' fees, including attorney's fees on appeal, incurred by Landlord in connection with enforcing this Lease, recovering possession, reletting the Premises or collecting amounts owed, including, without limitation, costs of reasonable and necessary alterations, commercially reasonable brokerage commissions, and other costs reasonably and necessarily incurred in connection with any reletting;
- (e) Pursue other remedies available at law or in equity.

14.5 **Landlord's Default.** Landlord ("**Landlord Default**") shall be in default under this Lease if it

- (a) Fails to pay any amount owed to Tenant when due and fails to make such payment within thirty (30) days after written notice from Tenant that the payment is past due; or
- (b) Fails to perform any other obligation under this Lease within thirty (30) days after receipt of written notice from Tenant of nonperformance, except that Landlord shall not be in default if the obligation cannot be fulfilled within thirty (30) days and Landlord is using diligent efforts to perform the obligation.

14.6 **Tenant's Remedies.** In the event that Landlord shall at any time be in default beyond the applicable cure period under Section 14.5, Tenant at any time thereafter without further notice or demand, may exercise any one or more of the following remedies concurrently or in succession:

- (a) Exercise its self-help remedy pursuant to Section 14.1;
- (b) Enforce Landlord's obligation by injunction or judicial decree of specific enforcement;

(c) Recover all costs, expenses and reasonable attorneys' fees, including attorney's fees on appeal, incurred by Tenant in connection with enforcing this Lease or collecting amounts owed;

(d) Pursue other remedies available at law or in equity.

ARTICLE 15 COVENANTS AND WARRANTIES

15.1 Assurances. Landlord covenants the following:

(a) Lawful Authority. Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease for the entire Term and has a good and marketable fee title in and to the Premises.

(b) No Other Agreements. Landlord has no knowledge of any lease or other agreement relating to the Premises or any adjoining property, the terms of which conflict with the provisions of this Lease.

(c) Peaceful Enjoyment. Subject to Landlord's remedies following an Event of Default, Tenant shall quietly and peaceably hold, possess and enjoy the Premises and the exclusive use of parking and other areas under and pursuant to the terms of the this Lease without hindrance or molestation from Landlord. Notwithstanding the foregoing sentence, Landlord shall have the right to the non-exclusive use of the Basement Area and the East Parking Area as set forth in Section 1.2 above, together with the right to use the drive aisles as they may exist from time to time to access Landlord's adjoining property to the south.

15.2 Compliance with Law

(a) Tenant's Responsibility. The Premises shall be constructed pursuant to Tenant's requirements and subject to all applicable laws and regulations. Tenant is solely responsible for causing the Premises to comply with any law or regulation not in effect at the date the improvements were designed or applicable because of a change in Tenant's change in business operation or use in the future. Notwithstanding anything contrary to the foregoing, so long as Landlord is in the Basement Area or using the East Parking Area, Landlord shall be responsible to comply with any applicable laws or regulations that may arise from the use of said Areas.

(b) Tenant Expense. Tenant, at Tenant's expense, shall comply with all laws and shall procure all permits, certificates, licenses and other authorizations required by applicable law relating to Tenant's business or any subtenant of Tenant's business. Tenant shall defend, indemnify and hold harmless Landlord and Landlord's present and future officers, directors, employees, partners and agents from and against all claims, demands, liabilities, fines, penalties, losses, costs and expenses, including but not limited to costs of compliance, remedial costs, and reasonable attorneys' fees, including reasonable attorneys fees on appeal (collectively, "Claims") arising out of or relating to any failure of Tenant to comply with applicable laws.

15.3 Environmental Matters

(a) Presence of Hazardous Substances. To Landlord's knowledge, except as may be provided in the Level I or any other environmental assessment delivered to Tenant by Landlord prior to the date of this Lease, no "Hazardous Substances" (as defined below) have been generated, disposed of, released or found in or under the Premises, no storage tanks are or have been located in the Premises, either above or below ground, and the Premises has not been used as a landfill or as a dump for garbage or refuse. Landlord represents that Landlord and employees of Landlord, including library staff, have occupied the Building since acquisition by Landlord. Without limiting the covenants, warranties and indemnifications set forth in this Section 15.3, Tenant, at Tenant's expense, shall pay for any required clean up, removal or remediation of asbestos containing material and lead based paint existing within or on the Building during the Term of this Lease. In addition, if any other Hazardous Substances are found in, on or under the Premises, including under the Building during the Term of this Lease that require clean up, removal or remediation thereof (the "**Clean up**"), Tenant shall pay the first One Hundred Thousand Dollars (\$100,000.00) towards any such Clean up during the initial redevelopment of the Premises as contemplated hereunder, and Tenant shall receive a credit in the form of prepaid Rent in the amount of such out-of-pocket funds incurred to third-parties in performing any such Clean up, up to \$100,000.00. Landlord shall be responsible for the cost of any Clean up in excess of \$100,000.00.

(b) Compliance by Tenant. Without limiting the provisions of Section 15.2, Tenant shall comply with all laws relating to environmental matters, and shall defend, indemnify and hold harmless Landlord from and against all Claims, arising from or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substances from, on or at the Premises, any adjoining land, or any other land affecting the Premises or affected by Hazardous Substances on the Premises as a result of an act or omission on the part of Tenant or Tenant's employees, agents, contractors, or subtenants during the Term of this Lease. Tenant's indemnification obligations shall survive the expiration or termination of this Lease. For the purposes of this Lease, "Hazardous Substances" means any substance, whether solid, liquid or gaseous in nature: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or (ii) which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), The Clean Air Act (42 U.S.C. section 7401 et seq.), The Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Idaho or any political subdivision thereof; or

(iv) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs) asbestos or urea formaldehyde foam insulation or radon gas.

(c) Indemnification by Landlord. Landlord shall comply with all laws relating to environmental matters, and shall defend, indemnify and hold harmless Tenant from and against all Claims, arising from or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substances from, on or at the Premises, any adjoining land, or any other land affecting the Premises or affected by Hazardous Substances on the Premises not as a result of an act or omission on the part of Tenant or Tenant's employees, agents, contractors, or subtenants during the Term of this Lease. Landlord's indemnification obligations shall survive the expiration or termination of this Lease.

ARTICLE 16 MORTGAGE AND ESTOPPEL CERTIFICATES

16.1 **Mortgage.** Tenant or any assignee or subtenant of Tenant may place a mortgage or deed of trust on and any improvements constructed on Tenant's interest in the Leased Premises; provided, however, that any such mortgage or deed of trust shall not exceed the remaining term of the Lease and any renewal thereof. Such mortgage or deed of trust shall not encumber Landlord's fee title to the Leased Premises. In the event Tenant is in default under this Ground Lease as defined in Article 14 (Default and Remedies), Landlord agrees to give written notice of such default to the mortgagee as required by Section 14.3. Landlord shall not terminate this Lease, re-enter the Premises, or exercise any other remedy available at law which would affect Tenant's rights under this Lease, provided said mortgagee has cured said default within the time allowed Tenant for same hereunder or within thirty (30) days after receipt of said notice of default by said mortgagee, whichever is greater.

16.2 **Estoppel Certificates.** Each party shall from time to time upon not less than ten (10) days' prior written notice from the other, execute, acknowledge and deliver a statement in writing (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 dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to the knowledge of the certifying party, any uncured defaults on the part of the other party hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other factual matters relating to this Lease within the knowledge of the certifying party as the other party may reasonably request. No estoppel certificate shall in any manner modify this Lease or impose additional covenants on the certifying party. Any such statement may be relied upon by any prospective purchaser or lender. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (A) that this Lease is in full force and effect, without modification except as may be requested by Landlord, (B) that there are no uncured defaults in Landlord's performance, and (C) that not more than an amount equal to one (1) month's Rent has been paid in advance.

ARTICLE 17
EXCHANGE OF PROPERTIES

17.1 **Property Exchange.** Upon mutual agreement, Landlord and Tenant agree to work in good faith to effectuate an exchange of Landlord's fee title in and to the Premises with fee title owned by Tenant in other real property of interest to Landlord, in accordance with Idaho Code § 50-1401 *et seq.* ("**Property Exchange**"). Landlord agrees to work with Tenant for a Property Exchange prior to initiating steps to market and sell the property to a third-party party. At or prior to the Property Exchange, Landlord, at Landlord's expense, shall obtain all appropriate governmental and regulatory approvals to permit Landlord to convey good and marketable title in and to the Premises as a separate legal, building parcel. In addition, Landlord and Tenant shall negotiate in good faith a cross access easement for ingress and egress over and across the drive aisles of the Premises and Landlord's adjacent property to the south.

ARTICLE 18
NONDISCRIMINATION

18.1 **Nondiscrimination.** Tenant covenants that there shall be no discrimination against or segregation of any person or group of persons by Tenant on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises, nor shall Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenant, subtenants or vendees in the Premises.

ARTICLE 19
GENERAL PROVISIONS

19.1 **Notices.** Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and mailed by certified mail (return receipt requested) or sent by air courier, expedited mail service or national overnight delivery service providing receipted delivery, addressed to the other party as follows:

- (a) If to Landlord: Boise City
150 North Capitol Boulevard
Boise, ID 83702
Attn: Economic Development Division

- (b) If to Tenant: 9th & River, LLC
2700 Airport Way
Boise, ID 83705
Attn: Michael N. Fery

Notice shall be given at such other address as may be specified from time to time in writing by either party. All notices shall be deemed to have been given on the date marked on the return receipt or delivery confirmation unless delivery is refused or cannot be made, in which case the

date of postmark or attempted delivery by the carrier, as applicable, shall be deemed the date notice is given.

19.2 **Recording.** This Lease shall not be recorded, but a Memorandum of this Lease shall be recorded in the form attached hereto as Exhibit B.

19.3 **Surrender and Holding Over.** Upon expiration of the Term or termination of this Lease, Tenant shall surrender possession of the Premises to Landlord in good condition and repair, reasonable wear and tear, damage by casualty or condemnation, incidental damage resulting from removal of Tenant's Property, and performance of Landlord's repair and maintenance obligations excepted. In the event of a holdover, Tenant shall occupy the Premises as a tenant from month-to-month subject to the terms and conditions of this Lease.

19.4 **Non-Waiver.** No waiver by Landlord or Tenant of any provision of this Lease or any breach by the other party shall be a waiver of any other provision of this Lease or of any subsequent breach by the other party of the same or any other provision. Any consent or approval given under this Lease requiring consent or approval shall not be deemed to render unnecessary the obtaining of consent to or approval for any subsequent act whether or not similar to the act so consented to or approved. No act shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept surrender shall be valid, except a formal acceptance of surrender in writing and signed by Landlord. No acquiescence by either party to any default by the other party shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.

19.5 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Nothing in this section shall authorize an assignment or subletting except as expressly authorized in this Lease.

19.6 **Time is of the Essence.** The time of performance of all of the covenants, conditions, and agreements of this Lease is of the essence of this Lease.

19.7 **Partial Invalidity.** If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

19.8 **Broker.** Landlord and Tenant represent that neither has worked with or consulted any broker, agent or finder to act in its behalf in connection with this transaction. Each party agrees to indemnify, defend and hold harmless the other from and against any and all Claims arising from any claim for brokerage commissions, finder's commissions or other such compensation by any broker or other person based upon a claimed obligation or liability (whether valid or not) of the indemnifying party

19.9 **Interpretation.** This Lease has been fully negotiated by legal counsel for the parties and no provision of this Lease shall be construed strictly against either party. The

exhibits are incorporated into this Lease by this reference. The captions of Articles, Sections, and subsections are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires.

19.10 **Entire Agreement.** This Lease, including but not limited to the attached exhibits, constitute the entire and complete agreement of Landlord and Tenant regarding the subject matter hereof. No provision of this Lease may be waived or modified except in writing signed by the party against whom enforcement of the waiver or modification is sought.

19.11 **Governing Law.** This Lease shall be governed by and construed under the laws of the State of Idaho.

19.12 **Attorney's Fees.** In the event either party is required to initiate or defend with litigation with respect to any of the terms of this Lease, the prevailing party in any such litigation shall be entitled to reasonable attorney's fees and costs, including fees and costs on any appeal.

19.13 **Counterpart.** This Lease may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF this Lease has been executed under seal as of the day and year first above written.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEM INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

LANDLORD:

BOISE CITY,
an Idaho municipal corporation

TENANT:

9TH & RIVER, LLC,
an Idaho limited liability company

By: _____
David H. Bieter
Mayor

By: _____
Michael N. Fery, Manager

ATTEST:

Craig Croner
Interim City Clerk

SCHEDULE I

DESCRIPTION OF PREMISES

LAND DESCRIPTION FOR "OLD SHAVER'S BUILDING" LEASE

A parcel of land located in part of Lots 3 thru 16, and vacated alley, lying within Block 5 of Davis' Addition to Boise City, according to the plat thereof, filed in Book 1 of Plats at Page 17, records of Ada County, being part of the Southwest $\frac{1}{4}$ of Section 10, Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the centerline intersection of Battery Street and Eighth Street; thence along the centerline of said Eighth Street South $34^{\circ}42'00''$ West 95.00 feet; thence leaving said centerline North $55^{\circ}18'00''$ West 40.00 feet to the northeasterly corner of Lot 3, the **True Point of Beginning**;

Thence along the northerly boundary of said Lot 3 North $55^{\circ}18'00''$ West 158.00 feet to the southeasterly corner of Lot 15;

Thence along the easterly boundary of Lots 15 and 16 North $34^{\circ}42'00''$ East 49.31 feet to the southerly right of way of Battery Street;

Thence along said right of way 51.12 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing North $83^{\circ}48'07''$ West 51.00 feet;

Thence continuing along said right of way 38.58 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing South $84^{\circ}28'13''$ West 38.53 feet;

Thence continuing along said right of way 13.75 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing South $77^{\circ}37'42''$ West 13.75 feet;

Thence continuing along said right of way 16.10 feet along a curve left, said curve having a radius of 20.00 feet and a chord bearing South $52^{\circ}45'49''$ West 15.67 feet to the easterly right of way of Ninth Street;

Thence continuing along said easterly right of way 8.68 feet along a curve left, said curve having a radius of 20.00 feet and a chord bearing South $15^{\circ}53'48''$ West 8.61 feet;

Thence continuing along said right of way 54.77 feet along a curve left, said curve having a radius of 532.96 feet and a chord bearing South $5^{\circ}08'11''$ West 54.74 feet;

Thence continuing along said right of way South $2^{\circ}11'32''$ West 130.86 feet;

Thence leaving said right of way South $55^{\circ}18'00''$ East 146.35 feet to the westerly right of way of Eighth Street;

Thence along said westerly right of way North $34^{\circ}42'00''$ East 191.00 feet to the **True Point of Beginning**.

Parcel contains 0.94 Acres and is subject to easements of record or in use.

EXHIBIT A

SITE PLAN

[on following page]

EXHIBIT B

(space above line for Clerk's use only)

This instrument *prepared by*
and after recording return to:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into this _____ day of _____, 20____, by and between **9TH & RIVER, LLC**, an Idaho limited liability company, 2700 Airport Way, Boise, Idaho 83705, ("**Tenant**") and **BOISE CITY**, an Idaho municipal corporation with its home office located at 150 N. Capitol Boulevard, Boise, Idaho 83702 ("**Landlord**").

WITNESSETH:

1. **Premises.** Landlord leases to Tenant and Tenant leases from Landlord, pursuant to a Lease dated as of _____, 2011 (the "**Lease**") certain real property and improvements, including the approximate 30,000 square foot "**Old Shaver Warehouse**" located at 705 South 8th Street, Boise, Idaho 83702, as depicted on **Exhibit A** attached to and made a part hereof, and as more particularly described in **Schedule I** attached to and made a part hereof (the "**Premises**").

2. **Term.** The Initial Term of the Lease shall be for a period of a partial Lease Year and forty-five (45) full Lease Years beginning on the Commencement Date, as those terms are defined in the Lease. The Term of the Lease may be extended by three (3) successive periods of five (5) Lease Years each, in accordance with the applicable provisions of the Lease.

3. **Property Exchange.** Upon mutual agreement, Landlord and Tenant agree to work in good faith to effectuate an exchange of Landlord's fee title in and to the Premises with fee title owned by Tenant in other real property of interest to Landlord, in accordance with Idaho Code § 50-1401 *et seq.* ("**Property Exchange**"). Landlord agrees to work with Tenant for a Property Exchange prior to initiating steps to market and sale the property to a third-party party. At or prior to the Property Exchange, Landlord, at Landlord's expense, shall obtain all appropriate governmental and regulatory approvals to permit Landlord to convey good and marketable title in and to the Premises as a separate legal, building parcel. In addition, Landlord and Tenant shall negotiate in good faith a cross access easement for ingress and egress over and across the drive aisles of the Premises and Landlord's adjacent property to the south.

4. **Incorporation of Lease.** This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way to modify or otherwise affect any of

STATE OF IDAHO)
) ss:
County of Ada)

On _____, 2011, before me, the undersigned Notary Public, personally appeared Michael N. Fery, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the foregoing instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(S E A L)

Notary Public for Idaho
My Commission Expires: _____

**SCHEDULE I
to MEMORANDUM**

DESCRIPTION OF PREMISES

LAND DESCRIPTION
FOR
"OLD SHAVER'S BUILDING" LEASE

A parcel of land located in part of Lots 3 thru 16, and vacated alley, lying within Block 5 of Davis' Addition to Boise City, according to the plat thereof, filed in Book 1 of Plats at Page 17, records of Ada County, being part of the Southwest ¼ of Section 10, Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the centerline intersection of Battery Street and Eighth Street; thence along the centerline of said Eighth Street South 34°42'00" West 95.00 feet; thence leaving said centerline North 55°18'00" West 40.00 feet to the northeasterly corner of Lot 3, the **True Point of Beginning**;

Thence along the northerly boundary of said Lot 3 North 55°18'00" West 158.00 feet to the southeasterly corner of Lot 15;

Thence along the easterly boundary of Lots 15 and 16 North 34°42'00" East 49.31 feet to the southerly right of way of Battery Street;

Thence along said right of way 51.12 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing North 83°48'07" West 51.00 feet;

Thence continuing along said right of way 38.58 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing South 84°28'13" West 38.53 feet;

Thence continuing along said right of way 13.75 feet along a curve left, said curve having a radius of 219.12 feet and a chord bearing South 77°37'42" West 13.75 feet;

Thence continuing along said right of way 16.10 feet along a curve left, said curve having a radius of 20.00 feet and a chord bearing South 52°45'49" West 15.67 feet to the easterly right of way of Ninth Street;

Thence continuing along said easterly right of way 8.68 feet along a curve left, said curve having a radius of 20.00 feet and a chord bearing South 15°53'48" West 8.61 feet;

Thence continuing along said right of way 54.77 feet along a curve left, said curve having a radius of 532.96 feet and a chord bearing South 5°08'11" West 54.74 feet;

Thence continuing along said right of way South 2°11'32" West 130.86 feet;

Thence leaving said right of way South 55°18'00" East 146.35 feet to the westerly right of way of Eighth Street;

Thence along said westerly right of way North 34°42'00" East 191.00 feet to the **True Point of Beginning**.

Parcel contains 0.94 Acres and is subject to easements of record or in use.

**EXHIBIT A
to MEMORANDUM**

SITE PLAN

[to be attached prior to execution]