

# Wallace Stegner Academy Board of Directors Meeting



**Date:** Wednesday, March 19, 2025

**Time:** 5:30 PM

**Teleconference:** <https://us02web.zoom.us/j/82261523963>

*Wallace Stegner Academy will foster a community of active learners through academic rigor and citizenship by providing an opportunity for students to achieve academic excellence.*

## AGENDA

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### CALL TO ORDER

### CONSENT ITEMS

- January 28, 2025, Board Meeting Minutes

### PUBLIC COMMENT (Comments will be limited to three minutes.)

- Reading Curriculum (1<sup>st</sup> Public Comment Period)

### REPORTS

- Directors' Report – 2023-2024 School Land Trust Final Report
- Finance Report

### VOTING AND DISCUSSION ITEMS

- Award RFP for Landscaping and Snow Removal Services – Kearns Campus
- Award IFB for Sunset Campus and Kearns High School Furniture
- Award Request for Proposals for E-rate
- Approve CACFP (Child and Adult Care Food Program) for Kearns Campus
- Walker Center Office Space Lease
- Bill Kurtz Consulting Invoice
- Utah YAMAS Controls Invoice (Sunset)
- Amended Time and Effort Documentation Policy and Procedures
- Amended Travel Policy
- Rescind Library Materials Policy

In compliance with the Americans with Disabilities Act, persons needing accommodations for this meeting should call 801-444-9378 to make appropriate arrangements. One or more board members may participate electronically or telephonically pursuant to UCA 52-4-207.

**CALENDARING**

- Next Board Meeting is Scheduled for May 15, 2025 @ 5:30 PM.
- Clinton City Easter Hop is April 19, 2025 @ 10:00 AM.

**CLOSED SESSION**

- Closed session to discuss the character, professional competence, or physical or mental health of an individual pursuant to Utah Code 52-4-205(1)(a).

**VOTING AND DISCUSSION ITEMS**

- Compensation Committee

**ADJOURN**

In compliance with the Americans with Disabilities Act, persons needing accommodations for this meeting should call 801-444-9378 to make appropriate arrangements. One or more board members may participate electronically or telephonically pursuant to UCA 52-4-207.

# Wallace Stegner Academy Board of Directors Meeting



**Date:** Tuesday, January 28, 2025

**In Attendance:** Sarah Vaughan, Tony Furano, Jeremy Schow, Reed Farnsworth, Frank Magana

**Others in Attendance:** Adam Gerlach, Anthony Sudweeks, Brandon Fairbanks, Stacey Phillips, Hannah Jones

*Wallace Stegner Academy will foster a community of active learners through academic rigor and citizenship by providing an opportunity for students to achieve academic excellence.*

## MINUTES

**CALL TO ORDER** Sarah Vaughan called the meeting to order at 9:32 AM.

### CONSENT ITEMS

- January 14, 2025, Board Meeting Minutes

*Jeremy Schow made a motion to approve the January 14, 2025, Board Meeting Minutes. Tony Furano seconded. The motion passed unanimously. The votes were as follows: Sarah Vaughan, Aye; Jeremy Schow, Aye; Tony Furano, Aye; Reed Farnsworth, Aye; Frank Magana, Aye.*

**PUBLIC COMMENT** There were no public comments.

### VOTING AND DISCUSSION ITEMS

- Approve Satellite Waiver Request

There were no questions or concerns from the board about the Satellite Waiver Request.

*Tony Furano made a motion to approve the Satellite Waiver Request. Jeremy Schow seconded. The motion passed unanimously. The votes were as follows: Sarah Vaughan, Aye; Jeremy Schow, Aye; Tony Furano, Aye; Reed Farnsworth, Aye; Frank Magana, Aye.*

## **CALENDARING**

The next board meeting is scheduled for March 20, 2025, at 5:30 PM.

## **ADJOURN**

*At 9:35 AM Frank Magana made a motion to adjourn. Tony Furano seconded. The motion passed unanimously. The votes were as follows: Sarah Vaughan, Aye; Jeremy Schow, Aye; Tony Furano, Aye; Reed Farnsworth, Aye; Frank Magana, Aye.*

DRAFT

**Wallace Stegner Academy**  
**Statement of Financial Position**  
**Created on March 11, 2025**  
**For Prior Month**

	07/01/2024 Through 02/28/2025 <u>Actual</u>	Year Ending 06/30/2024 <u>Actual</u>
<b>Assets &amp; Other Debits</b>		
Current Assets		
Operating Cash	6,077,728	3,630,561
Accounts Receivables	4,696	567,983
Other Current Assets	0	109,899
Total Current Assets	<u>6,082,424</u>	<u>4,308,443</u>
Restricted Cash	<u>4,937,529</u>	<u>4,039,189</u>
Net Assets		
Fixed Assets	30,957,651	30,957,650
Depreciation	(2,095,088)	(2,095,088)
Total Net Assets	<u>28,862,563</u>	<u>28,862,562</u>
<b>Total Assets &amp; Other Debits</b>	<b><u>39,882,516</u></b>	<b><u>37,210,194</u></b>
<b>Liabilities &amp; Fund Equity</b>		
Current Liabilities	(22,198)	1,075,584
Long-Term Liabilities	<u>31,284,271</u>	<u>31,284,272</u>
Fund Balance	4,850,339	3,081,995
Net Income	<u>3,770,104</u>	<u>1,768,343</u>
<b>Total Liabilities &amp; Fund Equity</b>	<b><u>39,882,516</u></b>	<b><u>37,210,194</u></b>

# Wallace Stegner Academy

## Statement of Activities

Created on March 11, 2025

For Prior Month

	Annual June 30, 2025 Budget	Year-to-Date February 28, 2025 Actual	% of Budget
<b>Net Income</b>			
Income			
Revenue From Local Sources	2,840,000	2,637,910	92.9 %
Revenue From State Sources	22,054,099	15,143,007	68.7 %
Revenue From Federal Sources	2,098,349	882,999	42.1 %
Total Income	26,992,448	18,663,916	69.1 %
Expenses			
Instruction/Salaries	13,201,399	7,501,621	56.8 %
Employee Benefits	1,777,863	1,066,756	60.0 %
Purchased Prof & Tech Serv	1,428,186	992,419	69.5 %
Purchased Property Services	3,015,080	2,028,660	67.3 %
Other Purchased Services	2,336,050	1,160,695	49.7 %
Supplies & Materials	2,361,000	1,187,777	50.3 %
Property	300,000	93,914	31.3 %
Debt Services & Miscellaneous	2,350,578	930,952	39.6 %
Total Expenses	26,770,156	14,962,794	55.9 %
<b>Total Net Income</b>	<b>222,292</b>	<b>3,701,122</b>	<b>1,665.0 %</b>

**Wallace Stegner Academy  
Evaluation Committee Statement  
RFP for Landscaping and Snow Removal Services**

**Background**

Wallace Stegner Academy issued an RFP for Landscaping and Snow Removal Services on January 21, 2025. The School posted the RFP on its website and sent the RFP to multiple vendors. The deadline to submit a proposal in response to the RFP was February 4, 2025. Three companies submitted proposals to the School – Landscape Solutions, Prime Design, and Above All.

**Evaluation and Scoring of Proposals**

The Evaluation Committee for this RFP was Adam Gerlach, Kirk Blake, and Gabe Clark. They reviewed and scored all proposals on March 17, 2025.

There were three categories under which each proposal was evaluated and scored: Offeror's Experience and Qualifications (40 points possible); Past Performance for the School and/or References (20 points possible); and Cost (40 points possible).

The Evaluation Committee awarded Landscape Solutions' proposal the highest overall score, 96/100, Prime Design's proposal scored 76/100, and Above All's proposal scored 80/100.

Based on the Evaluation Committee's review of the proposals, Landscape Solutions (a) is highly qualified and has extensive experience in providing these services to the School; and (b) can provide such services at a competitive cost.

**Award Recommendation**

The Evaluation Committee believes that Landscape Solutions' proposal provides the best value to the School in connection with these services. The Evaluation Committee therefore recommends to the School's Board of Directors that it award the School's landscaping and snow removal contract to Landscape Solutions, with the contract having a term of up to five years, and authorize the executive director to negotiate and execute an agreement.

# Wallace Stegner Academy Evaluation Committee Statement E-Rate RFP Sunset Campus

## **Background Information**

Wallace Stegner Academy (the “School”) published an E-Rate RFP in early February 2025 through March 4, 2025. Only one company properly submitted a proposal in response to the RFP: Eminent Technical Solutions (“ETS”).

One other company, Cytranet, submitted two proposals in response to the RFP, but it did not do so in accordance with the RFP requirements; as a result, and in accordance with the RFP, Cytranet’s proposals were disqualified.

## **Evaluation**

The Evaluation Committee for this RFP was Adam Gerlach, Gabe Clark, and Platte Nielson. They met and reviewed and scored all proposals after the proposal deadline. No member of the Evaluation Committee had a conflict of interest with ETS. The Evaluation Committee evaluated the proposals in accordance with the Bid Evaluation Instructions provided to the School.

The Evaluation Committee awarded ETS’s proposal the highest overall score, 100/100. A breakdown of the total scores is provided on the E-Rate Bid Evaluation Grid, which is provided with this Statement.

Based on the Evaluation Committee’s review of the proposals, it determined that (i) the proposal from ETS meets the requirements of the RFP; (ii) ETS’s proposal pricing is reasonable; (iii) ETS has the requisite knowledge, experience, and skill to complete this project; and (iv) acceptance of ETS’s proposal would be in the best interest of the School.

The cost of ETS’s proposal is \$92,083.81, all of which are E-Rate eligible costs.

## **Award Recommendation**

The Evaluation Committee recommends to the School’s Board of Directors that it award the E-Rate contract to ETS. The Evaluation Committee believes that ETS’s proposal provides the best value to the School in connection with this project.



## E-RATE BID EVALUATION GRID

Organization Name:	Wallace Stegner Academy	E-Rate Yr:	2025-26
Prepared by:	Adam Gerlach	Title:	Co-Director
Signature:	<i>Adam Gerlach</i>	Date:	3/12/25

Description of Service:	Category 2 Network Equipment								
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Service Provider	E-Rate Eligible Costs	Other Costs - Not Eligible	Price-Erate	Price-Other Costs	Prior Experience	Personnel Qualifications	Responsiveness	Technical Merit	Total Points
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<i>Points Possible for Each Bid</i>			30	5	20	10	15	20	100
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1	Eminent Technical Solutions	\$ 92,083.81	30.000	5.000	20	10	15	20	100.000
2									0.000
3									0.000
4									0.000
5									0.000
6									0.000
7									0.000
8									0.000
9									0.000
10									0.000

### EVALUATION RATIONALE (Attach additional pages as necessary)

See Evaluation Committee Statement

## EVALUATION CRITERIA - SCORING BY BIDDER

E-Rate Bid Item (Product or Service):

Name of Bidder (Service Provider):

Name of School or Library (Applicant)

Prepared by:

Criteria	Possible Points	Actual Score
<b>Price-Erate Items</b>	<b>30</b>	<b>30</b>
<b>Price-Other Costs</b>	<b>5</b>	<b>5</b>

### Prior Experience:

Similar Projects & References	10	10
Experience with this applicant	10	10
<b>Total Prior Experience</b>	<b>20</b>	<b>20</b>

### Personnel Qualifications:

Qualifications of Management	5	5
Qualifications of Staff	5	5
<b>Total Personnel Qualifications</b>	<b>10</b>	<b>10</b>

### Responsiveness

Responsiveness of the bidder	5	5
Proximity of sales and service offices	5	5
Local representative available	5	5
<b>Total Responsiveness</b>	<b>15</b>	<b>15</b>

### Technical Merit

Meets the needs of the applicant	10	10
Compliance with bid requirements	10	10
<b>Total Technical Merit</b>	<b>20</b>	<b>20</b>

<b>Possible</b>	<b>Score</b>
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<b>TOTAL POINTS</b>	<i>100</i>	<b>100</b>
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**Category 2 Network Equipment - Sunset Campus****Eminent Technical Solutions**

Wallace Stegner Academy

Adam Gerlach

**Bid Evaluation Notes**

Total cost is \$92,083.81, all of which is E-Rate eligible

Lowest overall cost

Listed three cabling/network projects, all three of which were for charter schools in Utah (2020, 2021, and 2023) plus experience with

Yes (9 years)

20 years

Attended on-site walk through

Located in Layton

Yes

Yes

Yes

Use this sheet for each bidder for each bid item evaluated. Make copies as needed

Provide short description of bid item you are evaluating

Name of Service Provider

Name of School or Library

Name of person who completed this schedule

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### Scoring Guidelines

Price-Price of E-rate eligible products and services. <i>If Excel spreadsheet is used, formula will calculate the proportion of costs for each bid compared to highest bid.</i> Otherwise use the following general guidelines: 20-30 points = lowest overall costs; 10-19 points = middle range overall cost; 0-9 points highest overall cost
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Price-Other Costs: Price of products and services NOT eligible for E-rate discount. Use the following general guideline 5-4 points = lowest overall costs; 3-2 points = middle range overall cost; 1-0 points highest overall cost
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Experience with similar projects and references
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Experience with this applicant
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Qualifications of Management
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Qualifications of Staff
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Responsiveness of the bidder - replied promptly to emails, attended on-site walk through if applicable
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Proximity of sales and service offices
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Local representative available or dedicated representative is comparably responsive
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Technical merit of the proposed solution to meet needs of the applicant-service level agreement if applicable, quality of the solution to meet the needs of the applicant.
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Compliance with listed requirements of the project scope and bidding requirements, whether or not the proposal includes all information requested; timelines met
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**EVALUATION CRITERIA - SCORING BY BIDDER**

E-Rate Bid Item (Product or Service): \_\_\_\_\_

Name of Bidder (Service Provider): \_\_\_\_\_

Name of School or Library (Applicant) \_\_\_\_\_

Prepared by: \_\_\_\_\_

Criteria	Possible Points	Actual Score	Bid Evaluation Notes
Price-Erate Items	30		
Price-Other Costs	5		

**Prior Experience:**

Similar Projects & References	10		
Experience with this applicant	10		
Total Prior Experience	20	0	

**Personnel Qualifications:**

Qualifications of Management	5		
Qualifications of Staff	5		
Total Personnel Qualifications	10	0	


**Responsiveness**

Responsiveness of the bidder	5		
Proximity of sales and service offices	5		
Local representative available	5		
Total Responsiveness	15	0	

**Technical Merit**

Meets the needs of the applicant	10		
Compliance with bid requirements	10		
Total Technical Merit	20	0	
<b>TOTAL POINTS</b>	Possible 100	Score 0	

## E-RATE BID EVALUATION GRID (EXCEL VERSION)

Organization Name:	THE BEST SCHOOL DISTRICT	E-Rate Yr:	2025-26
Prepared by:	SUSAN SMITH	Title:	TECHNOLOGY DIRECTOR
Signature:		Date:	12/1/24

Description of Service:	Network Equipment - HIGH SCHOOL								
Service Provider	E-Rate Eligible Costs	Other Costs - Not Eligible	Price-Erate	Price-Other Costs*	Prior Experience	Personnel Qualifications	Responsiveness	Technical Merit	Total Points
<b>Points Possible for Each Bid</b>			<b>30.000</b>	<b>5.000</b>	<b>20</b>	<b>10</b>	<b>15</b>	<b>20</b>	<b>100</b>
1 123 BITS AND BYTES	4,300.00	-	30.000	Disqualified	Disqualified	Disqualified	Disqualified	Disqualified	30.000
2 ABC COMPANY	18,000.00	-	7.167	2.00	15	10	5	10	49.167
3 GREAT GADGETS & CO.	24,000.00	-	5.375	1.50	15	10	5	15	51.875
4 BestGuy Electronics & Technology	22,000.00	-	5.864	1.00	20	10	15	20	71.864
5									0.000
6									0.000
7									0.000
8									0.000
9									0.000
10									0.000

### EVALUATION RATIONALE:

Even though lowest cost, ABC company has not completed any similar projects for schools of the same size as ours. Also, they do not have certified personnel, were not responsive to our emails requesting additional information, and the solution will not meet our needs. 123 Bits & Bytes submitted an incomplete bid and did not attend mandatory walk-through so they were disqualified. Great Gadgets was highest price.

\*NOTE: Price-other costs does not have a formula on the bid evaluation worksheet since a zero cost cannot be accurately calculated.

## CONTRACT FOR E-RATE PRODUCTS AND/OR SERVICES

APPLICANT		PROVIDER	
Organization	Wallace Stegner Academy	Company Name	Eminent Technical Solutions, LLC
Contact Name	Adam Gerlach	Contact Name	Scott Barrett
Contact Email	agerlach@wsacharter.org	Contact Email	Scott.barrett@etscorp.com
Address	980 S Bending River Road,	Address	1103 N 1600 W
City, ST, Zip	Salt Lake City, UT 84104	City, ST, Zip	Layton, UT 84041
USAC BEN	17026705	USAC SPIN	143035132
FCC Form 470 #	250019791	Bid #	EM-3303
E-Rate RFP #	WALL 2025-C2 Sunset K8	Bid Amount \$	92,083.81
Number of annual renewals allowed for this agreement:		Initial one year with up to four renewals.	

### SERVICES

The Provider agrees to provide to the Applicant the products and/or services as specified in the Provider's Bid and incorporated with the Applicant's E-Rate RFP and FCC Form 470 as listed above.

### RECITALS

Pursuant to the Schools and Libraries Universal Services Support Mechanism (E-Rate) contained in the Universal Service Provisions of the Telecommunications Act of 1996 [47 U.S.C. § 254. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act")], Applicant advertised for certain products and services. Provider submitted a bid to provide same. In accordance with the requirements of the regulations implementing the Act, Applicant considered the bid and determined that it should be accepted. The parties are now ready to enter into a contract for the furnishing of such products and/or services and they set their agreement in writing as follows:

### AGREEMENT

For and in consideration of the payment of the sums of money specified herein, together with other good and valuable consideration, Provider does hereby agree to furnish, and Applicant does hereby agree to accept and pay the discounted price for the products and/or services bid.

The term of this contract shall commence (a) on or after July 1, 2025 and shall terminate on June 30, 2026 for recurring services or (b) on or after April 1, 2025 and shall terminate on September 30, 2026 for non-recurring services. The contract expiration for non-recurring services shall be automatically extended to align with SLD authorized extensions due to late funding and changes in products and/or services approved on or after March 8th. This agreement may be extended annually and voluntarily by mutual written ratification up to the number of renewals listed above. The Applicant must issue a written notice to proceed to the Provider prior to commencement of service, delivery or installation. The Applicant is under no obligation to pay if the Provider commences work without the Applicant's written notice to proceed.

If the Schools and Libraries Division ("SLD"), Administrator of the Universal Services Support Mechanism, or its successor, should fail to approve all of or any part of the products and services covered by this contract, the Applicant shall have the right, at its option, to cancel this contract, as to that part of the products and services disallowed for discount pricing. If, after approval of discount funding by SLD or its successor, Applicant's governing board should fail to approve all of or any part of the products and services covered by this contract, the Applicant shall have the right, at its option, to cancel this contract as to that part of the products and services disallowed by the governing board. The total costs of the products and services shall not exceed the Bid Amount. In no circumstances shall Applicant be liable for an amount exceeding the Applicant's non-discount share unless Applicant's governing board specifically waives this provision in writing.

In no circumstances shall Applicant be liable for any amount that would have been discounted or reimbursable but for actions of the Provider.

**For Applicant:**

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**For Provider:**

\_\_\_\_\_  
Provider Signature

3/3/25

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Barrett

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
CEO

\_\_\_\_\_  
Title



## CACP Overview

### Overview

The Child and Adult Care Food Program (CACFP) is a federally assisted meal program that provides funds to licensed child and adult care centers, Head Start/Early Start centers, schools and after school meal centers, family or group day care homes as well as emergency/homeless shelters for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

For those who already participate, the Healthier Child and Adult Care Food Program (CACFP) Award is a recognition system that supports the wellness efforts of child care providers, center staff, and home providers participating in CACFP. Caregivers going above and beyond the Program requirements by taking steps to improve the menus, physical activity, professional development, nutrition and wellness environment and/or infant care can apply for an award in one or more of these categories. Three award levels are offered: Honors, High Honors and Highest Honors.

#### [Healthier CACFP](#)

Utah Education Network (UEN)

#### [CACFP](#)

United States Department of Agriculture (USDA)/Food and Nutrition Service (FNS)

AGREEMENT OF LEASE

By and Between

WCH, LLC, as Landlord

and

WALLACE STEGNER ACADEMY, as Tenant

Suite 1050, covering a portion of the 10<sup>th</sup> floor

at

THE WALKER CENTER

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<u>Exhibit C</u>	Provision for Use of Parking Stalls (§22.24)
<u>Exhibit D</u>	Confirmation of Term of Lease
<u>Exhibit E</u>	Landlord's Work

This LEASE AGREEMENT (the "**Lease**") made and entered into between WCH, LLC, a Utah limited liability company, as landlord ("**Landlord**"), and the person or entity described below as "Tenant." In consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described below upon the following terms and conditions:

## ARTICLE 1. DEFINITIONS AND SUMMARY OF FUNDAMENTAL LEASE TERMS

The following sets forth certain fundamental facts and definitions relating to this Lease:

- 1.1. "**Date of Lease**": as of \_\_\_\_\_, 2025
- 1.2. "**Landlord**": WCH, LLC, a Utah limited liability company.
- 1.3. "**Tenant**": WALLACE STEGNER ACADEMY, a Utah nonprofit corporation
- 1.4. "**Tenant's Trade Name**": Wallace Stegner Academy
- 1.5. "**Building**": "The Walker Center" located at 175 South Main Street, Salt Lake City, Utah 84111 and 19 East 200 South, Salt Lake City, Utah 84111 and the real property upon which The Walker Center is located.
- 1.6. "**Premises**": Suite 1050 on the 10<sup>th</sup> floor of the Building, as more particularly designated on Exhibit "A" annexed.
- 1.7. "**Permitted Use**": Executive, administrative and general offices.
- 1.8. "**Term**": Approximately seventy-two (72) months, beginning on the Commencement Date and ending on the Expiration Date, unless sooner terminated in accordance with the terms of this Lease.
- 1.9. "**Commencement Date**": The date upon which Landlord Substantially Completes Landlord's Work (as defined on Exhibit "E"). Upon the determination of the Commencement Date, the parties shall execute that certain Confirmation of Term of Lease, substantially in the form of Exhibit "D" attached hereto and made a part hereof.
- 1.10. "**Expiration Date**": The date which is the last day of the month within which occurs the date which is seventy-two (72) months following the Commencement Date (meaning if the Commencement Date shall occur on a date other than the first day of a calendar month, the Term shall be seventy-two (72) full calendar months plus a partial month), unless sooner terminated in accordance with this Lease.
- 1.11. "**Rent Commencement Date**": The date which is twelve (12) months after the Commencement Date. If such date is not the first of a month, rent will be pro-rated for the month in which it occurs.
- 1.12. **Intentionally omitted.**
- 1.13. "**Security Deposit**": \$8,661.32.
- 1.14. "**Base Rent**" shall mean the amount set forth in the table below, subject to any escalation set forth in this Lease:

Lease Year	Lease Year Beginning	Lease Year Ending	Base Annual Rent	Base Monthly Rent
1	Commencement Date	Lease Month 12	\$89,656.00	\$7,471.33
2	Lease Month 13	Lease Month 24	\$92,345.68	\$7,695.47

3	Lease Month 25	Lease Month 36	\$95,116.05	\$7,926.34
4	Lease Month 37	Lease Month 48	\$97,969.53	\$8,164.13
5	Lease Month 49	Lease Month 60	\$100,908.62	\$8,409.05
6	Lease Month 61	Expiration Date	\$103,935.88	\$8,661.32

Lease Year 1 commences on the Commencement Date and ends on the last day of the calendar month in which occurs the date which is the day immediately preceding the first anniversary of the Commencement Date. (For example, if the Commencement Date is June 1, 2024, then Lease Year 1 commences on June 1, 2024, and ends on May 31, 2025, and if the Commencement Date is June 15, 2024, then Lease Year 1 commences on June 15, 2024, and ends on June 30, 2025.) Notwithstanding the foregoing provisions of this §1.14, Tenant shall receive a one-time rent credit in the amount of the Base Rent otherwise payable for the period beginning on the Commencement Date and ending on the day immediately preceding the Rent Commencement Date.

1.15. **"Tenant's Proportionate Share":** 2.95%, as reasonably adjusted from time to time by Landlord to reflect any changes in the size of the Premises or of the Building.

1.16. **"Base Year":** 2025.

1. 17. **"Address for Notices":**

Landlord: WCH, LLC  
c/o Vectra Management Group  
175 South Main Street, Suite 610  
Salt Lake City, Utah 84111

with a mandatory copy to:

Vectra Management Group  
c/o Capstone Law LLC  
20 Ash Street, Suite 320  
Conshohocken, PA 19428  
Attn.: Stu Goodman, Esquire, General Counsel

and a mandatory copy to:

Vectra Management Group  
1528 6<sup>th</sup> Street, Suite 100  
Santa Monica, CA 90401

Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.18. **"Address for Payment of Rent":**

Agent: WCH, LLC  
c/o Vectra Management Group  
175 South Main Street, Suite 610  
Salt Lake City, Utah 84111

1.19. **"Brokers":** Colliers International

1.20. Exhibits. The following Exhibits are attached to and made a part of this Lease:

Exhibit "A"	-	Floor Plan of Premises
Exhibit "B"	-	Rules and Regulations
Exhibit "C"	-	Provision for Use of Parking Stalls
Exhibit "D"	-	Confirmation of Term of Lease
Exhibit "E"	-	Landlord's Work

1.21. Summary for Convenience Only. The foregoing provisions of this Article 1 summarize for convenience only certain key terms of this Lease, which terms are sometimes delineated more fully in the Articles and Sections below. In the event of a conflict between the provisions of this Article 1 and the balance of this Lease, the latter shall control.

## **Article 2. Base Rent; Late Charges; Base Rent Escalation.**

2.1. Base Rent During Term. Tenant shall pay to Landlord the Base Rent in equal monthly installments on the 1<sup>st</sup> day of each and every month, other than the first month's rent, which shall be paid upon execution of this Lease. All Rent shall be paid without counterclaim, setoff or deduction. Landlord may change the Address for Payment of Rent by notice to Tenant.

2.2. Late Charges. If Landlord does not receive any part of the Base Rent or Additional Rent herein reserved, or any other sum required to be paid by Tenant, within 5 days after the due date thereof, Tenant shall pay Landlord, as Additional Rent, a late charge of 10% of the overdue amount on account of Landlord's increased costs of collection and administration. In addition, all delinquent sums payable by Tenant to Landlord that are not paid within 5 days after the due date shall bear interest at the rate of 18% per annum, or the maximum rate of interest allowable by law, whichever is less. Interest on all delinquent amounts shall be calculated from the original due date of the date of payment. (Base Rent and Additional Rent may collectively be referred to herein as "Rent".)

## **Article 3. Operating Expenses.**

### **3.1. Definitions.**

(a) "Operating Expenses" shall mean all costs, expenses and fees incurred or payable by Landlord in connection with this Lease and the ownership, operation, management, maintenance and repair of the Premises and the Building, determined in accordance with the accounting procedures and business practices customarily employed by Landlord, including without limitation, the costs, expenses and fees of the following: removal of snow, ice, trash and other refuse; landscaping, cleaning, janitorial, parking and security services; fire protection; elevators; utilities provided by Landlord; supplies and materials; insurance; insurance deductibles; licenses, permits and inspections; third party property management fees; administrative services, including without limitation, legal, consulting and accounting services; labor and personnel; Landlord's supervisory, administrative and overhead costs in the amount of 10% of the Operating Expenses; reasonable reserves for Operating Expenses; rental or an allowance for depreciation of personal property; improvements to and maintenance and repair of the Premises and the Building and all equipment used in the Building; management services; the cost incurred after the Base Year of capital expenditures made to the Building by reason of the laws and requirements of any public authorities or the requirements of insurance bodies; and that part of office rent or the rental value of space in the Building or another building used by Landlord to operate the Premises and the Building. If Landlord shall purchase any item of capital equipment or make any capital expenditure, other than those referred to above in this paragraph, in connection with the operation and maintenance of the Building (and parking areas), and the services provided to tenants therein, including all expenses incurred as a result of Landlord's compliance with any of its obligations hereunder, then the cost thereof shall be included in Operating Expenses. The costs of such capital equipment or capital expenditures are to be included in Operating Expenses for the Operating Year in which the costs are incurred and subsequent Operating Years, on a straight line basis, based on their useful life, but in no event longer than 10 years, with an interest factor equal to 1% per annum plus the prime interest rate published by Chase Manhattan Bank, N.A. or its successor and in effect at the time of Landlord's having incurred such costs. If Landlord shall lease any such item of capital equipment, the rentals and other costs paid or incurred in connection with such leasing shall be included in

Operating Expenses for the Operating Year in which they were incurred. If during all or any part of any Operating Year, Landlord shall not furnish any particular item of work or service which would constitute an Operating Expense to portions of the Building (including without limitation the Premises) due to the fact that such portions are not occupied or leased, or because such item of work or service is not required or desired by a tenant (including, without limitation, Tenant), or such tenant is itself obtaining and providing such item of work or service, or for any other reason, then, for the purpose of computing the Additional Rent payable pursuant to this Article 3, the amount of the expenses for such item for such period shall be deemed to be increased by an amount equal to the additional operating and maintenance expenses which would reasonably have been incurred during such period by Landlord if Landlord had at its own expense furnished such item of work or services to such portion of the Building. Operating Expenses shall not include financing or carrying costs; legal fees, consulting fees, broker's commissions or any other costs incurred by Landlord in connection with leasing space and negotiating leases with tenants of the Building or legal fees in connection with disputes between Landlord and any tenant of the Building, or between Landlord and any mortgagee. All Operating Expenses shall be computed on an annual, calendar year basis.

(b) "Base Year Operating Expenses" means the Operating Expenses that are actually incurred in the Base Year.

(c) "Operating Year" means each calendar year, all or a portion of which falls within the Term.

(d) "Estimated Operating Expenses" means the projected amount of Operating Expenses for any given Operating Year as estimated by Landlord, in Landlord's discretion, but in no event shall Estimated Operating Expenses be less than 3% greater than the Actual Operating Expenses for the previous Operating Year.

(e) "Actual Operating Expenses" means the actual amount of Operating Expenses for any given Operating Year, but in no event shall Actual Operating Expenses be less than 3% greater than the Actual Operating Expenses for the previous Operating Year.

(f) "Tenant's Estimated Share of Operating Expenses" means the result obtained by multiplying Tenant's Proportionate Share by the Estimated Operating Expenses and then subtracting from the result Tenant's Proportionate Share of the Base Year Operating Expenses. Tenant's Estimated Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Estimated Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year.

(g) "Tenant's Share of Operating Expenses" means the result, but not less than zero, obtained by subtracting the Base Year Operating Expenses from the Actual Operating Expenses and then multiplying the result by Tenant's Proportionate Share. Tenant's Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year.

(h) "Lease Year" means and includes each of the periods of time referred to in §1.14 above as a "Lease Year".

3.2. Payment of Operating Expenses. In addition to the Base Rent set forth in §1.14, Tenant covenants to pay to Landlord without abatement, deduction, offset, prior notice (except as provided in this §3.2) or demand, Tenant's Share of Operating Expenses as Additional Rent commencing on the Rent Commencement Date. On or before the Commencement Date, and on or before the first day of each Operating Year commencing after the Commencement Date, Landlord shall, if reasonably practicable, furnish Tenant with a written statement (the "Estimated Operating Expenses Statement") showing in reasonable detail the computation of Tenant's Estimated Share of Operating Expenses. On or before the Commencement Date, and on or before the first day of each month following the Commencement Date, Tenant shall pay to Landlord one-twelfth (1/12<sup>th</sup>) of Tenant's Estimated Share of Operating Expenses as specified in the Estimated Operating Expenses Statement for such Operating Year. If Landlord fails to give

Tenant an Estimated Operating Expenses Statement prior to any Operating Year, Tenant shall continue to pay on the basis of the Estimated Operating Expenses Statement for the prior Operating Year until the Estimated Operating Expenses Statement for the current Operating Year is received and upon receipt shall promptly remit to Landlord amounts owing for months covered by the Estimated Operating Expense Statement prior to receipt of the Estimated Operating Expense Statement. If at any time, it appears to Landlord that the Operating Expenses will vary from Landlord's original estimate, Landlord may deliver to Tenant a revised Estimated Operating Expenses Statement for such Operating Year, and subsequent payments by Tenant for such Operating Year shall be based on such revised Estimated Operating Expenses Statement. Within a reasonable time after the expiration of any Operating Year, Landlord shall furnish Tenant with a written statement (the "Actual Operating Expenses Statement") showing the computation of Tenant's Share of Operating Expenses for such Operating Year and the amount by which Tenant's Share of Operating Expenses exceeds or is less than the amounts paid by Tenant during such Operating Year. If the Actual Operating Expenses Statement indicates that the amount actually paid by Tenant for the relevant Operating Year is less than Tenant's Share of Operating Expenses for such Operating Year, Tenant shall pay to Landlord such deficit within 30 days after delivery of the Actual Operating Expenses Statement. Such payments by Tenant shall be made notwithstanding that the Actual Operating Expenses Statement is furnished to Tenant after the expiration of the Term or sooner termination of this Lease. If the Actual Operating Expenses Statement indicates that the amount actually paid by tenant for the relevant Operating Year exceeds Tenant's Share of Operating Expenses for such Operating Year, such excess shall, at Landlord's option, either be applied against any amount then payable or to become payable by Tenant under this Lease, or promptly refunded to Tenant. No failure by Landlord to require the payment of Tenant's Share of Operating Expenses for any period shall constitute a waiver of Landlord's right to collect Tenant's Share of Operating Expenses for such period or for any subsequent period. If the Base Year Operating Expenses exceed Tenant's Share of Operating Expenses for any full or partial Operating Year, Tenant shall not be entitled to any refund, credit or adjustment of Base Rent.

3.3. Resolution of Disagreement. Every statement given to Tenant by Landlord under this Lease, including, without limitation any statement given to Tenant pursuant to §3.2 shall be conclusive and binding on Tenant unless within 15 days after the receipt of such statement Tenant notifies Landlord that Tenant disputes the correctness of such statement, specifying the particular respects in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement between Landlord and Tenant, Tenant shall, within 30 days after receipt of such statement, pay the amounts set forth in such statement in accordance with such statement, and such payment shall be without prejudice to Tenant's position. If such dispute exists and it is subsequently determined that Tenant has paid amounts in excess of those then due and payable under this Lease, Landlord, at Landlord's option, shall either apply such excess to an amount then payable or to become payable under this Lease or return such excess to Tenant. Landlord shall grant to an independent certified public accountant retained by Tenant reasonable access to Landlord's books and records for the purpose of verifying Operating Expenses incurred by Landlord, at Tenant's sole cost.

#### **Article 4. Escalation for Real Estate Taxes.**

##### **4.1. Definitions.**

(a) "Real Estate Taxes" shall mean all taxes and assessments, and any bill for work done or services performed by a governmental agency which may be levied, assessed or imposed at any time during the Term of this Lease by any governmental authority upon or against the land or the Building, or on personal property owned in conjunction therewith for any reason. If in any Tax Year (including the Base Year) there is any abatement, exemption or discount of Real Estate Taxes (or any assessment or rate which comprises Real Estate Taxes), the abatement, exemption or discount shall not be taken into account, and Real Estate Taxes shall be determined as if there were no abatement, exemption or discount. In addition, if due to a future change in the method of taxation, any tax or payment shall be levied against the Landlord in substitution for any tax which would otherwise constitute a Real Estate Tax, such tax or payment shall be deemed to be a Real Estate Tax for the purposes hereof.



(b) "Tax Year" means the calendar year, or any other 12-month period selected by a governmental entity as the measuring date for payment of Real Estate Taxes. Tenant agrees to pay as Additional Rent (Tenant's "Real Estate Tax Contribution") for each Tax Year during the Term Tenant's Proportionate Share of any increase in Real Estate Taxes above the Real Estate Taxes paid or payable for the Base Year, as defined in §1.16.

4.2. Monthly Installments. Tenant shall pay monthly installments on account of its Real Estate Tax Contribution for the tax year then in progress. Said monthly installments shall be included in the Base Rent during the first calendar year of the Term. Commencing with the second calendar year of the Term, the installments shall be 105% of the monthly Real Estate Tax Contribution which Tenant paid during the first calendar year of the Term. Thereafter, Tenant's installments shall be 105% of one-twelfth of Tenant's Real Estate Tax Contribution for the previous year. Within 60 days after the close of each Tax Year, Landlord shall send to Tenant a statement of Landlord's Real Estate Taxes during that Tax Year. Within 10 days thereafter, Tenant shall pay to Landlord, or Landlord shall refund to Tenant or credit against Tenant's subsequent Real Estate Tax Contribution (as applicable), the difference between Tenant's total installments during that Tax Year and Tenant's Real Estate Tax Contribution. Tenant's Real Estate Tax Contribution during the first and last year of the Term shall be pro-rated equitably. If the due date or frequency of Real Estate Tax payments to the municipality is changed, the installments and reconciliation of Tenant's contributions will be adjusted accordingly.

4.3. Expense of Reductions. If Landlord should incur any expenses in connection with Landlord's successful endeavor to reduce the assessed valuation or to reduce any bill for work done or services rendered, assessment or levy, water or sewer charges, thereby reducing Tenant's share of increased Real Estate Taxes as set out above, Tenant shall pay as Additional Rent Tenant's Proportionate Share of such expenses of Landlord, and such amount shall be payable to Landlord as Additional Rent and collectible in the same manner as annual Base Rent 10 days following Landlord's demand.

4.4. Evidence. A copy of a Real Estate Tax bill, bill for assessment or levy, bill from Landlord for expenses of any proceeding to obtain a Real Estate Tax reduction, or a letter from Landlord's mortgagee attesting to any such amount shall be conclusive evidence of the amount of any Real Estate Tax or expense of obtaining a reduction unless disputed by Tenant within 30 days after receipt.

4.5. Nature of Payments. All payments to be made by Tenant under Article 4 are Additional Rent.

## **Article 5. Security Deposit.**

5.1. Deposit. Tenant shall maintain a Security Deposit with Landlord in the amount as set forth in Article 1 above as security for the faithful performance by Tenant of all of the terms, covenants and conditions required to be performed by Tenant hereunder. Tenant shall deposit the Security Deposit with Landlord upon execution of this Lease. Landlord may commingle the Security Deposit with Landlord's own funds and shall not be deemed to be a trustee of the Security Deposit. The Security Deposit, without interest, shall be returned to Tenant after the expiration of this Lease and delivery of possession of the Premises to Landlord if, at such time, Tenant has performed fully and faithfully all of the terms, covenants and conditions hereof. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer or credit the Security Deposit to Landlord's successor in interest, and Landlord shall thereupon be released from any liability for the return of the Security Deposit or the accounting therefor. The provisions hereof shall apply to every transfer or assignment made of the security to a new Landlord. Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

5.2. Default. If Tenant is in default under this Lease, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of any monetary obligation due hereunder or to compensate Landlord for any other expense or cost which Landlord may expend, or any loss or damage which Landlord may suffer, by reason of Tenant's default under the terms hereof, including any damages or deficiency in the reletting of the Premises. If any portion of the Security Deposit is so used or applied, regardless of

whether such use or application is before or after Tenant has ceased to occupy the Premises, Tenant shall, upon demand, deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its original amount.

5.3. Rights of Mortgagee. No holder of a mortgage or deed of trust or a lessor under a ground lease to which this Lease is or may become subordinate shall be responsible for the Security Deposit, unless such mortgagee or holder of such deed of trust or lessor shall have actually received such Security Deposit.

## **Article 6. Use and Occupancy.**

6.1. Permitted Use. Tenant shall use and occupy the Premises for the "Permitted Use" described in §1.7 and for no other purpose. Tenant shall at no time use or occupy the Premises in violation of the certificate of occupancy for the Building.

### **6.2. Prohibition of Certain Activities or Uses.**

(a) Tenant shall not do or permit anything to be done in the Building or on the Premises which may (i) increase the existing rate or violate the provisions of any insurance carried with respect to the Building or any of the contents thereof; or (ii) create any public or private nuisance, commit waste or disturb the quiet enjoyment of any other occupant of the Building; or (iii) violate any present or future law, ordinance, regulation or requirement of any governmental authority or any restriction or covenant existing with respect to the Premises; or (iv) overload the floors or otherwise damage the structure of the Building; or (v) exceed the capacity of any of the electrical conductors, systems and equipment in or otherwise serving the Premises; or (vi) constitute an improper, immoral or objectionable purpose; or (vii) increase the cost of electricity provided by Landlord if any, natural gas or other utility service beyond that level permitted in this Lease; or (viii) use the name "Walker" as any part of the business name of Tenant; or (i) subject Landlord or any other Tenant to any liability to any third party. The judgment of any court or the admission of Tenant in any action that Tenant has violated any governmental law, ordinance, regulation or requirement shall be conclusive as between Landlord and Tenant. The foregoing shall not be construed to create or confer upon Tenant or any other person any rights with respect to Landlord.

(b) Tenant shall not permit any machine, personal property or fixture heavier than customarily used in connection with general office purposes or Tenant's Permitted Use to be placed in the Premises.

(c) Tenant shall not make any holes in any part of the Premises or place any exterior signs or interior drapes, blinds or similar items visible from outside the Premises without Landlord's prior written consent.

(d) (i) Tenant shall not use, generate, manufacture, produce, store, treat, dispose or permit the escape on, under, about or from the Premises, or any part thereof, of any asbestos, polychlorinated biphenyls, petroleum products or any flammable, explosive, radioactive, toxic, contaminating, polluting matter, waste, or substance or related injurious materials, whether injurious by themselves or in combination with other materials, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any federal, state or local laws, rules or regulations, whether now existing or hereinafter enacted or promulgated or any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments (collectively "Hazardous Materials"). Tenant shall also not use, generate, manufacture, produce, store, treat, dispose or permit the escape on, under, about or from the Premises of any material, substance, or chemical regulated by any federal, state or local law, rule, ordinance or regulation (collectively "Regulated Materials").

(ii) Tenant shall indemnify, defend and hold harmless Landlord and Landlord's employees, partners, agents or successors from any and all claims, sums paid in settlement of claims, judgments, damages, cleanup costs, penalties, fines, costs, liabilities, losses or expenses which arise during or after the Term as a result of Tenant's breach of the obligations set forth herein and from the

release in the Premises of, or contamination of the Premises by, Hazardous Materials or Regulated Materials which are introduced or permitted to be introduced by Tenant at any time during the Term. This indemnity includes (A) costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision and attorneys, consultants and experts fees; (B) additional costs required to take necessary precautions to protect against the release of Hazardous or Regulated Materials on, in, under or affecting the Building or the Premises, into the air, any body of water, any other public domain or any other surrounding areas and (C) any costs incurred to comply, in connection with all or any portion of the Building or the Premises, with all applicable laws, orders, judgments and regulations with respect to Hazardous or Regulated Materials. Tenant shall promptly take all actions at its sole cost and expense which are necessary to remediate the presence of a Hazardous Material or Regulated Material. This indemnity shall survive expiration or earlier termination of this Lease.

(iii) From time to time, Landlord shall have the right, upon 24 hours' prior notice, to cause the Premises to be inspected and tested for the presence of Hazardous or Regulated Materials or the correction of any condition existing at the Premises as a result of any such Hazardous or Regulated Materials. Tenant shall cooperate with Landlord's representatives and agents in the making of such inspections and tests by furnishing such information and access as may be necessary or required to carry out the same. If any such tests or inspections shall reveal any Hazardous Materials or Regulated Materials or other condition in the Premises as a result of actions of Tenant, Tenant's employees, officers, contractors, guests or invitees which requires corrective action or other remediation, Tenant shall pay to Landlord, as Additional Rent, within 10 days after demand, the cost of such action or remediation, including the cost of an independent, licensed environmental consultant to monitor such work and to certify its full completion, and the cost of any filing fees and permit fees in connection therewith. Landlord shall not be liable to Tenant or any party claiming through or under Tenant for loss of business or other consequential damages arising out of such inspections, testing and work, nor shall Tenant or any other such party be entitled to any abatement of Base Rent or Additional Rent while such inspections, testing and work are carried out.

6.3. Affirmative Obligations With Respect to Use. Tenant, at its sole cost and expense, shall:

(a) Keep the Premises in a clean and orderly condition, free of objectionable noises, odors or nuisances.

(b) Comply with all laws, rules, regulations, statutes and ordinances with respect to the use and storage of Hazardous Materials and Regulated Materials, including their removal and disposal at the expiration or earlier termination of the Term. If any equipment installed by Tenant to serve the Premises utilizes refrigerants containing chlorofluorocarbons ("CFCs"), Landlord, in its sole discretion, may require Tenant to remove such equipment at the expiration or earlier termination of the Term. Tenant shall also comply with all laws, rules, regulations, statutes and ordinances with respect to such equipment and its use or disposal and/or the use of CFCs.

(c) Pay when and as due all license fees, permit fees, equipment use permits, refrigerator machine permits, and charges of a similar nature for the conduct by Tenant or any subtenant of any business or undertaking authorized under this Lease to be conducted in the Premises.

(d) Use commercially reasonable methods to prevent vermin, rats and mice in the Premises and, if Landlord shall notify Tenant in writing that there is a problem with vermin, rats or mice in or about or emanating from the Premises and Tenant shall fail to cure such problem within 10 days after such notice, maintain a service contract for the extermination of vermin, rats and mice in the Premises in compliance with Landlord's requirements using a vendor designated by Landlord.

(e) Conduct its business in and from the Premises in a reputable manner in every respect. If at any time Landlord notifies Tenant that Landlord reasonably objects to Tenant's manner of operating the Premises, Tenant shall remove the basis for such objection in such manner and within such reasonable time as Landlord may specify in such notice.

(f) Not place a load upon any floor of the Premises exceeding the floor load which it was designed to carry and which is allowed by law. Landlord may prescribe the weight and position of all safes, business machines and mechanical equipment. Tenant shall place and maintain installations, at Tenant's expense, in settings sufficient (in Landlord's judgment) to absorb and prevent vibration, noise and annoyance.

(g) Keep the Premises in good order and repair in accordance with §9.3.

6.4. Suitability. Tenant acknowledges that except as expressly set forth in this Lease, neither Landlord nor any other person has made any representation or warranty with respect to the Premises or any other portion of the Building or improvements, nor has Landlord agreed to undertake any modification, alteration or improvement thereof, and that no representation has been made or relied upon concerning the suitability of the Premises or any other portion of the Building or improvements for the conduct of Tenant's business.

6.5. License to Use Public Portions of Building. The public portions of the Building shall be available for the common use of all Building occupants and their invitees and shall be used and occupied under a revocable license. If the amount of such areas shall be changed or diminished, Landlord shall not be subject to any liability, Tenant shall not be entitled to any compensation or diminution or abatement of Rent, and revocation or diminution of such areas shall not be deemed constructive or actual eviction. The public portions of the Building shall be subject to the exclusive control and management of Landlord. Landlord may close all or any portion of the public portions of the Building (including sidewalks) as necessary to prevent a dedication thereof or the accrual of any right to any person or the public therein.

6.6. Compliance with Law.

(a) **"Legal Requirements"** shall mean laws, statutes and ordinances and the orders, rules, regulations, directives and requirements of all federal, state, county, city and borough departments, bureaus, boards, agencies, offices, commissions and other subdivisions thereof, or of any official thereof, or any other governmental public or quasi-public authority, whether now or hereafter in force, including building codes and zoning regulations and ordinances and The Americans with Disabilities Act of 1990, as amended, which may be applicable to the land or Building or the Premises or the sidewalks, curbs or areas adjacent thereto and all requirements, obligations and conditions of all instruments of record on the date of this Lease.

(b) Tenant shall promptly comply with all Legal Requirements (i) if with respect to the Premises, whether or not arising out of Tenant's use or manner of use thereof (including Tenant's permitted use) and (ii) if with respect to the Building, if arising out of Tenant's use or manner of use of the Premises or the Building (including Tenant's permitted use). Tenant shall not do anything in the Premises which is contrary to Legal Requirements, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord, or which may subject Landlord to any liability or responsibility.

6.7. Signs; Directory Listing.

(a) Any sign, curtain, blind, window treatment, window film, decoration, or other installation visible from outside the Premises and suffered or installed by Tenant must be approved in advance and in writing by Landlord, in Landlord's sole discretion. Landlord shall not unreasonably withhold consent to an identification sign on Tenant's door at the entrance to its space which shall be at Tenant's sole cost and expense.

(b) Tenant shall be entitled to one listing, identifying Tenant, on the directory in the lobby and one listing on the directory on the landing outside the elevator on the floor on which the Premises are located other than the ground floor. All Tenant listings shall be provided by Landlord at Tenant's sole cost and expense.

6.8. Access to Premises. Tenant shall have the right of access to the Premises 24 hours a day, 7 days a week.

6.9. Early Access. Landlord shall grant Tenant access ("Early Access") to the Premises commencing on or before the date which is four (4) weeks prior to the Commencement Date for purposes of Tenant's employee training and installation of its furnishings, equipment, telecommunications and data wiring and cabling. Such Early Access shall not change the Commencement Date or the Rent Commencement Date. Tenant shall give Landlord not less than forty-eight (48) hours' advance notice of Tenant's intent to enter the Premises. Prior to any entry upon the Premises, Tenant and its contractors or consultants entering upon the Premises shall furnish certificates of insurance to Landlord evidencing that Tenant and its contractors and consultants each carry insurance in the amounts required by this Lease, and naming Landlord and its designees as additional insureds. Tenant shall not in any way interfere with Landlord's prosecution of Landlord's Work. Tenant shall promptly repair any damage to the Premises caused by Tenant's entry. Tenant shall reimburse Landlord, promptly upon demand, for any actual damage solely caused by Tenant to any portions of the Premises or Building. Tenant shall indemnify, defend and hold Landlord harmless from and against all actual losses, costs, damages, liabilities and expenses suffered or incurred by Landlord as a result of Tenant's entry upon the Premises or any work or activities conducted upon the Premises by or on behalf of Tenant. All of the terms of this Lease shall apply during Tenant's use and/or occupancy of the Premises prior to the Commencement Date, other than the obligation to pay Rent.

#### **Article 7. Landlord's Obligations.**

7.1. Utilities and Services to be Provided by Landlord. As long as Tenant is not in default under this Lease, Landlord shall provide, and Tenant shall pay as part of Tenant's Share of Operating Expenses: (i) passenger elevator facilities on business days from 8 a.m. to 6 p.m., with one passenger elevator subject to call at all other times; (ii) heat to the Premises on business days from 8 a.m. to 6 p.m., and on Saturdays from 9:00 a.m. to 12:00 p.m.; (iii) water for ordinary lavatory purposes, but if Tenant uses water for any other purposes or in unusual quantities, Landlord, at Tenant's expense, may install a water meter, which Tenant shall keep in good working order and repair, and Tenant shall pay for water consumed per the meter as Additional Rent upon rendition of bills; (iv) air-conditioning/cooling to the Premises from May 15<sup>th</sup> through September 30<sup>th</sup> on business days (Monday through Friday, holidays excepted) from 8:00 a.m. to 6:00 p.m.; (v) ventilation to the Premises during the same hours except when air-conditioning/cooling is being furnished as stated above; and (vi) freight elevator service on business days between 8:00 a.m. and 12:00 p.m. and between 1:00 p.m. and 4:00 p.m..

7.2. Generally. Except as expressly provided in this Lease, Tenant shall pay for all water, gas, electricity, telephone, data/internet and all other utilities used or consumed in the Premises, and shall pay all water, sewage and trash removal charges imposed by government authority or otherwise, whether assessed directly to Tenant or as part of Tenant's Operating Expenses. Upon request and at Tenant's sole cost and expense, Tenant shall install any meter necessary for Tenant to make any such payments directly to the utility provider. Any separately metered utility to the Premises that is paid by Tenant directly to the utility has been taken into account and is reflected in Tenant's Base Rent in §1.14. Except as expressly provided in this Lease, Tenant shall arrange and pay for the entire cost and expense of all (a) wiring from the core of the floor on which the Premises are located, (b) telephone and data stations, (c) equipment and use charges, and (d) other materials and services for any utilities or telecommunications facilities utilized by Tenant.

7.3. After-Hours and Additional Services. The Base Rent does not include the cost of furnishing electricity to the Premises or the cost of furnishing heat, air-conditioning, elevator or mechanical ventilation to the Premises during periods other than the hours and days set forth in §7.1. (Periods other than those set forth in §7.1 shall be referred to as "Overtime Periods"). Accordingly, Landlord shall install a meter or submeter to measure electricity provided to the Premises at Landlord's sole cost and expense. If the Premises are separately metered, the meter shall be registered by Tenant in Tenant's name and Tenant shall pay all costs of registration and electricity directly to the electricity service provider. If the Premises

are submetered, Landlord shall cause the submeter to be read on a monthly basis and Tenant shall pay for Tenant's share of electricity costs, which shall include an administrative fee to cover Landlord's third party out-of-pocket expenses incurred reading said submeter, on a monthly basis as Additional Rent. Tenant's submetered electricity costs shall not be greater than Tenant's metered electricity costs if the Premises were separately metered. If Landlord shall furnish any heat, air-conditioning, mechanical ventilation or elevator services to the Premises during Overtime Periods, Tenant shall pay Landlord Additional Rent for such services at the standard rates fixed from time to time by Landlord. Tenant shall provide reasonable advance notice of its need for such services. If Landlord is unable or unwilling to supply those services, then Landlord, at Tenant's expense, may install controls which permit Tenant to regulate when such overtime services are furnished. Notwithstanding anything herein to the contrary, if Landlord provides any utility or service which is in excess of that typically required for routine office purposes, including additional cooling necessitated by Tenant's equipment, Landlord shall reasonably determine or calculate the cost of such utility or service, and Tenant shall pay such cost on a monthly basis to Landlord as Additional Rent. Landlord may cause a water meter to be installed in the Premises in order to measure the amount of water consumed for any such use and the cost of such meter shall be paid promptly by Tenant.

7.4. Limitation on Landlord's Liability. In no event shall Landlord be liable for any interruption or failure in the supply of any utility or service to the Premises unless such failure is caused by Landlord's gross negligence or willful misconduct. Utilities and services furnished to the Premises are subject to and limited by all laws, rules, and regulations of any governmental authority affecting the supply, distribution, availability of or consumption of energy, including, but not limited to, heat, electricity, gas, oil and/or water. Landlord may also suspend operation of the heating system, the air conditioning system, the ventilation system, elevator service, the plumbing system, electric power systems, cleaning or other services when Landlord deems it necessary by reason of accident or emergency, or the making of necessary repairs, and such suspension may continue until such repairs have been completed. Landlord's failure to furnish any of such services shall not constitute or give rise to any claim of an actual or constructive eviction; or entitle Tenant to any compensation or abatement or diminution of Rent; or relieve Tenant from any of its obligations under this Lease; or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant or injury to or interruption of Tenant's business or otherwise.

7.5. Janitorial Services. Landlord shall provide as part of Tenant's Operating Expenses light janitorial services including the emptying of wastebaskets, dusting, vacuuming and as needed window cleaning. All Janitorial services in excess of those set forth herein shall be arranged for by Tenant at Tenant's sole cost and expense, using a contractor from a list provided by Landlord. All cleaning shall be performed at such times and in such a manner as Landlord may reasonably determine pursuant to Rules and Regulations for the Building.

## **Article 8. Condition of Premises.**

8.1. Condition of Premises and Building. Tenant represents that it has inspected the Premises, and agrees that Landlord shall not be required to perform any work, supply any materials or incur any expense to prepare the Premises for Tenant's occupancy, except as otherwise specifically provided for herein. Tenant hereby accepts the Premises in its condition on the date of this Lease, "as is" and subject to violations, whether or not of record. Neither Landlord nor Landlord's agents have made any representations or promises with respect to the physical condition of the Building, the land upon which it is erected or the Premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the Premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in this Lease. Tenant acknowledges that Tenant's taking possession of the Premises shall be conclusive evidence that the Premises and the Building were in good and satisfactory condition at the time possession was taken, except as expressly set forth herein.

8.2. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the Base Rent and Additional Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises,

subject, nevertheless, to the terms and conditions of this Lease and to the ground leases, underlying leases and mortgages mentioned herein.

8.3. Failure to Give Possession. If Landlord is unable to give possession of the Premises on the Commencement Date because of the holding-over or retention of possession of any tenant, subtenant or occupant or because a certificate of occupancy has not been procured for the Premises or the Building, or for any other reason, Landlord shall not be subject to any liability for failure to give possession on such date, the validity of the Lease shall not be impaired, and the Expiration Date shall not be extended, but the Rent payable hereunder shall be abated (unless Tenant is responsible for Landlord's inability to obtain possession) until Landlord has given Tenant written notice that Landlord is able to deliver possession in the condition required by this Lease. If permission is given to Tenant to enter into the possession of the Premises or to occupy premises other than the Premises before the Commencement Date, then such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease except the obligations to pay the fixed annual Base Rent set forth in this Lease and to pay utilities.

## **Article 9. Alterations during Term; Maintenance of and Repairs to Premises.**

### **9.1. Alterations During Term.**

(a) As used in this Lease, the term "Alterations" shall mean any changes, alterations, installations, additions, or improvements, of any nature, in or to the Premises. Tenant shall make no Alterations without Landlord's prior written consent, provided, however, that, subject to Landlord's prior written consent, which shall not be unreasonably withheld or delayed, and subject to compliance at all times with all applicable laws and governmental rules and regulations and Landlord's reasonable requirements relating to construction and alterations, Tenant may make nonstructural decorative interior Alterations costing less than \$1,000 in the aggregate in any 12 month period. Tenant shall give to Landlord at least 10 business days' prior written notice of the expected date of commencement of any work relating to Alterations. Tenant shall discharge any mechanic's or materialman's liens imposed in connection with the Alterations pursuant to §9.6.

(b) Tenant may not make any changes or installations to the exterior of the Premises or which will be visible from the exterior of the Premises. No window-type air conditioner may be installed in the Building or through any of its exterior walls and no equipment may be installed on the roof of the Building. No openings may be cut in the roof, floors, or exterior walls of the Building.

(c) If Landlord approves an Alteration, then in order to compensate Landlord for the cost of reviewing and inspecting the Alteration during the Term and of coordinating entry by Tenant's workers and the performance of the Alteration so as not to disrupt other tenants within the Building, Tenant shall pay to Landlord an administrative fee equal to 8% of the cost of the Alteration. Such fee shall be payable as Additional Rent upon demand by Landlord. Landlord may base its calculation of the amount of such fee upon an estimate or invoice from the contractor performing the work, and shall be provided with same upon demand.

### **9.2. Maintenance, Repairs and Alterations to Building by Landlord.**

(a) Subject to the other provisions of this Lease, Landlord shall maintain in good order, condition and repair the parking, public portions and structural elements of the Building, including the foundation, bearing walls, columns, and roof.

(b) Landlord shall have the right to change the arrangement or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the Building, or the name, number or designation by which the Building may be known, or the manner in which the Building is heated and cooled, including without limitation, the right to shut, lock and prevent windows from being opened or operable, at any time without such changes constituting an eviction and without incurring liability to Tenant therefor. There shall be no allowance to Tenant for diminution of rental value

and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord or others making repairs, alterations, additions or improvements in or to or replacing any portion of the Building or the Premises or in or to the fixtures, appurtenances, or equipment thereof. Furthermore, Tenant shall not have any claim against Landlord by reason of Landlord's imposition of controls on the manner of access to the Building by Tenant's invitees as the Landlord may deem necessary for the security of the Building and its occupants.

### 9.3. Maintenance and Repairs by Tenant.

(a) Tenant, at its sole cost and expense, shall maintain the Premises in good order, condition and repair, reasonable wear and tear excepted, including electric light bulbs; interior surfaces of the ceilings, walls and floors; doors; door frames and door locks; window panes, sills and frames; electrical wiring, switches and fixtures; plumbing and plumbing fixtures; HVAC systems and all equipment and fixtures installed by or at the expense of Tenant. Tenant shall use contractors approved by Landlord. Tenant shall not make any repair affecting the windows, doors, structure or utility systems of the Building without first notifying Landlord in writing. After notice from Tenant, Landlord shall have the right (but not the obligation) to make such repair on Tenant's behalf, at the expense of and for the account of Tenant. If Tenant fails to maintain the Premises in good order, condition and repair, Landlord may give Tenant notice to do such acts as are reasonably required so to maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work, including an administrative fee equal to 8% of the cost of the work. Any amount so expended by Landlord shall be paid by Tenant promptly upon demand therefor with interest at 18% per annum. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work. Tenant expressly and irrevocably waives the benefit or applicability of any statute which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

(b) Tenant shall give prompt notice of any defective condition in the Premises for which Landlord may be responsible hereunder. Tenant shall not be entitled to any setoff or reduction of Rent by reason of any failure of Landlord to comply with the covenants of this or any other article of this Lease. Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article shall not apply in the case of fire or other casualty which are dealt with elsewhere in this Lease.

(c) Tenant shall be responsible for the cost of repairing all damage or injury to the Premises or to any other part of the Building, and the systems and equipment thereof, whether requiring structural or nonstructural repairs, which is caused by or results from carelessness, omission, neglect or improper conduct of Tenant, its agents, employees, invitees or licensees, or which arises out of any work, labor, service or equipment done for or supplied to Tenant or arising out of the installation, use or operation of the Tenant's property or equipment.

9.4. Cleaning of Windows. Tenant will not clean nor permit to be cleaned any window in the Premises from the outside in violation of any applicable law, and without prior notice to Landlord.

9.5. Landlord's Rights as to Installations in and Access to Premises. Landlord may place, maintain and repair installations and equipment of any kind in, upon and under the Premises as necessary or desirable for the servicing of the Premises and any other portion of the Building. Landlord may also enter the Premises at all times in order to inspect them, to exhibit them to prospective purchasers, mortgagees, tenants and lessees, and to make such repairs, additions, alterations or improvements as Landlord may deem desirable. Tenant hereby expressly waives any claim for damages for any injury or inconvenience to, or interference with, Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall at all times have and retain a key with which to unlock all the doors in, upon and about the Premises, excluding Tenant's vaults and safes. Landlord may use any and all means which Landlord may deem proper to open such doors in an emergency in order to obtain entry to the Premises. No entry by Landlord upon the Premises shall under any circumstances be construed or



deemed to be a forcible or unlawful entry into or detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof.

9.6. Mechanic's Liens. Tenant shall keep the Building and the Premises free from any liens arising out of work performed on or materials furnished to the Premises or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. If within 15 days following the imposition of any such lien or encumbrance Tenant shall not cause such lien or encumbrance to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the attorneys' fees and costs, and the same shall be payable to Landlord by Tenant upon demand as Additional Rent with interest thereon at 18% per annum. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises and any other party having an interest therein from mechanics' and materialmen's liens.

9.7. Adjacent Excavation-Shoring. If an excavation is made upon land adjacent to the Premises, Tenant shall afford to the person causing such excavation a license to enter the Premises for the purpose of doing such work as such person shall deem necessary to preserve the wall or the Building from injury or damage and to support the wall or Building by proper foundations and shall make no claim against Landlord for damages or indemnity, or for diminution or abatement of Rent.

#### **Article 10. Insurance.**

10.1. Tenant's Insurance. At all times during the Term of this Lease, Tenant shall procure and continue in force the following insurance coverage:

- (a) Broad form commercial general liability insurance covering bodily injury and property damage of not less than \$3,000,000 for any single injury and \$3,000,000 for any single occurrence;
- (b) Fire and extended coverage insurance, including vandalism and malicious mischief coverage, in an amount equal to the full replacement value of all fixtures, furniture and improvements installed by or at the expense of Tenant, and naming Landlord as loss payee;
- (c) Contractual liability insurance endorsements with respect to Tenant's liability under this Lease;
- (d) Workers' compensation insurance policy providing statutory benefits for Tenant's employer's liability;
- (e) Business interruption insurance for up to one year; and
- (f) Such other or additional insurance in such types and amounts as Landlord may reasonably require.

10.2. Contents of Insurance Policies. All insurance shall name Landlord, its managing agent, the present and any future mortgagee of the Building, and any other persons specified by Landlord from time to time as additional insureds. Such insurance shall be maintained with companies licensed to do business in the State of Utah and having a rating of not less than A- in "Best's Insurance Guide." Tenant shall furnish to Landlord certificates of coverage on the Commencement Date and thereafter not less than 30 days prior to the expiration of each policy. All policies shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after 30 days' prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Landlord may carry. At least 30 days prior to the expiration of such policies, Tenant shall furnish Landlord with renewals or binders. If Tenant

does not maintain any required insurance, Tenant shall be in default under this Lease and Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge Tenant the premiums together with a 25% handling charge, payable upon demand. Tenant may provide such insurance coverage pursuant to blanket policies if they expressly afford coverage to the Premises and to Tenant as required by this Lease. The foregoing minimum limits of policies shall in no event limit the liability of Tenant under this Lease.

10.3. Subrogation. Landlord and Tenant shall each procure an appropriate waiver of subrogation clause or consent to waiver of right to recovery clause in (or endorsement on) any "special causes of loss" property insurance covering the Premises and the Building and their respective alterations, construction and other improvements, personal property, fixtures, furniture, inventory and equipment located thereon or therein. Such clause or endorsement shall state that their respective insurers waive subrogation or consent to a waiver of right of recovery against the other party, to the extent permitted by law. Neither Landlord nor Tenant will make any claim against or seek to recover from the other or its partners, directors, officers, shareholders or employees for any loss or damage to their property or the property of others resulting from fire or other hazards covered by such "special causes of loss" property insurance policies to the extent that such loss or damage is actually recoverable under such policies (exclusive of any deductibles). Such waiver will not apply in the event of loss or damage resulting from the other party's gross negligence or willful misconduct. Any insurance policies herein required to be procured by Tenant shall contain an express waiver of any right of subrogation by the insurer against Landlord.

10.4. Lender as Insured. At Landlord's option, any mortgage lender interested in any part of the Building or the Premises may be afforded coverage under any policy required to be secured by Tenant hereunder, by use of a mortgagee's endorsement to the policy concerned.

10.5. No Coverage for Tenant's Personal Property. Landlord shall not be obligated to repair any damage to or to carry insurance on the alterations, construction and other improvements installed by Tenant within the Premises or on Tenant's fixtures, furnishings, equipment, personal property or inventory located in the Premises, or to carry insurance against interruption of Tenant's business.

10.6. Compliance with Insurance Requirements. Tenant shall not keep anything in the Premises or use the Premises in a manner which will increase the insurance rate for the Building over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties, or damages imposed upon Landlord by Tenant's failure to comply with this section. If Landlord's fire insurance rate shall increase during the Term as a result of Tenant's use or manner of use, then Tenant shall reimburse Landlord, as Additional Rent hereunder, for the increase. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" of rates for the Building or Premises issued by a body making fire insurance rates applicable to the Premises shall be conclusive evidence of the facts therein stated and of the items and charges in the fire insurance rates then applicable to the Premises.

## **Article 11. Indemnities.**

11.1. Indemnification by Tenant. Tenant shall defend, indemnify and save harmless Landlord and any managing agent, mortgagee or lessor under any ground or underlying lease, and their respective agents, officers and employees, contractors, licensees and invitees (collectively, "Indemnitees"), from and against all loss or liability, claims, suits, demands, damages, judgments, costs, interest and expenses (including counsel fees, witness fees and disbursements incurred in the defense of any action or proceeding), to which they may be subject or which they may suffer, by reason of any claim for any injury to, or death of, any person or persons (including Landlord, its agents, contractors, employees, licensees and invitees) or damage to property (including any loss of use thereof) or otherwise arising from or in connection with the occupancy or use of the Premises, or from any work, installation or thing whatsoever done at the Premises or performed by Tenant within the Building (whether or not with Landlord's consent), from and after the execution of this Lease; resulting from any breach of Tenant's obligations under this Lease; or from any act, omission or negligence of Tenant or any of Tenant's officers, directors, agents, contractors, employees, subtenants, licensees or invitees (individually and collectively, "Claims"). Tenant shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against any

Indemnitor in connection with a Claim within 30 days after the rendering thereof. If any action or proceeding is brought against any Indemnitor by reason of any such claim, Tenant, upon written notice from Landlord, shall resist or defend such action or proceeding by counsel approved by Landlord in writing, such approval not to be unreasonably withheld.

**11.2. Limits on Landlord's Liability for Loss or Damage.**

(a) Landlord shall not be responsible or liable to Tenant for any loss or damage to Tenant or its property, or property under Tenant's care and custody, for any reason, including (but not limited to) damage caused by water, steam, wind, leakage, fire, theft, or vandalism, or by the bursting, stoppage or overflow of any drain, or any water or sewer or sprinkler pipe, unless resulting from Landlord's gross negligence. Under no circumstances shall Landlord be liable to Tenant for consequential damages.

(b) Landlord and its agents will not be liable for any loss or damage caused by other tenants or persons in, upon or about the Building or caused by operations in construction of any private, public or quasi-public work.

(c) Landlord shall not be liable for any damage Tenant may sustain if at any time any windows of the Premises are closed, darkened or bricked up (whether temporarily or permanently) for any reason, and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of Rent nor shall the same release Tenant from its obligations hereunder or constitute an eviction.

**11.3. Recourse by Tenant.** Tenant shall look only to Landlord's current rents, issues, profits and other income Landlord receives from the Building, net of current operating expenses, liabilities, reserves and debt service, for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or liability by Landlord hereunder. No other property or assets of Landlord and no property of any officer, employee, director, shareholder, partner or principal of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises.

**Article 12. Damage or Destruction.**

**12.1. Landlord's Obligations.** Tenant shall give immediate notice to Landlord if the Premises are damaged by fire or other casualty, and this Lease shall continue in full force and effect except as set forth below. If the Premises shall be partially damaged by any casualty insured against in any insurance policy maintained by Landlord, Landlord shall repair the Premises upon receipt of insurance proceeds. Until such repair is complete, the Base Rent and Additional Rent shall be abated proportionately as to any portion of the Premises rendered untenantable. If, however, by reason of such occurrence (a) the Premises are rendered wholly untenantable; or (b) the Premises are damaged as a result of a risk which is not covered by insurance; or (c) the Premises are damaged during the last 24 months of the Term or of any renewal; or (d) insurance proceeds or a portion thereof are applied by the lender to the satisfaction of Landlord's mortgage on the Building; or (e) the Premises or the Building is damaged to the extent of 50% or more of the then-monetary value thereof, Landlord may either elect to repair the damage or may cancel this Lease by notice of cancellation within 60 days after such event and thereupon this Lease shall expire upon the date specified in such notice as fully and completely as if such date were the date set forth above for the termination of this Lease and Tenant shall forthwith quit, surrender and vacate the Premises without prejudice to Landlord's rights and remedies against Tenant under the Lease as in effect prior to such termination. In that case Tenant's liability for Rent upon the termination of this Lease shall cease as of the date of the occurrence of such casualty. If Landlord elects to repair any such damage, Tenant shall cooperate with Landlord's restoration by promptly removing from the Premises all of tenant's salvageable inventory and moveable equipment, furniture and other property. Tenant's liability for Rent shall resume 5 days after notice the Premises have been repaired. If the damage is caused by the negligence of Tenant or its employees, agents, invitees or concessionaires, there shall be no abatement of Rent. Except for abatement of Rent (if any), Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration, nor shall Tenant have the right to terminate this

Lease as the result of any statutory provision now or hereafter in effect pertaining to the damage and destruction of the Premises or the Building, except as expressly provided herein.

12.2. Restoration of Tenant's Fixtures and Equipment. Landlord shall not be required to repair any injury or damage caused by fire or any other cause, or to make any restoration or replacement of any paneling, decoration, partition, railing, floor covering, office fixture or any other improvement or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Unless this Lease is terminated by Landlord pursuant to §12.1, Tenant shall restore or replace such improvements and property in the event of injury or damage to a condition at least equal to that existing prior to the destruction or casualty. The proceeds of all insurance carried by Tenant on its property and fixtures shall be held in trust by Landlord for the purpose of said repair and replacement.

### **Article 13. Assignment and Subleasing.**

13.1. No Sublease or Assignment. Subject to Section 13.5 below, Tenant shall not transfer, assign, mortgage or hypothecate this Lease, in whole or in part, permit the use of the Premises by any person or persons other than Tenant, its employees, customers and others having lawful business with Tenant, or sublet the Premises or any part thereof, without the prior written consent of Landlord in each and every instance, which consent shall not be unreasonably withheld. Landlord shall be entitled to review, and Tenant shall supply, any and all information Landlord deems necessary to determine whether to grant its consent, all of which must be provided to Landlord not later than thirty (30) days prior to the proposed effective date of assignment, subletting or other transfer. Any transfer of this Lease from Tenant by merger, consolidation, transfer of assets or liquidation or otherwise by operation of law shall constitute an assignment for purposes of this Lease. If Tenant is not a natural person, the transfer, assignment, reallocation or hypothecation of any stock or interest in such entity so as to transfer a record or beneficial interest in the aggregate in excess of 49% of such interest, whether in a single transaction or a series of transactions during the Term of this Lease, shall be deemed an assignment within the meaning of this §13.1.

13.2. Effect of Unauthorized Transfer. Any transfer, assignment or subletting without Landlord's prior written consent shall be void ab initio and shall constitute a default hereunder which, at the option of Landlord, shall result in the termination of this Lease or the exercise of Landlord's other remedies hereunder. Consent to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting and the terms of such consent shall be binding upon any person holding by, under or through Tenant.

13.3. Limitations Upon Proposed Sublease or Assignment. Tenant shall not offer to sublease any of the Premises or to assign this Lease before delivering to Landlord a written notice that Tenant intends to seek a subtenant or assignee. Tenant shall not offer to sublease or assign at a base rent lower than the rent established by Landlord for comparable space in the Building. All documents circulated by Tenant in connection with any solicitation shall be subject to the prior approval of Landlord.

13.4. Collection not Waiver or Consent. If this Lease is assigned without Landlord's written consent as provided herein or if the Premises or any portion thereof are sublet or occupied by any person other than Tenant without Landlord's written consent as provided herein, Landlord may collect rent and other charges from such assignee or other party, and apply the amount collected to the Rent and other charges reserved hereunder, but such collection shall not constitute consent or waiver of the necessity of consent to such assignment, subletting or other transfer, nor shall such collection constitute the recognition of such assignee, subtenant or other party as Tenant hereunder or a release of Tenant from further performance of any covenant or obligation herein. No consent by Landlord to any assignment, subletting or other transfer by Tenant shall relieve Tenant of any obligation to be performed by Tenant hereunder, whether occurring before or after such consent, assignment, subletting or other transfer. If any assignee or sublessee of Tenant or any successor of Tenant defaults in the performance of any of the provisions of this Lease, whether or not Landlord has collected Rent directly from said assignee or sublessee, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, sublessee or other successor-in-interest. Provided that in no event shall any further assignment, sublease, amendment or modification to this Lease serve to either increase Tenant's liability or expand Tenant's duties or

obligations hereunder, or relieve Tenant of its liability under this Lease, then Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with any assignee, without notifying Tenant or any successor of Tenant, and without obtaining their consent thereto. If Landlord shall consent to any assignment, subletting or other transfer hereunder, Tenant shall pay or reimburse Landlord's reasonable fees and costs, including its costs of administration and attorneys' fees, incurred in connection with the processing of documents necessary to the giving of such consent. If Landlord withholds its consent and Tenant believes that Landlord did so contrary to the terms of this Lease, Tenant may, as its sole remedy, prosecute an action for declaratory relief to determine if Landlord properly withheld or conditioned its consent, and Tenant hereby waives all other remedies.

### 13.5. Subletting and Assignment.

(a) (i) If Tenant desires to obtain Landlord's consent to a proposed assignment of this Lease or to a subletting of the whole or any part of the Premises, Tenant shall submit to Landlord a copy of the proposed assignment agreement or sublease, the terms thereof, the name of the proposed assignee or subtenant, the portion of the Premises proposed to be sublet, including the entire Premises if applicable (the "**Subleased Premises**"), and such further information relating to the subletting or assignment as Landlord may reasonably request. The commencement date of the proposed sublease or assignment ("**Effective Date**") shall be neither less than sixty (60) days nor more than one hundred twenty (120) days following the date of Tenant's submission of such information. Upon receipt of such request and all such information from Tenant, Landlord shall have the right, exercisable by notice in writing within forty-five (45) days after such receipt, (A) to terminate this Lease if the request is to assign this Lease, (B) to terminate this Lease with respect to the Subleased Premises, or (C) to sublet the Subleased Premises from Tenant at a rent equal to the lower of the proposed sublease rent or the existing rent payable by Tenant under this Lease (pro-rated based on the portion of the Premises proposed to be subleased), in each case as of the Effective Date.

(ii) Landlord's right to terminate under clauses (A) and (B) of subsection (i) above shall be for any reason whatsoever in the sole discretion of Landlord, including but not limited to an intention to retain any and all profits of such assignment or sublease or to lease the Premises to the proposed subtenant or assignee. If Landlord shall exercise such termination right, Tenant shall surrender possession of the entire Premises or of the affected portion, as the case may be, on the Effective Date in accordance with this Lease, and the rent payable by Tenant hereunder shall be abated proportionately.

(iii) If the Subleased Premises are removed from this Lease or are sublet to Landlord, then Tenant grants to Landlord the right to enter onto the Premises and to construct such demising walls or other facilities as may be needed to physically separate the Subleased Premises from the Premises, or (at Tenant's option) to effect whatever lesser or additional degree of separation may have been agreed to between Tenant and the prospective subtenant.

(b) If Landlord does not exercise its rights under Section (a), then Landlord will not unreasonably withhold consent to an assignment of the Lease or the sublease of the Premises, subject to the following conditions precedent.

(i) Tenant shall deliver to Landlord sufficient information (certified by an independent accountant) to enable Landlord to evaluate the financial strength, business experience, and creditworthiness of the sublessee or assignee. Landlord may require other information with respect thereto in connection with Tenant's request.

(ii) The proposed sublessee or assignee shall have a net worth equal to the net worth of Tenant on the date of this Lease or the date of the request for approval, whichever is greater. In addition, the proposed sublessee or assignee shall be of such financial strength, creditworthiness and business experience at the time of the subletting or assignment (of which Landlord shall be the sole judge) as to give reasonable assurance of the successful operation of the business and the payment of all rents and other amounts reserved in this Lease and compliance with all of the terms, covenants, provisions and conditions of this Lease.

(iii) If the assignee or subtenant is not a natural person or a public corporation, the principals of the assignee or subtenant shall each execute a guarantee of lease in form satisfactory to Landlord.

(iv) The assignee or subtenant shall not be an existing tenant (or an affiliate of an existing tenant) in the Building, nor any person who is either currently negotiating with Landlord for space in the Building or has negotiated for space with Landlord in the previous six months.

(v) The assignment and assumption agreement shall contain a covenant by which each permitted assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent and additional rent and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease. In no event shall any assignment or subletting be deemed to release Tenant from any of its obligations under this Lease.

(vi) Tenant or the sublessee or assignee shall increase the security deposit under this Lease by one month's Base Rent.

(vii) The assignment agreement or sublease shall contain an express prohibition against any further subletting, notwithstanding any rights granted under this Lease.

(viii) The subtenant or assignee shall not be entitled to diplomatic immunity as to any claim made under this Lease, the sublease (if applicable), or by any third person as to which Landlord may be named as a defendant.

(ix) No subletting shall result in occupancy of the Premises by more than two different entities.

(x) If Tenant proposes to sublease and the rent collectible under the sublease exceeds the rent payable by Tenant under this Lease, Tenant shall promptly remit 50% of the difference to Landlord each month as Additional Rent under this Lease. If Tenant proposes to assign this Lease, Tenant shall remit to Landlord 50% of any consideration received by Tenant in connection with the assignment, directly or indirectly. In calculating the net consideration received by Tenant in connection with a sublease or assignment, Tenant may take into account any leasing brokerage commissions or advertising costs payable by Tenant with respect thereto. It is the intention of the parties by this clause that Landlord shall be entitled to 50% of any profit relating to the use and occupancy of the Premises by any person other than Tenant after subtracting such costs.

(xi) In the case of a sublease, Landlord shall have the option to collect the subrent thereunder directly from the subtenant, without releasing Tenant in any way from the full performance of its obligations under this Lease.

(xii) Tenant or the proposed sublessee or assignee shall pay to Landlord a fee in an amount equal to one month's Base Rent and shall reimburse Landlord's reasonable legal fees and disbursements and other reasonable out-of-pocket costs.

#### **Article 14. Defaults and Remedies.**

14.1. Default by Tenant. Upon the occurrence of any of the following events, Tenant shall be deemed in default under this Lease;

(a) Tenant's failure to pay any installment of Base Rent or Additional Rent or any other sum due hereunder within 5 days after it shall be due;

- (b) Assignment of this Lease or subleasing of any portion of the Premises in violation of Article 13;
- (c) Failure to keep the insurance policies for the Premises in full force and effect, or to deliver the policies to Landlord upon request;
- (d) Default by Tenant under any other agreement between Tenant and Landlord;
- (e) The Building's or the Premises' becoming subject to any mechanic's, materialman's or other lien which arises out of work performed or materials furnished to the Premises or obligations incurred by Tenant and which remains undischarged of record (by payment, bonding or otherwise) for 30 days;
- (f) Tenant's failure to deliver to Landlord, within 10 days after request by Landlord, any estoppel certificate required under this Lease;
- (g) Default under any guarantee or indemnity executed in connection herewith which continues after the expiration of any applicable grace periods;
- (h) Tenant's or any guarantor's becoming bankrupt or insolvent or filing any debtor proceedings or having taken against it, in any court, pursuant to state or federal statute, a petition in bankruptcy or insolvency, or reorganization, or the appointment of a receiver or trustee; or Tenant's petitioning for or entering into an arrangement or suffering this Lease to be taken under a writ of execution;
- (i) Tenant's not taking possession of the Premises within 30 days after the Date of this Lease, or Tenant's vacating or abandoning the Premises; or
- (j) Tenant's default in the performance of any (but not necessarily the same) term of condition of this Lease 3 or more times during any 12 month period; or
- (k) Tenant's failure to perform any other term, condition, or covenant to be performed by it pursuant to this Lease within 15 days after written notice.

14.2. Conditional Limitation. If Landlord has given the notice provided for in §14.1 and Tenant has not cured the breach, or if Tenant shall default in the payment of any Base Rent or Additional Rent, Landlord may serve a written 3 days' notice of cancellation of this Lease upon Tenant. Upon the expiration of such 3-day period, this Lease and the Term shall end and expire as fully and completely as if the expiration of such 3-day period were the day originally fixed for the end of this Lease, and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided and Landlord shall have all remedies available to it in equity and at law and the other remedies set forth in this Lease.

14.3. Landlord's Remedies. If Tenant defaults, Landlord shall have the following remedies:

- (a) Landlord, without notice, may re-enter the Premises (either by force or otherwise) and dispossess Tenant (by summary proceedings or otherwise) and the legal representative of Tenant or other occupants of the Premises and remove their effects and hold the Premises as if this Lease had not been made. Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall default hereunder before the date fixed as the commencement of any renewal or extension of this Lease, Landlord may cancel and terminate such renewal or extension agreement by written notice.
- (b) Landlord may terminate Tenant's rights and interest under this Lease by written notice, but no act by Landlord other than written notice of termination from Landlord shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for all damages Landlord is entitled to at law and in equity and as set forth in this §14.3.

(c) All installments of Base Rent (and Additional Rent at the level at the time of default) through and including the original Expiration Date shall immediately become due and payable. Landlord may re-let the Premises or any parts thereof, either in the name of Landlord or otherwise, for any term, whether more or less than the Term of this Lease, and may grant concessions or free rent or charge a higher rental than that in this Lease. Tenant or its legal representatives shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants in this Lease any deficiency between the Rent reserved in this Lease and the net amount, if any, of the rents collected on account of the re-let lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the Term. The failure of Landlord to re-let any part of the Premises shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the deficiency all expenses which Landlord may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and the costs of keeping the Premises in good order or for preparing the Premises for re-letting and administrative fees. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding. Landlord, in putting the Premises in good order or preparing it for re-letting, may make such alterations, repairs, replacements, and decorations in the Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of re-letting the Premises, and the making of such alterations, repairs, replacements, and decorations shall not operate or be construed to release Tenant from liability under this Article. Landlord shall not be liable in any way whatsoever for failure to re-let the Premises, or, if the Premises are re-let, for failure to collect the rent due under such re-letting, and in no event shall Tenant be entitled to receive any excess of such net rents collected over the sums payable to Tenant to Landlord hereunder.

(d) Nothing contained in this Lease shall be considered to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any law, rule or regulation or as allowed in equity.

14.4. Equitable Rights. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for elsewhere in this Lease.

14.5. Landlord's Right to Cure Tenant's Breaches. If Tenant shall fail to perform any obligation hereunder, Landlord, after notice to Tenant, may perform the obligation on behalf of and for the account of Tenant, and the cost of performing such obligation, together with a 10% administrative fee and interest at the greater of 18% or the maximum legal rate, shall be Additional Rent payable to Landlord upon demand.

14.6. Waiver of Right of Redemption. Tenant expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant's being evicted or dispossessed for any cause, or in the event of Landlord's obtaining possession of Premises for any reason, whether by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

14.7. Remedies Cumulative. Each remedy of Landlord provided for in this Lease shall be in addition to, and not in exclusion of, each other remedy available to Landlord.

14.8. Consents. If in this Lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld or delayed, Tenant's sole remedy for any claimed breach shall be an action for specific performance. If it is established by a court or body having final jurisdiction thereover that Landlord has been unreasonable, the only effect of such finding shall be that Landlord shall be deemed to have given its consent or approval. Landlord shall not be liable to Tenant in any respect for money damages under any circumstances by reason of withholding its consent.



14.9. Fees and Expenses. If Landlord is required to send any notice of default, demand, or engage in any action or other proceeding for which Landlord deems it advisable to retain an attorney, then Tenant shall pay Landlord for reasonable attorney's fees incurred in connection with such notice, demand, action or proceeding, together with Landlord's costs of enforcing this Lease, including attorney's fees, witness fees and disbursements. Tenant shall be responsible for all of Landlord's costs and expenses of enforcing this Lease or defending any claim or action brought by Tenant in connection with this Lease. The expenses incurred by reason of Tenant's default shall be deemed to be Additional Rent hereunder and shall be paid by Tenant to Landlord within 10 days of rendition of any bill or statement to Tenant therefor. If the Term shall have expired at the time such expenditures are incurred, such sums shall be recoverable by Landlord as damages.

#### **Article 15. Provisions relating to Termination of Lease.**

15.1. Surrender of Premises. Upon the expiration of this Lease, Tenant shall peaceably surrender the Premises to Landlord broom clean, in good order and condition, ordinary wear and tear and loss by fire (unless caused by Tenant, its agents, servants, employees or invitees) excepted, and shall deliver all keys to Landlord. Before surrendering the Premises, Tenant, at Landlord's option, shall either leave all Alterations intact in the Premises all such Alterations being considered part of the Building; or remove from the Premises and the Building all Alterations, all of its personal property and trade fixtures and such other property as Landlord shall have the right to require the removal of, in such a way as not to damage the Premises or the Building, unless such damage shall be unavoidable, in which event Tenant shall advise Landlord in advance and in writing and in reasonable detail of what Tenant proposes to do that will cause such damage, and shall perform such removal so as to minimize any damage to the Premises and the Building and shall restore the Premises and the Building to substantially the condition existing prior to such Alterations. Without limiting the generality of the foregoing, if during the Term any portion of the Premises has been painted in a color different from its color on the date of this Lease, then Tenant shall repaint such portion in such initial color or shall pay Landlord's reasonable cost of doing so. Tenant shall be responsible for all costs, expenses and damages incurred in such removal. All of the foregoing property not removed from the Premises upon the abandonment thereof or upon the termination of this Lease for any cause whatsoever shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without any obligation to account therefor. Tenant shall pay Landlord upon demand all expenses incurred in connection with the disposition of such property. Upon termination of the Term, Tenant shall deliver to Landlord all keys to the Premises. However, no surrender of the Premises shall be effected by Landlord's acceptance of the keys or of the rent or by any other means whatsoever without Landlord's written acknowledgment of such acceptance as a surrender. Tenant shall not be released from obligation in connection with surrender of the Premises until Landlord has inspected the Premises and delivered to Tenant a written release. Tenant shall indemnify Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Premises, including without limitation thereto, any claims made by any succeeding tenant founded on such delay.

15.2. Repair of Damage. Tenant, at its sole cost and expense, shall repair to Landlord's reasonable satisfaction any damage to the Building or the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, movable partitions, or temporary or permanent Alterations.

#### **15.3. Holding Over.**

(a) If Tenant holds over in possession after the expiration or an earlier termination of the Term, such holding over shall not extend the Term or renew the Lease, nor establish a month-to-month tenancy (but such holding over shall be subject to all of covenants and conditions of this Lease), except that the charge for use and occupancy of such holding over ("**Use Fee**") for each calendar month or part thereof shall be two times the sum of-

(i) 1/12<sup>th</sup> of the highest annual Base Rent set forth in this Lease; plus

(ii) 1/12<sup>th</sup> of all other items of annual Additional Rent which would have been payable had this Lease not expired; plus

(iii) all other items of Additional Rent (not annual Additional Rent) which would have been payable had this Lease not expired.

(b) Tenant shall pay to Landlord the Use Fee, in full and without setoff, on the first day of each month for which the Use Fee is due. Tenant agrees that said Use Fee is commercially reasonable.

15.4. Landlord's Right to Require Relocation and Substitution of Premises. Landlord may relocate Tenant to other space within the Building, if in Landlord's reasonable judgment such space is comparable in size and sufficient for Tenant's intended use. If Landlord shall elect to relocate Tenant pursuant to the provisions of this Section, Landlord shall give Tenant not less than 60 days' written notice, indicating the location of Tenant's new space and the date on which Tenant shall move to Tenant's new space in the Building. Upon receipt of notice from Landlord that Landlord elects to relocate Tenant pursuant to the provisions hereof, Tenant shall notify Landlord, not later than 20 days after receipt of such notice, either that Tenant will move to the space designated by Landlord in the Building or that Tenant will not accept such move and elects to terminate this Lease, such termination to be effective 30 days after Tenant so notifies Landlord. If Tenant does not give either such notice to Landlord within such 20-day period, then this Lease shall terminate 30 days after the date of Landlord's notice to relocate as if the date specified were the originally scheduled Expiration Date. If Tenant elects to be relocated, Landlord shall pay the cost of moving Tenant's furniture and equipment to the new space. When Tenant has moved, the new space shall become the "Premises" which is the subject of this Lease. Otherwise, neither the terms of this Lease nor Tenant's duties and obligations hereunder shall be affected by relocation of Tenant to other space in the Building. If Tenant elects not to relocate and to terminate this Lease, Landlord shall have no liability to Tenant for earlier termination of this Lease or for any cost or expense of moving from the Premises.

#### **Article 16. Eminent Domain.**

As used in this Article, "Eminent Domain" means any actions or proceedings in which any interest in the Building is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise. If the whole of the Premises is taken through Eminent Domain, this Lease shall automatically terminate as of the date of the taking. The phrase "as of the date of the taking" means the date of taking actual physical possession by the condemning authority or such earlier date as the condemning authority gives notice that it is deemed to have taken possession. If part, but not all, of the Premises is taken, either Landlord or Tenant may terminate this Lease. Landlord may terminate this Lease if any portion of the Building (whether or not including the Premises) is taken which, in Landlord's reasonable judgment, substantially interferes with Landlord's ability to operate or use the Building for the purposes for which the Building was intended. Any such termination must be accomplished through written notice given no later than 30 days after, and shall be effective as of, the date of such taking. In all other cases, or if neither Tenant nor Landlord exercises its right to terminate, this Lease shall remain in effect. If a portion of the Premises is taken and this Lease is not terminated, the Base Rent shall be reduced in the proportion that the floor area taken bears to the total floor area of the Premises immediately prior to the taking. Whether or not this Lease is terminated as a consequence of Eminent Domain, all damages or compensation awarded for a partial or total taking, including any award for severance damage and any sums compensating for diminution in the value of or deprivation of the leasehold estate under this Lease, shall be the sole and exclusive property of Landlord, provided that Tenant shall be entitled to any award for the loss of, or damage to, Tenant's trade fixtures or loss of business and moving expenses, if a separate award is actually made to Tenant and if the same will not reduce Landlord's award. Tenant shall have no claim against Landlord for the occurrence of any Eminent Domain, or for the termination of this Lease or a reduction in the Premises as a result of any Eminent Domain.

**Article 17. Subordination; Attornment; Rights of Mortgagee; Amendment.**

17.1. Subordination. This Lease shall automatically be subject and subordinate to any existing or future mortgage, any and all advances made under any mortgage, any ground or underlying lease, and all renewals, modifications, amendments, consolidations, replacements and extensions of either. No documentation, other than this Lease, shall be required to evidence such subordination. If any holder of a mortgage or deed of trust shall elect to have this Lease superior to the lien of its mortgage or deed of trust and shall give written notice thereof to Tenant, then this Lease shall be deemed prior to such mortgage or deed of trust or to the date of recording thereof. So long as Tenant is not in default under this Lease (and no event has occurred which, with the passage of time or giving of notice or both, would result in a default), this Lease shall remain in full force and effect for the Term and shall not be terminated as a result of any foreclosure or sale or transfer in lieu of such proceedings pursuant to a mortgage or other instrument to which Tenant has subordinated its rights. Tenant shall execute all documents required by Landlord to confirm such subordination or priority within 10 days of request therefor from Landlord. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead to do so if Tenant fails to do so within such time period, and such power of attorney shall be deemed to be coupled with an interest. Without the prior written consent of Landlord, Tenant shall not subordinate its interests hereunder or in the Premises to any lien or encumbrance other than those encumbrances described in this §17.1. Any such unauthorized subordination by Tenant shall be void and of no force or effect whatsoever and shall constitute a default by Tenant under this Lease.

17.2. Attornment. If at any time (a) Landlord shall be the holder of a leasehold estate covering premises of which the Premises form a part, and if such leasehold estate shall expire or terminate for any reason, or (b) the Building, the Land or Landlord's leasehold estate shall be affected by a mortgage, then at the election and upon the demand of any landlord of the premises of which the Premises are a part, or of any mortgagee in possession thereof, Tenant shall attorn to any such landlord or mortgagee upon the terms and conditions set forth in this Lease for the remainder of the Term, regardless of any rule of law to the contrary or absence of privity of contract. The foregoing provisions shall inure to the benefit of any such landlord or mortgagee and shall be self-operative without the necessity of the execution of any further instruments; but Tenant shall upon demand execute, acknowledge and deliver any instrument or instruments confirming such attornment. The foregoing shall not limit any other rights which such landlord or mortgagee may then have under the law.

17.3. Rights of Mortgagee. In the event of an act or omission or alleged act or omission by Landlord which would give Tenant the right to terminate this Lease or to abate the payment of rent or to claim a partial or total eviction, Tenant shall not exercise any such right unless (a) Tenant shall first have given written notice of such act or omission to Landlord and to the holder of any mortgage on the Building (whose name and address shall previously have been furnished to Tenant) and (b) neither Landlord nor any mortgagee shall have commenced to cure such act or omission within a reasonable period of time following the giving of such notice (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

17.4. Amendments in Connection with Financing. In connection with the procurement, continuation or renewal of any financing for which the Land or the Building represents collateral in whole or in part, if a lender shall request reasonable modifications of the Lease as a condition of such financing, Tenant will join with Landlord in amending this Lease, if such amendment does not materially and adversely affect Tenant's economic interests under this Lease.

**Article 18. Estoppel Certificates.**

Within 10 days after Landlord's request therefor on a form provided by Landlord, Tenant shall execute and deliver to Landlord an Estoppel Certificate in recordable form setting forth the following: (a) a ratification of this Lease; (b) the Commencement Date and Expiration Date hereof, (c) a certification that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writing as shall be stated) and that this Lease represents the entire agreement between Landlord and Tenant; (d) that all conditions under this Lease to be performed by Landlord have been satisfied; (e)

that there are no defenses or offsets against the enforcement of this Lease by Landlord, or, in the alternative, those claimed by Tenant; (f) the amount of advance rent, if any (or none if such is the case) paid by Tenant; (g) the date to which rent has been paid; (h) the amount of Base Monthly Rent, if any, that has been paid in advance and the amount of security deposited with Landlord; (i) whether or not Landlord is in default under this Lease (and if so, specifying the nature of the default); and (j) such other information as Landlord (or its mortgagees or potential purchasers of the Premises) may reasonably request. If Tenant fails to properly execute and deliver the Estoppel Certificate to Landlord within 10 days after Landlord has delivered to Tenant an Estoppel Certificate under this Article 18, Tenant shall be deemed to have authorized Landlord to respond to Landlord's request as Tenant's attorney-in-fact on Tenant's behalf and Landlord is hereby authorized to so certify and deliver such certificate. Landlord's mortgage lenders, assignees and purchasers shall be entitled to rely upon such Estoppel Certificate. Tenant's failure to furnish any Estoppel Certificate within 10 days after request shall be a default under this Lease and it shall be conclusively presumed that (x) this Lease is in full force and effect without modification in accordance with the terms set forth in the request; (y) there are no breaches or defaults on the part of Landlord; and (z) no more than one month's rent has been paid in advance.

#### **Article 19. Rules and Regulations.**

The rules and regulations in Exhibit "B" are hereby made a part of this Lease. Landlord may from time to time amend, modify, delete or add rules and regulations for the use and care of the Building and the Premises. Each such amendment, modification, deletion or addition shall be effective upon notice to Tenant. Tenant will cause its employees, visitors, agents, or any other persons permitted by Tenant to occupy or enter the Building to abide by all of such rules and regulations at all times. Upon any breach of such rules or regulations, Landlord may exercise any or all of its remedies in the event of default by Tenant and may, in addition, exercise any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. No act performed by Landlord or its agents during the Term to enforce such rules and regulations shall constitute an eviction of Tenant by Landlord or an acceptance or surrender of the Premises. Landlord shall not be responsible to Tenant for the failure by any other tenant or person to observe any such rules and regulations.

#### **Article 20. Bankruptcy.**

20.1. Landlord's Right to Cancel. Landlord may cancel this Lease by written notice to Tenant within a reasonable time after (a) the commencement of a case in bankruptcy, or under the laws of any state, naming Tenant as the debtor or (b) Tenant's making an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the Premises but shall forthwith quit and surrender the Premises.

20.2. Landlord's Damages. Upon the termination of this Lease under §20.1, Landlord may recover from Tenant as and for liquidated damages all amounts of damages provided for in Article 14 above or elsewhere in this Lease in addition to any and all damages allowed by law or in equity.

#### **Article 21. Notices.**

Any notice required or permitted under this Lease shall be in writing and shall be deemed sufficiently given or served if addressed as indicated in Article I and delivered by hand or sent for delivery on the next business day by overnight mail by recognized overnight courier (with receipt), or by United States certified mail, return receipt requested. The time of the giving of such notice shall be the time when the same is delivered by hand or 1 day after the same is sent for delivery by overnight mail or 3 days after the same is mailed as aforesaid. Each party may from time to time change the place to which notice is to be given under this Article by giving written notice thereof to the other party.

#### **Article 22. Miscellaneous.**

22.1. No Waiver. Landlord's failure to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Lease or of any Rule or Regulation shall not prevent a subsequent act from having all the force and effect of an original violation. Landlord's receipt of Base Rent or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement of or on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy in this Lease. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. No employee or agent of Landlord shall have any power to accept the keys of the Premises on Landlord's behalf prior to the termination of the Lease, and the delivery of keys to any such agent or employee shall not operate as a termination of the Lease or a surrender of the Premises.

22.2. Waiver of Trial by Jury; No Counterclaims. Landlord and Tenant each waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any emergency statutory or any other statutory remedy. If Landlord commences any proceeding or action for possession, including a summary proceeding for possession of the Premises, Tenant shall not interpose any counterclaim, except for statutory mandatory counterclaims.

22.3. Force Majeure. This Lease and the obligations of Tenant hereunder shall not be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease, or is unable to make, or is delayed in making any repair, additions, alterations or decorations, or is unable to supply or is delaying in supplying any equipment, fixtures, or other materials, if the reason for such inability or delay is strike or labor troubles or any cause beyond Landlord's reasonable control, including government preemption or restrictions; or any rule, order or regulation of any governmental agency; or conditions resulting from war or other emergency.

22.4. Captions. The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provisions thereof.

22.5. Binding Effect. The covenants, conditions and agreements contained in this Lease shall bind and insure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and (except as may be otherwise provided in this Lease) assigns. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by such provisions.

22.6. Execution and Delivery. Landlord's submission of this Lease to Tenant for execution shall confer no rights and impose no obligations on either party unless and until both Landlord and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties. At Landlord's option, this Lease shall be void and of no force and effect if the check given hereunder for the Security Deposit and first month's rent is not honored on first deposit, and Tenant shall be liable for any costs of Landlord (including attorney's fees) incurred in connection with the execution of this Lease and enforcement of Landlord's rights hereunder.

22.7. Attachments. Exhibits referred to in this Lease and any addendums, riders and schedules attached to this Lease shall be deemed to be incorporated in this Lease as though a part hereof.

22.8. Recording. Tenant shall not record this Lease or a memorandum hereof without Landlord's prior written consent. Landlord, at its option and at any time, may file this Lease or a memorandum hereof

for record with the appropriate authority and Tenant agrees to cooperate with Landlord to accomplish said filing.

22.9. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid, 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.

22.10. Broker's Commissions. Each of Landlord and Tenant covenants, warrants and represents to the other that it has not dealt with any broker except the Brokers as defined in §1.19 who brought about this Lease. Landlord shall pay commission(s) to any such Broker(s) pursuant to a separate agreement. Each of Tenant and Landlord shall indemnify and hold the other harmless from and against any claims for any brokerage commissions or finder's fees including, without limitation, attorneys' fees and expenses, arising out of any conversation or negotiation had by the indemnifying party with any other broker or finder.

22.11. Entire Agreement, etc. This Lease and the Exhibits, Riders and/or Addenda, if any, attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof. Any guarantee attached hereto is an integral part of this Lease and constitutes consideration given to Landlord to enter into this Lease. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed.

22.12. Time of Essence. Time is of the essence as to all time periods contained in this Lease.

22.13. No Joint Venture, etc. Nothing contained in this Lease shall be deemed to constitute or be construed or implied to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto, other than the relationship of landlord and tenant.

22.14. Authorization. If Tenant is not a natural person, (a) Tenant represents and warrants (i) that Tenant is duly constituted and is qualified to do business in Utah; (ii) that all of Tenant's franchise, corporate or other applicable taxes have been paid to date; and (iii) that all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws shall be filed and paid by Tenant when due; (b) each person executing this Lease on behalf of Tenant represents and warrants that he or she, and Tenant, are duly authorized to execute and deliver this Lease; and (c) Tenant shall deliver to Landlord within ten (10) days after written notice (i) a good standing certificate issued by the state under the laws of which Tenant is organized, (ii) a copy of the certificate of incorporation and bylaws, or articles of organization and limited liability company agreement, or limited partnership certificate and limited partnership agreement, or other organizational documents of Tenant, including all amendments thereto, certified by the secretary or manager or member or general partner or other appropriate representative of Tenant to be true, correct, and complete and in full force and effect, (iii) if applicable, Tenant's authorization to do business in the State of Utah, (iv) if applicable, resolutions of the board of directors, or shareholders, of Tenant authorizing Tenant to execute and deliver this Lease and authorizing one or more officers of Tenant to do so on behalf of Tenant, and (v) if applicable, an incumbency certificate, executed by Tenant's secretary, naming the officers of Tenant, containing their signatures, and stating that they have been duly elected and are presently serving in such offices and that the signature opposite each such name is the true and correct signature of such person.

22.15. No Third Party Beneficiary. Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a mortgagee.

22.16. Choice of Law, Venue. This lease shall be governed by Utah law. Tenant consents to personal jurisdiction and venue in Salt Lake City, Salt Lake County and the State of Utah.

22.17. No Oral Changes. This Lease may not be modified orally.

22.18. Survival. Tenant's obligations under this Lease shall survive the expiration or earlier termination of the Lease. In addition, notwithstanding any termination of this Lease or the Term, Tenant shall be and remain liable to fully perform and fulfill all of its obligations under this Lease relating to events occurring, circumstances existing, or obligations or claims arising or attributable to, the period prior to the date of termination.

22.19. Successors. Landlord shall not be liable to Tenant for any default or breach under this Lease after the sale of the Building or Premises by Landlord, regardless of when the default or breach occurred.

22.20. Construction and Definitions.

(a) Additional Definitions. As used in this Lease, the following terms shall be construed as follows. The term "including" means "including but not limited to". The term "may" means "may but is not obligated to". The term "or" means "and/or". The term "at any time" shall be construed as "at any time or from time to time". The term "any" shall be construed as "any and all". The term "Tenant" includes Tenant and its agents, employees, contractors, concessionaires, and licensees. The term "repair" means "repair, maintain or replace". The term "office" shall exclude premises used as a store, for the sale or display, at any time, of any goods, wares or merchandise, or as a restaurant, shop, booth, bootblack, shoe shine or other stand, barber shop, or for other similar purposes or for manufacturing. The term "Landlord" means a landlord or lessor, and means only the Landlord, or the mortgagee in possession, for the time being of the Land and Building (or the Landlord of a lease of the Building or of the Land and Building, as applicable), so that upon any sale or assignment (except for purposes of security or collateral) by Landlord of the Building, the Premises or this Lease, Landlord shall be entirely relieved of its obligations hereunder from and after the Commencement Date of the Term (irrespective of when such sale or assignment occurs), and it shall be deemed ipso facto that the purchaser or lessee has assumed and agreed to carry out all obligations of Landlord hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" shall exclude Saturdays, Sundays, and all days observed by the Utah State or federal government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

(b) Restrictions on Tenant's acts also restrict Tenant from permitting such act to be performed.

(c) Wherever a requirement is imposed on any party, it shall be deemed that the party shall be required to perform the requirement at its own expense unless it is specifically otherwise provided.

22.21. Checks, etc. Tenant shall pay Landlord the sum of \$50.00 for each unpaid check tendered to Landlord and returned by the bank to defray Landlord's expenses in connection therewith. If Tenant shall tender to Landlord during the term of this Lease three or more checks which are returned by the bank, Landlord may, at its option, by written notice to Tenant, require that all further checks tendered to Landlord pursuant to this Lease be certified or bank checks. Within 10 days after written request, Tenant shall deliver to Landlord a copy of Tenant's annual income tax returns, a copy of annual audited financial statements of Tenant fairly reflecting the operations of Tenant during its current and/or most recently ended financial year, and such other financial information as Landlord may reasonably request, in form and substance satisfactory to Landlord.

22.22. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one instrument after execution of one original by each party hereto.

22.23. Construction. All parties to this Lease have reviewed and have had the opportunity to have their counsel review and revise this Lease, and the normal rule of construction to the effect that any ambiguities in this Lease are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.

22.24. Parking. The rights and obligations of the parties with respect to parking are set forth in Exhibit "C".

22.25. Storage. If at any time during the term of this Lease Landlord shall provide to tenant the right to use space in the Building for storage, then a default by Tenant under any agreement for such storage shall constitute a default by Tenant under this Lease and any default by Tenant under this Lease shall constitute a default by Tenant under such agreement for storage.

**IN WITNESS WHEREOF**, Landlord and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

**LANDLORD: WCH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

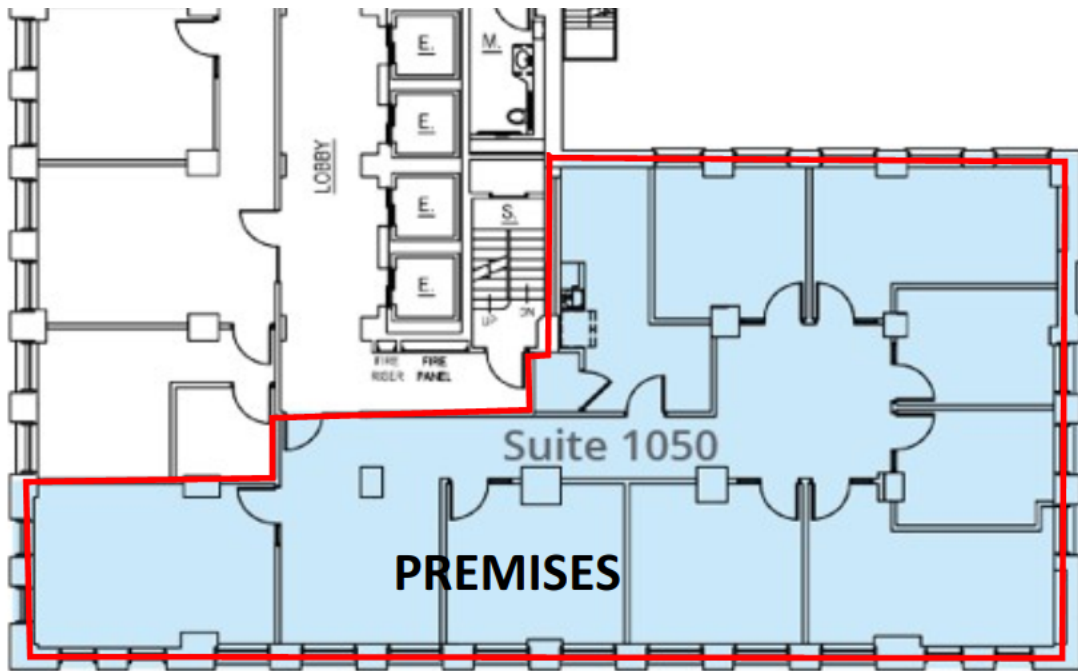
**TENANT: WALLACE STEGNER ACADEMY**

By: \_\_\_\_\_  
Name:  
Title:



EXHIBIT A

FLOOR PLAN OF PREMISES



## **EXHIBIT B**

### **RULES AND REGULATIONS**

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other for ingress or egress from the Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Landlord. There shall not be used in any space, or in the public hall of the Building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards approved by Landlord. If the Premises are situated on the ground floor of the Building, Tenant shall keep the sidewalk and curb in front of the Premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designated or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the Building and no Tenant shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the Building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the Building. Smoking or carrying lighted cigars or cigarettes in the Building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the Building without Landlord's prior written consent.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the Premises or the Building or on the inside of the Premises if the same is visible from the outside of the Premises without the prior written consent of Landlord, except that the name of Tenant may appear on the entrance door of the Premises. In the event of the violation of the foregoing by any Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal, including an administrative expense, to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Landlord at the expense of such Tenant, and shall be of a size, color and style acceptable to Landlord.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the Premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Premises, and, if linoleum or other similar floor covering is desired to be used then an interlining of Building's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. Tenant shall not place any additional locks or bolts of any kind upon any of the doors or windows, nor shall any changes be made in existing locks or mechanism thereof. Upon termination of its tenancy, each Tenant must restore to Landlord each key or access control card to stores, offices and lavatories that was furnished to, or otherwise procured by, such Tenant, and Tenant shall pay to Landlord the cost of each lost key or card. All keys and access control cards shall be keyed in accordance with the

Building's master control system. Landlord shall provide all duplicate keys and access control cards to Tenant at Tenant's expense. Purchase of keys and access cards from unauthorized vendors is prohibited.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the Premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Landlord. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of these Rules and Regulations of the lease of which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the Building is prohibited and each Tenant shall cooperate to prevent the same.

10. Landlord may prohibit any advertising by any Tenant which in Landlord's opinion tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

11. Tenant shall not bring or permit to be brought or kept in or on the Premises, any inflammable, combustible, explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the Premises.

12. Tenant agrees to abide by all rules and regulations issued by Landlord with respect to Landlord obtaining maximum effectiveness of the cooling system.

13. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the Building without Landlord's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures requires special handling, all work in connection therewith shall comply with all laws and regulations applicable thereto and shall be done during such hours as Landlord may designate.

14. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as required by law. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Landlord. Such separate receptacles may be removed from the Premises in accordance with a collection schedule prescribed by law or as Landlord may designate. Landlord may require Tenant to remove certain items which do not fall into the foregoing categories, as determined by Landlord in its sole discretion.

## **EXHIBIT C**

### **USE OF PARKING STALLS**

#### **1. Reserved / Unreserved Parking Stalls.**

(a) Landlord shall lease to Tenant, and Tenant shall take from Landlord, (i) \_\_\_ reserved parking space(s); and/or (ii) \_\_\_ unreserved parking space(s) in the Building parking structure (collectively, the "Parking Spaces") during the Term of this Lease for \$155 per month for each reserved parking space and \$120 per month for each unreserved parking space as adjusted from time to time to reflect the standard parking rates then in effect for the Building ("Parking Rent"). Parking Rent shall be payable as Additional Rent, shall be due on the 1<sup>st</sup> day of every month and shall be subject to escalation as though it were Base Rent as set forth in §2.3 of this Lease.

(b) The Parking Spaces shall be used by Tenant solely for the purpose of parking Tenant's vehicle(s). The Parking Spaces shall be available for Tenant's use seven (7) days a week and twenty-four (24) hours per day during the Term, except that Landlord may restrict access to one or more Parking Spaces from time to time, during such period as Landlord is performing necessary maintenance and repairs in the Building parking structure. Parking in the Building parking structure shall not be permitted overnight and shall not be used for storage of vehicles or anything else. Tenant's use of the Parking Spaces shall be subject to such rules and regulations, including access controls, as Landlord deems reasonably appropriate from time to time. Landlord shall not be liable to Tenant, nor shall this Lease be affected, if parking in the Parking Spaces is impaired by moratorium, initiative, referendum, law, ordinance, regulation or order passed, issued or made by any governmental or quasi-governmental body.

(c) Tenant shall not make or allow to be made any alterations, additions or improvements to the Parking Spaces, including signs, without Landlord's prior written consent.

(d) Tenant's use of the Parking Spaces is on an "as is" basis.

(e) Tenant shall indemnify, defend and save Landlord, Landlord's beneficiaries and agents and their respective successors and assigns harmless and indemnified from all injury, loss, claims or damage to any person or property while on or in the Building parking structure occasioned by an act or omission of Tenant, or anyone claiming by, through or under Tenant.

(f) If the Parking Spaces are reserved, Landlord shall have the right to change the location of Parking Spaces within the Building parking structure on 5 business days' written notice to Tenant.

(g) If the Parking Spaces are reserved, Landlord shall have no obligation to enforce Tenant's exclusive use of the Parking Space(s), other than the posting of a sign on the Parking Space(s) indicating that the Parking Space(s) are reserved.

**EXHIBIT E**

**CONFIRMATION OF TERM OF LEASE**

This Confirmation of Term of Lease is made by and between **WCH, LLC**, a Utah limited liability company, as Landlord, and Wallace Stegner Academy, a Utah nonprofit corporation, as Tenant, hereby agree as follows with respect to the Lease Agreement dated \_\_\_\_\_, 202\_\_ (the "Lease"), in which Landlord leased to Tenant and Tenant leased from Landlord the Premises described in the Basic Lease Information sheet of the Lease (the "Premises"):

1. **Commencement Date:** \_\_\_\_\_, \_\_\_\_\_.
2. **Rent Commencement Date:** \_\_\_\_\_, \_\_\_\_\_.
3. **Expiration Date:** \_\_\_\_\_, \_\_\_\_\_, unless sooner terminated or extended as provided in the Lease.
4. Tenant hereby confirms that the Lease is in full force and effect and:
  - a. It has accepted possession of the Premises as provided in the Lease;
  - b. The improvements and the space required to be furnished by Landlord under the Lease have been furnished;
  - c. Landlord has fulfilled all its duties of an inducement nature;
  - d. The Lease has not been modified, altered or amended, except as follows:  
\_\_\_\_\_; and
  - e. There are no setoffs or credits against Rent and no security deposit has been paid except as expressly provided by the Lease.
5. The provisions of this Confirmation of Term of Lease shall inure to the benefit of, or bind, as the case may require, the parties and their respective successors, subject to the restrictions on assignment and subleasing contained in the Lease.

**SIGNATURES APPEAR ON THE NEXT PAGE**

[Signature Page to Confirmation of Term of Lease]

**IN WITNESS WHEREOF**, Landlord and Tenant, intending to be legally bound, have executed this Certificate as of the date first written above.

**LANDLORD: WCH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**TENANT: WALLACE STEGNER ACADEMY**

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT D**

### **Landlord's Work**

Notwithstanding anything contained in this Lease to the contrary, Landlord shall cause **"Landlord's Work"** to be constructed upon the Premises as described on Exhibit D1 attached hereto. Landlord shall substantially complete Landlord's Work on or before the Commencement Date. Landlord shall have "Substantially Completed" Landlord's Work when Landlord sufficiently completes the requisite work subject only to completion of minor punch-list items as determined by Landlord in its commercially reasonable judgment. The Commencement Date shall be delayed until the Landlord's Work has been substantially completed, except to the extent that the delay is caused by any one or more of the following (a) Tenant's failure to provide information or documents to Landlord necessary for the performance of Landlord's Work; or (b) Tenant specifying any material or product for Landlord's Work that is not immediately available; or (c) failure to complete work on portions of the common areas of the Building not required to obtain a temporary certificate of occupancy for the Premises or for Tenant to conduct business at the Premises; or (d) Tenant's interference with Landlord's Work during the Early Access Period; or (e) changes requested by Tenant, to previously approved Landlord's Work after the date hereof ("Change Order"). If Tenant requests any Change Order which incurs additional cost, Tenant shall pay to Landlord the cost of such Change Order at the time such Change Order is approved by both parties.

## **EXHIBIT D1**

### **Landlord's Work**

Landlord's Work shall perform the following work in the Premises:

- Re-carpet the Premises using Building standard carpeting;
- Re-paint the Premises using Building standard paint and color schemes, subject to mutual agreement by Tenant and Landlord.
- Install new lighting fixtures in the Premises using Building standard material.
- Update the kitchen countertop and cabinets in the Premises using Building standard finishes.



# Invoice

**Bill Kurtz**

wrkurtz01@gmail.com  
2060 Fairfax Street  
Denver, CO 80207  
303-880-9019

**Services for:** Wallace Stegner Academy**Project:** High School and Scaling**Invoice #1**

DESCRIPTION OF WORK	AMOUNT
<i>Getting to know WSA, reviewing documents, developing work plans for high school project, scaling project and visiting WSA on 2/13/25. 1<sup>st</sup> invoice of 4 (\$32,000 total)</i>	\$8,000
<i>Travel Expenses</i>	
<i>United Airlines Ticket</i>	\$347
<i>Hertz Car Rental</i>	\$136
<i>1 night at Comfort Inn</i>	\$159
<i>Lyft from airport</i>	\$35
<i>Food (two dinners)</i>	\$38
	8,715\$

**PAYMENT TERMS**

Make checks payable to *Bill Kurtz*

*Net 30 Days*

**ADDRESS**

*2060 Fairfax Street  
Denver, CO 80207*

## Credit Application & New Customer Form

COMPANY INFORMATION			
Company Name	Wallace Stegner Academy	Doing Business Since:	2016
Phone	801-884-7950	Time at Current Location (years)	21 yr
A/P Contact	Maddi Winter	Federal Tax ID (EIN)	47-3210780
Phone	385-262-3155	DUNS	
Fax		Sales Tax Status:	<input type="checkbox"/> Non-Exempt
E-mail	maddi.winter@academica	*(please check one)	<input checked="" type="checkbox"/> Exempt (include certificate)
Registered Company Address (include City, State & ZIP)	2525 N. 160 W. Sunset, UT 84015	Type of Business: *(please check one)	
		<input checked="" type="checkbox"/> Sole proprietorship	<input checked="" type="checkbox"/> Corporation
		<input type="checkbox"/> Partnership	<input type="checkbox"/> Other (include an explanation)

OWNERS / OFFICERS			
Name	Adam Gerlach	Name	Anthony Sudweeks
Position	executive director	Position	executive director
Phone	801-456-9570	Phone	801-456-9570

BANK INFORMATION			
Bank name:		Account Number	
Contact		Account Type	<input type="checkbox"/> Savings <input type="checkbox"/> Checking <input type="checkbox"/> Other
Phone		Date Opened	
Fax		E-mail	

BUSINESS / TRADE REFERENCES			
Company Name	Amazon	Company Name	One West Construction
Contact *Required	AR Rep	Contact *Required	Chelsea Young
Phone	888-283-2209	Phone	801-444-9878
Email	ar-businessinvoicing@amazon.com	Email	chelsea@1westconstruction.com
Company Name	OP Dealer	Company Name	ETS
Contact *Required	Rick Butler	Contact *Required	Carter Fedor
Phone	801-550-1140	Phone	801-758-7300
Email	rick@opdealer.com	Email	accounting@eminent-technical.com

SIGNATURES	
Signature	Maddi Winter
Name & Title *(Must be officer)	Maddi Winter // Bookkeeper (AP)

All information contained above is for use in obtaining credit. By signing this application, you authorize Utah-Yamas Controls to make such inquiries as are necessary to obtain credit information. You also authorize banks and suppliers listed above to release information regarding your accounts. In the event of default by non-payment of balances due, you agree to be liable for the collection of said balances, including reasonable attorney and court fees.

*13526 South 110 West  
Draper, Utah 84020 Phone 801-990-1950*

Dated 02/26/2025

Former Fremont Elementary School EBO Integration

Kirk:

Thank you for requesting our proposal for integrating the existing INET programming into Ecostruxure Building Operation. This quotation is based on files received from Davis School District. We have included installation labor, material and programming in our Scope of work as outlined below:

**Scope of Work:**

- 1- Provide and install Automation server and other hardware for interfacing to existing INET BMS system. The Automation server is an IP level device and will require a network connection provided by the IT department. Some of the benefits of this head end device are: ability to upgrade the existing controls to the latest generation of BACnet/IP controls at any time whether it be the entire BMS system or one controller at a time, ability for alarms to be sent through text or email messages, and the ability to access the BMS from any tablet, phone or PC remotely.
- 2- Provide Programming for integration of the existing INET controllers, creation of graphics, alarms and schedules in EBO, functional testing of new installation and 4 hours of Owner's training.

YOUR NET COST IS:	<b>\$ 26,939</b>
-------------------	------------------

**Also Included in our Scope of Work:**

- **One (1) year standard warranty on DDC control parts and one (1) year standard warranty on labor. After the expiration of the initial warranty period, additional professional services will be available at preferred labor rates.**
- **Panels, relays, and other devices required to make this a complete and working system as specified.**

**Please be advised that a 3% surcharge will be added to all payments made via physical or virtual credit card. The 3% fee will be in addition to the total invoice amount. The surcharge does not apply to payments made with debit cards.**

**Due to global shortages, we are experiencing extended lead-times, impacting our ability to fulfill orders within standard timelines. Despite our continued work with manufactures and supply chains, we expect that this situation of shortages and extended lead times will continue.**



Therefore, we highly encourage prompt acceptance of approval to proceed so that commencement of parts procurement, project engineering, and scheduling can begin so due diligence can be done now to strive for desired completion date.

Pricing and proposals are good for 30 days. On projects extending beyond 30 days, we reserve the right to increase costs based on current MSRP at time of order.

On bid to spec and new construction projects, parts will be ordered ASAP and billed upon review and approval of submittals. All parts will be stored in our secured and bonded warehouse.

Submission of our price to perform the work outlined is based on the following: The Mechanical Contractor agrees to submit and process project progress invoicing submitted by Utah Yamas Controls and pay draws within 1 week when payments are received by Mechanical Contractor. The Mechanical Contractor further agrees that a joint check agreement may be implemented for this project.

**Not Included in our Scope of Work:**

- Any over time work, cutting, patching, or painting.
- The furnishing or installation of any access doors or panels.
- This does not include any obligation, performance or bid bonding.
- Any hardwired override panels that may be facilitated by a GUI Screen.
- The providing or installation of any dampers not indicated in this scope of work.
- The installation of any devices or controls in the water or mechanical piping. Any control valves provided by the Automatic Temperature Control (ATC) Contractor shall be installed into piping by the Mechanical Contractor.
- The furnishing or installation of smoke dampers, fire smoke dampers, or their wiring.
- The furnishing or installation of any Division 16 wiring indicated on the control drawings.
- The furnishing or installation of 120 volt power circuit breakers and loader centers required as power sources to the Automatic Temperature Control (ATC) panels and other control devices.
- The furnishing or installation of any controls not specifically indicated in this scope.
- The furnishing or installation of any motors, motor starters, combination starters or variable frequency drives (VFD).
- Dampers, Actuators, Controls and Devices, Wires, Cables, Terminals, Etc. that are supplied and installed by the Factory, Others, or the Owner shall not be our responsibility and we shall not be required to install or warranty said items.
- Further, any other equipment or devices that are existing or that are to be reused as allowed by specification or agreement shall not be our responsibility, nor shall we be required to repair, replace, warranty, or guarantee its suitability for use.
- Utah-Yamas Controls Inc takes exception to any control specifications based on or centered on propriety or vender specific product selection, features or specifications limited to that vender. We will provide the nearest reasonable equivalent design and product selections to address the intended purpose of the specification and sequence as is typical for our TAC product line and Utah-Yamas Controls Inc standards.
- It is not the intent of Utah-Yamas Controls Inc to in any way presume responsibility for unspecified controls or labor associated with any and /or all such controls. Controls and requirements not specifically detailed and clearly or correctly referenced in the plans, prints, specifications or addendum as the specific responsibility of the Automatic Temperature Control Contractor shall not be our responsibility. Blanket, catch-all and general responsibility clauses shall not apply

Thank you for allowing Utah-Yamas Controls Inc. to present this quotation to you. If you should have any questions please give me a call at (801) 633-1129.

This quotation, when signed by the purchaser or his representative, implies an acceptance of the attached terms and conditions and becomes a contract in full force and effect. All quotations are for prompt acceptance and are subject to change without notice after 30 days.

**Sincerely,**

**Utah-Yamas Controls Inc.**  
Kirk Horinek

*This quotation, when signed by the purchaser or his representative, implies an acceptance of the attached terms and conditions and becomes a contract in full force and effect. All quotations are for prompt acceptance and are subject to change without notice after 30 days.*

Printed Name	
Signature	
Date	

The Proposal by Utah Controls, Inc. dba Utah-Yamas Controls ("UYC") is based upon and subject to the following terms and conditions:

**SCOPE OF WORK.** This Proposal is based upon the use of straight time labor only, and does not include any overtime labor that might be required to complete any other work and/or any changes requested by Purchaser. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by UYC, shall be distributed and installed by others under UYC's supervision but at no additional cost to UYC. For clarity, all such costs will be the responsibility of Purchaser. Purchaser agrees to provide UYC with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge to UYC. UYC agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge UYC for any costs or expenses without UYC's written consent and agreement to any such back charges.

Unless specifically detailed in the statement of the scope of work or services agreed to be performed by UYC under this agreement, UYC's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environmental hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by UYC shall not operate to compel UYC to perform any work relating to the foregoing without UYC's express written consent.

**INVOICING & PAYMENTS.** UYC may invoice Purchaser on a monthly basis for all material delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site by Purchaser, its subcontractors, fabricators and/or suppliers. Purchaser shall pay UYC at the time Purchaser signs this agreement an advance payment equal to ten percent (10%) of the contract price, which advance payment shall be credited against the final payment (but not any progress payment) due hereunder and Purchaser agrees to pay UYC additional amounts invoiced upon receipt of invoice. At the discretion of UYC, lien waivers may be furnished by UYC covering only the work or services for which payment has been made to UYC by Purchaser. All work or services invoiced by UYC shall be paid in full by Purchaser within thirty (30) days of each invoice issued by UYC. UYC may bill monthly for work or services provided to projects lasting more than thirty (30) days. Materials may be billed at time they are provided. In the event that UYC or its agents or subcontractors are asked by Purchaser, the owner of the project, a government representative or inspector, or any of their agents, to provide materials or services not detailed in the Proposal, or to otherwise alter UYC's performance. Purchaser shall pay UYC additional compensation for the changes performed at UYC's ordinary rates, including any overtime paid by UYC to complete such work in a timely manner. If UYC's invoice is not paid within thirty (30) days of its issuance, Purchaser shall be deemed delinquent, interest will accrue at the greater of one and one-half percent (1 ½%) per month or the highest rate allowed by applicable law, and UYC will be allowed to stop any work for Purchaser.

**MATERIALS.** If the materials or equipment included in this Proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of UYC, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, UYC shall be (a) excused from furnishing said materials or equipment, and (b) reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.

**LIMITED WARRANTY.** UYC warrants that for equipment furnished and/or installed but not manufactured by UYC, UYC will extend the same warranty terms and conditions which UYC receives from the manufacturer of said equipment. For equipment installed by UYC, if Purchaser provides written notice to UYC of any defect in such equipment within thirty (30) days after appearance of discovery of such defect, UYC shall, at its option, repair or replace the defective equipment. For equipment not installed by UYC, if Purchaser returns the defective equipment to UYC within thirty (30) days after appearance or discovery of such defect, UYC shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for warranties outlined herein do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANT ABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

**LIABILITY.** UYC SHALL NOT BE LIABLE FOR ANY MATTER UNDER THIS AGREEMENT FOR AMOUNTS IN EXCESS OF THE PAYMENTS PURCHASER HAS MADE TO UYC HEREUNDER. UYC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING IN ANY MANNER FROM, AMONG OTHER THINGS, THE FAILURE OR MALFUNCTION OF THE EQUIPMENT OR MATERIAL FURNISHED OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT. THIS PROVISION SHALL APPLY TO ANY LOSS, DAMAGE, OR INJURY, IRRESPECTIVE OF CAUSE OR ORIGIN, WHICH RESULTS DIRECTLY OR INDIRECTLY TO ANY PERSON OR PROPERTY FROM PERFORMANCE OR NON PERFORMANCE OF OBLIGATIONS IMPOSED BY THIS AGREEMENT OR FROM THE NEGLIGENCE, ACTIVE, PASSIVE OR OTHER WISE, STRICT LIABILITY, BREACH OF WARRANTY, VIOLATION OF ANY APPLICABLE CONSUMER PROTECTION LAW OR ANY OTHER ALLEGED FAULT ON THE PART OF UYC OR ITS SUBCONTRACTORS. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST UYC OR ITS SUBCONTRACTORS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREFORE.

**TAXES.** The price of this proposal includes use tax, if applicable. Purchaser shall pay, in addition to the stated Proposal amount, all taxes not legally required to be paid by UYC or, alternatively, shall provide UYC with acceptable tax exemption certificates. UYC shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.

**DELAYS.** UYC shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond UYC's control, including but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, owner, or other contractors or delays caused by suppliers or subcontractors of UYC, etc.

**COMPLIANCE WITH LAWS.** UYC shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for UYC's work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.

**DISPUTES.** All disputes involving more than \$10,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall be entitled to recover all legal costs and attorney's fees incurred in connection with the enforcement of the terms of the parties' agreement. Nothing herein shall limit any rights available to UYC under any applicable construction lien laws or other applicable laws.

**INSURANCE.** Insurance coverage in excess of UYC standard limits will be furnished when requested and required by Purchaser in writing. No credit will be given or premium paid by UYC for insurance provided or covered by others.

**INDEMNITY.** Subject to Section 5, each party (the "Indemnifying Party") agrees to indemnify the other party and its officers, directors, managers, representatives and agents from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.

**OCCUPATIONAL SAFETY AND HEALTH.** The parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.

**ENTIRE AGREEMENT.** This proposal, upon acceptance shall constitute the entire agreement between the parties and supersedes any prior representations, negotiations, agreements or understandings, either written or oral.

**CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon UYC unless accepted by UYC in writing.

**ACCESS TO PROPERTY.** Purchaser, owner, and/or their agents shall provide UYC with reasonable access to the property, project, or premises whenever reasonably necessary, so that UYC can timely perform and complete its work.

**GOVERNING LAW.** THIS AGREEMENT SHALL BE CONSTRUED AND INTERPETED IN ACCORDANCE WITH THE State of Utah and any dispute arising out of or relating to this agreement shall be brought and maintained in the state or federal courts of the State of Utah.

**Array Education**

25 Broadway, Fl 3  
 New York, NY 10004  
 tlac@teachlikeachampion.org

Teach Like a **CHAMPION**®

**Quote****ADDRESS**

Wallace Stegner Academy  
 980 S Bending River Rd  
 Salt Lake City, UT 84104  
 United States

QUOTE 1099  
 DATE 01/15/2025  
 EXPIRATION DATE 02/17/2025

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
	The Wanderings of Odysseus by Rosemary Sutcliff	Unit (G8): The Wanderings of Odysseus by Rosemary Sutcliff	3	800.00	2,400.00
	The Magician's Nephew by C.S. Lewis	Unit (G5): The Magician's Nephew by C.S. Lewis	3	800.00	2,400.00
	Number the Stars by Lois Lowry	Unit (G5): Number the Stars by Lois Lowry	3	800.00	2,400.00
	A Single Shard by Linda Sue Park	Unit: A Single Shard by Linda Sue Park	3	800.00	2,400.00
	Bud, Not Buddy by Christopher Paul Curtis	Unit: Bud, Not Buddy by Christopher Paul Curtis	3	800.00	2,400.00
	The Outsiders by S.E. Hinton	Unit (G6): The Outsiders by S.E. Hinton	3	800.00	2,400.00
	The Giver by Lois Lowry	Unit (G6): The Giver by Lois Lowry	3	800.00	2,400.00
	Chains by Laurie Halse Anderson	Unit (G6): Chains by Laurie Halse Anderson	3	800.00	2,400.00
	Roll of Thunder, Hear My Cry by Mildred Taylor	Unit (G7): Roll of Thunder, Hear My Cry by Mildred Taylor	3	800.00	2,400.00
	The House on Mango Street by Sandra Cisneros	Unit (G7): The House on Mango Street by Sandra Cisneros	3	800.00	2,400.00
	Narrative of the Life of Frederick Douglass by Frederick Douglass	Unit (G8): Narrative of the Life of Frederick Douglass by Frederick Douglass	3	800.00	2,400.00
	Lord of The Flies by William Golding	Unit (G7): Lord of The Flies by William Golding	3	800.00	2,400.00
	Esperanza Rising by Pam Munoz Ryan	Unit (G6): Esperanza Rising by Pam Munoz Ryan	3	800.00	2,400.00
	A Raisin In The Sun by Lorraine Hansberry	Unit (G8): A Raisin In The Sun by Lorraine Hansberry	3	800.00	2,400.00
	To Kill a Mockingbird by Harper Lee	Unit (G8): To Kill a Mockingbird by Harper Lee	3	800.00	2,400.00
	Of Mice and Men by John Steinbeck	Unit (G8): Of Mice and Men by John Steinbeck	3	800.00	2,400.00

The Curious Incident of the Dog in the Night-Time by Mark Haddon	Unit (G8): The Curious Incident of the Dog in the Night-Time by Mark Haddon	3	800.00	2,400.00
Animal Farm by George Orwell	Unit (G8): Animal Farm by George Orwell	3	800.00	2,400.00
Boy-Tales of Childhood by Roald Dahl	Unit (G6): Boy-Tales of Childhood by Roald Dahl	3	800.00	2,400.00
RR Unit Bulk Discount	RR Unit Discount-buy four units, get fifth free	11	-800.00	-8,800.00
RR Unit Bulk Discount	RR Unit Bulk Discount	1	-3,680.00	-3,680.00

TOTAL

**USD 33,120.00**

Accepted By

Accepted Date



## WSA 03.19.2025 Policy Summary Sheet

### Amending Time and Effort Documentation Policy and Administrative Procedures

Recent audits of schools' Time and Effort Documentation Policies have revealed the need for the policies to specify that time and effort documentation is required not only when federal funds are used to pay employee salaries and wages, but also when state restricted funds (*e.g.*, special education funds) are used to pay employee salaries and wages. This proposed revision has been made to the school's Time and Effort Documentation Policy. Some other proposed revisions have also been made to the policy to bring it into compliance with applicable law and rule, including updates to the Definition section, additions to the Time and Effort Standards section, and specifying when Semi-Annual Certifications and Personnel Activity Reports are needed. The administrative procedures established under this policy have also been revised to be consistent with the policy.

### Amending Travel Policy

Based on recommendations from the school's accountant and the review of applicable IRS regulations, proposed revisions to the school's Travel Policy have been made. The proposed revisions include defining what constitutes travel for "school-related business," adding clarity on how travel requests are approved and communicated, basing per diem rates for meals and incidentals and lodging rates on the rates established by the U.S. General Services Administration (GSA), requiring travelers to submit travel expense reports within 60 days from the end of the trip, detailing how flights and lodging accommodations should be made and paid for, adding rules with respect to school credit card use on approved travel, specifying that expenses unrelated to the travel purpose will not be funded/reimbursed by the school, and adding a paragraph allowing for exceptions to the policy to be made by the Director or Board in appropriate circumstances.

### Rescinding Library Materials Policy

Awhile back the school amended its Instructional Materials Policy due to some changes to the applicable law and rules. Now that policy, along with the Sensitive Material Review procedures under that policy, governs how the school selects, approves, and handles challenges to all instructional materials, including library materials. So, there is no longer a need or a requirement for the school to have a separate Library Materials Policy. If a stakeholder of the school wants to challenge a library book based on their belief that it contains "sensitive material" (being pornographic or indecent), the required challenge and review process is laid out in the Sensitive Material Review procedures established under the Instructional Materials Policy.



## Time and Effort Documentation Policy

Adopted: December 17, 2020

Revised:



### Purpose

Because Wallace Stegner Academy (the "School") receives restricted funds, the School is obligated to properly spend and account for the expenditures of such funds. The School adopts this policy in order to ensure that charges to federal awards or other state restricted programs, as required, for salaries and wages are based on records that accurately reflect the work performed.

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### Definitions

"Accurate" means that salaries and wages are based on records that provide an actual representation of the work performed.

"Allocable" means, in accordance with 2 CFR § 200.405, a cost is allocable to a Federal award or other cost objective if the cost is assignable to that Federal award or other cost objective in accordance with the relative benefits received.

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"Allowable" means that a cost meets the criteria (factors affecting allowability of costs) outlined in 2 CFR § 200.403, unless otherwise authorized by statute.

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"Internal Control" means, as described in 2 CFR § 200.1, processes designed and implemented by a non-federal entity, to provide reasonable assurance regarding the achievement of objectives in the following categories:

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- Effectiveness and efficiency of operations;
- Reliability of reporting for internal and external use; and
- Compliance with applicable laws and regulations.

"Cost Objective" means, as described in 2 CFR § 200.1, a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, and capital projects, (i.e., implementation of program accounting).

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### Policy

#### Time and Effort Standards

The School shall recognize and follow the *Uniform Administrative Requirements* pertaining to the *Standards for Documentation of Personnel Expenses* as contained in 2 CFR § 200.430(g). Accordingly, all School employees who are paid in full or in part with federal funds shall keep specific documents to demonstrate the amount of time they spent working on the federal program (2 CFR § 200.430(g)(1)). In addition, all School

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employees who are paid with state and local funds, but whose salaries and wages are used for cost sharing or matching in a federal program, shall also keep time and effort documentation (2 CFR § 200.430(g)(4)). Moreover, all School employees who are paid in full or in part with state restricted funds shall keep specific documents to demonstrate the amount of time they spent working on the state restricted program.

Charges to restricted funds for salaries and wages must be based on records that accurately reflect the work performed. In accordance with 2 CFR § 200.430(g)(1), these records must:

1. Be supported by a system of **internal control** that provides reasonable assurance that charges are **accurate, allowable, and allocable**.
2. Be incorporated into the School's official records.
3. Reasonably reflect the total activity for which the employee is compensated by the School, not exceeding 100% of the compensated activities.
4. Encompass ~~federally-assisted~~ and all other activities compensated by the School on an integrated basis.
5. Comply with the established accounting policies and practices of the School.
6. Support the distribution of the employee's salary or wages among specific activities or cost objectives.

#### Semi-Annual Certifications and Personnel Activity Reports

To meet the above requirements, all School employees who are required to keep time and effort documentation must submit either a Semi-Annual Certification or a Personnel Activity Report ("PAR") as described below. Whether an employee must submit a Semi-Annual Certification or a PAR depends on the number of cost objectives that an employee works on.

The School's administration shall ensure that employees who work solely on a single cost objective complete a Semi-Annual Certification consistent with 2 C.F.R. § 200.430 and applicable state law and rule.

The School's administration shall ensure that employees who work on multiple cost objectives document their time and effort on a PAR consistent with 2 C.F.R. § 200.430 and applicable state law and rule.

#### Procedures

The School's administration **shall** adopt additional administrative procedures to ensure compliance with this policy and applicable law.

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## Time and Effort Documentation Procedures

These procedures are established in accordance with the Time and Effort Documentation Policy adopted by the School's Board of Directors.

1. All employees paid in whole or in part with federal funds, ~~employees whose salaries are used to meet a matching/cost sharing requirement, and employees who are paid in whole or in part with state restricted funds~~ are required to provide time and effort documentation that accurately ~~and~~ reasonably represents the work that has been performed during the period being reported on.

a. **Semi-Annual Certification** – This certification must be submitted by/for employees who ~~work solely on a single cost objective~~ during the six-month period being reported on.

i. ~~Semi-Annual Certifications must:~~

1. ~~Be completed at least twice a year. For example, they could~~ be submitted for the periods July 1 through December 31, and January 1 through June 30.
2. ~~Be submitted after the last day of the period being reported (i.e., after the fact – the certification must reflect an after-the-fact distribution of the actual activity).~~
3. ~~Account for the total activity for which the employee is compensated;~~
4. ~~Be signed by the employee or a supervisor with direct knowledge of the work performed; and~~
5. ~~Be submitted on an approved form.~~

ii. ~~Semi-Annual Certification~~ forms will include ~~the following:~~

1. Name ~~and title~~ of ~~the employee.~~
2. ~~Name and title of the employee's supervisor;~~
3. ~~Name of the cost objective the employee worked on;~~
4. Period being reported on.
5. A certification statement ~~certifying~~ the employee has spent 100% of their time on the stated ~~cost objective;~~
6. Whether time, effort, and salary are being used for cost sharing or matching purposes, ~~and~~ if so, for which program(s);
7. Signature of ~~the employee or the employee's supervisor who has direct knowledge of the work performed; and~~
8. Date Signed by ~~the employee or the employee's supervisor~~ (Note: Cannot be dated prior to the end of the period covered by the certification).

b. **Personnel Activity Report (PAR)** – This report must be submitted by/for employees ~~who work on multiple cost objectives. PARs must support the distribution of employees' salaries and wages that meet the standards outlined below.~~

i. A PAR must:

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1. Provide a written record of the employee's work activities used to document that employee's time to a cost objective;
  2. Be completed at least monthly and be supported by the employee's work activities (should be submitted after the last day of the month being reported on, that is, after the fact – the PAR must reflect an after-the-fact distribution of the actual activity, not a budget estimate);
  3. Account for the total work activity for which the employee is compensated;
  4. Coincide with one or more pay periods;
  5. Be signed by the employee; and
  6. Be submitted on an approved form.
- ii. PAR forms will include the following:
1. Name and title of the employee;
  2. Name and title of the employee's supervisor;
  3. Name of the cost objectives the employee worked on;
  4. Period being reported on (e.g., January 1 through January 31);
  5. A certification statement stating that the distribution of the employee's time is an accurate representation of the work performed;
  6. Whether time, effort, and salary are being used for cost sharing or matching purposes, and if so, for which cost objective;
  7. Distribution of time (by percentage, e.g., 70% Title I, 30% Special Education) by account, function, program, location;
  8. Time being reported must represent but cannot exceed 100%;
  9. Signature of the employee;
  10. Date signed by the employee (Note: Cannot be dated prior to the end of the period covered by the PAR); and
  11. Sick time, vacation time, etc. (if applicable) must be coded proportionally to the different programs.
2. Payroll records must reconcile with the time and effort documentation.
  3. A reconciliation of payroll records and time and effort documents will be done on a regular basis. Adjustments will be made and discussed, as necessary.
  4. If an employee's salary is being used for cost sharing/matching purposes, then this needs to be identified on the employee's time and effort form. Once a salary has been used for matching purposes or a portion of the salary, then the salary, or portion thereof, that has been used may not be used as matching/cost sharing funds for another program.
  5. If assignments change, it is the School's responsibility to inform the School's accounting and payroll staff so that payroll records, budgets, etc. can be updated.
  6. Upon termination of employment, an employee must submit their final time and effort documentation prior to receiving their final payment.

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 Work on multiple federal awards.  
 A federal award and a non-federal award.  
 Employees that work on a single federal award, but are paid for indirect cost activities AND direct cost activities.  
 Employees that work on two or more indirect cost activities that are allocated using two different allocation bases.  
 An employee that works on a federal award but on an unallowable activity and a direct or indirect cost activity.  
 PARs will be submitted on a monthly basis.  
 PARs must be submitted after the last day of the month being report on (after the fact) ... [3]

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7. Time and effort procedures will be periodically reviewed by School administration and the accounting and payroll staff. Updates due to changes in rules or regulations will be made in a timely manner, as necessary.
8. Employees will receive appropriate training on time and effort documentation, as necessary.
9. The School will keep a copy of all time and effort documentation (Semi-Annual Certifications, PARs, payroll reports, etc.) in accordance with the School's record retention practices or 3 years from the date of submission, whichever is greater, as required by 2 CFR § 200.334.
10. The signatures required herein may be either handwritten or electronic signatures.

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## Travel Policy

Adopted: January 20, 2016

Revised: \_\_\_\_\_



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### Purpose

The purpose of this policy is to establish procedures for authorization of, and payment for, travel by employees or Board members of Wallace Stegner Academy (the "School") who may be required to travel to fulfill their official duties or to attend seminars, conferences, conventions, or other professional or educational events or meetings benefiting the School ("School-related business").

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### Policy

1. This policy applies to all approved travel by employees and Board members on School-related business, whether or not overnight stay is required. This policy does not apply to an employee's regular daily travel to and from work or a Board member's regular travel to and from a regular Board meeting.

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2. Travel for School-related business by campus-level employees must be approved in advance by the Director in order for the School to pay for the travel expenses as set forth in this policy. Travel for School-related business by the Director or Board members must be communicated to the Board of Directors in advance of the travel, where possible. Payment for all travel-related expenses are subject to, and must be approved in accordance with, the School's Purchasing and Disbursement Policy.

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3. Where possible, all campus-level employee travel requests must be submitted to the Director, and all travel requests by the Director or Board members must be communicated to the Board, at least three (3) weeks prior to departure date and prior to making any arrangements. Such travel requests submitted to the Director and communications to the Board must explain the purpose of the travel and, where applicable, include the nature of the School-related business, proposed lodging accommodations, and approximate airfare or mileage, as applicable.

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4. Reasonable and necessary flight reservations for approved travel events must:
- Be personally made and paid for by the traveler and then reimbursed by the School based on receipts submitted for such expenses. The traveler must provide receipts for all flight reservations for which reimbursement is sought;  
or
  - Be made and paid for by the School.

Absent extraordinary circumstances, first class flight reservations are not considered reasonable and necessary under this policy.

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5. Per diem for meals and incidental expenses will be paid for all approved travel events that are more than 100 miles from the School's Salt Lake City Campus. The School will pay per diem for meals and incidental expenses in accordance with the federal per diem meals and incidental expenses rates established by the U.S. General Services Administration ("GSA"). Where possible, the per diem will be paid to the traveler by check no less than 48 hours prior to departure date.
6. Reasonable and necessary ground transfer expenses (e.g., taxi, public transportation, ride share, parking, etc.) for approved travel events will be personally paid for by the traveler and then reimbursed by the School based on receipts submitted for such expenses. The traveler must provide receipts for all ground transfer expenses for which reimbursement is sought.
7. Reasonably and necessary mileage incurred by the traveler for approved travel events will be reimbursed by the School at the standard IRS mileage reimbursement rates in effect at the time.
8. Reasonable and necessary lodging accommodations for approved travel events will be made and paid for by the School. However, under extenuating circumstances and only after receiving approval from the Director or the Board, travelers may personally make and pay for reasonable and necessary lodging accommodations for approved travel events. A traveler in this situation shall be reimbursed by the School based on receipts submitted for such expenses.
9. Lodging accommodations will be approved for the number of days an approved travel event is in session, less one. However, this is subject to the following exceptions:
- One additional night of lodging accommodations will be approved when an additional travel day is required prior to an approved travel event;
  - A second additional night of lodging accommodations will be approved when an additional travel day is required after the approved travel event concludes;  
and
  - Other additional nights of lodging accommodations will be allowed only when approved in advance of the approved travel event by the Director or the President of the Board of Directors, as applicable.
10. School employees who have been issued a School credit card may use their School credit card to pay for approved flight reservations, ground transfer expenses, and lodging accommodations in accordance with this policy only after receiving approval from the Director. Such School employees may also use their School credit card to pay for other reasonable travel-related expenses only after receiving approval from the Director. The Director may also use his/her School credit card to pay for the same travel expenses listed above in this paragraph in accordance with the School's Credit Card Policy and Purchasing and Disbursement Policy. However, School credit cards must not be used for per diem for meals and incidental expenses, as per

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Out-of-State per diem of up to \$75 per day for meals.

In-State per diem of up to \$60 per day for meals.

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diem will be paid to travelers by check in advance of approved travel as explained earlier in this policy.

11. School employees and Board members must submit an expense report related to an approved travel event to the Director within sixty (60) days from the end of the trip.

12. The School will not fund travel expenses that are unrelated to the approved travel purpose. Similarly, the School will not reimburse travelers for travel expenses that are unrelated to the approved travel purpose or which are determined by the School to be excessive.

13. Either the Director or the Board may authorize individual exceptions to this policy if they, in their sole discretion, feel an exception is appropriate under the circumstances.

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# Enrollment

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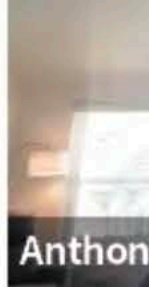
SLC : 652

WVC: 709

KEARNS: 765

Total: 2126

Budgeted total 2100



# New Student Applications for Next Year

	Kearns K-8	Kearns High School	WVC	SLC	Sunset	Total
Registered	930	233	838	660	54	2715
Total Applications Pending	72	36	86	67	32	290
Waitlist	181	N/A	92	N/A	N/A	273





# Projects

- School Leader Dashboard
- Hiring Season (19 hired, need 17 more)
- Accreditation
- Satellite Application Waiver
- Marketing
- Central Office Building
  - Mentor
  - Theory of Action
  - Graduate Profile
  - Hiring/Capacity Building
    - COS
    - Heads of Schools
    - CCO
    - Additional Curriculum Writers
  - Office

School Leader Metric ☆ 📁 ☁			
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A	B	C	D
	Advanced (+2)	Proficient (+1)	Working Towards (-1)
Classroom Learning Environment	desks are organized and free of clutter • 100% of Coats and backpacks are in lockers or cubbies. • All classrooms and hallway floors are free of trash.	desks are organized and free of clutter • 90% of Coats and backpacks are in lockers or cubbies. • 90% classrooms and hallway floors are free of trash.	desks are organized and free of clutter • 70% of Coats and backpacks are in lockers or cubbies. • 70% classrooms and hallway floors are free of trash.
Bulletin boards	• Recent exemplary student work is posted (or on the outside bulletin board) in 100% of classes  • Current Vocabulary Words or Sight Words Displayed at front of classroom in 100% of Classes  • Math Facts Posters present with 95% Mastered by November 15.	• Recent exemplary student work is posted (or on the outside bulletin board) in 90% of classes  • Current Vocabulary Words or Sight Words Displayed at front of classroom in 90% of Classes  • Math Facts Posters present with 85% Mastered by November 15.	• Recent exemplary student work is posted (or on the outside bulletin board) in 80% of classes  • Current Vocabulary Words or Sight Words Displayed at front of classroom in 80% of Classes  • Math Facts Posters present with 70% Mastered by November 15
Strong Start Mornings	100% of classes begin teaching within 1 minute of the bell.	75% of classes begin teaching within 1 minute of the bell.	50% of classes begin teaching within 1 minute of the bell.
Efficient After School	• 100% of teachers re-teach missed concepts to the whole class or small group. • No teachers are sitting or just wandering around without a specific re-teaching lessons planned. • After school in is used as a general study hall in any classroom.	• 80% of teachers re-teach missed concepts to the whole class or small group. • Less than 2 teachers are sitting or just wandering around without a specific re-teaching lessons planned. • After school is not used as a general study hall in more than 3 classrooms.	• 70% of teachers re-teach missed concepts to the whole class or small group. • Less than 4 teachers are sitting or just wandering around without a specific re-teaching lessons planned. • After school is not used as a general study hall in more than 5 classrooms.
Number of Poor Classroom Lessons Observed	0	1	2
Action Steps (Student Proficiency Oriented)	All teachers have current Student Data Action step assigned within the past three weeks	80% of teachers have current Student Data Action step assigned within the past three weeks	70% of teachers have current Student Data Action step assigned within the past three weeks

# Land Trust Final Reports

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Goal: Increase Early Literacy Performance

SLC: Our students reading on grade level increased from 38.6% to 45.2%. Our long-term early literacy plan is paying off and our preliminary data for the 2024/2025 data is showing even greater improvements!

WVC: Our students reading on grade level increased from 49.8% to 50.5%. Although this progress is minor, our long-term early literacy plan is paying off and our preliminary data for the 2024/2025 data is showing even greater improvements!





# Intramurals/Sports

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Basketball is currently going on.

We are working on joining the UHSAA for high school sports

Mountain Biking Team