

## **LEASE OF BUILDING AND REAL PROPERTY AGREEMENT**

THIS LEASE OF BUILDING AND REAL PROPERTY (this "Lease") is executed this 3rd day of May, between Moore Returns, LLC a Colorado limited liability company ("Landlord"), whose address is PO BOX 527, Pine, CO 80470, and the Town of Castle Rock, a Colorado home rule municipal corporation ("Tenant"), whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104.

### **1. GENERAL**

1.1 Consideration. Landlord enters into this Lease in consideration of the payment by Tenant of the rents herein reserved and the keeping, observance and performance by Tenant of the covenants and agreements of Tenant herein contained.

1.2 Exhibits to Lease. The Exhibits listed herein shall be attached to this Lease and be deemed incorporated in this Lease by this reference. In the event of any inconsistency between such Exhibit and the terms and provisions of this Lease, the terms and provisions of the Exhibit shall control. The **Exhibit A** to this Lease is Legal Description of Demised Premises, Lease Term, and Basic Rent.

### **2. DEMISE AND TERM**

2.1 Demise. Subject to the provisions, covenants and agreements herein contained, Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, the Demised Premises as hereinafter defined, for the Lease Term as hereinafter defined, subject to existing covenants, conditions, restrictions, easements and encumbrances affecting the same.

2.2 Demised Premises. The "Demised Premises" shall mean the real property legally described on Exhibit A, including all improvements located thereon. The address of the Demised Premises is the address set forth in Exhibit A.

2.3 Lease Term. "Lease Term" shall mean the period commencing at 12:01 a.m. on the commencement date specified in Exhibit A and expiring at 11:59 p.m. on the expiration date specified in Exhibit A. The Lease Term is specified for a period of one (1) year(s), provided however, the Lease Term shall end on December 31, 2017 in the event that Tenant fails to budget and appropriate sufficient funds for calendar year 2018. The Landlord and Tenant have agreed to a month-to-month lease for the lease term with 120 days' notice of lease cancellation by either party.

2.4 Covenant of Quiet Enjoyment. Landlord covenants and agrees that, provided Tenant is not in default and keeps, observes and performs the covenants and agreements of Tenant contained in this Lease, Tenant shall have quiet and peaceable possession of the Demised Premises and such possession shall not be disturbed or interfered with by Landlord or by any

person claiming by, through or under Landlord. Landlord shall use all reasonable efforts to provide Tenant with 24-hour access to the Demised Premises.

2.5 Condition of Demised Premises. Tenant shall have the right to inspect and note condition of Demised Premises prior to execution of lease. Tenant covenants and agrees that, upon taking possession of the Demised Premises, Tenant shall be deemed to have accepted the Demised Premises "as is."

2.6 Security Deposit. Tenant has already provided deposit, based on the current lease agreement, with Landlord upon execution hereof \$6350.00 as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within fifteen (15) days after written demand therefore deposit cashier's check or money order with Landlord in an amount sufficient to restore said deposit to the full amount hereinabove stated and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep said deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days after the expiration of the term hereof, and after Tenant has vacated the Demised Premises. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit.

2.7 Interest on Past Due Obligations. Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at the rate of twelve percent (12%) per year from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant.

2.8 Permitted Use. Tenant shall use and occupy the Demised Premises solely for the purpose of operating a training, office and storage facility. Demised Premises should not be used for any other purpose without the prior written consent of Landlord, which Landlord may withhold in its sole consent.

### 3. RENTS

3.1 Basic Rent. Tenant covenants and agrees to pay to Landlord, without offset, deduction or abatement, basic rent for the full Lease Term in the amount initially specified as basic rent in Exhibit A ("Basic Rent"). Basic Rent shall be payable monthly in advance, without notice, in equal installments in the amount of monthly rent initially specified in ***Exhibit A***, commencing on the commencement date of the Lease Term and continuing on the first day of each month thereafter for the balance of the Lease Term.

3.2 Place of Payments. Basic Rent and all other sums payable by Tenant to Landlord under this Lease shall be paid to Landlord at the place for payments specified in ***Exhibit A***, or

such other place as Landlord may, from time to time, designate by written notice delivered by certified mail.

3.3 Rent Absolute. Basic Rent shall be absolutely payable without offset, reduction or abatement for any cause except as otherwise specifically provided in this Lease; that the Lease shall continue for the full Lease Term notwithstanding any occurrence preventing or restricting use and occupancy of the Demised Premises, including any damage or destruction affecting the Demised Premises, and any action by governmental authority relating to or affecting the Demised Premises, except as otherwise specifically provided in this Lease.

#### 4. TAXES AND ASSESSMENTS

4.1 Covenant to Pay Taxes and Assessments. Intentionally deleted.

#### 5. INSURANCE

5.1 Casualty and Liability Insurance. Tenant shall maintain fire and extended coverage insurance on the Building, in such amounts as the Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade equipment, located in or on the Demised Premises. Tenant shall maintain a policy of comprehensive general liability insurance with respect to the activities in the building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company reasonably approved by Landlord, such insurance to afford a minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof, Landlord shall be listed as an additional insured on Tenant's policy or policies of fire and extended coverage, comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificate of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least 10 days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within or around the Demised Premises.

5.2 Cooperation in the Event of Loss. Landlord and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

#### 6. UTILITY, OPERATING, MAINTENANCE AND REPAIR EXPENSES

6.1 Utility Charges. All utilities are included in Rent outlined in *Exhibit A*. Tenant agrees to use utilities as efficiently as possible.

6.2 Operating Expenses. Subject to the provisions of Sections 6.1 and 6.3, Tenant covenants and agrees to pay all costs and expenses of operations on or relating to the Demised Premises, including costs and expenses for HVAC Maintenance, trash and garbage disposal, janitorial and cleaning services, gardening and landscaping services, security services, removal of snow and ice from parking areas, sidewalks and driveways serving the Demised Premises, painting, replacement of damaged or broken glass and other breakable materials, unless due to

natural causes which shall be covered under Section 5 above; in or serving the Demised Premises and replacement of lights and light fixtures in or serving the Demised Premises and to contract for the same in Tenant's own name.

6.3 Maintenance and Repair Expenses. Tenant shall make, at Tenant's expense, all necessary repairs to the Demised Premises except as otherwise set forth in this Section 6.3. Repairs shall include such items as repairs of floors, walls, ceilings, plumbing, mechanical system (i.e., air conditioning, heating systems, swamp cooler, electrical systems, sprinkler systems) and other parts of the Demised Premises damaged or worn though misuse of property, fixtures and/or appliances. Landlord is further responsible for maintaining and repairing the roofs, exterior walls, parking lot surface and structural elements of the Demised Premises. Landlord will be responsible for all other repairs resulting from normal use of property.

## 7. OTHER COVENANTS OF TENANT

7.1 Use by Tenant. Tenant covenants and agrees to use the Demised Premises consistent with PUD requirements, all association rules and regulations, and any and all other zoning or ordinance restrictions required by any applicable governmental authority.

7.2 Compliance with Laws. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises in violation of any law, ordinance, order, rule or regulation of any governmental authority having jurisdiction and that the Demised Premises shall be used, kept and maintained in compliance with any such law, ordinance, order, rule or regulation.

7.3 Compliance with Insurance Requirements. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises which might impair or increase the cost of insurance maintained with respect to the Demised Premises or the Property, which might increase the insured risks or which might result in cancellation of any such insurance.

7.4 No Waste, Hazardous Waste, Hazardous Substances or Impairment of Value. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises which might impair the value of the Demised Premises or which would constitute waste or Hazardous Substances except that Tenant may use Hazardous Substances in the Demised Premises, if necessary for its current business relating to memorial stones, if it does so in compliance with applicable law. The term Hazardous Substance as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release is either (i) regulated or monitored by any governmental authority or (ii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and or crude oil or any products, by products or fractions thereof.

7.5 No Hazardous Use. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises (except as permitted pursuant to Section 7.4) and that no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Demised Premises which might be unsafe or hazardous to any person or property.

7.6 No Structural or Electrical Overloading. Tenant covenants and agrees that nothing shall be done or kept on the Demised Premises and that no improvements, changes, alterations,

additions, maintenance or repairs shall be made to the Demised Premises which might impair the structural soundness of the buildings thereon, which might result in an overload of electrical lines serving the Demised Premises or which might interfere with electric or electronic equipment in the Demised Premises or on any adjacent or nearby property. In the event of violations hereof, Tenant covenants and agrees to immediately remedy the violation at Tenant's expense and in compliance with all requirements of governmental authorities and insurance underwriters.

7.7 No Nuisance, Noxious or Offensive Activity. Tenant covenants and agrees that no noxious or offensive activity shall be carried on upon the Demised Premises nor shall anything be done or kept on the Demised Premises which may be or become a public or private nuisance or which may cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property. Landlord acknowledges that customary activities relating to the memorial stone business do not violate this Section 7.7.

7.8 No Violation of Covenants. Tenant covenants and agrees not to commit, suffer or permit any violation of any covenant, condition or restriction affecting the Demised Premises.

7.9 Changes and Alterations. Tenant shall not have the right to improve, change, alter, add to, remove or demolish any improvements on the Demised Premises ("Changes"). Tenant shall pay all costs and expenses with respect to all Changes. Tenant shall manage all construction activities and pay for all necessary permits and authorizations from any governmental authorities having jurisdiction with respect to all such Changes. Tenant or its contractors, at Tenant's or its contractor's sole cost and expense, shall maintain or cause to be maintained workmen's compensation insurance covering all persons employed in connection with the work and obtain liability insurance covering any loss or damage to persons or property arising in connection with any such Changes. Tenant covenants and agrees that any such Changes shall be completed with due diligence and in a good and workmanlike fashion and in compliance with all conditions imposed by Landlord, if any, all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction, and all covenants, conditions and restrictions with respect to the Demised Premises. Tenant covenants and agrees that the costs and expenses with respect to such Changes shall be paid promptly when due and that the Changes shall be accomplished free of liens of mechanics and materialmen. Tenant covenants and agrees that all such Changes shall become the property of the Landlord at the expiration of the Lease Term

7.10 No Mechanic's Liens. Tenant covenants and agrees not to permit or suffer, and to cause to be removed and released, any mechanic's, materialmen's or other lien on account of supplies, machinery, tools, equipment, labor or material furnished or used in connection with the construction, alteration, improvement, addition to or repair of the Demised Premises by, through or under Tenant. Tenant shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that, on final determination of the lien or claim for lien, Tenant shall immediately pay any judgment rendered, with interests and costs, and will cause the lien to be released and any judgment satisfied.

7.11 Subordination to Landlord Mortgages. Tenant covenants and agrees that this Lease and Tenant's interest in the Demised Premises shall be junior and subordinate to any

mortgage or deed of trust now or hereafter encumbering the Demised Premises, including, without limitation, Landlord's mortgages. No act or further agreement by Tenant shall be necessary to establish the subordination of this Lease to any such mortgage or deed of trust but Tenant covenants and agrees, upon request of Landlord, to execute such documents as may be necessary or appropriate to confirm and establish this Lease as subordinate to any such mortgage or deed of trust in accordance with the foregoing provisions. Tenant covenants and agrees that, at Landlord's request, Tenant shall execute documents as may be necessary to establish this Lease and Tenant's interest in the Demised Premises as superior to any such mortgage or deed of trust. If Tenant fails to execute any documents required to be executed by Tenant under the provisions hereof, Tenant hereby makes, constitutes and irrevocably appoints Landlord as Tenant's attorney in fact and in Tenant's name, place and stead to execute any such documents.

7.12 Assignment and Subletting. Tenant shall not have the right to make or permit a Transfer by Tenant, as hereinafter defined, without Landlord's prior written consent, which consent shall not be unreasonably withheld. For purposes of this Lease, a "Transfer by Tenant" shall include an assignment of this Lease, a sublease of all or any part of the Demised Premises or any assignment, sublease, transfer, mortgage, pledge or encumbrance of all or any part of Tenant's interest under this Lease or in the Demised Premises, by operation of law or otherwise, or the use or occupancy of all or any part of the Demised Premises by anyone other than Tenant. Any such transfer shall not release Tenant of its obligations under this Lease. At the time the request for a Transfer is made, the proposed sub-tenant or assignee shall submit complete financial statements to Landlord.

7.13 Payment of Income and Other Taxes. Tenant covenants and agrees to pay promptly when due all personal property taxes on personal property of Tenant on the Demised Premises and all federal, state and local income taxes, sales taxes, use taxes, Social Security taxes, unemployment taxes and taxes withheld from wages or salaries paid to Tenant's employees, the nonpayment of which might give rise to a lien on the Demised Premises or Tenant's interest therein.

7.14 Estoppel Certificates. Tenant covenants and agrees to execute, acknowledge and deliver to Landlord, upon Landlord's written request, delivered via certified mail, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the dates to which Basic Rent has been paid; and stating whether or not Landlord is in default under this Lease (and, if so, specifying the nature of the default). Tenant agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Demised Premises. Tenant agrees that a failure to deliver such a statement within 10 days after written request from Landlord shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord; that there are no uncured defaults by Landlord under this Lease; and that any representation by Landlord with respect to Basic Rent is true.

7.15 Landlord Right to Inspect and Show Demised Premises. Tenant covenants and agrees that Landlord and the authorized representatives of Landlord shall have the right to enter the Demised Premises at any reasonable time during ordinary business hours for the purposes of inspecting, repairing or maintaining the same or performing any obligations of Tenant which Tenant has failed to perform hereunder or for the purposes of showing the Demised Premises to

any existing or prospective mortgagee, purchaser or lessee of the Demised Premises. Landlord shall be respectful of any customers present and shall schedule repair or maintenance, showing or inspection with Tenant prior to any such repair, showing or inspection

7.16 Removal of Tenant's Equipment. Tenant covenants and agrees to remove, at or prior to the expiration of the Lease Term, all of Tenant's Equipment, as hereinafter defined. "Tenant's Equipment" shall mean all equipment, apparatus, machinery, signs, furniture, furnishings and personal property used in the operation of the Tenant's business activity (as distinguished from the use and operation of the Demised Premises). If such removal shall injure or damage the Demised Premises Tenant covenants and agrees, at its sole cost and expense, at or prior to the expiration of the Lease Term, to repair such injury and damage in good and workmanlike fashion and to place the Demised Premises in the same condition as the Demised Premises are at the effective date of this Lease.

7.17 Tenant Indemnification of Landlord. To the extent permitted by law, Tenant covenants and agrees to protect, indemnify and save Landlord harmless from and against all liability, obligations, claims, damages, penalties, causes of action, costs and expenses, including attorneys' fees, imposed upon, incurred by or asserted against Landlord by reason of (a) any accident, injury to or death of any person or loss of or damage to any property occurring on or about the Demised Premises; (b) any act or omission of Tenant or Tenant's officers, employees, agents, guests or invitees or of anyone claiming by, through or under Tenant; (c) any use which may be made of the Demised Premises by Tenant, or condition existing upon, the Demised Premises created by Tenant; (d) Tenant's improvements, fixtures or equipment placed upon the Demised Premises; (e) any failure on the part of Tenant to perform or comply with any of the provisions, covenants or agreements of Tenant contained in this Lease; (f) any violation of any law, ordinance, order, rule or regulation of governmental authorities having jurisdiction by Tenant or Tenant's officers, employees, agents, guests or invitees or by anyone claiming by, through or under Tenant; and (g) any repairs, maintenance or Changes to the Demised Premises by, through or under Tenant. Tenant further covenants and agrees that, in case any action, suit or proceeding is brought against Landlord by reason of any of the foregoing, Tenant will, at Tenant's sole cost and expense; defend Landlord in any such action, suit or proceeding with counsel reasonably acceptable to Landlord.

7.18 Waiver by Tenant. Tenant waives and releases any claims Tenant may have against Landlord or Landlord's officers, agents or employees for loss, damage or injury to person or property sustained by Tenant or Tenant's officers, agents, employees, guests, invitees or anyone claiming by, through or under Tenant resulting from any cause whatsoever other than the negligence or willful misconduct of Landlord.

7.19 Release upon Transfer by Landlord. In the event of a transfer by Landlord of the Demised Premises or of Landlord's interest as Landlord under this Lease, Landlord's successor or assign shall take subject to and be bound by this Lease and, in such event, Tenant covenants and agrees that Landlord shall be released from all obligations of Landlord under this Lease, except obligations which arose and matured prior to such transfer by Landlord; that Tenant shall thereafter look solely to Landlord's successor or assign for satisfaction of the obligations of Landlord under this Lease; and that, upon demand by Landlord or Landlord's successor or assign, Tenant shall agree to such successor or assign.

7.20 Signs. Tenant shall not place any sign upon the Demised Premises without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Tenant shall have the right, without the prior permission of Landlord to place ordinary and usual for rent or sublet signs thereon.

## 8. DAMAGE OR DESTRUCTION

8.1 Tenant's Notice of Damage. If any portion of the Demised Premises shall be damaged or destroyed by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord ("Tenant's Notice of Damage").

8.2 Options to Terminate if Damage Substantial. Upon receipt of Tenant's Notice of Damage, Landlord shall promptly proceed to determine the nature and extent of the damage or destruction and to estimate the time necessary to repair or restore the Demised Premises. As soon as reasonably possible, Landlord shall give written notice, delivered via certified mail to Tenant stating Landlord's estimate of the time necessary to repair or restore the Demised Premises ("Landlord's Notice of Repair Time"). If Landlord reasonably estimates that repair or restoration of the Demised Premises cannot be completed within one hundred eighty (180) days from the time of Tenant's Notice of Damage, and the cost of repair is fifty percent (50%) or more of the then replacement cost of the Demised Premises, Landlord and Tenant shall each have the option to terminate this Lease. In the event, however, that the damage or destruction was caused by the act or omission of Tenant or Tenant's officers, employees, agents, guests or invitees or of anyone claiming by, through or under Tenant, Landlord shall have the option to terminate this Lease if Landlord reasonably estimates that the repair or restoration cannot reasonably be completed within one hundred eighty (180) days from the time of Tenant's Notice of Damage, and the cost of repair is fifty percent (50%) or more of the then replacement cost of the Demised Premises, but Tenant shall not have the option to terminate this Lease. Any option granted hereunder shall be exercised by written notice, delivered via certified mail, to the other party given within 10 days after Landlord's Notice of Repair Time. In the event either Landlord or Tenant exercises its option to terminate this Lease, the Lease Term shall expire 10 days after the notice by either Landlord or Tenant exercising such party's option to terminate this Lease.

8.3 Obligations to Repair and Restore. In the event repair and restoration of the Demised Premises can be completed within the period specified in Section 8.2, in Landlord's reasonable estimation, this Lease shall continue in full force and effect and Landlord shall proceed forthwith to cause the Demised Premises to be repaired and restored with reasonable diligence. In the event of a partial destruction of the Demised Premises during the term hereof, Landlord shall forthwith repair the same, provided that such repairs can be made within one hundred eighty (180) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease. In the event of damage or destruction to the Demised Premises, Tenant shall be entitled to a proportionate reduction of rent, based upon the extent to which the damage or destruction and the making of such repairs shall interfere with the business of Tenant on the Demised Premises, during the period from when the damage or destruction occurs until the repairs to the Demised Premises are completed. If such repairs cannot be made within one hundred eighty (180) days, this lease may be terminated at the option of either party. A total destruction of the Demised Premises shall terminate the Lease.



## 9. CONDEMNATION

9.1 Taking -- Substantial Taking -- Insubstantial Taking. A "Taking" shall mean the taking of all or any portion of the Demised Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of the Demised Premises under the threat of condemnation. A "Substantial Taking" shall mean a Taking of so much of the Demised Premises that the Demised Premises cannot thereafter be reasonably used by Tenant for carrying on, at substantially the same level or scope, the business theretofore conducted by Tenant on the Demised Premises. An "Insubstantial Taking" shall mean a Taking such that the Demised Premises can thereafter continue to be used by Tenant for carrying on, at substantially the same level or scope, the business theretofore conducted by Tenant on the Demised Premises.

9.2 Termination on Substantial Taking. If there is a Substantial Taking with respect to the Demised Premises, the Lease Term shall expire on the date of vesting of title pursuant to such Taking. In the event of termination of this Lease under the provisions hereof, Landlord shall refund to Tenant such amount of Basic Rent theretofore paid by Tenant as may be applicable to the period subsequent to the time of termination of this Lease.

9.3 Restoration on Insubstantial Taking. In the event of an Insubstantial Taking, this Lease shall continue in full force and effect, Landlord shall proceed forthwith to cause the Demised Premises to be restored as near as may be to the original condition thereof and there shall be an abatement of Basic Rent proportionate to the extent of the space so taken. Tenant shall have the right to terminate lease in the event of an Insubstantial Taking, if the Demised Premises cannot be restored to the original condition and cannot be used in full function in order to continue business operations at the same level of productivity or efficiency at the effective date of lease.

9.4 Right to Award. The total award, compensation, damages or consideration received or receivable as a result of a Taking ("Award") shall be paid to and be the property of Landlord, whether the Award shall be made as compensation for diminution of the value of the leasehold or the fee of the Demised Premises or otherwise and Tenant hereby assigns to Landlord, all of Tenant's right, title and interest in and to any such Award. Tenant covenants and agrees to execute, immediately upon demand by Landlord, such documents as may be necessary to facilitate collection by Landlord of any such Award. Without limiting the foregoing, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant on account of any and all damage to Tenant's business by reason of the Taking or for or on account of any of Tenant's moving expenses, to the extent that such compensation does not reduce the Award to which Landlord is entitled.

## 10. DEFAULTS BY TENANT

10.1 Defaults Generally. Each of the following shall constitute a "Default by Tenant" under this Lease:

10.2 Failure to Pay Rent or Other Amounts. A Default by Tenant shall exist if Tenant fails to pay when due, Basic Rent, Additional Rent, or any other amounts payable by Tenant

under the terms of this Lease, and such failure shall continue for 5 days after written notice from Landlord to Tenant of such failure, provided however, that Tenant shall not be entitled to more than two notices of such failure during any lease year and if, after two such notices are given in any lease year, Tenant fails, during such lease year, to pay any such amounts within five (5) days of when due, such failure shall constitute a Default by Tenant without further notice by Landlord.

10.3 Violation of Lease Terms. A Default by Tenant shall exist if Tenant breaches or fails to comply with any agreement, term, covenant or condition in this Lease applicable to Tenant, and such breach or failure to comply continues for a period of 20 days after written notice thereof by Landlord to Tenant, or, if such breach or failure to comply cannot be reasonably cured within such 20-day period, if Tenant shall not in good faith commence to cure such breach or failure to comply within such 20-day period or shall not diligently proceed therewith to completion.

10.4 Transfer of Interest Without Consent. A Default by Tenant shall exist if Tenant's interest under this Lease or in the Demised Premises shall be transferred to any other party without Landlord's prior written consent.

## 11. LANDLORD'S REMEDIES

11.1 Remedies Generally. Upon the occurrence of any Default by Tenant, Landlord shall have the right, at Landlord's election, then or at any time thereafter, to exercise any one or more of the following remedies:

11.2 Cure by Landlord. In the event of a Default by Tenant, Landlord may, at Landlord's option, but without obligation to do so, and without releasing Tenant from any obligations under this Lease, make any payment or take any action as Landlord may reasonably deem necessary or desirable to cure any such Default by Tenant in such manner and to such extent as Landlord may reasonably deem necessary or desirable. Landlord may do so after providing notice to Tenant, and Tenant's failure to cure the Default within twenty (20) days after notification pursuant to Section 10.3. Tenant covenants and agrees to pay to Landlord, within 20 days after demand, all reasonable advances, costs and expenses of Landlord in connection with the making of any such payment or the taking of any such action, including reasonable attorney's fees, together with interest as hereinafter provided, from the date of payment of any such advances, costs and expenses by Landlord. Action taken by Landlord may include commencing, appearing in, defending or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien with respect to the Demised Premises which Landlord, in its reasonable discretion, may deem necessary or desirable to protect its interest in the Demised Premises and under this Lease.

11.3 Termination of Lease and Damages. In the event of a Default by Tenant, Landlord may terminate this Lease, effective at such time as may be specified by written notice, delivered via certified mail, to Tenant, and demand (and, if such demand is refused, recover) possession of the Demised Premises from Tenant. Tenant shall remain liable to Landlord for damages in an amount equal to the Basic Rent for the balance of the term, had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Demised Premises by Landlord subsequent to such termination, after deducting all Landlord's reasonable expenses in

connection with such recovery of possession or reletting. Landlord shall be entitled to collect and receive such damages from Tenant on the days on which the Basic Rent would have been payable if this Lease had not been terminated.

**11.4 Repossession and Reletting.** In the event of Default by Tenant, Landlord may reenter and take possession of the Demised Premises or any part thereof, without demand or notice, and repossess the same and expel Tenant and any party claiming by, under or through Tenant, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Demised Premises by Landlord shall be construed as an election by Landlord to terminate this Lease unless a written notice, delivered via certified mail, of such intention is given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice, delivered via certified mail, in which event the Lease will terminate as specified in said notice. After recovering possession of the Demised Premises, Landlord may, from time to time, but shall not be obligated to, relet the Demised Premises, or any part thereof, for the account of Tenant, for such term or terms and on such conditions and upon such other terms as Landlord, in its reasonable discretion, may determine. Landlord may make such repairs, alterations or improvements as Landlord may reasonably consider appropriate to accomplish such reletting, and Tenant shall reimburse Landlord upon demand for all reasonable costs and expenses, including attorneys' fees, which Landlord may incur in connection with such reletting. Landlord may collect and receive the rents for such reletting but Landlord shall in no way be responsible or liable for any reasonable failure to relet the Demised Premises, or any part thereof, or for any reasonable failure to collect any rent due upon such reletting. Notwithstanding Landlord's recovery of possession of the Demised Premises, Tenant shall continue to pay on the dates herein specified, the Basic Rent that would be payable hereunder if such repossession had not occurred minus any applicable amounts being paid to Landlord by subsequent tenants of the Demised Premises. Upon the expiration or earlier termination of this Lease, Landlord shall refund to Tenant any amount, without interest, by which the amounts paid by Tenant, when added to the net amount, if any, recovered by Landlord through any reletting of the Demised Premises, exceeds the amounts payable by Tenant under this Lease.

**11.5 Suits by Landlord.** Upon Default by Tenant, actions or suits for the recovery of amounts and damages payable under this Lease may be brought by Landlord from time to time, at Landlord's election, and Landlord shall not be required to await the date upon which the Lease Term would have expired to bring any such action or suit.

**11.6 Recovery of Landlord Enforcement Costs.** Upon Default by Tenant, all costs and expenses incurred by Landlord in connection with collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease or to enforce any provision of this Lease, including reasonable attorneys' fees, whether or not any action is commenced by Landlord, shall be paid by Tenant to Landlord upon demand.

11.7 Late Payment Penalty. Tenant covenants and agrees to pay to Landlord a late payment penalty in the amount of 5% per month of any installment of Basic Rent that Tenant fails to pay within five (5) days of when due.

11.8 Landlord's Bankruptcy Remedies. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any statute or rule of law governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable, either as damages or rent, under this Lease.

11.9 Remedies Cumulative. Exercise of any of the remedies of Landlord under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Landlord at law or in equity.

## 12. DEFAULT BY LANDLORD

12.1 Default by Landlord. The following will be deemed a default by Landlord and breach of this Lease: Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within thirty days after receipt of written notice from Tenant specifying the failure. If Landlord remains in default beyond the applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity.

## 13. SURRENDER AND HOLDING OVER

13.1 Surrender upon Lease Expiration. Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by Landlord after any Default by Tenant, Tenant covenants and agrees to surrender possession of the Demised Premises to Landlord, in the same condition as when Tenant first occupied the Demised Premises, ordinary wear and tear excepted.

## 14. MISCELLANEOUS

14.1 No Implied Waiver. No failure by Landlord to insist upon the strict performance of any term, covenant or agreement contained in this Lease, no failure by Landlord to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any Default by Tenant, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy, or a waiver of any such Default by Tenant.

14.2 Survival of Provisions. Notwithstanding any termination of this Lease, the same shall continue in force and effect as to any provisions hereof which require observance or performance by Landlord or Tenant subsequent to termination.

14.3 Covenants Independent. This Lease shall be construed as if the covenants herein between Landlord and Tenant are independent, and not dependent, and Tenant shall be entitled to any offset against Landlord permitted by Colorado Law, if Landlord fails to perform its obligations under this Lease.

14.4 Covenants as Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

14.5 Tenant's Remedies. Tenant may bring a separate action against Landlord for any claim Tenant may have against Landlord under this Lease, provided Tenant shall first give written notice, via certified mail, thereof to Landlord and shall afford Landlord a period of thirty days to cure any such default, or, if such default cannot be reasonably cured within such 30-day period, then Landlord shall in good faith commence to cure such default within such 30-day period. In addition, Tenant shall send notice of such default by certified or registered mail, postage prepaid, to the holder of any mortgage or deed of trust covering the Demised Premises or any portion thereof of whose address Tenant has been notified in writing, and shall afford such holder a reasonable opportunity to cure any default on Landlord's behalf. Tenant shall be entitled to remedies under Colorado Law of any default by Landlord hereunder.

14.6 Binding Effect. Without limiting the provisions of Section 10.4, this Lease shall extend to and be binding upon the heirs, executors, legal representatives, successors and assigns of the respective parties hereto.

14.7 Short Form Lease. This Lease shall not be recorded without the express written consent of the Landlord. If the Landlord desires or consents to the recording of this Lease, the parties shall execute a short form lease containing the names of the parties, a description of the Demised Premises and the Lease Term.

14.8 Notices and Demands. All notices, demands or billings under this Lease shall be in writing, and shall be deemed properly given and received when actually given and received or 3 business days after mailing, if sent by registered or certified United States mail, postage prepaid, addressed to the party to receive the notice at the address set forth for such party in the first paragraph of this Lease or at such other address as either party may notify the other of in writing.

14.9 Time of the Essence. Time is of the essence under this Lease, and all provisions herein relating thereto shall be strictly construed.

14.10 Captions for Convenience. The headings and captions hereof are for convenience only and shall not be considered in interpreting the provisions hereof.

14.11 Severability. If any provision of this Lease shall be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

14.12 Governing Law. This Lease shall be interpreted and enforced according to the laws of the State of Colorado.

14.13 Entire Agreement. This Lease and any exhibits referred to herein, constitute the final and complete expression of the parties' agreements with respect to the Demised Premises and Tenant's occupancy thereof. Each party agrees that it has not relied upon or regarded as binding any prior agreements, negotiations, representations, or understandings, whether oral or written, except as expressly set forth herein.

14.14 No Oral Amendment or Modifications. No amendment or modification of this Lease, and no approvals, consents or waivers by Landlord under this Lease, shall be valid or binding unless in writing and executed by the party to be bound.

14.15 Real Estate Brokers. Each party hereto represents and warrants to the other that it has not incurred any liability for the payment of any fee or commission to any broker or other agent in connection with the negotiation and execution of this Lease and each party agrees to indemnify and hold the other party harmless from any damages which may be incurred by the other party as a result of a breach by the indemnifying party of the foregoing warranty.

14.16 Relationship of Landlord and Tenant. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.

14.17 Limitation on Personal Liability of Landlord. Notwithstanding anything to the contrary contained in this Lease, it is understood and agreed that there shall be no personal liability on the part of the Landlord or any of its beneficiaries, successors or assigns, with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the equity of Landlord in the Demised Premises in the event of any default or liability of Landlord under this Lease, such exculpation of liability to be absolute and without any exception whatsoever.

14.18 Authority of Tenant. Each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed the day and year first above written.

**LANDLORD:**

Moore Returns, LLC

By: \_\_\_\_\_

Name: Bill Moore

Title: Owner

**TENANT:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Acting Town Clerk

\_\_\_\_\_  
Jennifer Green, Mayor

**Approved as to form:**

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

**EXHIBIT A**

**DEMISED PREMISES – LEGAL DESCRIPTION:**

1335 Park Street, Castle Rock, CO 80104

South Building & Parking Lot to East of building

**LEASE TERM:**

COMMENCEMENT DATE: June 1<sup>st</sup>, 2017

EXPIRATION DATE: June 1<sup>st</sup>, 2018

The initial Basic Rent\* shall be \$6,540.50 per month, as defined in Lease Agreement:

<u>Lease Period</u>	<u>Monthly Rent</u>
6/1/17 – 12/31/2017	\$6,540.50
1/1/18 – 6/1/2018	\$6,736.72

*\*Base rate is inclusive of rent, property taxes, and utilities.*

*Tenant is responsible for trash removal, insurance and regular maintenance of building.*

**PLACE FOR PAYMENTS:**

**Please mail rent payments and all correspondence to:**

**Moore Returns, LLC  
PO BOX 527  
Pine, CO 80470**