

COTTONWOOD HEIGHTS

RESOLUTION No. 2015-50

A RESOLUTION APPROVING AND RATIFYING ENTRY INTO A SIXTH AMENDMENT TO OFFICE LEASE WITH WLA UPU-1 AND -2, LLC

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 11 August 2015 to consider, among other things, approving the City's entry into the "Sixth Amendment to Office Lease" (the "Agreement") with WLA UPU-1 and -2, LLC ("Landlord") concerning, inter alia, extension of the term of the City's leasehold in certain office space in the building located at 1265 East Fort Union Blvd., Cottonwood Heights, UT; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2015-50, shall take effect immediately upon passage.

PASSED AND APPROVED effective 11 August 2015.



ATTEST:
By: Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By: Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 11th day of August 2015.

RECORDED this 13 day of August 2015.

2. Extension of Term; New Expiration Date. The Parties agree and acknowledge that the current and effective Term of the Lease was expected to expire on June 30, 2016, however, the Parties by way of this Sixth Amendment have agreed to extend the Term and establish a new Expiration Date as of the Effective Date of this Sixth Amendment, so that the Expiration Date will now extended through and expire at midnight on December 31, 2017.

3. Basic Monthly Rent. Basic Monthly Rent applicable to the Premises shall continue be paid by Tenant in the same manner and on the same terms and conditions as provided in the Lease, except that the amount of Basic Monthly Rent paid for the Premises during the extension of the Term, as extended in accordance with Section 2 above, is increased to the following amounts for each applicable calendar month:

Applicable Months during Extension of Term	Basic Monthly Rent Applicable to Premises during Extension of Term	Annual Rent Per Rentable Square Foot for Extended Term
July 1, 2016 through December 31, 2017, inclusive	\$36,068.33 per month	\$23.75

4. Early Termination Rights. Subject to the conditions and limitations set forth in this Sixth Amendment, the Lease may be terminated by Tenant for any reason or no reason at all, upon giving written notice of its intent to terminate ("Termination Notice") to Landlord not less than ninety (90) days prior to the date of the intended termination and selection of one of the specific termination dates specified below, by sending the required Termination Notice to Sublessor in accordance with the notice provisions and requirements set forth in the Lease, which termination shall thereafter be effective as of the specific date selected by Tenant as referenced in its Termination Notice ("Termination Date"). Tenant's Termination Notice shall specify in sufficient detail which one of the following termination dates that Tenant has selected and the Termination Notice shall be accompanied by a certified or cashier's check in an amount specified below as the termination fee ("Termination Fee").

Termination Date selected by Tenant and resulting Termination Fee owing to Landlord:
If Tenant desires to terminate the Lease and have an effective Termination Date of September 30, 2016, then Tenant must provide its Termination Notice by no later than July 2, 2016 and concurrently pay a Termination Fee to Landlord in the amount of \$65,000.
If Tenant desires to terminate the Lease and have an effective Termination Date of December 31, 2016, then Tenant must provide its Termination Notice by no later than October 2, 2016 and concurrently pay a Termination Fee to Landlord in the amount of \$40,000.
If Tenant desires to terminate the Lease and have an effective Termination Date of March 31, 2017, then Tenant must provide its Termination Notice by no later than January 1, 2017 and concurrently pay a Termination Fee to Landlord in the amount of \$20,000.

If Tenant desires to terminate the Lease and have an effective Termination Date of June 30, 2017, then Tenant must provide its Termination Notice by no later than April 1, 2017 and concurrently pay a Termination Fee to Landlord in the amount of \$15,000.

If Tenant desires to terminate the Lease and have an effective Termination Date of September 30, 2017, then Tenant must provide its Termination Notice by no later than July 2, 2017 and concurrently pay a Termination Fee to Landlord in the amount of \$10,000.

Failure of Tenant to deliver a Termination Notice and the Termination Fee within the specified dates and time limits prescribed in this Section 4 shall constitute a waiver by Tenant of its right to terminate this Lease. Tenant's exercise of the foregoing option to terminate is further subject to the condition that Tenant is not in default under any of the terms, covenants, or conditions of the Lease beyond any applicable grace or cure periods at the time that Tenant delivers the Termination Notice or upon the Termination Date. In the event Tenant exercises the foregoing option subject to and in accordance with the conditions and limitations contained in this Section 4, Tenant shall deliver the Premises to Landlord on or before the Termination Date in accordance with the conditions, standards, and requirements set forth in the Lease and in accordance with Section 6 below, as if the Termination Date were the Expiration Date of the Term. Tenant shall continue to pay Basic Monthly Rent, Tenant's Share of Operating Expenses, and all other amounts owing by Tenant as provided for under the Lease, and keep, perform, and observe all of the terms, covenants, and conditions on Tenant's part to be kept performed and observed as provided in the Lease for the period between the date Tenant delivers the Termination Notice through and including the date Tenant actually vacates and properly surrenders the Premises. The delivery of a Termination Notice and payment of a Termination Fee shall not release Tenant from full and faithful performance of all terms and conditions of the Lease during the continuing occupancy of Tenant after the delivery of a Termination Notice but before Tenant actually vacates and properly surrenders the Premises and shall not release or waive any indemnification or other obligations that are expressly required by the Lease to survive any termination of the Lease or surrender of the Premises. The termination rights granted under this Section 4 are personal to Cottonwood Heights, a Utah municipality, and may not be assigned to nor shall such rights inure to the benefit of any other successor, assign, sublessee, or other party.

5. Early Access Upon Termination. In the event Tenant exercises the termination option provided for in Section 4 above, Landlord, along with its contractors, subcontractors, agents, licensees, and employees, may immediately enter upon the Premises and begin assessing, evaluating, and determining the type and scope of work that will be necessary or desirable to relet the Premises and prepare the Premises for a replacement tenant. Provided that Landlord and its contractors, subcontractors, agents, licensees, and employees do not unreasonably interfere with the winding up of Tenant's occupancy and efforts to vacate and surrender the Premises and provided such actions are in accordance with good construction practices, Landlord and its contractors, subcontractors, agents, licensees, and employees, may enter upon the Premises and, conditioned on the prior written consent of Tenant's manager or deputy manager (which shall not be unreasonably withheld or delayed) as to each proposed item of removal and replacement, commence the removal and replacement of any walls, flooring, ceiling materials, lighting, wiring, fixtures, and other improvements throughout the Premises that Landlord or any

replacement tenant may not desire to remain on or within the Premises following the Termination Date. Notwithstanding the foregoing, Landlord's early access rights as provided in this Section 5 are not required to be provided by Tenant more than thirty (30) days prior to the applicable Termination Date.

6. Surrender of Premises. In the event Tenant exercises the termination option provided for in Section 4 above, Tenant will vacate and surrender the Premises to Landlord in no less than those conditions, standards, and requirements previously established in the Lease; provided, however, notwithstanding any dates specified in any applicable Termination Notice and notwithstanding any applicable Termination Date, and notwithstanding any contrary dates or timeframes in the Lease, Tenant agrees to vacate and surrender the Premises as expeditiously as possible and in no event later than twelve (12) days after Tenant's replacement space is ready for occupancy. Notwithstanding the date Tenant actually vacates and properly surrenders the Premises, Tenant agrees and acknowledges that if Tenant has exercised the termination option provided in Section 4 above, Tenant will remain obligated for all payment of Basic Monthly Rent, Tenant's Share of Operating Expenses, and all other amounts owing by Tenant as provided for under the Lease through and including the Termination Date.

7. Moving Expenses. Tenant will be responsible for all arrangements and costs related to moving its office equipment, supplies, fixtures, furniture, personal property, and other apparatus out of the Premises. In addition to any other requirements previously established under the Lease, Tenant shall utilize elevator blankets, furniture blankets, and appropriate flooring protection measures to limit any damage to the Premises, the Building, and the Property while moving out of the Premises and Tenant will promptly repair any damage to the Premises, the Building, and the Property incident to Tenant moving out of the Premises.

8. Headings. The captions and headings of the various sections of this Sixth Amendment are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions of this Sixth Amendment. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

9. Entire Amendment. This Sixth Amendment contains all amendments and modifications between the Landlord and Tenant with respect to the matters set forth herein, and no amendment or modification not contained in this Sixth Amendment shall be recognized by Landlord and Tenant. In the event of any amendment or modification of this Sixth Amendment, the amendment or modification shall be in writing signed by Landlord and Tenant in order to be binding upon Landlord and Tenant. In the event of a conflict between the provisions of this Sixth Amendment and the Lease, the provisions of this Sixth Amendment shall control. Except as modified by this Sixth Amendment, the Lease shall continue in full force and effect and is hereby ratified and affirmed in its entirety. Any exhibits attached to and/or referred to in this Sixth Amendment are incorporated into this Sixth Amendment and the Lease.

10. Counterparts. Delivery of an executed counterpart of this Sixth Amendment by facsimile or other electronic transmission (including a PDF file via email) shall be equally effective as delivery of a manually executed counterpart of this Sixth Amendment or any such

document, and the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Sixth Amendment or any such document.

11. Authority. Each individual executing this Sixth Amendment on behalf of Landlord and Tenant does thereby represent and warrant to each other person so signing (and to each other entity for which such other person may be signing) that he or she has been duly authorized to deliver this Sixth Amendment in the capacity and for the entity set forth where she or he signs.

12. Successors and Assigns. All of the covenants, conditions, and provisions of this Sixth Amendment shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

13. Further Assurances. The Parties agree to sign any additional commercially reasonable documents and perform any additional commercially reasonable acts as may be reasonably necessary to effectuate the intent and purpose of this Sixth Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have caused their duly authorized representatives to execute and deliver this Sixth Amendment as of the Effective Date.

LANDLORD:

WLA UPU-1 AND 2, LLC, a Utah limited liability company

By and through its Managing Member, WLA UPU MANAGER, LLC, a Utah limited liability company

By: _____
Print Name: _____
Its: _____

TENANT:

COTTONWOOD HEIGHTS,
a Utah municipality

ATTEST:

By: _____
Linda W. Dunlavy, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor