

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter called the "Lease") is made to be effective as of the 1st day of October , 2017 by and between **KIWI PROPERTIES, LLC**, a Minnesota limited partnership, having office at 1755 Highland Parkway, Saint Paul, MN 55116 (hereinafter called the "Lessor"), and the **City of Saint Paul – Police Department** (hereinafter referred to as "Tenant"), whose mailing and notification address for this Lease is: Financial Services – Real Estate, 25 W. 4th St., Rm. 1000, Saint Paul, Minnesota 55102.

ARTICLE 1 – DESCRIPTION OF PREMISES

Lessor, in consideration of the rents and covenants herein contained, hereby leases a portion of the land and building of the property located at 1630-1642 Carroll Avenue, St. Paul, Ramsey County, Minnesota 55104 (the "Property"), legally described as:

Parcel One: Lots One (1) Two (2) and Three (3), and Four (4), Block Six (6), College Park, according to the recorded plat thereof.

Parcel Two: Lots One (1) and Two (2), Block Five (5), Excelsior Park, according to the map or plat thereof on file and of record in office at the Register of Deeds in and of said Ramsey County, Minnesota,

The lease space within the Property to be occupied exclusively by Tenant includes 4,000 sq. ft. of warehouse space and 1,071 sq. ft. of office space, as outlined on Exhibit A attached hereto and incorporated herein by this reference, said lease space hereinafter called the "Premises."

Additionally, Tenant is granted the non-exclusive right to use the loading dock area with other tenants of the Property as shown on the attached Exhibit A

ARTICLE 2 – USE OF PREMISES

The Premises shall be used by Tenant for business related professional equipment and repairs and property service equipment and for no other purpose. Tenant's use shall, at all times, be subject to and in conformity with all regulations imposed by local, state, federal or other governmental agencies, and subject to rules and regulations which may, from time to time, be promulgated by Lessor.

Tenant acknowledges that access from the Premises to the shared loading dock area is provided through areas of the Property leased by other tenants. Tenant shall, at all times, traverse areas being leased to other tenants in such a manner so as to minimize disturbance with other tenants' occupancy. Tenant shall not store any materials on any part of the Property leased to other tenants.

ARTICLE 3 – TERM

TO HAVE AND TO HOLD the Premises together with all appurtenant rights and privileges, unto Tenant for a term of **2 years**, commencing on **October 1, 2017**, and terminating on **September 30, 2019** (hereafter called the "Term").

ARTICLE 4 – RENT

- A. Base Rent – Tenant shall pay Rent of **\$42,000.00** per year (\$3500 per month) during the Term of the Lease, payable in two annual installments no later than the fifth (5th) day of October of each year. Lessor shall be responsible for and pay all taxes, assessments and utility expenses (except telephone and cable connection) against the premises.

ARTICLE 5 – TENANT IMPROVEMENTS

- A. Tenant Improvements were previously completed by Lessor in conformance with all building, fire and safety code requirements of the City of Saint Paul..
- B. Lessor shall permit Tenant's use of or connection to the following items currently existing within the Premises:
1. Modular furniture in the office space
 2. Industrial racking along east wall of warehouse space
 3. Phone/computer connections

ARTICLE 6 – TENANT'S RESPONSIBILITY, CARE OF PREMISES AND UTILITIES

- A. Tenant shall be responsible for the maintenance of the interior of the Premises, and Tenant's own telephone and cable connection charges furnished to the Premises during the Term of this Lease or any extension or renewal thereof.
- B. Tenant further agrees (a) to keep the Premises in as good condition as they were in at the time that Tenant took possession of same, reasonable wear and tear excepted; (b) to keep the Premises in a clean and sanitary condition; (c) not to commit any nuisance or waste on the Premises, throw foreign substances in plumbing facilities, or waste any of the utilities; and (d) not to obstruct entries, halls, stairways, or lavatories, nor use the same for anything other than their intended purpose.

- C. If Tenant shall fail to keep and preserve the Premises in the state of condition required by the provisions of this Lease, Lessor may, at its option, put or cause the same to be put in the condition and state or repair agreed upon, and in such case, Tenant shall pay the reasonable cost thereof.

ARTICLE 7 – LESSOR’S RESPONSIBILITY – QUIET ENJOYMENT

- A. Only Lessor or Lessor’s designee shall have a secured key to the Premises to enter in case of emergency (e.g., frozen pipe, medical necessity, structural issue, etc). Any entry into the Premises or service work done in the Premises by Lessor or Lessor’s contractors shall not be permitted without providing advance notice and coordination with Tenant.
- B. Lessor shall keep in reasonable good order, condition and repair the structural parts of the Property, including the building’s load bearing walls, foundation, and interior support columns, except that Tenant shall be responsible for the cost of the repairs that are caused by the fault or negligence of Tenant, its employees or invitees.
- C. Lessor shall be responsible for all rubbish and trash removal from the Premises, and the provision of appropriate rubbish containers.
- D. Lessor shall be responsible for reasonable removal of snow from all sidewalks, parking areas and walkways of the Property and Premises and the adjacent public sidewalks.
- E. Lessor shall pay when due all charges for water and sewer usage or rental.
- F. Lessor shall be responsible for maintaining all landscaped areas, parking areas, non-public sidewalks and exterior portions of the Property and its building.
- G. Lessor shall be responsible for reasonable maintenance of the heating and ventilating systems and air conditioning (if any) systems servicing the Property and Premises.
- H. Lessor shall be responsible for the combined consumption of natural gas, electricity, and any other utilities, services or energy source furnished to the Premises which are not separately metered for the Premises.
- I. Lessor warrants that it has full right to execute and perform this Lease and to grant the estate demised, and that Tenant, upon payment of the rents and other amounts due and the performance of all the terms, conditions, covenants and agreements on Tenant’s part to be observed and performed under this Lease, may peaceably and quietly enjoy the Premises for the uses permitted hereunder, subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE 8 – HAZARDOUS WASTE

A. Definitions. As used in this Lease, the following terms shall have the following meanings:

1. "Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §1802, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. Sec §1321, *et seq.*, the Clean Water Act, 33 U.S.C. §1321, *et seq.*, the Clean Air Act, 42 U.S.C. §7401, *et seq.*, the Minnesota Environmental Response and Liability Act, Minn. Stat. Chapter 115B, the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. Chapter 115C, and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.
2. "Hazardous Substances" means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCB's"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by any Environmental Law.

- B. The Tenant shall not use, or permit the use of, the Premises for the handling, storage, transportation, manufacture, release or disposal of any Hazardous Substances except in compliance with all applicable laws. In addition, the Tenant shall not install or maintain, or permit the installation or maintenance of, any above-ground or underground storage tanks for the storage of petroleum, petroleum by-products or other Hazardous Substances in, about or under the Premises and the building constituting part of the Premises without the prior written consent of Lessor, and unless the Tenant installs and maintains such above-ground or underground storage tanks in compliance with all applicable Environmental Laws. Tenant's obligations hereunder shall survive the expiration or termination of this agreement.
- C. The Tenant shall immediately notify the Lessor in writing of any claim, investigation, administrative proceeding, litigation, regulatory hearing or request or demand for remedial or response action or for compensation which may be proposed, threatened or pending, alleging the presence, handling, storage, transportation, manufacture, release or disposal of Hazardous Substances in, about, or under the premises or the building constituting part of the Premises. The Lessor shall have the right, but not the obligation, to join and participate in any such investigation, administrative proceeding, litigation, regulatory hearing or other action and to have its attorneys' fees and expenses in connection therewith paid by the Tenant. Without the Lessor's prior written consent, the Tenant shall not take any remedial or response action or enter into any settlement or other compromise with respect to any claim, investigation, administrative proceeding, litigation, regulatory hearing or request or demand for remedial or response action or for compensation which, in the Lessor's reasonable judgment, may materially impair the value of the Premises.

ARTICLE 9 – NON-PERMITTED USE

Tenant agrees not to commit or permit any act to be performed on the Premises or any omission to occur which will be in violation of any statute, regulation, or ordinance of any governmental body or which will increase the insurance rates on the Building or Premises or which will be in violation of any insurance policy carried on the Building or Premises by Tenant or Lessor. Tenant, at its expense, shall comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with the Premises or Tenant's use or occupancy of the Premises, including the making of any alterations or improvements to the Premises, all at Tenant's sole cost and expense. Tenant shall not do or permit to be done in or about the Premises anything which will be dangerous to life or limb. Tenant's indemnification in the next Article shall be deemed to include any breach of this representation and warranty

ARTICLE 10 – INSURANCE

A. Tenant shall acquire during the term of this lease the following coverage:

1. Tenant shall be responsible for the self insurance of, or the acquisition of, Commercial Property Insurance on its personal property.
2. Tenant certifies that it is a duly authorized self-insured entity in accordance with Minnesota state law for purposes of general liability, property damage and workers compensation claims. Furthermore, Tenant hereby affirms and maintains its entitlement to all available immunities, defenses and protections to the fullest extent provided by law.

B. Lessor shall carry and cause to be in full force and effect a fire and extended coverage insurance policy on the Building and/or premises but not contents owned, leased to or otherwise in possession of Tenant.

ARTICLE 11 – INDEMNITY

Lessor agrees to indemnify, defend, save and hold harmless Tenant and any agents, officers and employees thereof from all claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of the condition of the Premises.

ARTICLE 12 – NON-LIABILITY OF LESSOR AND COVENANT TO HOLD HARMLESS

Lessor shall not be liable for any loss or damage caused by water, snow, back up of sewer, or for failure to furnish heat, air conditioning, electricity, water, or due to theft, burglary, or fire, nor shall such failure or other temporary failures of such services due to Lessor's maintenance or repair be deemed an eviction of Tenant or relieve Tenant of any of its obligations hereunder. Lessor shall not be liable for personal injury, death or any damage from any cause on or about the Property or the Premises. All property, kept, stored, or maintained in the Premises shall be so kept, stored or maintained at the sole risk of the Tenant.

ARTICLE 13 – FIRE REPAIR

In the event of damage to the Property or Premises by fire, the elements, or other casualty, Lessor at its option may terminate this Lease or repair the damage. If the damage renders the Premises untenable in whole or in such part that it is impracticable to conduct business therein, the rent shall wholly abate until the damage has been repaired. If the damage renders the Premises untenable in part but Tenant continues to occupy it in part, the rent shall be reduced in the proportion that the unoccupied portion of the Premises bears to the entire Property and its building until the damage has been repaired.

ARTICLE 14 – CONDEMNATION LOSS

Should all the Property be taken in condemnation proceedings or by exercise of any right of eminent domain, then this Lease shall automatically terminate as of the date the condemning authority or the authority exercising its right of eminent domain takes possession of the Premises. If there is a partial taking but Tenant continues to occupy the Premises in part, the rent shall be reduced in the proportion that the unoccupied part of the Premises bears to the entire Property. If, as a result of a partial taking, the Premises is no longer usable for the purpose(s) specified in Article 2 of this Lease, Tenant may terminate this Lease as of the date the condemning authority or the authority exercising its right of eminent domain takes possession of the Premises by giving written notice thereof to Lessor. If there is a partial taking of the Premises, Lessor may terminate this Lease as of the date specified in the foregoing sentence by giving written notice thereof to Tenant. All damages awarded for any such taking shall belong to and be the property of Lessor irrespective of the basis upon which they are awarded provided, however, that nothing contained herein shall prevent Tenant from making a separate claim to the condemning authority for its moving expenses and trade fixtures. For purposes of this Article, a taking by eminent domain shall include Lessor's giving of a deed under threat of condemnation.

ARTICLE 15 – ASSIGNMENT AND SUBLETTING

- A. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease, the Premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Lessor in each instance. If Tenant is a corporation or partnership, transfer of a controlling interest of Tenant shall be considered an assignment of this Lease for purposes of this Article. Consent by Lessor in one such instance shall not be a waiver of Lessor's rights under this Article to require consent for any subsequent instance. In the event Tenant desires to sublet a part or all of the Premises, or assign this Lease, Tenant shall give written notice to Lessor at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee. At Lessor's option, any and all payments by the proposed assignee or sublessee with respect to the assignment or sublease shall be paid directly to Lessor. In any event no subletting or assignment shall release Tenant of its obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. At Lessor's option, Lessor may terminate the Lease in lieu of giving its consent to any proposed assignment of this Lease or subletting of the Premises (which termination may be contingent upon the execution of a new lease with the proposed assignee of subtenant).

B. Lessor's right to assign this Lease is and shall remain unqualified upon any sale or transfer of the Property or Premises and, providing the purchaser succeeds to the interests of Lessor under this Lease, Lessor shall thereupon be entirely freed of all obligations of the Lessor's hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

ARTICLE 16 – MECHANICS' LIEN

In the event any mechanic's lien shall at any time be filed against the Property or any part thereof by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be released as a lien against the Premises. If Tenant shall fail to cause the Premises to be released from such lien within thirty (30) days after being notified of the filing thereof, then, in addition to any other right or remedy for Lessor, Lessor may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Lessor and all costs and expenses, including reasonable attorneys' fees incurred by Lessor in procuring the discharge of such lien, shall be due and payable in full by Tenant to Lessor on demand.

ARTICLE 17 – SURRENDER

On the last day of the Term or upon the sooner termination thereof, Tenant shall peaceably surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as provided in Article 6 hereof. On or before the last day of the Term or the sooner termination thereof, Tenant shall at its expense remove all of its equipment and other personal property from the Premises, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. At the election of Lessor, all alterations, additions and fixtures, other than Tenant's trade fixtures, which have been made or installed by either Lessor or Tenant upon the Premises shall remain as Lessor's property and shall be surrendered with the Premises as part thereof, or Lessor may, at Lessor's sole option, require removal of the same at the end of the term. Tenant shall promptly surrender all keys for the Premises to Lessor at the place then fixed for payment of rent.

ARTICLE 18 – HOLDING OVER

In the event Tenant remains in possession of the Premises after the expiration of this Lease, whether by lapse of time or termination, and without the execution of a new Lease, it shall be deemed to be occupying said Premises as a month-to-month tenant. In such case, Tenant shall pay during that time a monthly rental at the rate of 100% of the Base Rent plus all Additional Rent payable hereunder, subject to all the conditions, provisions and obligations of this Lease insofar as the same can be applicable to said tenancy.

ARTICLE 19 – DEFAULT OF TENANT

If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to Lessor shall be and remain unpaid in whole or in part for more than ten (10) days after same is due and payable; (2) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein or in any other agreement between Lessor and Tenant relating to the Premises; (3) Tenant or any guarantor of this Lease shall commence or have commenced against Tenant or any guarantor proceedings under a bankruptcy, receivership, insolvency or similar type of action; or (4) Tenant shall vacate any substantial portion of the

Premises for a period of more than 15 days; then it shall be optional for Lessor, without further notice or demand, to cure such default or to declare this Lease forfeited and the said Term ended, or to terminate only Tenant's right to possession of the Premises, and to re-enter the Premises with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and the Lessor shall not be liable for damages by reason of such re-entry or forfeiture; but notwithstanding re-entry by Lessor or forfeiture or termination of this Lease or termination only of Tenant's right to possession of the Premises, the liability of Tenant for the rent and all other sums provided for herein shall not be relinquished or extinguished for the balance of the Term of this Lease and Lessor shall be entitled to periodically sue Tenant for all sums due thereafter. Tenant shall be responsible for, in addition to the rentals and other sums agreed to be paid hereunder, the cost of any necessary maintenance, repair, restoration, reletting (including related cost of removal or modification of Tenant Improvements) or cure as well as reasonable attorney's fees incurred or awarded in any suit or action instituted by Lessor to enforce the provisions of this Lease, regain possession of the Premises or the collection of the rentals due Lessor hereunder. Tenant shall also be liable to Lessor for the payment of a late charge in the amount of 10% of the rental installment or other sum due Lessor hereunder if said payment has not been received within ten (10) days from the date the same becomes due and payable. Each right or remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 20 – DEFAULT OF LESSOR

Lessor shall not be deemed to be in default under this Lease until the Tenant has given Lessor written notice specifying the nature of the default and Lessor does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure.

ARTICLE 21 – ALTERATIONS

Tenant will not make any alterations, repairs, additions or improvements in or to the Premises or add, disturb or in any way change any plumbing, wiring, life/safety or mechanical systems, or structural components of the Premises and building without the prior written consent of Lessor as to the character of the alterations, additions of improvements to be made, the manner of doing the work, and the contractor doing the work. Such consent shall not be unreasonably withheld or delayed, if such alterations, repairs, additions or improvements are required of Tenant or are the obligations to Tenant pursuant to this Lease. All such work shall comply with all applicable governmental laws, ordinances, rules and regulations. Lessor, as a condition to said consent, may require a surety performance and/or payment bond from Tenant for said actions.

ARTICLE 22 – ENTRY

Lessor shall have the right to keep pass keys to the Premises. Tenant agrees that Tenant will not place additional locks on any of the doors to the Premises without the written consent of Lessor and without first giving Lessor access keys to such locks. Lessor, its agents, and its employees shall have the right, without any diminution of Rent, to enter the Premises at all reasonable times to inspect, conduct environmental tests, to make repairs and to maintain the Premises consistent with the Lessor or Tenant's obligations relating thereto and as set forth in this Lease, **but only after providing advance notice and coordination with Tenant.**

ARTICLE 23 – SUBORDINATION

It is mutually agreed that this Lease shall be subordinate to any and all mortgages, including any renewals, modifications, consolidations, replacements and extensions thereof now or hereafter imposed on the Premises by Lessor. Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the Rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. In the event Lessor's mortgagee wishes to waive the subordination right set forth in this Article, then upon written notice to Tenant, this Lease shall be deemed prior in encumbrance to said mortgage. In confirmation of such subordination or priority, Tenant, upon request, shall promptly execute and deliver any instrument, as required by Lessor's mortgagee.

ARTICLE 24 – GENERAL

- A. This Lease does not create the relationship of principal and agent or of partnership or of joint venture; the sole relationship between Lessor and Tenant being that of Lessor and tenant.
- B. The submission of this Lease for examination does not constitute a reservation of, or option for, the Premises, and this Lease shall become effective only upon execution and delivery thereof by Lessor and Tenant.
- C. No waiver of any default of Tenant hereunder shall be implied from any omission by Lessor to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated.
- D. The covenants of Tenant to pay the Base Rent and the Additional Rent are each independent of any other covenant, condition, provision or agreement contained in this Lease.
- E. The marginal or topical headings of the several paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such paragraphs or clauses.
- F. All preliminary negotiations are merged into and incorporated in this Lease.
- G. This Lease can be modified or amended by an agreement in writing signed by the parties hereto.
- H. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto.
- I. Any notice required to be served in writing hereunder shall be delivered personally or sent by certified mail to Tenant at the address of the Premises and to Lessor at the address then fixed for payment of Rent. The place at which Tenant is to pay all Rent shall be designated in a separate writing from Lessor if different from the address of Lessor set forth above.
- J. This Lease Agreement shall be construed under law of the State of Minnesota.
- K. No receipt or acceptance by Lessor from Tenant of less than the monthly Rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement of any check or any letter or other writing accompanying any check or payment of rent to Lessor shall be deemed an accord and satisfaction, and Lessor may accept and negotiate such check or payment without prejudice to Lessor's rights to (i) recover the remaining balance of such unpaid rent or (ii) pursue any other remedy provided in this Lease.
- L. Neither party shall record this Lease or any memorandum thereof, and any such recordation shall be a breach of this Lease, void and without effect.

M. Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained.

ARTICLE 25 – SECURITY DEPOSIT

Lessor initially waives the requirement that Tenant pay a security deposit to Lessor. If at any time during the Term, Tenant fails to pay any installment of Rent or any other charges required to be paid to Lessor hereunder, Lessor may by notice to Tenant require the immediate deposit of a sum equal to two (2) months of the Rent for the Premises (the "Security Deposit"). Lessor may use said Security Deposit to the extent necessary, whether for rent or otherwise. The amount held as a security deposit shall bear no interest. If Tenant performs and observes all of the terms, conditions and covenants of this Lease which are required to be performed and observed by it, Lessor shall return the Security Deposit, or balance thereof then held by Lessor, to Tenant within thirty (30) days after the expiration of the Lease or after Tenant surrenders possession of the Premises, whichever is later. Tenant understands that its potential liability under this Lease Agreement is not limited to the amount of the Security Deposit. Use of such Security deposit by Lessor shall not constitute a waiver, but is in addition to other remedies available to Lessor under this Lease Agreement and under law.

ARTICLE 26 – LIMITATION OF LIABILITY

Any liability of Lessor under this Lease shall be limited solely to its equity interest in the Premises, and in no event shall any personal liability be asserted against Lessor in connection with this Lease, nor shall any recourse be had to any other property or assets of Lessor. Tenant agrees to look solely to Lessor's interest in the Premises for the recovery of any judgment from Lessor.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year in this Lease first above-written.

LESSOR

KIWI PROPERTIES, LLC

William Corcoran - (PRES)
WILLIAM CORCORAN
Its PRESIDENT KIWI PROPERTIES LLC

TENANT

City of Saint Paul

Mayor or designee

City Clerk

Director – Office of Financial Services

Assistant Chief of Police
Saint Paul Police Department

City Attorney (Form Approval)

Exhibit A

