

## **GROUND LEASE AGREEMENT WITH OPTION TO PURCHASE**

THIS AGREEMENT, made and entered into effective the \_\_\_ day of \_\_\_\_, 2017, by and between The City of Missoula, 435 Ryman Street, Missoula, Montana 59802, hereinafter referred to as “Lessor” or “City”, and Consumer Direct Grant Creek Campus, LLC, a Montana limited liability company of 100 Consumer Direct Way, Missoula, MT 59808, hereinafter referred to as “Lessee” or “Consumer Direct”. It is specifically agreed and acknowledged that this agreement is subject to the terms and conditions of that certain Master and Subordination Agreement, executed currently herewith (the “Master Agreement”).

### **WITNESSETH:**

That, in consideration of the covenants herein contained on the part of Lessee to be observed and performed, Lessor does hereby lease unto Lessee, and Lessee does hereby lease from Lessor, certain real property (the “Premises”), which is Three and 51/100 (3.51) acres of land, more or less, and certain improvements to such land as described herein below, situated in the County of Missoula, State of Montana, particularly described as follows, to-wit:

Lot 1 of Consumer Direct Addition, a two-lot subdivision located in the NW  $\frac{1}{4}$  of Section 8, Township 13 North, Range 19 West, P.M.M., City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

Together with all improvements thereon other than the building (with any internal building fixtures and improvements) constructed or to be constructed thereon, the bike storage structure of approximately 660 square feet located adjacent to the building, the chiller, generator, and playground equipment located thereon (all of which are presently owned by Lessee and shall be referred to as the “Lessee Improvements”). It is specifically agreed and acknowledged that the

“Premises” shall include any and all right, title and interest granted from Consumer Direct to the City via that certain Special Warranty Deed, executed concurrently herewith. Lessor hereby agrees and represents and warrants to Lessee: (i) that Lessee shall have the quiet enjoyment and exclusive use of the Premises; (ii) excluding only MBOI (defined below) or as by Bank of Montana under the LCA (defined below), this lease and the rights hereunder shall not be assigned by the City; (iii) the City shall not transfer any right, title or interest, including any easement, license, or right-of-way as relating to the Premises, or terminate or modify any easement, license, or right-of-way; (iv) the City shall not encumber or lien the Premises, except as to MBOI as contemplated by documents executed concurrently herewith or to Bank of Montana as set forth in the Master Agreement, and; (v) the City shall not allow or undertake any change in zoning or allowable use of the Premises, change access to the Premises, allow any encroachment onto the Premises, or change any boundary of the Premises.

NOW, THEREFORE, it is hereby agreed by the parties as follows:

1. **Term.** The term of this Lease Agreement shall be for a period of twenty (20) years, commencing on the \_\_\_ day of \_\_\_\_\_, 2017, and ending on the \_\_\_ day of \_\_\_\_\_, 20\_\_.
2. **Rental.**
  - a. Lessee shall pay Lessor as monthly rental for the Premises, the amount which is equal to the infrastructure loan payments as set forth in the attached Loan Agreement entered into by the Montana Board of Investments (“MBOI”) and the City dated \_\_\_\_\_, 2017 (the “Loan Agreement”).
  - b. Lessee shall have the right to make additional rental payments with no prepayment penalty. However, any such prepayment will not excuse the Lessee’s obligation to make timely monthly payments until the balance of the MBOI loan is paid in full.

3. **Acceptance of Condition.** Lessee acknowledges familiarity with the condition of the Premises and that no representation, statement or warranty, expressed or implied, has been made by or on behalf of Lessor as to such condition. In no event shall Lessor be liable for any defect in such property or for any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Lessee accepts the same “as is” and that the Premises was in good condition at the time possession took place. Lessee agrees to accept the Premises in the condition in which they exist at the date of taking possession, without representation or warranty, express or implied, in fact or by law, by Lessor, and without recourse to the Lessor as to the nature, condition or unsuitability thereof, or as to the uses to which the Premises may be put.

4. **Utilities.** Lessee shall pay all charges for utilities used, rendered or supplied upon or in connection with the Premises.

5. **Insurance.**

a. **Property and Casualty Coverage.** During the entire term of this Agreement, Lessee shall cause the Premises to be insured at all times against loss or damage by special perils and related casualty in an amount representing the full insurable replacement value thereof as determined by Lessor and MBOI. Replacement coverage shall be subject to such deductible clauses as are required in order to obtain coverage at reasonable cost, and which coverage shall be increased by Lessee as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction with comparable quality materials. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. In lieu of separate policies, blanket policies having the coverage required herein may be maintained. Such policy or policies shall name Lessor and MBOI as insured and all policy proceeds shall be payable to MBOI and Lessor. At the request of Lessor or MBOI, policies or certificates evidencing such insurance shall be delivered to Lessor or MBOI.

b. **Comprehensive liability insurance.** Lessee shall maintain in effect throughout the term of this Lease Agreement comprehensive general liability insurance covering the use, occupation or condition of Premises in the amount of One Million Dollars

(\$1,000,000.00) for injury to or death of any one person per occurrence, and in the amount of Two Million Dollars (\$2,000,000.00) aggregate for injury to or death of any number of persons in one occurrence. Such insurance shall specifically insure Lessee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both Lessor and Lessee, but shall be endorsed so as to create the same liability on the part of the insurer as though separate policies had been written for Lessor and Lessee.

Lessee, for itself, its employees, agents, successors and assigns, shall fully save and hold harmless Lessor from any cause, claim, demand or action of any sort or nature arising from or out of Lessee's occupation, use or possession of the said Premises; excepting therefrom only, any cause, claim, demand or action of any sort or nature arising out of the negligence of Lessor or its agents.

c. **Lessor's right to pay premiums on behalf of Lessee.** All of the policies of insurance referred to in this Lease Agreement shall be written in form satisfactory to Lessor and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums and deliver evidence of such policies to Lessor, and in the event of failure of Lessee either to effect such insurance in the name hereinabove called for or to pay the premiums therefor, or to deliver evidence of said insurance to Lessor, after providing written notice to Lessee and giving a reasonable chance to cure, Lessor shall be entitled to, but shall have no obligation to, effect such insurance and pay the premiums therefor, which premiums shall be repayable to Lessor by Lessee with the next installment of rental due under this Lease Agreement, and Lessee's failure to repay the same shall carry with it the same consequences as failure to pay any installment of rental under this Lease Agreement. Each insurer shall agree, by endorsement on the policy or policies issued by it, or by independent instruments furnished to Lessor, that it will give to Lessor thirty (30) days' written notice before the policy or policies in question shall be altered or canceled. Lessor agrees not to unreasonably withhold its approval as to the form or to the insurance companies selected by Lessee.

d. **Damage or destruction of Premises.** In the event the Premises are damaged or destroyed by fire or other casualty, Lessor may, at its option, proceed with all due diligence to restore and repair the Premises to its original condition prior to the damage or destruction, unless delayed by strike, riots or acts of God. If Lessor does not choose to commence within sixty (60) days to restore the Premises, then Lessee shall have the right, at its option, to terminate this Lease Agreement.

#### 6. **Taxes and Assessments.**

a. **Taxes as additional rental.** As additional rental hereunder, Lessee shall pay and discharge as they become due, promptly and before delinquency, all real estate taxes, special improvement district taxes, special city taxes, special assessments, beneficial use

taxes, and other charges and taxes of every nature and kind whatsoever if any can be and are assessed against the Premises.

b. **Receipt.** Lessee shall deliver to Lessor receipts showing taxes and assessments have been paid promptly upon written request from Lessor.

7. **Repairs and Maintenance.**

a. **Maintenance of Premises.** Lessee shall, throughout the term of this Lease Agreement, and at its own cost and without any expense to Lessor, keep and maintain the Premises, and all appurtenances thereto, including, sidewalks adjacent thereto and parking lots, in good condition and repair. Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or any improvements thereon; PROVIDED further that Lessor shall not be responsible for repairs or maintenance resulting from the negligence of Lessee, its employees, agents, or invitees, which shall be the sole responsibility of Lessee.

b. **Entry by Lessor for Failed Maintenance.** Should Lessee at any time fail, neglect or refuse to fulfill this obligation to repair and maintain, then upon 30 days written notice to Lessee, Lessor may, but need not, enter the Premises (but not the Lessee Improvements) and make such repairs or alternations as in its opinion it may deem necessary, and may charge the costs of the same to Lessee to be paid upon the first day of the following month as part of the rental, and should said costs not be so paid, this Lease Agreement shall be considered in default.

8. **Right of Entry.** Lessor, or its agents or employees, shall have the right to enter the Premises (but not the Lessee Improvements) at all reasonable hours to examine the same or to make such repairs or temporary alterations as shall be deemed necessary for the safety or preservation of the Premises. When reasonable under the circumstances, Lessor shall give advance written notice prior to any such entry. There shall be no rebate of rent nor liability for any loss of occupation or quiet enjoyment occasioned thereby. Excluding only for Lessee's negligence and willful misconduct, Lessor shall indemnify, protect, defend and hold Lessee harmless from any claims, loss, or damages arising as a result of the negligence or willful

misconduct of Lessor or its agents or employees while on the Premises pursuant to the authority of this Paragraph.

9. **Use of Premises.** Lessee agrees that it will not make or suffer any unlawful, improper or offensive use of the Premises, or in any way use or occupy the same contrary to any law of the State or any ordinance of the City, now or hereafter made. Lessee shall not commit, or suffer to be committed, any waste on the Premises or any nuisance. Lessee agrees that no use shall be made or permitted to be made of the Premises, or acts done, which will cause a cancellation of any insurance policy covering the Premises or any part thereof.

At its own cost, responsibility and risk, Lessee intends to use the Premises to operate a facility on the Premises to provide home health care services throughout the United States. In such use, Lessee shall comply with the terms and conditions set forth in the Loan Agreement, and the Public Improvements Use Fee Agreement between Lessor and Lessee dated \_\_\_\_\_, 2017 (“Use Fee Agreement”).

10. **Subletting and Assignment.** Lessee shall not have the right to assign this Lease Agreement or sublet the Premises, or any part thereof, without the prior written permission of Lessor and MBOI; provided, however, such permission shall not be required for any leases or subleases of the Lessee Improvements. Should Lessor and MBOI grant such permission, any assignment or sublease shall be subject to all the provisions of this Lease Agreement, and Lessee shall continue to be bound by all the terms, conditions and covenants of this Lease Agreement and be liable for the rents reserved in this Lease Agreement; provided, however, anything in this Lease Agreement to the contrary notwithstanding, Lessor, with the written consent of MBOI, may release Lessee from any further liability whatsoever, at its option by doing so in writing.

Permission given by Lessor to an assignment or sublease shall not be deemed to be permission given to any subsequent assignment or sublease. Any assignment or sublease made without the prior written permission of Lessor and MBOI shall be void, and shall be a default of this Lease Agreement.

Lessee acknowledges and agrees that Lessor has assigned or will assign this Lease to MBOI as security for the Loan and Lessee hereby consents to such assignment. Any other assignment by Lessor or MBOI shall require Lessee's prior written consent.

11. **Improvements.** With Lessor's and MBOI's consent, which shall not be unreasonably withheld, Lessee shall be permitted during the term of this Lease Agreement to make such improvements and alterations to the Premises as it may see fit. Lessee shall not permanently destroy or remove any of the improvements thereon which are part of the Premises (as opposed to Lessee Improvements), without the prior written consent of Lessor and MBOI, which consent shall not be unreasonably withheld, but Lessee may, without such prior written consent, temporarily destroy or remove such improvements for purposes of repairing, maintaining or replacing such improvements with like improvements of equal or greater value. At the termination of this Lease Agreement, the Lessee shall be entitled to remove its trade fixtures and equipment which are not permanently attached to the Premises, at Lessee's expense. Subject to the option in Section 26, any improvements or trade fixtures not so removed shall become the sole property of Lessor upon termination of this Agreement.

12. **Lessor and Lessee's Title.** Lessor is not and never shall be liable to any creditor of Lessee or any claimant against the estate or property of Lessee for any debt, loss, contract or

other obligation of Lessee. The relationship between Lessor and Lessee is solely that of landlord and tenant, and does not and never shall be deemed a partnership or joint venture.

13. **Liability for Liens.** Lessor's interest in and to said Premises shall not be subject to or permitted to become subject to any lien or claims from or arising out of the use and occupation of the Premises by Lessee. If and in the event such liens or claims arise or occur, Lessee shall promptly and forthwith cause the same to be released or discharged to the extent that the interest of Lessor is encumbered thereby.

14. **Condition of Premises Upon Surrender.** At the expiration of this Lease Agreement, Lessee shall quit and surrender the Premises hereby demised in as good condition as when received, reasonable wear and tear and damage by the elements excepted.

15. **Environmental.**

a. **Environmental Law and Hazardous Materials.**

**"Environmental Law"** means any federal, state or local statute, law, rule, regulation, ordinance, code, guideline, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; and any state and local counterparts and equivalents, including without limitation the Montana Hazardous Waste and Underground Storage Tank Act, MCA § 75-10-401, et seq., and the Montana Comprehensive Environmental Cleanup and Responsibility Act, MCA § 75-10-701, et seq.

**"Hazardous Materials"** means (a) any oil, petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels



of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous chemical,” “hazardous material,” “hazardous substance,” “hazardous waste,” “pollutant,” or “contaminant” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the presence, collection, storage, use, generation, manufacturing, treatment, transportation, disturbance, disposal or exposure to or of which is prohibited, limited or regulated by any governmental authority and/or under any applicable Environmental Law.

**“Hazardous Materials Contamination”** means the contamination (whether presently existing or occurring after the date of this Agreement) of the buildings, improvements, facilities, soil, ground water, air or other elements on, or of, the Premises by Hazardous Materials, or the contamination (whether before or after the date of this instrument) of the buildings, improvements, facilities, soil, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Premises.

b. **Lessee’s Obligations.** Lessee:

i. represents and warrants to Lessor that: (1) during the period of Consumer Direct’s prior ownership of the Premises, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination by any person on, under, about or from any of the Premises or any buildings or other improvements located thereon, other than Hazardous Materials which are present, stored, handled or used in Consumer Direct’s ordinary course of business and in compliance with all applicable laws, including Environmental Laws; and (2) Consumer Direct has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws involving the Premises or any buildings or other improvements located thereon; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination on, under, about or from the Premises or any buildings or other improvements located thereon by any prior owners or occupants of any of the Premises or any buildings or other improvements located thereon; (c) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination on, under, about or from any property adjoining the Premises; (d) any underground storage tanks or underground storage tank systems located under or on the Premises; or (e) any actual or threatened litigation or claims of any kind by any person relating to such matters. The representations and warranties contained herein are based on Consumer

Direct's due diligence in investigating the subject property for Hazardous Materials.

Consumer Direct agrees: (1) that neither Consumer Direct or nor any tenant, contractor, agent or other authorized user of any of the Premises or any buildings or other improvements located thereon shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Materials on, under, about or from any of the Premises or any buildings or other improvements located thereon, other than such presence, storage, use or handling of Hazardous Materials as may occur in the ordinary course of business of Consumer Direct, or such authorized user and in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws; (2) to give notice to CITY and MBOI immediately upon acquiring knowledge of: (i) the presence of any Hazardous Materials on the Premises or any buildings or other improvements located thereon, other than Hazardous Materials which are placed, stored, used or handled in compliance with clause (1) of this Subsection, or (ii) of any Hazardous Materials Contamination of the Premises or any buildings or other improvements located thereon, with a full description thereof in either case; (3) to deliver to CITY and MBOI promptly after receipt copies of any documents received from or submitted to any governmental regulatory, environmental, or health agency concerning any actual, alleged or potential violation or noncompliance with any Environmental Law with respect to operations upon the Premises or any buildings or other improvements located thereon; (4) to comply, and to cause any and all lessees or other authorized users of the Premises or any buildings or other improvements located thereon to comply, with any applicable requirements of Environmental Laws, including without limitation, at Consumer Direct's or such authorized user's own expense, preparation, submission and carrying out of any plans and financial assurances that may be required by any governmental authority with respect to any cleanup or remediation of any Hazardous Materials or Hazardous Materials Contamination; and (5) upon the reasonable request of CITY or MBOI, at any time and from time to time during the existence of this Agreement, to provide at Consumer Direct's sole expense an inspection or audit of the Premises or any buildings or other improvements located thereon from an engineering or consulting firm approved by CITY and MBOI, indicating the presence or absence of Hazardous Materials or Hazardous Materials Contamination on or in the Premises or any buildings or other improvements located thereon. If Consumer Direct fails to provide such inspection report or audit after reasonable notice, CITY or MBOI may order same, and Consumer Direct grants to CITY and MBOI and their employees and agents access to the

Premises or any buildings or other improvements located thereon for the purpose of inspecting and testing for the presence of Hazardous Materials and Hazardous Materials Contamination. The cost of such tests shall be a demand obligation owing by Consumer Direct to CITY hereunder (for benefit of CITY or MBOI as applicable) together with interest thereon;

- ii. obtain, maintain in full force and effect, and strictly comply with any and all governmental permits, approvals and authorizations necessary for the conduct of Lessee's business operations;
- iii. supply Lessor with copies of any such permits, approvals and authorizations;
- iv. promptly notify Lessor of the expiration or revocation of any such permits, approvals and authorizations; and
- v. except to the extent of CITY's or MBOI's gross negligence or willful misconduct, Consumer Direct hereby (1) releases and waives any future claims against CITY and MBOI for indemnity or contribution in the event Consumer Direct becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless CITY and MBOI from and against any and all fines, claims, losses, liabilities, damages, settlements, judgments, penalties, costs, expenses, attorney, expert and consultant fees, and actions of any kind (including without limitation, administrative or court investigative, enforcement, cleanup, remediation and restoration proceedings) which CITY or MBOI directly or indirectly sustain or suffer resulting from a breach of Section 15.b. of this Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of Hazardous Materials or Hazardous Materials Contamination on the Premises or any buildings or other improvements located thereon, or from any failure of Consumer Direct to provide information, make submissions or take steps required under any Environmental Law. The provisions of this Subsection of this Agreement, including the obligation to indemnify and defend, shall survive the payment of the Loan and the termination, expiration or satisfaction of this Agreement and the Loan Agreement, and shall not be affected by CITY's or MBOI's acquisition of any interest in any of the Premises or any buildings or other improvements located thereon, whether by foreclosure or otherwise.

c. CITY or MBOI, as applicable, shall notify Consumer Direct in writing within ten (10) days if any action or proceeding involving a liability indemnified against under Section 15(b) and/or Section 16 is brought against MBOI or City. Consumer Direct, at its own cost and expense, may, and upon written demand from CITY or MBOI, shall assume the defense of such action or proceeding including the employment of counsel, who shall be counsel satisfactory to CITY or MBOI, as applicable, or their officers, employees or agents, as the case may be. CITY or MBOI or their officers, employees or agents may employ separate counsel in any such action and participate in the defense thereof. In that event, the fees and expenses of the separate counsel shall be the responsibility of such indemnitee. Consumer Direct will not be liable to indemnify any person or entity for the settlement of any action made without its consent. The omission to notify Consumer Direct as herein provided will not relieve Consumer Direct from any liability which it may have to any indemnified party pursuant hereto except to the extent such omission materially prejudices the interests of Consumer Direct.

This indemnification shall survive the end of the term of this lease and any extensions thereof and shall inure to the benefit of Lessor, its heirs and assigns.

16. **Indemnity.** Excluding for Lessor's negligence and willful misconduct, Lessee agrees to indemnify, defend and save Lessor harmless from and against all claims for or on account of damages to property or injuries (including death) to persons arising out of Lessee's use and occupancy of the Premises or any buildings or other improvements located thereon.

Excluding for Lessor's negligence and willful misconduct, Lessor shall not be liable to Lessee or any third party for any damage or injury (including death) to persons or property resulting from any defect in the Premises or any buildings or other improvements located thereon, whether such defects be the result of improper construction, lack of maintenance or repair, improper maintenance or repair or other cause whatsoever.

17. **Waiver of Subrogation.** Each party releases the other party (which term as used in this paragraph includes employees and agents of the other party) from all liability, whether for negligence or otherwise, in connection with loss covered by an insurance policy which the releasee carries with respect to the Premises or any interest or property therein or thereon

(whether or not such insurance is required to be carried under this Lease), but only to the extent that such loss is collected under said insurance policies. Such release is further conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect such policies or prejudice any right of the releasor to recover thereunder. Each party agrees that its insurance policies will include such a provision so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the party for whose benefit the cause or endorsement is obtained shall pay such extra cost. If extra costs shall be chargeable therefor, each party shall advise the other thereof of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

18. **Enforcement.** In the event either party resorts to judicial proceedings to enforce any rights under this Lease or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings shall be entitled to recover from the defaulting party the costs of such proceedings, including reasonable attorneys' fees.

19. **Default by Lessee.** In the event of a default by Lessee in the performance of any covenant, term, condition, or obligation or violation of any term of this Agreement or the Use Fee Agreement and, if applicable, such default is not corrected within sixty (60) days (or such other period, if any, as applicable under the Use Fee Agreement, but in all cases at least sixty (60) days) after written notice to Lessee, whether notice is given by Lessor hereunder or by MBOI as provided in the Use Fee Agreement, or if the Premises shall become vacated or abandoned and remain completely vacated or abandoned without occupants for a period of sixty (60) days or more, Lessee shall be dispossessed therefrom during the term of this Agreement, or a petition for bankruptcy or assignment for the benefit of creditors shall be filed by Lessee or if Lessee shall be

finally adjudicated bankrupt and the same shall not be discharged within sixty (60) days after written demand therefor by Lessor, subject to Bank of Montana's rights under that certain Landlord Consent to Assignment executed concurrently herewith (the "LCA"), Lessor may pursue any and all remedies available under this Agreement or at law or in equity. If a default to which a 60-day notice and opportunity to cure applies is not reasonably capable of being corrected within sixty (60) days, then Lessee must commence corrective action within the sixty (60) days and diligently pursue it to completion. Any extension of the correction period past the initial 60-day period must be approved in writing by MBOI, with such approval not to be unreasonably withheld.

20. Lessor's Rights Upon Default. If the Lessor notifies the Lessee in writing that it is in default under this Agreement, and the Lessee fails to cure or reasonably commence corrective action to cure the default within the time set forth in the notice, Lessor may, without making further notice or demand upon the Lessee, but subject to the LCA, exercise any or all of the following actions:

a. Leave this Agreement in effect, permit the Lessee to remain in possession of the Premises, and bring an action or actions against the Lessee to recover the amounts owed by the Lessee under this Agreement as they become due, and to recover any other amounts necessary to compensate the Lessor for all detriment caused by the Lessee's failure to perform its obligations under this Agreement. The abandonment of the Premises by the Lessee will not reduce or eliminate the Lessee's obligations under this Agreement.

b. Notify the Lessee in writing that the Agreement is terminated, and demand that the Lessee immediately relinquish possession of the Premises. The Lessor may take this action either as an alternative to or subsequent to exercising the remedies set forth in subsection (a) of this paragraph. If the Lessee does not relinquish possession of the Premises, the Lessor may enter and take possession of the Premises, may remove the property and personnel of the Lessee from the Premises at the expense of the Lessee, and may store the Lessee's personal property in any reasonable manner and place selected by the Lessor, without liability for any physical damage or financial loss that may be caused

to the Lessee by such removal. The Lessee agrees to reimburse the Lessor for all expenses of and all damage caused by the repossession of the Premises and the removal and storage of the Lessee's property.

c. Hold, renovate, or dispose of the Premises or any part of the Premises on any terms selected by the Lessor, free and clear of any rights of the Lessee and without any duty to account to the Lessee for any proceeds of the use of the Premises.

d. Relet the Premises in any commercially reasonable manner, and apply the proceeds, after deducting all costs and expenses incurred in connection with retaking possession of, remodeling, and reletting the Premises, in payment of the Lessee's obligations under this Agreement, with the Lessee remaining responsible for any deficiency.

e. If Lessee's default consists of failure to obtain, maintain or pay for any of the insurance policies which this Agreement requires it to maintain, or failure to pay any tax, assessment, or other charge which this Agreement requires it to pay, or failure to keep the Premises free from liens, levies and encumbrances, or failure to indemnify the Lessor against any claim, action, damage, loss, injury, demand, liability, cost or expense, the Lessor will have the right, but not be obligated, to take that action itself, and to bill the Lessee for the costs of taking that action.

f. Acceleration Upon Termination. Lessee acknowledges and agrees that, in the event of termination of this Agreement, for any reason and under any circumstances, Lessor has the right to accelerate payment of the Public Improvements Use Fee payments due from Lessee under the Public Improvements Use Fee Agreement to the extent that termination of this Agreement results in an acceleration of the indebtedness owed by Lessor under the Loan Agreement or the Public Improvements Use Fee Note. This section shall not be modified by Lessor and Lessee without MBOI's prior written consent. Such acceleration shall not terminate Lessee's rights as set forth in Section 26 herein.

g. The foregoing remedies shall not be deemed exclusive, and Lessor may, at its option, pursue any and all other rights or remedies available to the Lessor at law or in equity.

21. **Lease Subordination.** Lessee agrees that this Ground Lease and the Option to Purchase provided herein shall be subordinate to any mortgages or trust deeds that are now or may hereafter be placed upon the Premises, including without limitation the Trust Indenture given by CITY to secure the Loan, and to the interest thereon and all renewals, replacements and extensions thereof, provided the mortgagee or beneficiary named in said mortgages or trust deeds shall agree to recognize the Lease of Lessee in the event of foreclosure if Lessee is not in default.

If any mortgagee or beneficiary elects to have this Lease superior to its mortgage or deed of trust by notice to Lessee, then this Lease shall be deemed superior to the lien of any such mortgage or trust deed, whether this Lease is dated or recorded before or after said mortgage or trust deed.

22. **Lease Subject to Use Fee Agreement.** Lessee acknowledges and agrees that this Lease and the Option to Purchase provided in section 26 hereof shall be subordinate and subject to the provisions (except as to termination and survival) of the Public Improvements Use Fee Agreement between Lessor and Lessee. The provisions of this Lease shall supplement and shall not be deemed to supersede or replace the provisions of such Use Fee Agreement, and in the event of a conflict between any provisions of the respective agreements, the provisions of such Use Fee Agreement shall control, except as to the option, as stated in Section 26 or as otherwise as specifically noted as notwithstanding any other agreement, where the provisions of such section or agreement shall control over the Use Fee Agreement.

23. **Estoppel Certificates.** Lessee agrees that from time to time, and upon the request of Lessor, Lessee shall execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, and confirming Lessee's acceptance of the Premises, the commencement of the Lease term, and the rent provided under the Lease, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by a third party.

24. **Attornment.** Lessee shall, in the event any proceeding is brought for the foreclosure of or in the event of exercise of the power of sale under any mortgage made by Lessor



covering the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the landlord under this Lease, provided that such purchaser confirms in writing the validity and acceptance of this Lease.

25. **Payments and Notices.** The rentals due hereunder shall be paid by Lessee to Lessor in the amounts and at the times set forth on the Amortization Schedule (including any replacement thereof pursuant to the terms of the Use Fee Agreement) by direct payment to MBOI through the automated clearing house, or at such other place as MBOI may from time to time direct by written notice given to Lessor and Lessee thirty (30) days prior to the date of payment. The foregoing shall not reduce Lessee's right to prepay any amount due hereunder or under the Loan Agreement or Use Fee Agreement.

Any notices required or which may be submitted hereunder from Lessee to Lessor may be sent by registered or certified mail to the address designated above, or may be personally served upon Lessor.

Any notices required or which may be submitted hereunder from Lessor to Lessee may be sent by registered or certified mail to the Premises leased hereunder, or may be personally served upon Lessee. A copy of any such notices sent to Lessee shall also be sent to Bank of Montana, 125 Bank Street, Suite 100, Missoula, MT 59802.

All notices referred to in the Default paragraph hereinabove shall be sufficient for all purposes if they describe the default or defaults in general terms.

For any notice, service by mail shall be deemed complete when the notice is enclosed in an envelope, duly sealed, with postage prepaid and deposited in the United States Post Office or

any regular depository thereof, directed to Lessor or Lessee at the addresses hereinabove provided.

26. **Option to Purchase.** Lessor and Lessee recognize and agree that Lessee (or Lessee's designee, as so selected by Lessee) shall have the exclusive right and option to purchase the Premises, subject to the terms and conditions herein provided. The duration of this option shall be for the term of this lease, plus 120 days. For purpose of clarity, and notwithstanding any other provision of this agreement, the Loan Agreement, the Use Fee Agreement, or any document related or connected thereto, this option, and Lessee's (and it's designee's) right to exercise this option shall survive any termination of this Lease (and the Loan Agreement, the Use Fee Agreement, or any document related or connected thereto) by a period of 120 days. Lessee may remain in possession of the Premises during such 120 days on the same terms as provided for in this Lease. The parties agree that good and sufficient consideration exists for this option, and the consideration for the option includes, but is not limited to, Lessee's agreement to enter into this Lease Agreement, make the payments hereunder and under the Loan Agreement and Use Fee Agreement, including certain payment obligations on behalf of the City to MBOI, to offer the indemnifications to the City as provided herein, to have built the Lessee Improvements in the manner and at location that it has so done, to create new jobs and maintain jobs in Missoula, and to increase the tax revenue to the City; such option is a material inducement and provision of this Lease Agreement, and Lessee would not have sold the Premises to the City, agreed to pay certain amounts on behalf of the City under the Loan Agreement or Use Fee Agreement, otherwise have built the Lessee Improvements in the manner and at the location it has done, retained or created new jobs in Missoula, or entered into this Lease Agreement but for this option to purchase the

Premises on these terms. The purchase price for the Premises shall be all amounts still to be paid under the Loan Agreement, plus ten dollars (\$10.00). The purchase price for the Premises shall be paid in cash at closing. The option may be exercised at Lessee's (or Lessee's selected designee's) discretion by providing written notice to the City. Closing shall occur, at Lessee's discretion, at least 5 days after providing the City notice of Lessee's intent to exercise its option, and no later than 120 days after providing notice of Lessee's intent to exercise its option. Lessee shall have the right, after providing notice of Lessee's intent to exercise its option, until closing, to conduct such due diligence as Lessee so elects. Lessee may obtain a title commitment, at Lessee's cost. Lessee shall pay all reasonable closing and recording costs. Concurrently with the execution of this Lease Agreement, Lessor will execute that certain Special Warranty Deed (the "Deed") and Bill of Sale (the "Bill of Sale"), each attached hereto as Exhibit A, which will be held in escrow during the term of this option, and Lessor will authorize the release and recording of such Deed and Bill of Sale upon payment in full of the option purchase price, pursuant to the Escrow Agreement executed concurrently herewith. Lessor will also take such actions and execute such documents as reasonably requested or necessary to facilitate such closing and transfer. Lessor shall have, and transfer valid, marketable fee simple title to the Premises, which as of the closing will be delivered free and clear of all encumbrances and liens to the extent as represented in the Deed and Bill of Sale.

27. **Invalidity.** The invalidity or ineffectiveness for any reason of this Lease Agreement shall in no way affect the validity or enforceability of the remaining portion thereof and any invalid or unenforceable provisions shall be deemed severed from the remainder of the Lease Agreement.

28. **Waiver.** The waiver by Lessor of, or the failure of Lessor to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of same, or any other term, covenant or condition herein contained.

29. **Effect of Lessee's Holding Over.** Any holding over after the expiration of the term of this Lease Agreement with the consent of Lessor shall be construed to be a tenancy from month to month, at the same monthly rental as required pursuant to the terms of this Lease Agreement, and shall otherwise be on the terms and conditions herein specified so far as applicable.

30. **Binding Effect.** It is mutually understood and agreed that each and every provision of this Lease Agreement shall bind and inure to the benefit of the agents, administrators, successors and assigns of the respective parties hereto. Masculine pronouns shall be construed as feminine or neuter pronouns and singular pronouns and verbs shall be construed as plural in any place in which the context may require such construction.

31. **Time of the Essence.** Time is of the essence of this Lease Agreement, and of each and every provision hereof.

32. **Applicable Law, Jurisdiction and Venue.** This Lease Agreement shall be governed by and constructed in accordance with the laws of the State of Montana without giving effect to the conflicts-of-laws principles thereof. The parties hereby consent to jurisdiction and venue for any litigation or dispute arising from this Lease Agreement in the Montana state district court in the Fourth Judicial District in and for Missoula County.

33. **Reasonable Exercise of Discretion.** Any discretion to be exercised by Lessor under this Agreement shall be done in a reasonable manner.

**[Remainder of Page Intentionally Left Blank – Signatures Follow]**

IN WITNESS WHEREOF, Lessor and Lessee have hereunto set their hands and seals the day and year first hereinabove written.

**City of Missoula, Montana**

**Consumer Direct Grant Creek Campus, LLC**

By \_\_\_\_\_  
**John Engen, Mayor**

By \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Print Title:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Martha Rehbein, City Clerk**

**APPROVED AS TO FORM**

By \_\_\_\_\_  
**James P. Nugent, City Attorney**