

GROUND LEASE AGREEMENT

This Ground Lease Agreement (**Agreement** or **Lease**) is entered into between the CITY OF BRIGHTON, COLORADO, a Colorado home rule municipal corporation (**Landlord**), and ALLO Brighton, LLC, a Nebraska limited liability company (**Tenant**) as of _____ (“Effective Date”).

The Parties agree:

1. **DESCRIPTION**: Landlord leases to Tenant the area identified on Exhibit A, attached hereto and incorporated herein by reference, consisting of approximately 1,250 square feet of a portion of the real property located at 14950 Brighton Road, Brighton, CO (**Premises**).

2. **TERM**: The initial term of this Lease (**Initial Term**) shall commence as of the Effective Date and continue until the tenth (10th) anniversary of the Effective Date at which time it shall terminate, unless sooner terminated or renewed as provided herein. Upon providing no fewer than thirty (30) days written notice to Landlord prior to the expiration of the Initial Term or first Renewal Term, as applicable, Tenant shall have the option to extend this Agreement for two (2) additional ten (10) year terms (each, a **Renewal Term**, together with the Initial Term, the **Term**), upon the terms and conditions as stated herein. If Tenant fails to provide a notice of renewal, the Lease shall renew on month-to-month basis upon the same terms and conditions as stated herein and shall be terminable at any time, by either party, with thirty (30) days' written notice to the other party.

3. **RENT**: During the Term, Tenant shall pay to Landlord as Rent \$700.00 per month, with payment due on the first day of each month, and such Rent shall be prorated for any partial calendar months. For each year of any Renewal Term and commencing on the first day of each year of any such Renewal Term, Rent for the applicable year shall be determined by multiplying the monthly Rent for the immediately preceding year by the lesser of: (a) 1.03, representing a three percent (3%) annual increase; or (ii) a number equal to the percentage increase in the CPI over a 12 month period, calculated by using the most recently published CPI and the CPI published 12 months earlier. "CPI" shall mean the Revised Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, for United States City Average, All Items (1982-84 = 100).

4. **USE**: Tenant shall use the Premises for a central office and/or data bunker, which is a building for utilities, computers and a generator using electricity, but without any temporary or permanent occupancy. Tenant shall not, without the written consent of Landlord, use the Premises for any other purpose, which consent shall not be unreasonably conditioned, delayed, or withheld.

5. **CONDITION OF PREMISES**: Landlord makes no warranties as to the condition of the Premises, and Tenant acknowledges it is accepting the Premises in its current and “As Is” condition.

6. **EMINENT DOMAIN**: If at any time during the Term of this Lease the whole of the Premises, or so much thereof as to render the balance unusable for the intended use by the

Tenant as described herein, shall be taken by any authority (including Landlord) for any public use under any statute, by right of eminent domain, or by conveyance in lieu thereof, then in such event when title of the Premises is taken by the condemning authority, the Term hereby granted and all rights of the Tenant granted in this Lease shall immediately terminate. Tenant shall pay Rent up to the time of such termination. Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. The termination of this Lease shall not affect the rights of the respective parties to such awards.

7. **ACCESS; FIBER FACILITIES.** Access to the Premises shall be nonexclusive, i.e., the access shall be shared with other users, tenants and owners. In addition to Tenant's access rights described herein, Tenant shall also have the right to install and maintain conduit, fiber optic lines, and related facilities (which shall include, but not be limited to, any utilities, *e.g.*, electricity, natural gas, or any similar utilities that be reasonably required to operate the fiber facilities (collectively, **Fiber Facilities**) so as to allow Tenant to utilize its data bunker situated on the Premises. The Fiber Facilities shall be located in existing utility easements to the extent possible, but in any event within fifteen (15) feet of the boundary of the Premises in easements that are nonexclusive. Tenant and Landlord shall mutually agree on the exact placement of the Fiber Facilities prior to installation and Tenant shall be solely responsible for the repair and maintenance of the Fiber Facilities.

8. **TAXES:** At any time, in the event improvements placed on the Premises by Tenant cause an annual tax increase over the taxes due in the year of the Effective Date of this Lease (**Base Year**), Tenant shall, upon billing by Landlord and Landlord's provision of reasonable supporting documentation demonstrating the applicable increase, reimburse Landlord within twenty (20) days in the amount of the applicable tax increase. The obligations in this Section shall survive termination of this Agreement and Tenant shall remain obligated to pay taxes on improvements as stated herein that have accrued up to the date of termination or expiration of this Lease.

9. **IMPROVEMENTS BY LANDLORD:** Landlord reserves the right to make improvements, alterations, or additions to the Premises, but shall not materially change the general appearance, location or area of the Premises. Further, Landlord's improvements shall not unreasonably disturb or interfere with Tenant's improvements.

10. **IMPROVEMENTS BY TENANT:** Tenant shall not make any improvements or alterations to the Premises (excluding replacement or rearrangement of personal property within the Premises) without submitting plans and specifications to Landlord and securing Landlord's written consent, which shall not be unreasonably conditioned, delayed, or withheld. Tenant shall pay all costs of improvements and alterations, shall provide evidence of such payment to Landlord upon request, and shall hold Landlord harmless from any costs, liens, or damages. Upon termination or expiration of this Agreement, Tenant shall, at Tenant's sole cost and expense, remove from the Premises all of Tenant's leasehold improvements, including without limitation, interior and exterior signs, trade fixtures and equipment, and other such items that have been installed or placed on the Premises by Tenant, by Tenant's predecessors in interest, or which have been installed or placed therein for the benefit of or on behalf of Tenant or Tenant's predecessors (all of which are hereinafter referred to as "Tenant's Property"), and Tenant shall repair all damage resulting from such removal.

11. **MAINTENANCE OF PREMISES AND TENANT'S PROPERTY.** Tenant shall, throughout the Term of this Lease, at its own cost, and without any expense to Landlord, keep and maintain the Premises and Tenant's Property, including all appurtenances, in good, sanitary and neat order, condition and repair, and, except as specifically provided in this Lease, restore and rehabilitate its improvements on the Premises that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. This requirement to maintain includes, but is not limited to, snow removal, landscape maintenance, and utilities as required to effectively use the Premises.

12. **UTILITY CHARGES; TENANT GENERATOR:** The only utilities to the Premises shall be electricity and natural gas in Tenant's name and which Tenant shall cause, at Tenant's cost, to be separately metered from the remainder of Landlord's Property. Landlord acknowledges as part of Tenant's use of the Premises, Tenant shall install a generator.

13. **WASTE:** Tenant shall not commit or permit any waste of the Premises, nor any public or private nuisance on the Premises.

14. **INSURANCE.** Tenant shall, during the entire Term, keep in full force and effect, solely, at Tenant's cost and expense, a policy of commercial general liability insurance with respect to the Premises and the activities of Tenant thereon, for which the limits shall not be less than One Million and no/100 Dollars (\$1,000,000.00) covering bodily injury, sickness or death and loss of or damage to Premises, naming Landlord as an additional insured and providing that it is the primary coverage for liability on the Premises. Such coverage shall include a broad form general liability endorsement. The policy shall also be endorsed to provide that the additional insured party will be notified of the cancellation or non-renewal at least thirty (30) days before the effective date of such cancellation or non-renewal except in the event of cancellation due to non-payment of premium then a ten (10) days' notice shall be given.

15. **ASSIGNMENT:** Tenant shall not assign or sublet any portion of the Premises without the prior written consent of Landlord, which shall not be unreasonably conditioned, delayed, or withheld. Any such assignment or subletting without the consent of Landlord, shall be void and, at the option of Landlord, Landlord may terminate this Lease. Notwithstanding anything to the contrary contained herein, Tenant may assign its entire interest under the Lease or sublet the Premises or any portion thereof to a corporation, partnership, or other legal entity controlling, controlled by or under common control as Tenant, or to any successor to Tenant by purchase, merger, consolidation, reorganization, or sale of substantially all assets without the consent of Landlord.

16. **DISCLAIMER:** Landlord does not warrant its title to the premises nor undertake to defend Tenant in the peaceable possession or use thereof. No covenant of quiet enjoyment is made. This Lease is made subject to all outstanding rights or interests of others. If the Premises is subsequently found to be subject to prior claim, this Lease shall terminate immediately upon notice to that effect from Landlord. Tenant accepts this Lease subject to that possibility and its effect on Tenant's rights or ownership of Tenant's Property. In case of eviction of Tenant by Landlord or anyone owning or claiming title to or any interest in the Premises, Landlord shall not be liable to Tenant for damage of any kind (including any loss of ownership right to Tenant's Property) or to

refund any Rent paid hereunder, except to return the unearned portion of any rent paid in advance.

17. **DEFAULT**: Each of the following acts and omissions shall constitute a default and a breach of this Agreement:

- a. Voluntary or involuntary bankruptcy, assignment for benefit of creditors, reorganization or rearrangement under the Bankruptcy Act, receivership, dissolution or the commencement of any action or proceeding for dissolution or liquidation of Tenant or Landlord whether instituted by or against Tenant or Landlord, as applicable, or any other similar action or proceeding.
- b. The failure of Tenant to pay the Rent for a period of ten (10) calendar days after Tenant receives written notice of such non-payment.
- c. The failure of Tenant or Landlord to comply with any other provision of this Agreement for a period of thirty (30) days after written notice of such failure; provided, however, in the event that such cure shall be reasonably expected to exceed thirty (30) days, Tenant's or Landlord's cure right shall be expended provided that such cure is commenced within thirty (30) days and such cure is diligently pursued.

18. **REMEDIES**: In addition to any other remedies available to the non-defaulting party, upon a default by a party, the non-defaulting party shall have the right to terminate this Lease immediately by providing written notice to the non-breaching party.

19. **HOLDING OVER**: If Tenant remains in possession after the termination date without the written consent of Landlord, Tenant shall be deemed to be a trespasser. If Tenant shall have paid, and Landlord shall have accepted, rent in respect to such holding over, Tenant shall be deemed to be occupying the Premises only as a Tenant from month-to-month subject to all the terms of this Agreement except for the rental charged, which during the hold over period shall be at a rate which is the same as the last rental rate.

20. **EFFECT OF SALE**: A sale of the Premises will operate to release Landlord from all obligations pursuant to this Agreement, except liabilities which arose prior to the closing of such sale, and Tenant shall attorn to Landlord's successor in interest.

21. **TERMINATION**: Upon termination of this Agreement, Tenant shall:

- a. Deliver possession of the Premises to Landlord in good condition as at the commencement of this Agreement, ordinary wear and tear excepted.
- b. Leave undisturbed all non-trade fixtures and improvements.
- c. Remove from the Premises, at Tenant's sole cost and expense, all trade fixtures and other personal property of Tenant, including, without limitation, the central office and/or data bunker. Tenant shall, at Tenant's expense, repair any damage to the Premises arising from the removal of such trade fixtures or personal property.

22. **MISCELLANEOUS:**

No term or condition of this Agreement shall be construed to have been waived by Landlord or Tenant, unless Tenant or Landlord shall have secured such waiver from the other party, as applicable.

Each person executing this Agreement on behalf of an entity represents and warrants that they have complete and full authority and capacity to act on behalf of that entity.

The invalidity or unenforceability of any term or condition of this Agreement shall not prejudice the enforceability of any other term or condition.

This Agreement shall not be amended or modified, except by a written instrument executed by both Landlord and Tenant.

Any notice, demand, request, or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States certified or registered mail, postage prepaid and shall be addressed (a) if to Landlord, at 500 S. 4th Avenue, Brighton, CO 80602, c/o City Manager, with a copy to 500 S. 4th Avenue, Brighton, CO 80602, c/o City Attorney, and (b) if to Tenant, at ALLO Brighton, LLC, c/o President, 330 S. 21st Street, Lincoln, NE 68510.

Landlord and Tenant represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises.

This Agreement shall be binding upon the successors in interest of the parties.

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. EACH PARTY HERETO, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVES THE RIGHT TO A TRIAL BY JURY FOR ANY ACTION ARISING FROM, OR RELATED TO, THIS AGREEMENT.

The foregoing constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Agreement of the Effective Date.

LANDLORD:
CITY OF BRIGHTON, COLORADO,
a home rule municipal corporation

By: _____
Michael Martinez, City Manager

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Yasmina Shaush, Deputy City Attorney

[Signatures continue on following page.]

TENANT: ALLO Brighton, LLC, a Nebraska limited liability company

By: _____

Its: President and CEO

Name: Bradley A. Moline

EXHIBIT A

LEGAL DESCRIPTION

PROPERTY LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE TOWN OF BRIGHTON, ADAMS COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE S 00°09'00" W ALONG THE EAST LINE OF SAID NORTHEAST QUARTER FOR A DISTANCE OF 1,186.50 FEET TO THE SOUTHEAST CORNER OF THE EXCEPTION IN BOOK 3155 AT PAGE 921, ADAMS COUNTY RECORDS, SAID CORNER BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING S 00°09'00" W ALONG SAID EAST LINE A DISTANCE OF 96.40 FEET TO THE SOUTHEAST CORNER OF PARCEL A AS DESCRIBED IN SAID BOOK 3155 AT PAGE 921; THENCE N 89°33'00" W ALONG THE SOUTH LINE OF SAID PARCEL A FOR A DISTANCE OF 449.50 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF OLD BRIGHTON ROAD; THENCE N 25°18'00" E ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 130.45 FEET TO THE NORTHWEST CORNER OF PARCEL B AS DESCRIBED IN BOOK 3155 AT PAGE 921; THENCE S 86°21'32" E ALONG THE NORTHERLY LINE OF SAID PARCEL B AND ALONG THE SOUTHERLY LINE OF THE EXCEPTION AS DESCRIBED IN SAID BOOK 3155 AT PAGE 921, FOR A DISTANCE OF 394.79 FEET TO THE TRUE POINT OF BEGINNING AND ENDING THERE.

