

## Ground Lease Agreement

This Ground Lease Agreement (**Agreement**) is entered into between the Town of Erie, a Colorado municipality (**Landlord**) and ALLO Erie, LLC, a Nebraska limited liability company (**Tenant**) as of \_\_\_\_\_, 2022 (**Effective Date**).

The Parties agree:

1. **Description:** Landlord owns the real property described as Tract A, Rex Ranch Minor Subdivision, located in the North Half of the Northeast Quarter of Section 26, Township 1 North, Range 69 West of the Sixth PM, Town of Erie, County of Boulder, State of Colorado (the Property). Landlord hereby leases to Tenant the portion of the Property identified on Exhibit A, attached hereto and incorporated herein by reference, consisting of approximately 1,250 square feet at the address commonly known as 2901 North 119<sup>th</sup> Street, Erie, CO (**Premises**).

2. **Term:** The initial term of this Lease (**Initial Term**) shall commence as of the Effective Date and continue for 10 years, unless sooner terminated or renewed as provided herein. Upon providing no fewer than 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 one additional 10-year term (**Renewal Term**, together with the Initial Term, the **Term**), upon the terms and conditions as stated herein.

3. **Rent:** During the Term, Tenant shall pay to Landlord as Rent \$500.00 per 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 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 to construct and thereafter use a 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.

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. **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, including without limitation 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 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.

7. **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 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.

8. **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.

9. **Improvements by Tenant:**

a. Prior to constructing the data bunker or making any other improvements or alterations to the Premises (excluding replacement or rearrangement of personal property within the Premises), Tenant shall submit plans and specifications to Landlord and secure Landlord's written consent.

b. Tenant shall pay all costs of its improvements and alterations, shall provide evidence of such payment to Landlord upon request, and shall hold Landlord harmless from any costs, liens, or damages.

c. Tenant shall not permit any mechanic's liens to attach to the Premises as a result of Tenant's activities.

d. Upon termination or expiration of this Agreement, Tenant shall, at Tenant's sole cost and expense, remove from the Premises all of Tenant's improvements, including without limitation, the building, all signs, trade fixtures and equipment, and other such items that have been installed or placed on the Premises by Tenant, and Tenant shall repair all damage resulting from such removal.

10. **Maintenance:** Tenant shall, throughout the Term of this Lease, at its own cost, and without any expense to Landlord, keep and maintain the Premises, 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 without limitation snow removal, landscape maintenance, and utilities as required to effectively use the Premises.

11. **Utilities, 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 the Property. Landlord acknowledges as part of Tenant's use of the Premises, Tenant shall install a generator.

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

13. **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 \$2,000,000 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 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 10 days' notice shall be given.

14. **Assignment:** Tenant shall not assign or sublet any portion of the Premises without the prior written consent of Landlord. 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, provided that Tenant provides prior written notice of such assignment to Landlord.

15. **Quiet Enjoyment:** Landlord warrants that Tenant shall have possession and quiet enjoyment of the Premises for so long as Tenant is in compliance with the terms of this Agreement.

16. **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 five (5) 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 30 days after written notice of such failure; provided, however, in the event that such cure shall be reasonably expected to exceed 30 days, Tenant's or Landlord's cure right shall be expended provided that such cure is commenced within 30 days and diligently pursued.

17. **Remedies:** In addition to any other available remedies, the non-defaulting party shall have the right to terminate this Lease immediately by providing written notice to the defaulting party.

18. **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.

19. **Effect of Sale:** A sale of the Premises will operate to release Landlord from all obligations pursuant to this Agreement.

20. **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. Remove from the Premises all improvements, fixtures and other personal property of Tenant.

c. At Tenant's expense, repair any damage to the Premises arising from the removal of such improvements, fixtures or personal property.

21. **Indemnification:** Tenant agrees to indemnify, hold harmless, and defend Landlord and its representatives, officers, employees, agents, and contractors from and against all liabilities, injuries, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, including without limitation reasonable attorney fees arising from or in any way connected with Tenant's use of the Premises or any act, omission, condition, or other matter related to or occurring on or about the Licensed Property under this Agreement. Tenant agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false, or fraudulent.

22. **Miscellaneous:**

a. 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.

b. 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.

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

d. 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 PO Box 750, 645 Holbrook Street, Erie, CO 80516 and (b) if to Tenant, at ALLO Erie, LLC, c/o President, 330 S. 21<sup>st</sup> Street, Lincoln, NE 68510.

e. 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.

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

g. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

h. The foregoing constitutes the entire agreement between the parties.

i. Landlord and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to Landlord and its officers, attorneys or employees.

j. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of Landlord not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

In Witness Whereof, Landlord and Tenant have executed this Agreement on the day first set forth above.

**LANDLORD: Town of Erie, Colorado**

\_\_\_\_\_  
Justin Brooks, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**TENANT: Allo Erie, LLC, a Nebraska limited liability company**

DocuSigned by:  
*Brad Moline*  
By: \_\_\_\_\_  
Name: Bradley A. Moline  
Its: President and CEO

State of Nebraska            )  
  ) ss.  
County of \_\_\_\_\_ )

Subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Bradley A. Moline, as President and CEO of ALLO Erie, LLC.

My Commission expires:

(Seal)

\_\_\_\_\_  
Notary Public

**Exhibit A**  
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**The Premises**



