

**MEMORANDUM**

**TO:** Mayor Diane Wolfe Marlin and City Council Members

**FROM:** Carol Mitten, City Administrator

**DATE:** December 28, 2022

**SUBJECT:** An Ordinance Approving an Office Lease (Cohen Building – 136 W. Main Street)

**Introduction**

On November 21, 2022, City Council approved Ordinance No. 2022-11-045, which included funding to increase staffing in the Human Resources Division. In addition, the budget amendment provided funding for leased space outside the City Building, inasmuch as the City Building cannot accommodate the additional staffing for Human Resources. Suitable office space was identified at 136 West Main Street, which is known as the Cohen Building.

**Overview of Lease Terms**

The City and the owner of the Cohen Building, Dan Maloney, have negotiated the lease terms reflected in the draft lease that is attached to the draft Ordinance. The lease is for the entire second floor of the Cohen Building.

The lease is for an initial term of seven years, with an option to renew for three additional years at market rent. The timing reflected by the term coincides with the planned expansion of the City Building.

The initial rent for the office space would be \$81,000 per year or approximately \$17.33 per square foot (4,657 square feet). The rent reflects a so-called “modified gross” basis, whereby the landlord would pay for all utilities (water, sewer, electricity, gas), trash removal, real estate taxes, and building insurance. The City would pay for cleaning and maintenance items under \$1,000. There would be a 3% annual escalator on the rent, and the City would pay for “general utilities expenses” (defined as utilities plus trash removal) attributable to the second floor that are over \$6,000.

The City would pay for the fit-up of the space (essentially, paint and carpeting).

**Recommendation**

Staff recommends that the Committee of the Whole approve the proposed amendment and forward it on to the full Council with a recommendation for approval by inclusion on the Consent Agenda.

Attachment: Draft Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AN OFFICE LEASE**

**(Cohen Building --- 136 West Main Street)**

**WHEREAS**, the City of Urbana, an Illinois municipal corporation (the “City”), is a home rule unit of local government pursuant to Article 7, Section 6 of the Illinois Constitution of 1970 and 65 ILCS 5/1-1-10; and

**WHEREAS**, the City Council approved a Budget Amendment on November 21, 2022 (Ordinance No. 2022-11-045) that, among other things, provided funding to increase the number of employees in the Human Resources Division and relocate that Division out of the City Building into leased space to accommodate the expanded staff; and

**WHEREAS**, after searching for suitable office space within walking distance of the City Building, the second floor of the Cohen Building at 136 West Main Street was identified; and

**WHEREAS**, the City and the owner of the Cohen Building have negotiated lease terms acceptable to both parties as reflected in the attached Lease; and

**WHEREAS**, the City Council, after due consideration, finds that approval of the lease terms is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Urbana, Illinois, as follows:

**Section 1.**

That the Lease, including the terms thereof as set forth in the form of such Lease as presented to and now before the meeting of the Corporate Authorities at which this Ordinance is adopted, be and the same is hereby authorized and approved.

**Section 2.**

That the Mayor of the City of Urbana, Illinois, shall be and is hereby authorized to execute and deliver such Lease (with leave for minor modifications that do not materially change the terms) and any related documents granted in Section 1, and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Lease and related documents as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**Section 3.**

That this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

**PASSED BY THE CITY COUNCIL** this \_\_\_\_\_ day of January, 2023.

AYES:

NAYS:

ABSTENTIONS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_\_\_ day of January, 2023.

\_\_\_\_\_  
Diane Wolfe Marlin, Mayor

**LEASE**

THIS LEASE (“Lease”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between D & E ENTERPRISES, LLC – 136 MAIN STREET SERIES, a series of an Illinois limited liability company (“Landlord”) and CITY OF URBANA (“Tenant”).

WITNESSETH:

In consideration of the rents herein stipulated and the mutual covenants herein contained, and intending to be legally bound hereby, Landlord hereby leases to Tenant and Tenant leases from Landlord the premises within that certain portion of the second floor of the building located at 136 W. Main Street, Urbana, Illinois, depicted on the site plan attached as Exhibit A hereto and incorporated herein by reference (“Premises”), upon all terms and conditions herein set forth.

1. **BASIC LEASE PROVISIONS** - The following basic lease provisions embody the agreement of the parties hereto, subject to further terms and conditions hereinafter set forth elsewhere in this Lease.

- A. Original Term: Seven (7) years after the Rent Commencement Date
- Renewal Term: One (1) renewal period of three (3) years
- B. Possession Date: January 15, 2023
- C. Rent Commencement Date: March 1, 2023
- D. Rent:

Lease Year	Annual Base Rent Less Utilities	General Utilities Expenses	Total Escalated Rent	Monthly Escalated Rent
1	\$ 75,000	\$ 6,000	\$ 81,000	\$ 6,750
2	\$ 77,250	\$ 6,000	\$ 83,250	\$ 6,938
3	\$ 79,568	\$ 6,000	\$ 85,568	\$ 7,131
4	\$ 81,955	\$ 6,000	\$ 87,955	\$ 7,330
5	\$ 84,413	\$ 6,000	\$ 90,413	\$ 7,534
6	\$ 86,946	\$ 6,000	\$ 92,946	\$ 7,745
7	\$ 89,554	\$ 6,000	\$ 95,554	\$ 7,963

*Renewal Term:* 8-10 Market rent pursuant to Section 3D of this Lease

- E. Security Deposit: None
- F. Tenant’s Use: General office use

G. Tenant’s Notice Address: City of Urbana  
400 S. Vine Street  
Urbana, IL 61801  
Attention: City Administrator

H. Street Address of Premises: 136 W. Main Street, 2<sup>nd</sup> Floor  
Urbana, IL 61801

I. Lease Exhibits  
Incorporated Herein: A - Premises

2. **PREMISES** - Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises within the building located at 136 W. Main Street, Illinois (“Property”); together with the right to the nonexclusive use in common with others entitled to use some or all common areas and footways within the Property as may be designated by Landlord from time to time as more fully set forth in and subject to the terms and conditions of this Lease.

3. **TERM AND RENT COMMENCEMENT** -

A. **Term** - The term of this Lease shall be for the period set forth in Section 1A, as may be extended or renewed (“Term”).

B. **Definition of Lease Year** - A “Lease Year”, as herein referred to, shall consist of:

- (1) Each full twelve (12) month period commencing on the Rent Commencement Date if the Rent Commencement Date is the first day of a month; or
- (2) If the Rent Commencement Date is a day other than the first day of a month, the first Lease Year only shall consist of the remainder of that month and the first full twelve (12) months thereafter. Subsequent Lease Years shall consist of the next immediately succeeding periods of twelve (12) months each following the last day of the first Lease Year.

C. **Rent Commencement** - The terms and conditions of this Lease shall be effective upon signing, but for purposes of determining the commencement of rental payments, it is acknowledged and agreed that the Rent Commencement Date shall be as set forth in Section 1C.

D. **Lease Renewal Options** - In the event Tenant shall have faithfully performed all covenants of this Lease, Landlord hereby grants Tenant the right and option to renew this Lease for one (1) additional period of three (3) years (“Renewal Term”) immediately following the initial Term. In the event Tenant desires to renew and extend this Lease, it shall give Landlord written notice, at least six (6) months prior to the expiration of the then existing Term, of its intent to renew and extend; provided, however, that the following terms and conditions shall be applicable to any Term, as extended herein.

- (1) The provisions of this Lease during the Renewal Term shall be the same as provided in this Lease, except for the amount of Rent payable, which Rent during the Renewal Term shall be as set forth in Section 3D(2) below.

- (2) The amount of Rent applicable during the first Lease Year of the Renewal Term shall be Fair Market Rent (FMR) determined as follows: the parties shall meet and confer in an attempt to agree on FMR; in the event that the parties are unable to agree on FMR, then the FMR shall be determined by the parties using the “Three Appraiser Method”. The “Three Appraiser Method” shall operate as follows: FMR shall be based upon the current fair market rent for comparable space in comparable buildings within five (5) miles of the Premises; each party shall select and pay for an appraiser to conduct an appraisal according to the foregoing; if the appraisals are within ten percent (10%) of each other, FMR shall be the average of the two appraisals; if the appraisals are more than ten percent (10%) apart, a third appraiser shall be engaged to select between either the FMR of Landlord’s appraiser or the FMR of Tenant’s appraiser. The parties shall share equally in the cost of the third appraiser.

4. **RENT-**

- A. **Rent** - Subject to the terms and conditions of this Lease, Tenant shall pay to Landlord Rent, payable without prior notice or demand and without any deduction or set off whatsoever, in monthly installments, during the Term, commencing on the Rent Commencement Date, in the amount set forth in Section 1D (“Rent”). In the event that Tenant shall elect to pay the total amount for a given Lease Year on the first day of such Lease Year, the amount of Rent due for that Lease Year shall be discounted by two percent (2%).
- B. **Payments** - All payments required hereunder shall be payable in advance on the first (1<sup>st</sup>) day of each month; provided, however, if Tenant’s lease term commences or terminates on any day other than the first or last day, respectively, of any calendar month, Tenant’s first and/or last monthly installment of Rent shall be apportioned on a per diem basis.
- C. **Late Payment Charge** - In the event monthly Rent or any other payments due under this Lease, by the fifth (5<sup>th</sup>) of the month, late payment charges in the amount of five percent (5%) of the outstanding delinquent balance shall be charged to cover the extra expense involved in handling delinquent accounts. Any late payment charge assessed pursuant to this Section 4C shall be due and payable on demand.
- D. **Place of Payment** - The aforesaid rental payments and any other sums due to Landlord pursuant to this Lease shall be made payable to Landlord and delivered to Landlord at 1008 W. Williams Street, Champaign, IL 61821, or to such other person and/or at such other place or manner as may be designated by a notice, in writing, from Landlord to the Tenant.
- E. **Waiver of Demand for Payment of Rent** - TENANT EXPRESSLY WAIVES DEMAND FOR PAYMENT OF RENT OR OTHER SUMS DUE TO LANDLORD.
- F. **Landlord’s Furniture** - In addition to the Rent, Tenant shall pay One Hundred 00/100 Dollars (\$100.00) for the initial Lease Year with annual increase of three (3%) thereafter during the Term (as may be extended) for Tenant’s use of the following Landlord’s furniture located within the Premises (“Landlord’s Furniture”): (i) large conference table in suite B8; (ii) Larger conference table in suite B12; (iii) 16 wooden chairs; (iv) oak table in suite B2; and (v) 2 bookshelves outside of suite B13. Tenant, at Tenant’s sole

cost and expense, shall maintain, repair and replace Landlord's Furniture during the Term (as may be extended). Tenant shall surrender and deliver up Landlord's Furniture to Landlord at the end of the Term (as may be extended) in as good clean order, condition and repair as of the Possession Date, normal wear and tear excepted. In no event shall Landlord have any obligations to maintain, repair and/or replace Landlord's Furniture.

5. **POSSESSION DATE AND CONDITION OF PREMISES** -

- A. Possession Date - The term "Possession Date", whenever used herein, means the date set forth in Section 1B.
- B. Condition of Premises - Tenant accepts the Premises and Landlord's Furniture in "AS-IS, WHERE-IS WITH ALL FAULTS" condition as of the Possession Date.

6. **NOTICES** - Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by U.S. certified or registered mail, postage prepaid, return receipt requested or via nationally recognized overnight courier addressed to Tenant, at the address set forth in Section 1G, or by posting such notice on the Premises, and to Landlord at address set forth in Section 4D above or other such address as a party may provide in writing to the other. Notices and demands shall be deemed to have been given (i) upon the date of the executed return receipt if sent by certified or registered mail, provided that if delivery cannot be made or if any party shall refuse delivery, notices shall be deemed given when mailed; (ii) upon delivery if personally delivered; (iii) on the next business day immediately following the day sent via nationally recognized overnight courier; or (iv) upon posting if posted to the Premises for Tenant notices. With respect to Landlord, no notice, request or demand shall be effective unless and until given to the Landlord, and all copies, at the addresses provided hereinabove. Tenant acknowledges and agrees Tenant shall provide Landlord Tenant's current address, phone number and email at all times during this Lease.

7. **REAL ESTATE TAXES, UTILITIES, INSURANCE and MAINTENANCE** -

- A. Real Estate Taxes - Except as provided in this Lease, Landlord shall pay (prior to delinquency) the real estate taxes and insurance for all buildings, structures and improvements for the Premises. Tenant shall pay the Rent and all other charges and expenses as set forth herein and in connection with the Premises.
- B. Utilities - On and after the Possession Date, Landlord shall pay for all water, sewer, trash removal, gas and electric attributable to the Premises up to Six Thousand and 00/100 Dollars (\$6,000.00) per calendar year ("General Utilities Expenses"). Tenant shall pay for all other utilities and services supplied to the Premises for use by Tenant in the operation of its business, together with any taxes thereon. Tenant agrees that in the event of its vacation of the Premises for any reason whatsoever during the Lease Term (as may be extended), it will at all times maintain that amount of heat necessary to insure against the freezing of waterlines. Landlord, in collaboration with Tenant, shall make a reasonable determination the General Utilities Expenses that exceed Six Thousand and 00/100 Dollars (\$6,000.00). Tenant shall pay such additional amounts within ten (10) days of Landlord and Tenant documenting such additional amounts as provided by Landlord.

- C. Insurance - Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all its personal property, Landlord's Furniture and trade fixtures, located in the Premises. Landlord shall not be responsible for Landlord's Furniture, Tenant's personal property or fixtures located in the Premises. Further, commencing on the Possession Date and at all times thereafter, Tenant shall carry, pay for and maintain general public liability insurance against the following claims:
- (a) For bodily injury or death occurring upon, in or about the Premises or about all of the real estate leased hereunder, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000) with respect to any one person and One Million Dollars (\$1,000,000) with respect to more than one person.
  - (b) For property damage upon, in or about the Premises or about all of the real estate leased hereunder, such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000).
  - (c) For bodily injury or death and property damage of not less than One Million Dollars (\$1,000,000) in a combined single limit policy in lieu of Sections 7C(a) and 7C(b).
  - (d) Such other insurance, in such amounts and against such risks, as is commonly obtained in the case of property similar in use to the Premises and located in Illinois or as Landlord may reasonably require.
  - (e) The aforementioned policies shall be with an insurance company authorized to do business in the State in which the Premises are situated with an A.M. Best rating of "A-VIII" or better and shall also contain a provision that they cannot be cancelled or amended except upon ten (10) days prior notice to Landlord. In addition, Tenant shall submit to Landlord, on or before the Possession Date and annually thereafter, the appropriate certificates of insurance evidencing such policies, and the insurance coverage so evidenced will be maintained during the duration of this Lease.
  - (f) Under said policy or policies of insurance, Tenant shall be the "named insured" and Landlord and the holder of any mortgage on the Premises, if any, shall be named as "additional insureds". Tenant agrees to cause the insurance companies issuing the aforesaid policies of insurance to forward to Landlord policies, memorandum policies or certificates of insurance, to Landlord within ten (10) days of (i) the issuance or renewal of said policies and (ii) Landlord's written request for replacement policies, memorandum policies or certificates of insurance necessitated by a change in the "additional insureds".
- D. Repairs and Maintenance -
- (1) Landlord's Maintenance - Landlord agrees to maintain and to make all necessary repairs to the foundation, roof, exterior walls, structural columns and structural beams in good order and repair (except for loss by fire or other casualty entitling



termination of this Lease or due to Tenant's negligence, act and/or omission). Tenant shall give Landlord prompt written notice of any defects, necessary repairs or maintenance of which Tenant has knowledge in connection with the Premises. Provided Tenant is not in default under this Lease, Landlord agrees Landlord, at Landlord's cost, will or will cause the outside windows to the Premises be cleaned once per Lease Year.

- (2) Tenant's Maintenance - Tenant, at its expense, shall keep the Premises clean and sanitary and in good condition and repair. Tenant shall fully comply with all health and police regulations in force and shall conform with the rules and regulations of fire underwriters or their fire protection engineer. Notwithstanding anything contained in this Lease to the contrary, Tenant, at its expense (up to and including \$1,000.00 per repair, maintenance or replacement), shall maintain and make all repairs, replacements and alterations to the Premises and to all appurtenances thereto and to all equipment located therein or which serve the Premises which are required (or which may be deemed by Landlord to be required) to maintain the Premises and such equipment and appurtenances in good repair and condition or which may be required by any laws, ordinances, regulations or requirements of any public authorities having jurisdiction. (If more than one service call is required to effectuate a given repair, the aggregate amount of the service calls, labor, and materials shall be considered the cost of the "repair".) The property that Tenant is required to maintain, repair and replace shall be the Premises and every part thereof (except those items which Landlord is obligated to maintain pursuant to Section 7D(1) above), including but not limited to (i) all walls, floors, and ceilings, (ii) the drop ceiling tiles and below; (iii) the floor coverings and above; (iv) from the painted surface of the walls into the floor area within the Premises; (v) all interior water, telephone, gas, electricity and sewage conduits, cable, wires and lines, and all lighting, plumbing and electrical fixtures, equipment and meters located inside the Premises, (vi) any HVAC unit which services the Premises (that being two (2) rooftop HVAC units), and (vii) all glass, windows, doors, window sashes and frames, door frames and office front. In the event Tenant fails or refuses to so maintain and make all such repairs, replacements and alterations to the Premises, Landlord may, but shall be under no obligation to, maintain, and make any repairs, replacements and alterations to the Premises for Tenant's account, and one hundred fifteen percent (115%) of the cost thereof shall be additional rent due and payable by Tenant to Landlord on Landlord's demand. Upon completion of any work by or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may require (including without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.

## 8. ALTERATIONS AND IMPROVEMENTS -

- A. No Alterations - Tenant will not alter, paint or decorate the exterior of the Premises and will not make any structural alteration to the interior of the Premises. Tenant, at its own expense, may from time to time during the Term of this Lease (as may be extended), make nonstructural changes, alterations, additions and improvements to the interior of the Premises upon first obtaining Landlord's approval in writing. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. This work is to be performed in a good and workmanlike manner, and in accordance with all

municipal, state and federal requirements applicable thereto. Provided, however, that upon the termination of this Lease, unless Landlord has otherwise consented in writing: all leasehold improvements (as distinguished from trade fixtures and apparatus) installed in the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, shall not be removable from the Premises at any time, unless such removal is consented to in advance, in writing, by Landlord; and at the expiration of this Lease (either on the termination date or upon such earlier termination as provided in this Lease), all such leasehold improvements shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant.

- B. Liens - Tenant agrees that it will make full and prompt payment of all sums necessary to pay for the cost of repairs, alterations, improvements, changes or other work done by Tenant to the Premises and further agrees to indemnify and hold harmless Landlord from and against any and all such costs and liabilities incurred by Tenant, and against any and all mechanic's, materialman's or laborer's liens arising out of or from such work or the cost thereof which may be asserted, claimed or charged against the Premises. In the event any notice or claim of lien shall be asserted of record against the interest of Landlord in the Premises on account of or growing out of any improvement or work done by or for Tenant, or any person claiming by, through or under Tenant, or for improvements or work the cost of which is the responsibility of Tenant, Tenant agrees to have such notice or claim of lien cancelled and discharged of record as a claim against the interest of Landlord in the Premises (either by payment and satisfaction or by removal by transfer to bond or deposit as permitted by law) within ten (10) days after notice to Tenant by Landlord, and in the event Tenant shall fail to do so Tenant shall be considered in default under this Lease.
- C. No Roof Penetrations - Notwithstanding anything in this Lease to the contrary, in no event and for no purpose shall Tenant make or cause to be made any roof penetrations in the building of which the Premises is a part. If roof penetrations are required for Tenant's permitted use of the Premises, such penetrations shall be made only by Landlord's contractor upon Landlord's prior written approval, but at Tenant's sole cost and expense. In the event a roof penetration is required by the Tenant's obligation to maintain the rooftop HVAC units that serve the Premises, the limitations of Section 7D(2) shall apply.
9. SIGNS - Tenant shall have the right to place a sign on the exterior and/or interior of the Premises, at Tenant's sole expense, provided that Tenant has first submitted to Landlord a written report on the size and shape and design of said sign, its place and manner of attachment to the building and any other relevant details and Tenant has obtained Landlord's written approval for such sign. Landlord's approval of such sign shall be in Landlord's reasonable discretion. All signs shall be constructed and installed only by companies approved by Landlord. The expense of obtaining permits, if required, and compliance with any inspection requirement, state or municipal statute, ordinance or regulation shall be borne solely by Tenant. Landlord reserves the right to remove any and all improper signs installed, and Tenant shall reimburse Landlord upon demand for the costs for such work and any damage done by such work. Upon the expiration of this Lease, Tenant, at Tenant's expense, shall remove said sign and repair the Premises at its expense.

10. **TENANT'S INDEMNIFICATION** -

- A. **Good Repair and Condition** - Tenant shall keep the Premises and all parts thereof, and all fixtures, machinery and apparatus in good repair and in such condition that no damage will occur to any person by reason thereof.
- B. **Tenant's Indemnification** - Tenant shall and will save Landlord harmless from any and all claims and demands of every kind and nature, in favor of any person, whether by way of damage or otherwise, arising from the failure on the part of Tenant to perform and observe any covenant or condition hereof Tenant shall and will save Landlord harmless from all loss, cost, injury, damages or death that may occur to, be claimed by, or with respect to any persons, corporations, property or chattels on or about the Premises or to the Premises itself, resulting from any act done or omission by or through Tenant or caused by or resulting from Tenant use, non-use, possession of, condition of or conduct of its business on the Premises. If, however, Landlord is sued, a claim made or judgment rendered against Landlord arising out of Tenant's use or occupancy of the Premises, Tenant shall immediately pay said claim or judgment and/or forthwith reimburse Landlord therefor, including all cost and expense incurred by Landlord, including attorneys' fees.
- C. **Damages from Certain Causes** - To the extent not expressly prohibited by law, Landlord shall not be liable to Tenant or Tenant's employees, contractors, agents, invitees or customers, for any injury to person or damage to property sustained by Tenant or any such party or any other person claiming through Tenant resulting from any accident or occurrence in the Premises or any other portion of the building caused by the Premises or any other portion of the building becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or by broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Premises (except where due to Landlord's grossly negligent or willful failure to make repairs required to be made pursuant to other provisions of this Lease, after the expiration of a reasonable time after written notice to Landlord of the need for such repairs), nor shall Landlord be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the building or of any other persons whomsoever, including, but not limited to riot, strike, insurrection, war, court order, requisition, order of any governmental body or authority, acts of God, fire or theft.

11. **ASSIGNMENT AND SUBLEASING** -

- A. **Limitations** - Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, nor grant concessions, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. If Landlord consents to any such assignment or subletting, Tenant shall remain liable for the performance of all the terms, covenants and obligations under this Lease.
- B. **Effect of Violation** - Any purported assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license of this Lease, the leasehold estate hereby created, or

the Premises or any portion thereof, either voluntarily or involuntarily, whether by operation of law or otherwise, or any other action by Tenant in violation of the restrictions set forth in this Section 11, shall be null and void and a default of this Lease, and Landlord shall have the option to terminate this Lease upon fifteen (15) days' written notice to Tenant.

12. **CONDITIONS OF USE AND OCCUPANCY** -

- a. Tenant agrees that during the Lease Term (as may be extended) it shall:
- A. Use the Premises solely for Tenant's use as set forth in Section 1F of this Lease, and for no other purpose whatsoever without the written consent of Landlord.
  - B. Use the Premises only for the purpose herein stated and shall not abandon the Premises or leave said Premises vacant, or abandon or cease business operations at the Premises.
  - C. Use and keep the Premises in a careful, safe and proper manner.
  - D. Not commit or suffer waste thereon.
  - E. Fully comply with and obey all laws, ordinances, rules, regulations and requirements of all regularly constituted authorities, and recommendations or requirements of Landlord's insurers, in any way affecting the Premises or the use thereof or this Lease.
  - F. Not use or occupy the Premises for any unlawful purpose.
  - G. Not use or occupy the Premises, or permit the same to be used or occupied, for any purpose or business deemed extra hazardous on account of fire or otherwise.
  - H. Keep the Premises in such repair and condition as may be required by the Board of Health, or other municipal, state or federal authorities, free of all cost to Landlord.
  - I. Permit Landlord and its agents to enter upon the Premises at all reasonable times to examine the condition thereof.
  - J. Continuously, actively and diligently operate or cause the permitted business to be operated in good faith and in an efficient, businesslike and respectable manner.
  - K. Keep all exterior and interior office front surfaces clean and will maintain the rest of the Premises and all corridors and common areas immediately adjoining the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests.
  - L. Not permit accumulations of any refuse but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Premises shielded from the view of the public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or company, as is designated in writing by Landlord.
  - M. Replace promptly with glass of like kind and quality any plate glass or window glass of the Premises which may become cracked or broken due to Tenant's negligence or intentional act.

- N. Not solicit business, distribute handbills or other advertising matter or hold demonstrations in the common areas.
  - O. Not permit loudspeakers, televisions, phonographs, radios or other similar devices to be used in the Premises in a manner so as to be heard or seen outside of the Premises, without the prior written consent of Landlord.
  - P. Not suffer, allow or permit any vibration, noise, odor or flashing or bright light to emanate from the Premises or from any machine or other installation located therein, or otherwise suffer, allow or permit any vibration, noise, odor or flashing or bright light to constitute a nuisance to or interference with the safety, comfort or convenience of Landlord.
- b. Landlord agrees that during the Lease Term (as may be extended) it shall:
- A. Clean and maintain common areas and footways as reasonably determined by Landlord, including keeping the elevator in operating condition. Keep all common areas, footways, and the elevator free of obstructions, insects, rodents, vermin, and other pests.
  - B. Remove accumulations of snow and ice from sidewalk adjacent to the building in which the Premises is located.
  - C. Remove all furniture from Premises prior to the Possession Date that is not included in Section 4F, excepting any suites still occupied per Section 39.
  - D. Timely pay all water, sewer, trash removal, gas, and electricity charges.
  - E. Maintain all necessary and reasonable property and casualty insurance on the Building and Premises, as reasonably determined by Landlord.
  - F. Provide 24-hour, 7-days per week reasonable access to the main electric breakers and the main water shut-off to Tenant's personnel, in order for Tenant to discharge its maintenance and repair duties under the Lease.
  - G. Perform all maintenance requires per Section 7D(1).  
*In the event that any maintenance or repair (which is the responsibility of the Landlord but for which the Landlord or Landlord's agent is unavailable after reasonable notice to address) that imperils the safety or occupancy of the Premises, Tenant may, but shall not be obligated to, make any emergency repairs that are otherwise the responsibility of Landlord. Landlord shall be responsible to reimburse Tenant one hundred fifteen percent (115%) of the cost thereof. Upon completion of any such work, Tenant shall provide Landlord with such documents as Landlord may require (including without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.*
  - H. Not permit any unlawful use of the building in which the Premises is located, and otherwise comply with all laws, regulations, and ordinances.

- I. Not permit loudspeakers, televisions, speakers, amplifiers, radios or other similar devices to be used in the building in which the Premises is located in a manner so as to be heard within the Premises.
- J. Not suffer, allow or permit any vibration, noise, odor, or flashing or bright light to emanate from or within the building in which the Premises is located or from any machine or other installation therein, or otherwise suffer, allow or permit any vibration, noise, odor, or flashing or bright light to constitute a nuisance to or interference with the safety, comfort or convenience of Tenant.

13. **DESTRUCTION OR DAMAGE BY FIRE AND OTHER CASUALTY** -

- A. Casualty - In the event the Premises are damaged by fire, explosion or any other casualty to an extent which is less than fifty percent (50%) of the cost of replacement of the Premises, the damage, except as provided in Section 13B below, shall be repaired by Landlord within a reasonable time at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's trade fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (1) Landlord is not required to repair as hereinabove provided, or (2) the Premises shall be damaged to the extent of fifty percent (50%) or more of the cost of replacement, or (3) the building of which the Premises are a part is damaged to the extent of fifty percent (50%) or more of the cost of replacement, Landlord may elect either to repair or rebuild the Premises or the building or buildings, or terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Premises untenable, in whole or in part, and the damage shall not have been due to the default or neglect of Tenant, a proportionate abatement of the Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, said proportion to be computed on the basis of the relation which the square footage of the Premises rendered untenable bears to the square footage of the Premises.
- B. Tenant's Property - The provisions of this Section 13 with respect to repair by Landlord shall be limited to such repair as is necessary to place the Premises in the same condition as when possession was delivered by Landlord. Promptly following such damage or destruction, Tenant shall, at Tenant's expense, perform any other work required to place the Premises in the condition it existed prior to the destruction or damage, and Tenant shall restore, repair or replace its stock in trade fixtures, furniture, furnishings, floor coverings and equipment.
- C. Tenant's Notice to Rebuild - In the event Landlord's work is not commenced within one hundred eighty (180) days after the date of any damage or destruction, unless the commencement is delayed because of unavailability of labor due to strikes or lockouts, unavailability of materials, Tenant's failure to approve plans and specifications, or for any reason whatsoever, Tenant may, at its option, terminate this Lease after a written notice to Landlord, giving Landlord ten (10) days to start rebuilding, which termination shall be effective if said rebuilding does not commence. If Tenant terminates this Lease as herein provided the Lease shall be null and void and neither party shall have any rights or obligations pursuant to this Lease.

- D. Casualty Within Last Six (6) Months - In the event the destruction or damage occurs within the last six (6) months of the Lease Term (as may be extended), Landlord shall not be obligated to repair and/or restore unless Tenant agrees, in writing, to continue as Tenant of Landlord for a period of five (5) years after the completion of the repair and/or restoration, at a rental to be mutually agreed upon. If Tenant shall not agree then Landlord may, at its option, terminate this Lease by a written notice to Tenant.
14. **WAIVER OF RIGHT OF RECOVERY** - Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises suffered by or caused by any of the perils covered by fire and extended coverage insurance policies, notwithstanding the fact that such peril shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. Provided, however, that in the event it becomes impossible for either party to obtain insurance because of this provision, then this Section only shall be void upon submission in writing of evidence of such impossibility.
15. **EMINENT DOMAIN** -
- A. Taking - In the event all the Premises are taken for any public or quasi-public use, under any statute or by right of eminent domain, or if any part of the Premises are taken and the part not taken is insufficient for the reasonably successful operation of Tenant's business, then in either of such events, this Lease shall terminate on the date when possession is required for the public use, and all rents, taxes and other charges shall be prorated and paid to such date. In the event only part of the Premises is so taken and the part not so taken shall be sufficient for the reasonably successful operation of Tenant's business, this Lease shall remain unaffected except:
- (1) Tenant shall be entitled to a pro rata reduction in the Rent to be paid hereunder based on a fraction, the numerator of which shall be the total square feet of the Premises so taken, and the denominator of which shall be the total square feet of the Premises originally leased hereunder.
  - (2) Tenant shall promptly, after such taking, and at Tenant's own cost and expense, restore that part of the interior Premises and exterior Tenant improvements not so taken to as near its former condition as the circumstances will permit.
  - (3) Landlord shall, within a reasonable time after such taking, restore that part of the roof and structural parts of the building not so taken to as near its former condition as the circumstances will permit.
- B. Compensation - All compensation awarded for any taking of the Premises or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, so long as such reimbursement to Tenant shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord. Tenant shall not have (and hereby waives) any claim against Landlord or the condemning authority for the value of any unexpired Term (as may be extended) of this Lease.

16. **SURRENDER** - Tenant will surrender and deliver up the Premises at the end of the Lease Term (as may be extended) in as good clean order, condition and repair as of the date of execution hereof, reasonable use and natural wear and tear excepted.
17. **HOLDING OVER** - Should the Tenant, with or without the express or implied consent of Landlord, continue to hold and occupy the Premises after the expiration of the Term of the Lease (as may be extended), such holding over beyond the Term (as may be extended) shall operate and be construed as creating a tenancy from month to month and not for any other term whatsoever at a monthly rental of two hundred percent (200%) of the Rent plus any and all other sums due Landlord, but the same may be terminated by Landlord by giving Tenant ten (10) days written notice thereof, and at any time thereafter Landlord may re-enter and take possession of the Premises, any rule in law or equity to the contrary notwithstanding.
18. **PERFORMANCE OF TENANT'S COVENANTS** - Landlord may perform any obligation of Tenant which Tenant has failed to perform after Landlord has sent a written notice to Tenant informing it of its specific failure. Tenant shall then reimburse Landlord on demand for any expenditures thus rightfully incurred.
19. **LACHES** - No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms hereof shall impair any such right or power or be construed to be a waiver thereof. It is further agreed that a waiver by either of the parties hereto of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants or agreements herein contained.
20. **SUBORDINATION OF LEASE** -
- A. **Lease Subordinate to Mortgage Attornment** - This Lease and Tenant's rights hereunder are and will remain subject and subordinate to each and every mortgage (and all voluntary and involuntary advances thereon) that may now or hereafter encumber the Premises, and to all increases, renewals, recastings, modifications, consolidations, participations, replacements and extensions thereof (collectively referred to as the "Mortgage", which as used herein also includes a trust indenture and a deed of trust). If the holder of a Mortgage becomes the owner of the Property by reason of foreclosure or acceptance of a deed in lieu of foreclosure, at such holder's election Tenant will be bound to such holder or its designee under all terms and conditions of this Lease, and Tenant will be deemed to have attorned to and recognized such holder or its designee as Landlord's successor-in-interest for the remainder of the Term (as may be extended).
- B. **Automatic Effect** - The foregoing is self-operative and no further instrument of subordination and/or attornment will be necessary unless required by Landlord or the holder of a Mortgage, in which case Tenant, within ten (10) days after written request, will execute and deliver without charge any documents acceptable to Landlord or such holder in order to confirm the subordination and/or attornment set forth above. As used in this Section 20, whenever the context allows, the words "holder of a Mortgage" (or words of similar import) also include a purchaser of Property at a foreclosure sale.
21. **TENANT ESTOPPEL CERTIFICATE** -
- A. **Estoppel Certificate** - Tenant agrees to at any time and from time to time, within ten (10) days after Landlord's written request, to execute, acknowledge and deliver without



charge to Landlord a written instrument, certifying the Rent Commencement Date, that Tenant has accepted possession of the Premises and is open for business, that this Lease is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications), the dates to which Rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the authorized signer should have knowledge; and certifying such other matters as may be reasonably requested by Landlord (“Tenant’s Estoppel Certificates”).

- B. Attorney-in-Fact - If Tenant fails to deliver Tenant’s Estoppel Certificate within ten (10) days, Tenant does hereby irrevocably appoint Landlord as attorney-in-fact of Tenant, coupled with an interest, in Tenant’s name, place and stead to sign and deliver Tenant’s Estoppel Certificate as if the same had been signed and delivered by Tenant.
22. **RIGHT OF ACCESS** - Landlord or Landlord’s agents shall have the right to enter the Premises at all reasonable times for the purpose of inspection, to enforce or carry out any provisions of this Lease or as otherwise reasonably determined by Landlord. Within six (6) months prior to the termination of this Lease, Landlord or Landlord’s agents shall have the right to enter the Premises at all reasonable times for the purpose of exhibiting the same to others and to place upon the Premises “for sale” or “for rent” notices or signs.
23. **DEFAULT BY TENANT** - This Lease is made upon the condition that Tenant shall punctually and faithfully observe and perform all of the covenants, conditions and agreements as set forth in this Lease. The following shall each be deemed to be an event of default of this Lease:
- A. The failure of Tenant to pay the Rent, late payment charges, or any other charges payable by Tenant to Landlord under this Lease, if such failure continues for five (5) days after written notice thereof by Landlord to Tenant.
- B. The failure of Tenant to observe or perform any of the terms, covenants or conditions of this Lease where such failure continues beyond the period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of ten (10) days after written notice thereof from Landlord to Tenant (unless such failure is of a character that rectification thereof reasonably requires longer than said ten (10) day period and Tenant shall have commenced to cure said failure within ten (10) days and completes the same with due diligence).
- C. If Tenant shall vacate or abandon the Premises. For purposes of this Section 23C, thirty (30) successive days’ non-occupation and/or termination of utilities for three (3) days or more without notice to Landlord shall be deemed abandonment.
- D. The commencement of levy, execution or attachment proceedings against Tenant or a substantial portion of Tenant’s assets; the commencement of levy, execution, attachment or other process of law upon, on or against the estate created in Tenant hereby; the application for or the appointment of a liquidator, receiver, custodian, sequester, conservator, trustee or other similar judicial officer (and such appointment continues for a period of thirty (30) days); the insolvency of Tenant in the bankruptcy or equity sense; or any assignment by Tenant for the benefit of creditors.

- E. The commencement of a case by or against Tenant or any guarantor, under any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal. The determination by Tenant to request relief under any insolvency proceeding, including any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal, terminates the estate created in Tenant hereby and the Premises shall not become an asset in any such proceedings.
24. **LANDLORD'S REMEDIES** - Landlord may treat any event of default as a breach of this Lease. Landlord's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any rights or remedies reserved herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. In addition to any and all other rights or remedies of Landlord in this Lease or as provided by law or equity, Landlord shall have, at Landlord's option, the following rights and remedies if there shall occur any event of default:
- A. To terminate this Lease by written notice to Tenant. No reentry or taking possession of the Premises by Landlord, as hereinafter provided, shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant (all other demands and notices of forfeiture or other similar notices being hereby expressly waived by Tenant). Upon the service of such notice of termination, the Term of this Lease (as may be extended) shall automatically terminate. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach in the manner herein provided.
- B. To require that upon any termination of this Lease, whether by lapse of time, by the exercise of any option by Landlord to terminate the same, or in any other manner whatsoever, or upon any termination of Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord and immediately vacate the same, and remove all effects therefrom, except such as may not be removed under other provisions of this Lease. If Tenant fails to surrender possession and vacate as aforesaid, Landlord may forthwith re-enter the Premises, with or without process of law, and repossess itself thereof as in its former estate and expel and remove Tenant and any other persons and property therefrom, using such force as may be necessary, without being deemed guilty of trespass, eviction, conversion or forcible entry and without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity. If Tenant shall not remove all effects from the Premises as hereinabove provided, Landlord may, at its option, remove any or all of said effects in any manner it shall choose and store the same without liability for loss thereof, and Tenant shall pay Landlord, on demand, any and all expenses incurred in such removal including but not limited to storage on said effects for any length of time during which the same shall be in Landlord's possession or in storage.
- C. To make such alterations and repairs as Landlord shall determine may be necessary to relet the Premises, and to relet the same or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and upon such terms and conditions as Landlord in its sole discretion may deem advisable. Upon each reletting, all rent received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting (including brokerage fees and attorneys' fees and costs of such alterations and repairs); and third, to the payment of all rent and other charges due and unpaid hereunder. In no event shall

Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rent and other charges payable hereunder. If such rent and other charges received from such reletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord, such deficiency to be calculated and payable monthly.

- D. Landlord shall have the election in place and instead of holding Tenant liable for Rent and other charges on a monthly basis during the remainder of the Term (as may be extended), to accelerate the entire balance of the Rent and other charges multiplied by the number of months which would have constituted the balance of the Term (as may be extended), which amount shall be deemed due and payable as if, by the terms and provisions of this Lease, such amount was on that date payable in advance, and to take such action as is necessary to recover the entire remaining unpaid Rent and other charges.
- E. To bring suit for the collection of Rent or any other charges payable by Tenant to Landlord under this Lease (including without limitation, reasonable attorneys' fees) without entering into possession of the Premises or cancelling this Lease. Commencement of any action by Landlord pursuant to this Section shall not be construed as an election to terminate this Lease and shall not absolve or discharge Tenant from any of its obligations or liabilities for the remainder of the Term of this Lease (as may be extended).
- F. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, to enjoin any such breach or threatened breach; and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedies under this Lease, now or hereafter existing at law or in equity or by statute.
25. **DEFAULT BY LANDLORD** - This Lease is made upon the condition that Landlord shall punctually and faithfully observe and perform all of the covenants, conditions and agreements as set forth in this Lease. The following shall each be deemed to be an event of default of this Lease:
- A. The failure of Landlord to pay the amounts due, late payment charges, or any other charges payable by Landlord under this Lease, when and as the same shall become due and payable, and such failure continues for a period of ten (10) days after written notice thereof by Tenant to Landlord.
- B. The failure of Landlord to observe or perform any of the terms, covenants or conditions of this Lease where such failure continues beyond the period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless such failure is of a character that rectification thereof reasonably requires longer than said thirty (30) day period and Landlord shall have commenced to cure said failure within thirty (30) days and completes the same with due diligence).
- C. The filing, execution or occurrence of: a petition in bankruptcy by or against Landlord; a petition or answer by or against Landlord seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Code; adjudication of Landlord as bankrupt or insolvent, or Landlord being in fact insolvent or bankrupt; assignment by or against

Landlord for the benefit of creditors; a petition or other proceeding by or against Landlord for, or the appointment of, a trustee, receiver, guardian, conservator or liquidator of Landlord with respect to all or substantially all of Landlord's property; or, a petition or other proceeding by or against Landlord for the dissolution or liquidation of Landlord, or the taking of possession of the property of Landlord by any governmental authority in connection with dissolution or liquidation.

26. **TENANT REMEDIES** - Tenant may treat any event of default as set forth under Section 25 as a breach of this Lease. Tenant's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any rights or remedies reserved herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. Tenant shall have, at Tenant's option, the following rights and remedies if there shall occur any event of default:
- A. To terminate this Lease by written notice to Landlord. Upon the service of such notice of termination, the Term of this Lease (as may be extended) shall terminate ninety (90) days thereafter.
  - B. To take such steps as may be necessary to cure such breach by Landlord. In the event that Tenant expends funds on behalf of or for the benefit of Landlord to cure any breach by Landlord as allowed herein, Tenant may recover one hundred fifteen percent (115%) of such actual expenditures from Landlord.
27. **SALE OF PROPERTY BY LANDLORD** - In the event of the sale of the Premises, it shall be sold subject to this Lease, but the original Landlord shall then be released of all obligations under this Lease and the new owner shall be responsible, as the new Landlord, under the terms and conditions of this Lease. It is the intent that this Lease shall run with the land and not be personal to the landowners.
28. **CORRECTION OF DEFAULT BY MORTGAGE LENDER** - It is understood and agreed that the mortgage lender which finances the construction of the building initially, or any further lender loaning money on the within real estate during the Lease Term (as may be extended), shall have the right to correct any default on the part of Landlord within thirty (30) days after receipt of written notice from the Tenant, specifying said default. Tenant shall not be entitled to terminate the Lease without giving the appropriate notice to the mortgage lender.
29. **FORCE MAJEURE** - In the event that there is a strike, riot, shortage of material, restrictive governmental regulation, acts of God, or other similar cause beyond the control of Landlord preventing Landlord from performing under this Lease, it shall not constitute a breach or other violation of this Lease for so long as Landlord is disabled by such act from performing hereunder.
30. **ACCORD AND SATISFACTION** - No acceptance by Landlord of an amount less than the monthly rent and other payments stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such rent or other payments then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be effective to constitute an accord and satisfaction. Landlord may accept any check for payment by Tenant without prejudice to Landlord's right to recover the remainder of any rent or other payment then in arrears and Landlord may pursue any other right or remedy provided in this Lease. No acceptance by Landlord of any payment of rent or other sum by Tenant shall be deemed a waiver of any of the obligations of Tenant under this Lease.

31. **FAILURE OF UTILITIES** - In the event there is a failure of a utility company to provide water, heat, gas, electricity or other natural power, there shall be no liability on the part of Landlord or reduction of Rent or such other amounts due under this Lease therefor.
32. **QUIET ENJOYMENT** - Upon payment by Tenant of the rents and other sums herein reserved and provided to be paid by Tenant and upon the observance and performance by Tenant of all of the covenants, agreements, terms and conditions of this Lease on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term (as may be extended) hereby demised without hindrance or interruption by Landlord or by any person lawfully claiming or holding by, through or under Landlord, subject nevertheless, to the terms, provisions and conditions of this Lease.
33. **LIMITATION ON LANDLORD'S LIABILITY** - Notwithstanding anything to the contrary contained herein, any liability incurred by Landlord to Tenant shall not be of a personal nature and Tenant's sole means of recovery shall be against the real estate owned by Landlord at the location herein leased, it being the specific intention to not encumber other assets of Landlord in this regard.
34. **EXPENSE ENFORCEMENT** - Tenant agrees to pay all reasonable expenses and attorneys' fees including pretrial, trial, and appellate proceedings incurred by Landlord in enforcing any obligations or any remedies hereunder including collection of Rent, other sums due Landlord, recovery by Landlord of the Premises, or in any litigation in which Landlord shall become involved by reason of any act or negligence of Tenant.
35. **SEVERABILITY** - If any term or provision of this Lease is held invalid or unenforceable, such holding shall not affect the remainder of this Lease and the same shall remain in full force and effect unless such holding substantially deprives Tenant of the use of the Premises or Landlord of the rents herein reserved, in which event this Lease shall forthwith terminate as if by expiration of the Term hereof.
36. **CAPTIONS** - The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.
37. **BINDING EFFECT** - This Lease and all of the covenants and provisions thereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.
38. **GOVERNING LAW, VENUE AND STRICT CONSTRUCTION** - This Lease shall be construed under the laws of the State of Illinois and shall not be construed against either Landlord or Tenant. The parties covenant and agree that any dispute or controversy hereunder properly belongs within the jurisdiction of the state or federal courts of Illinois, and consent and agree that Champaign County, Illinois is a convenient and proper venue.
39. **ADJACENT SUITES** - Notwithstanding anything contained in this Lease to the contrary, Tenant acknowledges and agrees there are currently tenants located within suites B5, B6, B7, B8 and B11 ("Adjacent Suites"), which such tenants' leases expire March 31, 2023 ("Adjacent Suites Leases"). Landlord will continue to manage said tenants within the Adjacent Suites through the expiration of the Adjacent Suites Leases and the Rent due by Tenant during the overlapping period from the Rent Commencement Date until the expiration or earlier termination of the Adjacent Suites Leases shall be credited to Tenant by Landlord by such amount received by Landlord from said tenants. If any tenant of the Adjacent Suites surrenders the applicable suite

prior to March 31, 2023, Landlord will notify Tenant and Tenant shall have the right to commence using such applicable suite.

40. **HAZARDOUS MATERIAL** -

A. **No Hazardous Material** - Tenant shall not cause or permit any hazardous material, as defined below, to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by Landlord, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the Premises or elsewhere, or (2) the condition, use, or enjoyment of the Premises or any other real or personal property. If Tenant breaches either of these covenants, in addition to being a default under this Lease, Tenant shall be liable to Landlord for all damages resulting therefrom, and Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, penalties, fines, costs, liabilities or losses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of the Premises, any personal injury (including wrongful death) or property damage (real or personal), and sums paid in settlement of claims, attorney’s fees, consultant fees and expert fees which arise during or after the Lease Term (as may be extended) as a result of such breach or as a result of any contamination caused or permitted by Tenant. Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any hazardous material to the Premises by Tenant, its agents, invitees, contractors or employees; provided that Landlord’s approval of such action shall first be obtained. The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

B. **Definition of Hazardous Material** - As used herein, the term “hazardous material” shall mean the following: (1) “Hazardous Substances”, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 43 U.S.C. 9601, et seq.; (2) “Hazardous Wastes”, as defined by the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. 6901, et seq.; (3) any other wastes, pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable Federal, state or local law, regulations, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, all as amended or hereafter amended; (4) more than seven (7) gallons of crude oil or distillate thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (5) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. 2011, et seq., as amended or hereafter amended; and (6) the asbestiform varieties of chrysolite, crocidolite, amosite, anthophyllite, termolite or actinolite, or asbestos in any other form, in any condition.

41. **EXECUTION DATE** - The execution date of this Lease to be inserted on Page 1 hereof shall be the date of execution by both parties if they have each executed this Lease on the same date; otherwise, the execution date shall be the date of execution by the party last executing this Lease.

42. **ENTIRE AGREEMENT** - This Lease contains the entire agreement between the parties hereto and may not be modified in any manner except by an instrument in writing executed by said parties, or their respective successors in interest.
43. **COUNTERPARTS AND COPIES** - This Lease may be executed in one or more counterpart signature pages (including facsimile or electronic [including, without limitation, “pdf”, “tif”, “jpg”, DocuSign or AdobeSign] or other counterpart signature pages), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[signatures on following page]*

**IN WITNESS WHEREOF**, Landlord and Tenant, by their duly authorized representatives, have executed this Lease on the date first above written.

**LANDLORD:**

D & E ENTERPRISES, LLC – 136 MAIN STREET SERIES, a series of an Illinois limited liability company

By: \_\_\_\_\_  
Daniel Maloney, Manager

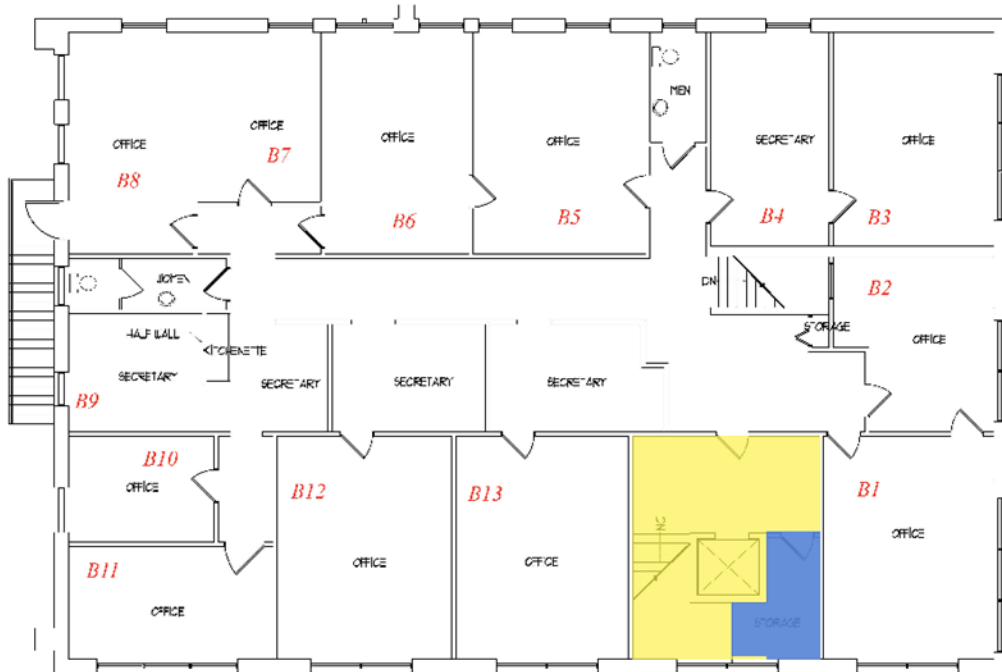
**TENANT:**

CITY OF URBANA

By: \_\_\_\_\_  
Diane Wolfe Marlin  
Mayor of Urbana



Exhibit A  
[Premises Depiction]



**Yellow-filled area is common-use area, not exclusive for city.  
Blue-filled area is neither common-use nor for use by city.**