



AGENDA FOR ELKHART REDEVELOPMENT COMMISSION MEETING  
MUNICIPAL BUILDING (2<sup>ND</sup> FLOOR), COUNCIL CHAMBERS  
TUESDAY, DECEMBER 10, 2024 at 4:00 P.M.

THIS MEETING WILL BE HELD IN-PERSON & ELECTRONICALLY VIA WEBEX

To join, go

<https://signin.webex.com/join>

enter **2303 927 6945** as the event number and **RDC12** as the event password.

To join by phone, call **1-415-655-0001**, enter **2303 927 6945##**

*Press \* 6 to unmute telephone*

Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to [adam.fann@coei.org](mailto:adam.fann@coei.org) prior to the meeting.

1. Call to Order

2. Approval of Minutes

- November 12, 2024 Regular Meeting Minutes
- November 20, 2024 Special Meeting Minutes

3. New Business

a) Open Bids

b) RFP for City Owned Property Maintenance

- Approve request to advertise and collect bids relating to property maintenance services for properties owned by the Redevelopment Commission

c) Juke

- Approve the employment of Juke Technologies, Inc. as consultant to provide collaborative assistance on music town program and appropriating funds

d) Woodland Crossing Lease

- Approve lease form for lots 1, 3, 5 and 6 in Woodland Crossing

4. Staff Updates
5. Other Business
  - a) Warrick and Boyn Invoice
  - b) TIF Report
9. Public Comment
10. Adjournment



**REGULAR MEETING**  
**ELKHART REDEVELOPMENT COMMISSION**  
**LOCATION: CITY HALL, 2 ND FLOOR, COUNCIL CHAMBERS**  
**Tuesday, November 12, 2024**  
**4:00 p.m.**

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**PRESENT:** Dina Harris, Wes Steffen, Willie Brown, Gary Boyn, Sherry Weber (Recording Secretary), Mike Huber, Adam Fann, Jacob Wolgamood, Mary Kaczka, Joshua Hofer, Drew Wynes, Dwight Fish, Dave Osborn, Andy Jones, Brad Hunsberger, and Alex Holtz

**PRESENT BY WEBEX:** Chris Pottratz, Gerry Roberts, Corinne Straight, Griffin Eaton at Juke Entertainment, Ambrose Kamyia and Mary Lou Timmons

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**CALL TO ORDER**

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:00 p.m. by Mr. Steffen, Vice-President.

**AMENDMENT TO THE AGENDA**

Mr. Steffen asked for a motion to amend the agenda for November 12, 2024. Moved by Mr. Brown. Seconded by Ms. Harris. Roll call vote, all in favor. Motion approved

**APPROVAL OF REGULAR MEETING MINUTES**

Mr. Steffen asked for a motion to approve the October 8, 2024 Regular Meeting Minutes. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, all in favor. Motion approved

**NEW BUSINESS**

**A. OPENING OF BIDS**

Mr. Jacob Wolgamood addressed the commission stating we did receive three bids for the Freight Street demolition project. Pelley Excavation in the amount of \$48,551.00, Jerry Reed Excavating in the amount of \$54,550.00 and Russell Cross in the amount of \$71,223.75. Mr. Steffen asked for a motion to have staff review the bids and report back

once they have confirmed everything is included and are ready to make a recommendation. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, all in favor. Motion approved.

#### **B. 420 SOUTH SECOND STREET LEASE**

Mr. Adam Fann addressed the commission and answered questions. Mr. Steffen asked for a motion to approve the lease agreement of real estate to Addiction Recovery Center (ARC) on the terms set forth in the attached agreement. Moved by Mr. Brown. Seconded by Ms. Harris. Roll call vote, all in favor. Motion approved.

#### **C. LACASA RIVER VISTA PARCELS**

Mr. Adam Fann addressed the commission and answered questions. Mr. Steffen asked for a motion to accept the offer to sell the real estate (River Vista parcels) to the commission for \$67,400, approving the terms and conditions of the purchase agreement and appropriate \$46,800 from Downtown Allocation Area No. 1 Special Fund and \$25,600 from Consolidated South Elkhart Economic Development/Redevelopment Area Allocation Special Fund. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, all in favor. Motion approved.

#### **D. GROVE COURT PROPERTY**

Mr. Adam Fann addressed the commission and answered questions. Mr. Steffen asked for a motion to accept the offer from Abrams to buy the Grove Court property for \$200 and approve the terms and conditions set forth in the attached purchase agreement. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, all in favor. Motion approved.

#### **E. AIRPORT HANGAR**

Mr. Adam Fann and Mr. Andy Jones (Director of Elkhart Airport) addressed the commission and answered questions. Mr. Steffen asked for a motion finding that the economic development of the Municipal Airport's purpose and project of the commission for which the Aeroplex funds may be spent and appropriate \$275,000 from Aeroplex Allocation Area Special Fund to reimburse the City for expenditures made for this project with any unspent funds being returned to the appropriate account. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, three in favor, one abstained. Motion approved.

#### **F. JUKE PROPOSAL**

Mr. Mike Huber and Griffin Eaton from Juke Entertainment addressed the commission and answered questions. Ms. Harris made a motion to table this agenda item until the December RDC meeting. Seconded by Mr. Brown. Roll call vote, three in favor, one opposed. Motion passes.

#### **G. TIF SPENDING PLANS**

Mr. Mike Huber addressed the commission and answered questions. Mr. Steffen asked for a

motion to open a public meeting and continue it through the special meeting later this month. Moved by Mr. Brown. Seconded by Ms. Harris. Roll call vote, all in favor. Motion approved.

#### **H. AWARD FREIGHT STREET DEMO BID**

Mr. Jacob Wolgamood addressed the commission and recommended awarding the Freight Street Demolition bid to the lowest bid of Pelley Excavating in the amount of \$48,551.00. Mr. Steffen asked for a motion to accept the proposal of Pelley Excavating in the amount of \$48,551.00. Moved by Mr. Brown. Seconded by Ms. Harris. Roll call vote, three in favor, one abstained. Motion approved.

#### **STAFF UPDATES**

Mr. Adam Fann addressed the commission with updates on projects around the city.

- **RFI for Windsor sidewalk improvements** - we received two RFI's and are anticipating a couple more.
- **State Road 19** - the section between the Toll Road and County Road 4 should be finished this week. The west side signs should be installed sometime around the week of Thanksgiving.
- **Roundhouse** - removing the stockpile of soil from the site currently. Once complete, they will demobilize and remove the fence. Staff has a walk through with the EPA, Robert's Environmental, the Railroad Museum and Leah from MACOG tomorrow to do some site assessment on the conditions, what was found while EPA was out there and discuss how to move forward with an application for a cleanup grant through the EPA.
- **Conn Site** - monitoring wells and injection wells have been installed and are currently being tested. Injections to start at the beginning of December. While the injections are going on, Robert's Environmental will be writing the excavation documents to go out and bid so we can start excavation in the spring.
- **1000 Block Freight Street** - meeting regularly with the developer. Working through the purchase and development agreement.
- **1701 Sterling** - waiting on the amended ERC from IDEM. Testing came back favorably so it should not be an issue to modify the ERC for residential development and the developer is finalizing some designs for the site.

#### **OTHER BUSINESS**

Mr. Steffen asked for a motion to approve the Warrick and Boyn invoice in the sum of \$25,392.39. Moved by Ms. Harris. Seconded by Mr. Brown. Roll call vote, all in favor. Motion approved.

The commissioners have the TIF Report.

**PUBLIC COMMENT**

No one from the public was there at address the Commission.

**ADJOURNMENT**

There being no further discussion, Mr. Steffen asked for a motion to adjourn the meeting. It was moved by Mr. Brown. Seconded by Ms. Harris. Roll call vote, all in favor. Motion approved. The meeting adjourned at 4:58 p.m. Next meeting is on Tuesday, December 10, 2024 at 4:00 p.m. in Council Chambers.

\_\_\_\_\_  
Sandra Schreiber, President

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City of Elkhart  
*Redevelopment Commission*

Elkhart Redevelopment Commission  
Pre-Agenda Meeting Summary  
For November 8, 2024

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PRESENT: Dina Harris, Sandi Schreiber, Wes Steffen, Gary Boyn, Adam Fann  
Jacob Wolgamood, Sherry Weber, Mary Kaczka, Corinne Straight,  
Drew Wynes and Joshua Hofer

PRESENT BY WEBEX: Chris Pottratz, Willie L. Brown, and Gerry Roberts

The Commission reviewed each agenda item and staff explained the status of each matter to date and the need for and purpose of the proposed Resolution to be acted upon at the upcoming Elkhart Redevelopment Commission meeting on November 12, 2024.



City of Elkhart  
*Redevelopment Commission*

SPECIAL MEETING  
ELKHART REDEVELOPMENT COMMISSION  
LOCATION: CITY HALL, 2<sup>ND</sup>. FLOOR, COUNCIL CHAMBERS  
Wednesday, November 20, 2024  
4:00 p.m.

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PRESENT: Dina Harris, Gerry Roberts, Sandi Schreiber, Wes Steffen, Willie Brown, Dorisanne Nielsen, Gary Boyn, Sherry Weber (Recording Secretary), Mike Huber, Jacob Wolgamood, Mary Kaczka, Joshua Hofer, Jamie Arce and Drew Wynes

PRESENT BY WEBEX: Chris Pottratz and Mary Lou Timmons

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CALL TO ORDER

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:03 p.m. by Ms. Schreiber, President.

AMENDMENT TO THE AGENDA

Ms. Schreiber asked for a motion to amend the agenda for November 20, 2024. Moved by Mr. Steffen. Seconded by Mr. Brown. Voice vote, all in favor. Motion approved.

NEW BUSINESS

A. FREIGHT STREET DEMOLITION CONTRACT

Mr. Adam Fann addressed the commission and answered questions. Ms. Schreiber asked for a motion to approve the proposal and award the demolition contract to Pelley Excavating, approve the form and content of the contract and appropriate \$48,551.00 from Downtown Allocation Area No. 1 Special Fund. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, four in favor, one abstain. Motion approved.

B. WOODLAND CROSSING USE AND EVENT PERMITS

Mr. Joshua Hofer addressed the commission and answered questions. Ms. Schreiber asked for a motion to approve holding the Winter Wonderland at Woodland Crossing event as scheduled in December. Moved by Mr. Steffen. Seconded by Ms. Harris. Voice vote, four in favor, one abstain. Motion approved.

Mr. Joshua Hofer addressed the commission and answered questions. Ms. Schreiber asked for a motion to authorize the Board of Public Works and its staff to receive, review and process all special use and event requests for the real estate Woodland Crossing and issue all permits there on it deems necessary and appropriate. Moved by Mr. Steffen. Seconded by Ms. Harris. Voice vote, four in favor, one abstain. Motion approved.

#### C. 2025 TIF SPENDING PLANS

Mr. Mike Huber addressed the commission and answered questions. Ms. Schreiber asked for a motion approve the 2025 TIF Spending Plan as presented with flexibility for adjustments as needed. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor. Motion approved.

#### D. WOODLAND CROSSING ROOF REPLACEMENT

Ms. Mary Kaczka addressed the commission and answered questions. Ms. Schreiber asked for a motion to approve the funding Woodland Crossing roof replacement as requested and continue to request that the Board of Public Works enter into all contracts and take all action necessary to supervise and complete the project and appropriate \$27,503.06 from Special Fund 2560 (Woodland Crossing Operating Fund) to help cover the cost of the project. Moved by Mr. Steffen. Seconded by Mr. Brown. Voice vote, all in favor. Motion approved.

#### E. FREIGHT STREET ASBESTOS REMOVAL

Mr. Adam Fann addressed the commission and answered questions. Ms. Schreiber asked for a motion to approve the proposal from A&G Environmental Solutions and authorize Development Services to instruct A&G to proceed with asbestos removal services and appropriate \$7,135.00 from the Downtown Allocation Area No. 1 Special Fund. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor. Motion approved.

#### PUBLIC COMMENT

No one from the public was there at address the Commission.

#### ADJOURNMENT

There being no further discussion, Ms. Schreiber asked for a motion to adjourn the meeting. Moved by Mr. Steffen. Seconded by Mr. Brown. Voice vote, all in favor. Motion approved. The meeting adjourned at 4:26 p.m. Next meeting is on Tuesday, December 10, 2024 at 4:00 p.m. in Council Chambers.

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Sandra Schreiber, President

RESOLUTION NO. 24-R-083

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA, APPROVING SOLICITATION OF MAINTENANCE SERVICES BIDS AND CONTRACT FORM

Whereas, the Commission has acquired certain parcels real estate in the City and County of Elkhart, Indiana (the "Real Estate") specifically described in the attached Notice to Bidders (the "Notice") and proposed Property Maintenance Services Contract (the "Contract"), and has requested authorization by the Commission to solicit bids for the maintenance services described in the Contract; and

Whereas, the Commission finds that the services are necessary and that it will be in the best interest of the City and its inhabitants to approve the request.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission authorizes the issuance of the Notice and such additional documents as staff deems necessary to obtain qualified bids on the Maintenance Services described in the Contract for the listed parcels of Real Estate.
2. The Commission approves the form and content of the proposed Contract.
3. The staff will cause a notice to be published in accordance with IC 5-3-1-2(e) as required by statute, in substantially the form attached hereto, designating the time the commission will open and consider submitted bids.
4. The Officers and staff of the Commission are hereby authorized to deliver all documents and to do all acts which they deem necessary and desirable to complete the bidding process.

ADOPTED BY MAJORITY VOTE THIS 10TH DAY OF DECEMBER 2024.

CITY OF ELKHART, REDEVELOPMENT COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Dina Harris, Secretary

# Memo

To: Redevelopment Commission Members  
From: Jacob Wolgamood  
Date: 12/2/24  
Re: Property Maintenance Services

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Development Services is requesting permission to receive bids for Property Maintenance Services for city-owned properties.

The Redevelopment Commission holds in its possession several properties within the City of Elkhart which require regular mowing, leaf removal, and snow removal services to maintain a neat and orderly appearance as well as meet municipal codes. Every two years the City requests proposals and awards a contract to a lawn care company to perform these services which are funded by the TIF area in which the property is located.

We are requesting the Redevelopment Commission allow for the advertisement and collection of bids relating to Property Maintenance Services for properties owned by the Redevelopment Commission.

**NOTICE OF PUBLIC MEETING TO OPEN AND CONSIDER  
WRITTEN OFFERS FOR PROPERTY MAINTENANCE SERVICES**

Notice is hereby given that the Redevelopment Commission of the City of Elkhart, Indiana will on the 14th day of January, 2025, at 4:00 p.m. (EST), at the Common Council Chambers in the Municipal Building, 229 South Second Street, Elkhart, Indiana, conduct a public meeting to open and consider bids for Property Maintenance Services on certain parcels of real estate in the City and County of Elkhart, State of Indiana.

The Commission may reject any bids and may make award to the highest and best bidder.

The Notice to Bidders, proposed Contract, list of parcels, and related documents are on file, and Form for Submission of the bid is available at, the Department of Community and Redevelopment, 201 South Second Street, Elkhart, Indiana, and available for inspection during normal office hours and copies thereof may be obtained on request.

The successful bidder will be required to sign a Property Maintenance Services Contract in the form approved by the Commission.

REDEVELOPMENT COMMISSION  
CITY OF ELKHART, INDIANA

By: \_\_\_\_\_  
Sandra Schreiber, President

(TO ELKHART TRUTH: Publish 2 times, 1 week apart with the last publication no later than January 6, 2025.)



City of Elkhart  
*Community & Redevelopment*

## Notice to Bidders

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December 2, 2024  
Department of Redevelopment  
City of Elkhart, Indiana

The City of Elkhart, Indiana, Department of Redevelopment will receive sealed bids for the following project: *Property Maintenance Services*

Project Summary: Property maintenance services to include mowing, leaf removal and/or mulching, snow removal, and large item removal on city-owned properties.

Sealed bids shall be filed with:  
Sherry Weber, Development Services Office Administrator  
City of Elkhart Permit Center  
229 S 2nd St.  
Elkhart, IN 46516

Bids will be accepted during the hours of 8:00 a.m. to 4:30 p.m. (ET) Monday-Friday and up until 4:00 p.m. (ET) on Tuesday, January 14, 2025 (the Deadline). All bids received by the Office Administrator prior to the Deadline will be reviewed at the meeting of the Redevelopment Commission (Commission) scheduled to start at 4:00 p.m. (ET) on Tuesday, January 14, 2025. Any bid received after the Deadline will be returned to the bidder unopened. After review of the bids, the Commission will take action based on staff recommendation.

Bid packets may be obtained from the following sources:

1. Go to <https://elkhartindiana.org/bid-opportunities/> and find bid packets listed by job title. Click the job title link to download for free.
2. Request a hard copy by contacting Adam Fann or Jacob Wolgamood at [adam.fann@coei.org](mailto:adam.fann@coei.org) or [jacob.wolgamood@coei.org](mailto:jacob.wolgamood@coei.org) Please note that while city staff will make every attempt to provide a hard copy in a timely manner, delays are possible.

The Commission will award a contract to the lowest responsive and responsible bidder. The Commission reserves the right to waive informalities or irregularities, and to reject any and all bids or portions thereof.

City of Elkhart, Indiana, Department of Redevelopment  
Sandi Schreiber, President



# City of Elkhart

*Community & Redevelopment*

## **PROPERTY MAINTENANCE SERVICES** **CONTRACT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **CITY OF ELKHART, INDIANA, DEPARTMENT OF REDEVELOPMENT** ("CITY"), and \_\_\_\_\_ ("CONTRACTOR").

### **RECITALS:**

WHEREAS, the CITY desires to arrange for property maintenance services consisting of mowing, leaf removal and/or mulching, snow removal, and large item removal on City owned properties ("Premises"); and

WHEREAS, the CITY desires to retain the services of a competent contractor with the necessary equipment, expertise, and personnel to execute property maintenance services; and

WHEREAS, CONTRACTOR represents that it has the requisite expertise and ability to complete this project.

NOW, THEREFORE, in consideration of the forgoing and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### SECTION 1. Scope of Services.

CONTRACTOR agrees to furnish the following services:

- A. Provide all necessary labor, materials, equipment, and funding related to property maintenance; and the coordination of any and all activities in conjunction with the contract.
- B. Take all reasonable and necessary steps to prevent damage to city-owned property, adjacent properties, the right of way, and minimize environmental impacts to the surrounding area.

- C. Mowing, which shall include the removal of all trash, sticks, branches, and other debris prior to each mowing event. Mowing to occur not more than twice in a given month unless requested by the City to keep grass and weeds less than 8" in height. Grass clippings are to be removed from sidewalks and streets.
- D. Leaf removal and/or mulching, which shall be provided seasonally or when requested by the City.
- E. Snow removal, which shall be performed when or where two or more inches of snow has accumulated on properties where sidewalks and drives are present.
- F. Large item removal, which shall be conducted for each property and may include items such as furniture, appliances, automotive parts, and plastic and metal containers. Items must be disposed or recycled appropriately and in accordance with local and state regulations.
- G. Provide dated photos prior to and after completion of each property maintained. Photos are to be taken from the same location on the same day services are provided. Photos are to be provided to the CITY with each invoice in order to receive payment. Method for providing photos may be via USB storage device or other means agreed upon by the CITY and the CONTRACTOR.
- H. CONTRACTOR acknowledges the number of properties to be maintained may be reduced or increased as the CITY disposes of or acquires property. CITY shall notify CONTRACTOR of disposed properties. Properties which are disposed of shall discontinue all maintenance activities and invoicing. Properties which are acquired may be incorporated into this contract. CITY shall notify CONTRACTOR of acquired properties requiring maintenance services. CITY and CONTRACTOR agree to negotiate property maintenance costs for properties added to this contract in a similar cost per acre for cost per occurrence basis based upon established contract costs.

SECTION 2. Schedule.

Services described in Section 1 shall be performed no more than twice each calendar month or at the direction of City.

SECTION 3. Payment.

CITY will pay CONTRACTOR for the Services in accordance with the per-service fee schedule contained in Exhibit A attached hereto (the "Fee"), as follows:

CONTRACTOR will submit monthly invoices for services performed and will be paid in accordance with the CITY's standard payment cycle.

CONTRACTOR shall submit its invoices to CITY no more than once per month along with reasonable supporting detail. CITY shall pay approved amounts no later than 40 days after receipt or as CITY's standard practices allow.

SECTION 4. Term.

The original term of the Contract shall begin on January 1, 2025 and terminate on December 31, 2027. Notwithstanding the above, either party may terminate this Agreement at any time during the term of this Contract by providing the other 30 days prior written notice, in which event all Services will be terminated upon the expiration of that notice period. In the event of such termination, the CITY will pay for only those Services actually performed to the date of termination.

SECTION 5. Indemnification.

CONTRACTOR represents and warrants that it is an independent contractor and agrees to indemnify and hold CITY harmless against any claim, loss, damages, or expense because of bodily injury, death, or property damage sustained by any person arising out of the performance of this Agreement, whether such injuries to persons or damage to property are due or claimed to be due to any negligence of CONTRACTOR, CITY, their agents, servants, or employees, or of any person.

SECTION 6. Assignment.

Neither this agreement nor any interest of CONTRACTOR herein may be assigned, sublet, or transferred to a third party without prior written consent of the CITY.

SECTION 7. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit based thereon must be brought in the Superior or Circuit Court of Elkhart County, Indiana.

SECTION 8. Compliance with State and Local Law.

CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are applicable at the time of CONTRACTOR'S services pursuant to this Agreement are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference.

SECTION 9. E-Verify Compliance.

All terms defined in I.C. § 22-5-1.7 et seq. are adopted and incorporated into this section. Pursuant to I.C. § 22-5-1.7 et seq., CONTRACTOR shall enroll in and verify the work eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement. CONTRACTOR is further required to execute an affidavit affirming that: (i) it is enrolled and is participating in the E-verify program, and (ii) does not knowingly employ any unauthorized aliens. In support of the affidavit, CONTRACTOR shall provide the CITY with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by CONTRACTOR and delivered to the CITY's authorized representative.

Should CONTRACTOR subcontract for the performance of any work under this Agreement, the CONTRACTOR shall require any subcontractor(s) to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) has enrolled and is participating in the E-verify program. CONTRACTOR shall maintain a copy of such certification for the duration of the term of any subcontract. CONTRACTOR shall also deliver a copy of the certification to the CITY within seven (7) days of the effective date of the subcontract.

If CONTRACTOR, or any subcontractor of CONTRACTOR, knowingly employs or contracts with any unauthorized aliens, or retains an employee or contract with a person that the CONTRACTOR or subcontractor subsequently learns is an unauthorized alien, CONTRACTOR shall terminate the employment of or contract with the unauthorized alien within thirty (30) days ("Cure Period"). Should the CONTRACTOR or any subcontractor of CONTRACTOR fail to cure within the Cure Period, the CITY has the right to terminate this Agreement without consequence.

The E-Verify requirements of this Agreement will not apply should the E-Verify program cease to exist.

SECTION 10. Anti-Iran Investment Requirement.

CONTRACTOR certifies that it is not now engaged in investment activities in the County of Iran and it understands that providing a false certification could result in fines, penalties, and civil action against it.

SECTION 11. Supplement.

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

SECTION 12. Entire Agreement.

This Agreement constitutes the entire agreement of the parties, and, unless specified otherwise herein, no representations, inducement, promises, or prior agreements, oral or written between the parties, or made by any agent on behalf of the parties or otherwise, shall be of any force and effect.

SECTION 13. Authority.

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 14. Nondiscrimination.

CONTRACTOR shall not be in violation of Elkhart City Ordinance No. 4101, for the duration of this agreement. Should CONTRACTOR be in violation of any of the aforementioned provisions, such shall be considered a material breach of this agreement.

SECTION 15. Severability.

In the event that any portion of this Agreement is found to be invalid it shall be deemed severed and the remainder of this Agreement shall remain in full force and effect as if the severed portion did not exist.

SECTION 16. Commission Appropriation.

In the event funds for the payment of services pursuant to this Agreement are not appropriated by the Redevelopment Commission of the City of Elkhart, then, the CITY shall have the right to terminate this Agreement without penalty by giving prior written notice to CONTRACTOR.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorization as of the date first set forth above.

\_\_\_\_\_  
Sandra Schreiber, President

\_\_\_\_\_  
Dina Harris, Secretary

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION**

I, \_\_\_\_\_, being first duly sworn, depose and say that I am familiar with and have personal knowledge of the facts herein and, if called as a witness in this matter, could testify as follows:

1. I am over eighteen (18) years of age and am competent to testify to the facts contained herein.
2. I am now and at all times relevant herein have been employed by \_\_\_\_\_ ("Consultant") in the position of \_\_\_\_\_.
3. I am familiar with the employment policies, practices, and procedures of Consultant and have the authority to act on behalf of the Consultant.
4. Consultant is enrolled and participates in the federal E-Verify program. Documentation of this enrollment and participation is attached as Exhibit "A" and incorporated herein.
5. Consultant does not knowingly employ any unauthorized aliens.
6. To the best of my information and belief, the Consultant does not currently employ any unauthorized aliens.

I swear and affirm under the penalties for perjury that the foregoing statements and representations are true and accurate to the best of my knowledge and belief.

EXECUTED on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed: \_\_\_\_\_

**CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN**

I, \_\_\_\_\_, certify to the following:

1. Pursuant to Indiana Code 5-22-16.5 *et seq.*, I am not now engaged in investment activities in Iran.
2. I understand that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed:\_\_\_\_\_



City of Elkhart

*Community & Redevelopment*

**TITLE VI NOTICE**

Title VI Policy

The City of Elkhart, Indiana (Elkhart) is committed to a policy of inclusiveness, fairness, and accessibility of its programs, activities and services to all persons in Elkhart. As provided by Title VI of the Civil Rights Act of 1964 and all related statutes, Elkhart assures that no person shall, on the on the grounds religion, race, color, national origin, sex, age, disability/handicap, sexual orientation, gender identity, limited English proficiency, or low income status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any City of Elkhart program, activity or service. The City of Elkhart further assures every effort will be made to ensure non-discrimination in all of its programs, activities, and services, whether those program, activities and services are federally funded or not. In the event the City of Elkhart distributes Federal aid funds to another entity, the City of Elkhart will include Title VI language in all written agreements.

The Title VI Coordinator is:

Title VI Coordinator  
City of Elkhart  
229 S 2<sup>nd</sup> Street  
Elkhart, Indiana 46516

Voice: (574) 294-5471  
Fax: (574) 293-7658  
TDD: (574) 389-0198  
Email: [titlevicoordinator@coei.org](mailto:titlevicoordinator@coei.org)

Acceptance by Contractor

I hereby certify that I have received the City of Elkhart's "Title VI Notice" and agree to comply with the requirements and provisions of the City of Elkhart's Title VI Policy during the duration of this Agreement with the City of Elkhart.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Dated

## **SPECIAL NOTES & REQUIREMENTS**

1. Bidders are required to submit their bid proposals in the following order:
  1. Certified Bid Summary Form
  2. Contractor's Bid for Public Work – Form 96 (Rev. 2013) including the Non-Collusion Affidavit. This form can be found at <https://www.in.gov/sboa/about-us/electronic-forms/>
  3. Bid Bond or Certified Check – made payable to the City in an amount of five percent of the bid price but not less than \$1000. May be a certified check, bank money order, or a bid bond.
  4. Signed Receipt of any/all Addendum
  5. Financial Statement as required by Form 96
  6. Itemized Proposal

Failure to follow bid proposal requirements may result in the bid being considered unresponsive and rejected.

### 2. Pre-Construction Meeting

Prior to the start of contracted work a pre-construction meeting with city departments shall be arranged to review project concerns. When applicable, the contractor shall present a traffic maintenance plan at this meeting for review.

### 3. Permits

Unless otherwise noted in the contract, all permits shall be acquired by the contractor.

### 4. Bidder's Questions

Bidders are requested to submit any pre-bid questions in writing at least forty-eight hours before the deadline. Questions may or may not be addressed by addendum as deemed appropriate by the city.

Questions may be submitted by email to Adam Fann [adam.fann@coei.org](mailto:adam.fann@coei.org) and/or Jacob Wolgamood [jacob.wolgamood@coei.org](mailto:jacob.wolgamood@coei.org), or mailed to

Sherry Weber  
Development Services Office Admin.  
City of Elkhart Permit Center  
229 S 2nd St.  
Elkhart, IN 46516

**CERTIFIED BID SUMMARY FORM**  
**Property Maintenance**

This Certified Bid Summary Form is to ensure that all required components of the bid have been included. Please initial each appropriate line, fill in the bid and alternate amounts, and **place this sheet as the first page of your submittal.**

- \_\_\_\_\_ I have included a completed **Form 96 (Rev. 2013)**
- \_\_\_\_\_ I have included the **Bid Bond or Certified Check**
- \_\_\_\_\_ I have included a **Financial Statement**, as required by Form 96
- \_\_\_\_\_ I have included an **Itemized Proposal**

**Base Bid**     \$ \_\_\_\_\_

I hereby certify the following: 1) that all of the required documentation is contained within the following bid packet; 2) that the information provided in this proposal is accurate and complete; 3) that I have read and understand the instructions, terms, conditions and specifications of this solicitation; 4) that I agree to fulfill the requirements of any awarded contract at the prices proposed; and 5) that this proposal includes all costs necessary to provide all supervision, labor, services, materials, tools, equipment, supplies, insurance, permits, bonds, and other incidental items, whether or not specifically called for in the specifications and contract documents, to perform and complete in a workmanlike manner all work as specifically described under each item in the specifications and contract documents, and other work necessary to complete the project in accordance with the obvious or expressed intent of the specifications of the contract documents.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor's Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**CONTRACTOR BID WORKSHEET**

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY		UNIT COST	ESTIMATED COST
	<b>ACCT. # 4445-5-000-4390912</b>				
1	20-06-05-401-002.000-012      200 N 2nd St.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	1	LSUM	\$ -	\$ -
2	20-06-05-180-006.000-012      408 N 2nd St.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	1	LSUM	\$ -	\$ -
3	20-06-08-179-003.000-012      613 Dr. King Dr.				
4	20-06-08-176-003.000-012      Dr. King Dr.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	1	LSUM	\$ -	\$ -
5	20-06-08-257-004.000-012      S 6th St.				
6	20-06-08-257-013.000-012      S 6th St.				
7	20-06-08-257-014.000-012      S 6th St.				
8	20-06-08-257-017.000-012      S 6th St.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	4	LSUM	\$ -	\$ -
9	20-02-33-362-007.000-027      Erwin St.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	1	LSUM	\$ -	\$ -
10	20-02-33-362-014.000-027      1032 E Beardsley Ave.				
	Mowing	1	LSUM	\$ -	\$ -
	Leaf Removal	1	LSUM	\$ -	\$ -
	Snow Removal	1	LSUM	\$ -	\$ -

11	20-06-08-255-023.000-012	Delaware St.				
12	20-06-08-255-024.000-012	Delaware St.				
13	20-06-08-255-029.000-012	Delaware St.				
14	20-06-08-255-030.000-012	Delaware St.				
15	20-06-08-257-009.000-012	Delaware St.				
16	20-06-08-257-010.000-012	Delaware St.				
17	20-06-08-257-016.000-012	Delaware St.				
18	20-06-08-258-001.000-012	Delaware St.				
19	20-06-08-258-002.000-012	Delaware St.				
20	20-06-08-258-003.000-012	Delaware St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	10	LSUM	\$ -	\$ -
21	20-06-05-479-031.000-012	Hug St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
22	20-06-05-479-024.000-012	144 Division St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
23	20-06-05-481-044.000-012	167 Division St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
24	20-06-05-482-030.000-012	207 Division St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -

25	20-06-05-479-015.000-012	150 Division St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
26	20-06-05-481-044.000-012	167 Division St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
27	20-06-05-482-030.000-012	207 Division St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
28	20-06-05-480-039.000-012	218 Division St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
29	20-06-05-482-011.000-012	241 Division St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
30	20-06-08-205-017.000-012	729 S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
31	20-06-08-205-018.000-012	733 S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
32	20-06-08-205-020.000-012	739 S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
33	20-06-08-205-016.000-012	S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	

34	20-06-08-230-017.000-012	919 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
35	20-06-08-234-004.000-012	1001 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
36	20-06-08-258-004.000-012	Maryland Ave.				
37	20-06-08-258-005.000-012	Maryland Ave.				
38	20-06-08-258-007.000-012	Maryland Ave.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
39	20-06-05-484-006.000-012	134 Middlebury St.				
40	20-06-05-484-007.000-012	Middlebury St.				
41	20-06-05-484-008.000-012	Middlebury St.				
42	20-06-05-484-009.000-012	142 Middlebury St.				
43	20-06-05-484-010.000-012	Middlebury St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	5	LSUM	\$ -	\$ -
44	20-06-08-258-006.000-012	Park Ave.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
45	20-06-09-133-010.000-012	1030 Princeton St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -

46	20-06-05-483-028.000-012	State St.					
47	20-06-05-483-029.000-012	State St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
48	20-06-04-357-008.000-012	329 State St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
49	20-06-04-358-006.000-012	417 State St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
50	20-06-08-163-003.000-012	Wagner Ave.					
51	20-06-08-163-004.000-012	Wagner Ave.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
52	Large Item Removal		1	LSUM	\$ -	\$ -	
	<b>ACCT. # 4451-5-000-4390912</b>						
53	20-06-06-230-006.000-012	700 W Beardsley Ave.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
	<b>ACCT. # 4453-5-000-4390912</b>						
54	20-06-08-234-001.000-012	S 2nd St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
55	20-06-09-426-035.000-012	York St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	

56	20-06-09-428-007.000-012	1526 Elgin St.				
57	20-06-09-428-006.000-012	Elgin St.				
58	20-06-09-428-008.000-012	Elgin St.				
59	20-06-09-428-009.000-012	Elgin St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
60	20-06-09-326-008.000-012	1536 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
61	20-06-09-333-015.000-012	1621 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
62	20-06-09-383-019.000-012	1710 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
63	20-06-09-378-013.000-012	S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
64	20-06-09-378-014.000-012	S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -
65	20-06-16-276-012.000-012	2306 S Main St.				
66	20-06-16-276-011.000-012	S Main St.				
67	20-06-16-276-013.000-012	S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	3	LSUM	\$ -	\$ -
68	20-06-22-251-006.000-011	3500 S Main St.				
		Mowing	1	LSUM	\$ -	\$ -
		Leaf Removal	1	LSUM	\$ -	\$ -
		Snow Removal	1	LSUM	\$ -	\$ -

69	20-06-22-251-007.000-011	3502 S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
70	20-06-22-251-010.000-011	3508 S Main St.					
71	20-06-22-251-009.000-011	S Main St.					
72	20-06-22-251-011.000-011	S Main St.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	3	LSUM	\$ -	\$ -	
73	20-06-09-335-008.000-012	1701 Sterling Ave.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
74	20-06-09-406-007.000-012	Sterling Ave.					
		Mowing	1	LSUM	\$ -	\$ -	
		Leaf Removal	1	LSUM	\$ -	\$ -	
		Snow Removal	1	LSUM	\$ -	\$ -	
75	Large Item Removal		1	LSUM	\$ -	\$ -	
	<b>Total</b>						<b>\$ -</b>

RESOLUTION NO. 24-R- 077

RESOLUTION OF THE REDEVELOPMENT COMMISSION  
OF THE CITY OF ELKHART, INDIANA, APPROVING EMPLOYMENT  
OF CONSULTANT TO PROVIDE COLLABORATIVE ASSISTANCE  
ON MUSIC TOWN PROGRAM AND APPROPRIATING FUNDS

WHEREAS, The Commission has received and reviewed the attached Collaboration Agreement with Juke Technologies, Inc (“Juke”) to provide administrative services to develop and run the Music Town Program (the “Program”) within the City of Elkhart as set forth in the Contract (the “Services”); and

WHEREAS, the Commission finds that the Program will enhance, improve and further the economic development and quality of life projects and goals within the established Development and TIF Areas of the City; and

WHEREAS, the Commission believes it is in the best interest of the City and its inhabitants that Juke be employed to perform the Services and the funds be appropriated to cover the cost.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the employment of Juke at a fee not to exceed \$125,000.00 to perform the Services.
2. The Commission approves the form of Collaboration Agreement attached hereto and authorizes its execution.

The Commission appropriates the sum of \$125,000.00 to be allocated among and charged in shares to each established Allocation Area to cover the cost of the Services, as follows: 30% of the total cost shall be charged to the Downtown Allocation Area No. 1, 30% of the total cost shall be charged to the Consolidated South Elkhart Allocation Area, 30% of the total cost shall be charged to the Cassopolis Street Allocation Area, 5% of the total cost shall be charged to the Aeroplex Allocation Area and 5% of the total cost shall be charged to the Technology Park Allocation Area.

3. The Officers of the Commission are hereby authorized to do all acts and execute all agreements which they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE AT ITS PUBLIC MEETING THIS 10th DAY OF DECEMBER, 2024.

**CITY OF ELKHART, REDEVELOPMENT  
COMMISSION**

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Dina Harris, Secretary

## COLLABORATION AGREEMENT

This Collaboration Agreement (this “**Agreement**”) is entered into as of November \_\_, 2024 (the “**Effective Date**”) by and between Juke Technologies, Inc., a Delaware corporation (“**Juke**”) and the City of Elkhart, Indiana, Department of Redevelopment, acting by and through its Redevelopment Commission (the “**City**”). Juke and the City are individually referred to herein as a “**Party**,” and collectively as the “**Parties**”. Capitalized terms used herein are defined in Section 11.

In consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

### 1. Collaboration; Appointment.

a. Appointment. The Parties have identified the opportunity to collaborate with one another in order to provide an enriching program designed to foster community vibrancy and growth by leverage the Juke Platform to administer the Music Town Program within the greater Elkhart Economic Area. As such, the City desires to appoint Juke as the Administrator of Music Town, and Juke desires to accept from the City the appointment as the Administrator of Music Town on the terms and subject to the conditions set forth in this Agreement. Throughout the Term, each Party shall use reasonable efforts to endorse and promote Music Town, as well as to refer, introduce, and direct potential Sponsors to help subsidize and develop the Music Town Program.

b. Promotion and Marketing. Juke shall be responsible for preparing the marketing materials as part of the Administrator Services for the promotion and advertisement of the Music Town Program (the “**Marketing Materials**”). Juke will provide the City with copies of any proposed Marketing Materials, which shall be deemed accepted for use in association with the Music Town Program, unless the City objects to any Marketing Materials (in whole or in part) within five (5) business days from receipt thereof. Juke hereby grants to the City a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free, fully-paid up right to copy and distribute the Marketing Materials solely in connection with the City’s efforts to promote and advertise the Music Town Program. Juke retains all right, title and interest in and to the Marketing Materials, and any derivative works, modifications or improvements to the Marketing Materials. The Parties shall not modify the approved Marketing

Materials unless the Parties agree in writing to such modification.

c. No Authority. Neither Party has the authority to bind the other Party to any contract, representation, warranty, understanding, act or deed concerning the other Party, or any services and products offered by the other Party. Neither Party shall make representations or warranties concerning the relationship with the other Party unless such warranty or representation is authorized in writing by the other Party. In addition, neither Party shall make any representations or warranties to any third parties with respect to the other Party’s obligations hereunder, including without limitation, concerning prices, terms or delivery, performance or delivery of such obligations, terms of payment, or conditions of sales except to the extent such representations are authorized in writing by the other Party (except as otherwise mutually agreed upon between the Parties).

d. Subcontracting. Juke may, but is not required to, subcontract the Administrator Services on a case-by-case basis (“**Subcontracting Relationship**”). Each such Subcontracting Relationship shall be established via a separate agreement negotiated by and between Juke and said subcontractor and shall be subject to the approval of the City, such approval not to be unreasonably withheld. Nothing in this Agreement shall create, or otherwise be construed to imply, an affirmative obligation on behalf of Juke to enter into a Subcontracting Relationship. The City hereby approves a Subcontracting Relationship with GigFinesse, Inc.

e. Collaboration. Each Party agrees to act in good faith and in a commercially reasonable manner to perform such functions as the Parties may mutually agree in writing, which may include

developing budgets, scope of works, protocols, specifications, timelines, milestones, schedule of activities and similar activities, in an effort to market, promote and/or administer the Music Town initiative.

f. No Obligation. City acknowledges that Juke is under no obligation to provide the Juke Platform to an End User and that the provision of Juke Platform to an End User shall be in the sole discretion of Juke.

## 2. Compensation.

a. Fees. In consideration of acting as the Administrator of Music Town, the City shall pay Juke fees in the aggregate amount of \$125,000 (“**Administrator Fees**”) as follows: 1) \$100,000 promptly after the Effective Date; and 2) \$25,000 six months after the Effective Date. Any Administrator Fees will be paid to Juke in accordance with this Section 2.

b. Promotion and Marketing Activities. Juke will promote and market Music Town by and through the Administrator Fees and otherwise at its own expense. As such, Juke shall not be entitled to any reimbursement of any additional costs or expenses incurred by Juke in connection with the Administrator Services unless expressly agreed to in writing by the City.

c. Currency. All Fees under this Agreement shall be paid in U.S. dollars, unless the Parties otherwise agree in writing.

d. Taxes. All Fees are stated exclusive of any applicable sales, use, GST, HST, PST, value-added, withholding, or similar taxes or duties, whether domestic or foreign (collectively, “**Taxes**”). Each Party is responsible for all applicable Taxes related to the Fees. Each Party shall pay to the other Party all amounts due hereunder in full without any set-off, counterclaim, deduction or withholding.

e. Books and Records. Juke shall: (i) maintain books and records in order to ensure that Fees, Taxes, receipts and expenses in connection with Juke’s performance under this Agreement are accurately recorded with reasonable detail and are based on accurate and sufficient supporting

documentation; and (ii) maintain practices and internal controls to ensure that no “off the books” accounts are created or maintained in connection with Juke’s performance under this Agreement. Unless otherwise required by applicable Law, all such books and records will be maintained by Juke for a period of two (2) years after the termination or expiration of this Agreement.

## 3. Conduct.

a. Generally. Neither Party: (i) will hold itself out as an agent, joint venturer, legal representative, or employee of the other Party, and will not otherwise suggest any affiliation with the other Party except as expressly provided herein or permitted in writing by the other Party; and (ii) will make any legal representations, guarantees or warranties of any type on behalf of the other Party or with respect to the Juke Platform, or describe the Juke Platform in a manner inconsistent with any descriptions or specifications communicated by Juke.

b. Compliance with Laws. Each Party represents and warrants that it has complied, and covenants that it shall comply, with all applicable Laws and that it has used and shall use only legitimate and ethical business practices in connection with the negotiation of, and performance of, its duties pursuant to this Agreement.

c. Anti-Corruption and Trade Compliance. Juke represents and warrants that it has not engaged in, and covenants that it and they shall refrain from, offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from: (i) any Government Official to (a) influence any act or decision of a Government Official in his or her official capacity, (b) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (c) otherwise secure any improper advantage; or (ii) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, in each case, in connection with the negotiation of, and performance of it and their duties pursuant to, this Agreement. Juke has not made a voluntary or other

disclosure to, received any notice, subpoena, request for information, or citation from, or is aware of any past or present investigation of Juke by a Governmental Authority related to alleged violations of any anti-corruption Law. Juke acknowledges that U.S. and EU trade sanction Laws are applicable to Juke and the Juke Platform and, as such, Juke represents and warrants that it is not subject to any U.S. or EU trade sanctions or economic restrictions. Juke will ensure that any subcontractors retained by Juke in connection with its performance under this Agreement expressly agree to anti-corruption and trade compliance undertakings, representations, and warranties substantially similar to the provisions set forth in this Section 3.c.

d. Non-Discrimination. The Parties shall not permit any discrimination against or segregation of any person or group of persons in connection with the performance of this Agreement by reason of race, color, religion, creed, national origin or ancestry, ethnicity, sex (including gender, pregnancy, sexual orientation, and gender identity), age, physical or mental disability, citizenship, past, current, or prospective service in the uniformed services, genetic information, union membership, or any other characteristic protected under applicable federal, state, or local law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Genetic Information Nondiscrimination Act, and any other similar laws, rules, or regulations.

e. Notice of Violation. If either Party becomes aware that it or the other Party has violated, or any employee or representative has requested that the other Party violate, any of the terms of this Section 3, said Party shall provide prompt notice to the other Party of the facts and circumstances associated with such violation or request.

#### 4. **Term and Termination.**

a. Term. Unless earlier terminated as permitted in this Agreement, this Agreement will commence on the Effective Date and will continue for an initial term of twelve (12) months (the “**Initial Term**”); thereafter, this Agreement will

automatically renew for successive twelve (12) month periods on payment terms to be negotiated and agreed to by the parties prior to the renewal, unless either party gives the other written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each, a “**Renewal Term**”) (the Initial Term and any Renewal Term(s), the “**Term**”). If the parties do not agree on payment terms for a Renewal Term prior to the expiration of the then-current Term, this Agreement shall terminate.

b. Termination for Breach. Either Party may terminate this Agreement upon ten (10) business days’ written notice in the event of a material breach of any term of this Agreement by the other Party that is not cured within such ten (10) business day period. Notwithstanding the foregoing, either Party may terminate this Agreement immediately (without the right to cure) upon notice to the other Party in the event of a breach of Section 3.

c. Effect of Termination. Upon expiration or termination of this Agreement for any reason, each Party agrees to (i) cease any activity with respect to the other Party and to return to the other Party all property of the other Party, (ii) immediately cancel, to the greatest extent possible, any third-party obligations pertaining to the Music Town Program, and (iii) within thirty (30) days after termination of this Agreement, Juke will provide the City with a written itemized statement of all work performed by it pertaining to the Music Town Program, and the costs associated, therewith, and either (x) promptly refund any recoverable costs to the City or (y) credit any recoverable costs toward another existing or future offering, at the election of the City.

d. Survival. Section 3 (Conduct), this Section 4 (Term and Termination), Section 5 (Confidential Information), Section 6 (Limitation on Liability; Indemnification), Section 7 (Audits), Section 10 (General) and Section 11 (Definitions) shall survive any expiration or termination of this Agreement. Further, except in cases of Termination for Breach pursuant to Section 4.c hereof, the obligation to pay the Referral Fees shall survive any expiration or termination of this Agreement.

5. **Confidential Information**. Each Party (the “**Receiving Party**”) agrees to hold in

confidence and not disclose to any third-party nor use for any purpose except as necessary to perform its respective obligations under this Agreement any Confidential Information received from the other Party (the “**Disclosing Party**”), except as required by law. Receiving Party shall return or certify its destruction of all Confidential Information (including all copies and extracts thereof) of Disclosing Party upon the earlier to occur of termination or expiration of this Agreement or written request by Disclosing Party. Receiving Party acknowledges that any disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or under this Agreement. Notwithstanding any other provision of this Agreement, or any non-disclosure agreement between the Parties, Receiving Party may freely disclose the existence and terms of this Agreement to any third party whenever Receiving Party considers it necessary or prudent to disclose the terms of this Agreement, including to any Governmental Authority in connection with a violation or potential violation of Section 3.

## **6. Limitation on Liability; Indemnification.**

a. Limitation on Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR DAMAGES RELATED TO LOST PROFITS, REGARDLESS OF THE FORM OF ACTION, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DAMAGES HEREUNDER IN THE AGGREGATE IN EXCESS OF THE TOTAL FEES PAID UNDER THIS AGREEMENT DURING THE 12-CONSECUTIVE MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST APPLICABLE EVENT, ACT OR OMISSION GIVING RISE TO SUCH DAMAGES. The foregoing shall not exclude or limit either

Party's liability for: (a) death or personal injury arising from negligence; (b) fraud; (c) gross negligence; or (d) willful misconduct. The limitations in this Section 6.1 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

b. Indemnification. Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold the other Party, its affiliates and its and their officers, directors, employees and agents (the “**Indemnified Party**”) harmless from and against any losses, damages, liabilities (including settlements, judgments, fines and penalties) and costs and expenses (including reasonable external attorneys' fees) of any type (collectively, “**Losses**”) arising out of or relating to a third party assertion, or an actual or threatened claim, action, suit or proceeding (collectively, “**Third Party Claim**”) in connection with Indemnifying Party's activities hereunder, including any breach of this Agreement (including Section 3) by Indemnifying Party.

c. Indemnification Procedures. If a Third Party Claim is commenced against an Indemnified Party, prompt notice thereof shall be given by the Indemnified Party to the Indemnifying Party. The failure to deliver such notice, however, shall not release the Indemnifying Party from its indemnification obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. At the Indemnifying Party's reasonable cost and expense: (i) the Indemnifying Party shall immediately take control of the defense of such Third Party Claim and shall engage attorneys reasonably acceptable to the Indemnified Party to defend such Third Party Claim; and (ii) the Indemnified Party shall cooperate with the Indemnifying Party (and its attorneys) in the defense of such Third Party Claim. The Indemnified Party may, at its own cost and expense, participate (through its attorneys or otherwise) in such defense. The Indemnifying Party shall not enter into a settlement of such Third Party Claim that does not include a full release of the Indemnified Party or involves a remedy other than the payment of money, without the Indemnified Party's written consent. If the Indemnifying Party does not assume control over the defense of such Third Party Claim as set forth herein, the

Indemnified Party may defend such Third Party Claim in such manner as the Indemnified Party may reasonably deem appropriate, at the cost and expense of the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume control of the defense of any Third Party Claim that could impose criminal liability on the Indemnified Party, and unless otherwise agreed by the Parties, the Indemnified Party shall have the right (but not the obligation) to defend such Third Party Claim, at the cost and expense of the Indemnifying Party.

7. **Audits.** Upon reasonable prior notice to Juke, Juke shall provide City and its auditors with reasonable access to, and assistance and information that they may reasonably require with respect to, Juke's books and records for purposes of auditing Juke's compliance with this Agreement (including Section 3). Upon notification that an audit identifies that Juke is not in compliance with this Agreement, Juke shall promptly correct such noncompliance no later than twenty (20) business days after such notice.

8. **Use of Name.** Subject to the limitations set forth herein, each Party shall be free to mention or otherwise use the name, logo, or Trademark of the other Party (or any abbreviation or adaptation thereof) (the "**Marks**") in any publication, press release, marketing and promotional material, or other form of publicity (collectively, "**Publication**"); provided, that it receives prior written (including email) approval of such other Party in each such instance. Notwithstanding the foregoing, Juke shall be permitted to use the City's Marks in any Publication without the prior written approval of the City to disclose, market or advertise (subject to applicable Laws, including relevant securities laws) (i) the City's collaboration with Juke as further contemplated herein, and (ii) the City's financial contribution in Music Town. The restrictions imposed by this Section 8 shall not prohibit either Party from making any disclosure identifying the other Party that, in the opinion of the disclosing Party's counsel, is required by applicable Law.

9. **Public Announcements.** Each Party and their respective affiliates shall have the right to publicly disclose the collaboration, development

and commercial information described in Exhibit C attached hereto and incorporated herein (the "**Press Release**"). The Parties have agreed upon the content of the Press Release and the release of which the Parties will coordinate in order to accomplish such release promptly upon execution of this Agreement.

## 10. General.

a. **Successors and Assigns.** This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

b. **Assignment.** Either Party may cede, delegate, and/or assign this Agreement (in whole or in part) to any of its affiliates or in connection with a merger, corporate reorganization, acquisition, change in control or similar such transaction or sale of all or substantially all of its assets or voting securities.

c. **Governing Law and Venue.** To the maximum extent permitted by law, this Agreement shall be governed by the laws of the State of Indiana and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

d. **Cumulative Remedies.** No specific remedy under this Agreement shall limit a Party's right to exercise all other remedies available to such Party at law, in equity or under this Agreement, and all such remedies shall be cumulative.

e. **Severability.** If a provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement shall remain in full force and effect, except to the extent such remaining provisions are not capable of substantial performance as a result of such holding.

f. **Notice.** Any notice under this Agreement shall be given in writing and shall be deemed

effective to the Party to be notified: (i) upon confirmed receipt by personal delivery; (ii) one (1) business day following deposit for delivery with any internationally recognized overnight courier; or (iii) three (3) business days after deposit with a nationally recognized mail carrier with packaging tracking capability, sent by certified mail with return receipt requested. Notice shall be addressed to each Party at the location specified on the signature page to this Agreement (as may be updated by either Party upon written notice to the other Party).

g. Entire Agreement. This Agreement, together with the Exhibits, constitutes the complete agreement between the Parties and supersedes all previous agreements or representations, whether written or oral, with respect to the subject matter set forth herein.

h. Amendment and Waiver. This Agreement may not be modified except in a writing duly executed by the Parties. Any waiver must be in writing signed by the Party claimed to have waived.

i. Counterparts and Electronic Signature. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement and any amendments hereto, to the extent signed and delivered by electronic means (e.g., facsimile or email), shall be treated in all respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

j. Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and each Party intends that this Agreement shall not benefit, or create a right or cause of action in or on behalf of, any person or entity other than the Parties, their permitted successors and assigns, and with respect to Section 6, the Indemnified Parties.

k. Independent Contractor. It is the express intention of the Parties that each Party is an independent contractor of the other Party and not an

employee, agent, joint venture or partner of the other Party. Nothing in this Agreement shall be read as creating the relationship of employer and employee between either Party. For the avoidance of doubt, neither Party is entitled to participate in any benefits provided by the other Party, including its pension plans, bonus, stock or similar benefits that it makes available to its employees.

l. Interpretation. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires. In this Agreement, references to "day" refers to a calendar day, unless otherwise indicated. In this Agreement, references to Sections or Exhibits shall be to Sections of, or Exhibits to, this Agreement, unless otherwise indicated. The word "will" shall be construed to have the same meaning and effect as the word "shall" The term "or" is not exclusive. The headings in this Agreement will not be referred to in connection with the construction or interpretation of this Agreement. This Agreement is in the English language only, which language shall be controlling in all respects, and all notices under this Agreement shall be in the English language.

m. Certificate of Compliance. Attached hereto as Exhibit D is Juke's signed Certificate of Compliance, which is incorporated herein by reference. Juke agrees that all Subcontracting Relationships shall include a substantially similar Certificate of Compliance.

11. **Definitions**. For the purposes herein, the following definitions shall apply:

"**Administrator**" means the Party appointed to provide the Administrator Services in accordance with the terms and conditions set forth under this Agreement.

"**Administrator Services**" means the provision of certain technology, managerial and administrative

services in furtherance of the Music Town Program, including those services set forth on Exhibit A attached hereto and incorporated herein.

“**Administrator Fees**” has the meaning set forth in Section 2.a.

“**Anything of Value**” means anything of value, including cash or a cash equivalent (including "grease", "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

“**Confidential Information**” means any and all technology, know-how, business information and other material of any type, which is either marked confidential at the time of disclosure or which from the context of its disclosure or the nature of the information itself should reasonably be understood to be confidential information, including the terms and conditions of this Agreement.

“**Elkhart Economic Area**” means the geographical location encompassing the city of Elkhart, Indiana, and the surrounding townships encompassing Elkhart County, Indiana.

“**End User**” means any person or entity who is authorized by Juke to access and use the Juke Platform under the rights granted to End User pursuant to the agreement(s) governing the rights, obligations and restrictions associated with the access and use of the Juke Platform.

“**Governmental Authority**” means a U.S. or non-U.S. multinational, national, regional, federal, state, municipal, local, territorial, provincial or other governmental department, regulatory authority, commission, board, bureau, agency, ministry, self-regulatory organization or legislative, judicial or administrative body, including any other entities funded in whole or in part by any of the foregoing.

“**Government Official**” means: (1) any official or employee of any multinational, national, regional, territorial, provincial or local government in any country, including any official or employee of any government department, agency, commission, or division; (2) any official or employee of any government-owned or - controlled enterprise; (3)

any official or employee of any public educational, scientific, or research institution; (4) any political party or official or employee of a political party; (5) any candidate for public office; (6) any official or employee of a public international organization; or (7) any person acting on behalf of or any relatives, family, or household members of any of those listed above.

“**Indemnified Party**” has the meaning set forth in Section 6.b.

“**Indemnifying Party**” has the meaning set forth in Section 6.b.

“**Initial Term**” has the meaning set forth in Section 4.a.

“**Juke Platform**” means the web-based software platform that provides certain End Users with an enhanced interactive experience during live performances at designated venue locations, and any related websites, apps, online services and content of Juke, as may be modified by Juke from time to time.

“**Laws**” means all applicable local, state, provincial, territorial, federal and international laws, regulations, rules and conventions, including those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

“**Losses**” has the meaning set forth in Section 6.b.

“**Marks**” has the meaning set forth in Section 8.

“**Marketing Materials**” has the meaning set forth in Section 1.b.

“**Music Town**” or “**Music Town Program**” means the community-based program designed to sponsor a series of live music events to better integrate the artistic musical community with the greater community to foster a vibrant atmosphere that celebrates diversity, inclusion, small businesses, tourism, and engagement, in furtherance of the Core Objectives set forth on Exhibit B attached hereto and incorporated herein.

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

**“Press Release”** has the meaning set forth in Section 9, as further described in Exhibit C attached hereto and incorporated herein.

**“Publication”** has the meaning set forth in Section 8.

**“Renewal Term”** has the meaning set forth in Section 4.a.

**“Sponsor”** means any person or entity who agrees to, directly or indirectly, provide Anything of Value

in support and furtherance of the Music Town Program.

**“Subcontracting Relationship”** has the meaning set forth in Section 1.d.

**“Taxes”** has the meaning set forth in Section 2.d.

**“Term”** has the meaning set forth in Section 4.a.

**“Third Party Claim”** has the meaning set forth in Section 6.b.

The remainder of this page is intentionally left blank; signature page follows.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**JUKE TECHNOLOGIES, INC.**

**THE CITY OF ELKHART, INDIANA,  
DEPARTMENT OF REDEVELOPMENT**

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

By: \_\_\_\_\_

Name: Sandra Schreiber

Title: President, Redevelopment Commission

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

## Exhibit A

### **Administrator Services:**

During the Term, Juke shall be responsible for providing and administering the following Administrator Services in furtherance of, and in connection with, the procurement, recruitment, management, administration, and support of the Music Town Program:

- 1. Technology Implementation:**
  - Provide the Juke Platform free of charge to end users (e.g. venues, local artists, etc.), subject to their respective compliance with Juke's then-standard terms and conditions governing the use and access of the Juke Platform.
  - Market, recruit, and onboard venues and businesses located within the Elkhart Economic Area onto the Juke Platform.
  - Market, recruit, and facilitate promotion and rebate initiatives with retail partners located within the Elkhart Economic Area.
- 2. Show Curation and Booking:**
  - Conduct market research and audience surveys to identify and implement community preferences.
  - Source, procure, and secure engagements with artistic musical talent (i.e. musicians, bands, instrumentalists, etc.) by (i) engaging local talent, as well as (ii) soliciting talent from outside the region to perform in the Elkhart Economic Area.
  - Work with venues located within the Elkhart Economic Area to secure, coordinate, and schedule Music Town events by leveraging (in part) the Juke Platform.
  - Work with the City to leverage sponsorship commitments to serve the diverse needs of community members located within the Elkhart Economic Area.
- 3. Marketing and Promotion:**
  - Develop a targeted marketing campaign leveraging the Juke Platform, social media channels, and local partnerships to promote, foster and encourage community participation in the Music Town Program.
  - Collaborate with regional tourism agencies, committees, and organizations to foster greater tourism to the Elkhart Economic Area.
  - Engage local media outlets and community groups to promote Music Town events.
- 4. Artist Development:**
  - Identify and provide booking support to emerging artistic musical talent.
  - Provide community engagement opportunities for artistic musical talent in an effort to better integrate the arts with community and business partners.
- 5. Community Engagement:**
  - Encourage feedback and input from community members located within the Elkhart Economic Area via surveys and questionnaires.
  - Facilitate periodic meetings with community stakeholders located within the Elkhart Economic Area to brainstorm unique and creative events for the Music Town Program.
- 6. Data Collection and Analysis:**
  - Track attendance, spending, and fan engagement through the Juke Platform.
  - Work with the City to generate periodic reports to measure the economic and social impact of Music Town Program.
  - Leverage data insights and extrapolations to refine programming and marketing strategies.

The Parties acknowledge that the Administrator Services require unique skills that the City does not currently possess and that the City is retaining Juke because it can provide such skills. Juke will provide periodic reports and consultation to the City concerning the Administrator Services at such times as the City reasonably requests. Subject to the requirements set forth above and those other provisions of this Agreement that apply to the times and manner of performing the Administrator Services, Juke will have the discretion to determine the manner in which it performs the Administrator Services and the time or times at which it performs the Administrator Services.

## Exhibit B

### **Music Town: Core Objectives**

- **Enhance Community Events:** Offer needle-moving event sponsorships that bring elements of novelty to the Elkhart Economic Area.
- **Boost Local Economy:** Drive economic growth by attracting visitors and encouraging spending at local businesses located within the Elkhart Economic Area.
- **Promote Cultural Engagement:** Increase community participation in cultural events and support for local venues and artistic musical talent within the Elkhart Economic Area.
- **Enhance Community Livability:** Improve the quality of life for residents located in the Elkhart Economic Area by providing more robust and diverse entertainment options.
- **Foster Talent Development:** Offer platforms for emerging and/or local artistic musical talent to showcase their talents and gain recognition.

**Exhibit C**

**Press Release**

[attached]

## Exhibit D

### **Certificate of Compliance**

Juke Technologies, Inc. ("Contractor") affirms to the City of Elkhart, Indiana, ("City") under the penalties of perjury:

#### E-VERIFY REQUIREMENT:

1. All terms defined in Indiana Code 22-5-1.7 *et.seq.* apply hereto.
2. Contractor shall enroll in and verify the work eligibility status of all its newly hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement.
3. Contractor does not knowingly employ an unauthorized alien.
4. Any subcontractor under this Agreement shall be required to certify by affidavit that it does not knowingly employ or contract with unauthorized aliens, and it has enrolled and is participating in the E-Verify program. Contractor shall maintain a copy of such certification for the duration of each subcontract.
5. Contractor and any Subcontractors shall have 30 days after notice of any violation of these terms to cure the same ("Cure Period"). Should the violation not be remedied within the Cure Period, City shall have the right to terminate this Agreement without liability to Contractor or Subcontractor.
6. The E-Verify requirements will not apply should the E-Verify program cease to exist.

#### ANTI-IRAN INVESTMENT REQUIREMENT

Contractor certifies that it is not now engaged in investment activities in the Country of Iran and it understands that providing a false certification could result in fines, penalties, and civil action against it.

#### TITLE VI POLICY

Contractor acknowledges receipt of the following Title VI Policy:

The City of Elkhart, Indiana (Elkhart) is committed to a policy of inclusiveness, fairness, and accessibility of its programs, activities and services to all persons in Elkhart. As provided by Title VI of the Civil Rights Act of 1964 and all related statutes, Elkhart assures that no person shall, on the on the grounds religion, race, color, national origin, sex, age, disability/handicap, sexual orientation, gender identity, limited English proficiency, or low income status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any City of Elkhart program, activity or service. The City of Elkhart further assures every effort will be made to ensure non-discrimination in all of its programs, activities, and services, whether those programs, activities and services are federally funded or not. In the event the City of Elkhart distributes Federal aid funds to another entity, the City of Elkhart will include Title VI language in all written agreements.

The Title VI Coordinator is: \_\_\_\_\_

Title VI Coordinator

Voice: (574) 294-5471

City of Elkhart

Fax: (574) 293-7658

229 S. 2nd Street

TDD: (574) 389-0198

Elkhart, Indiana 46516

Email: [titleviordinator@coei.org](mailto:titleviordinator@coei.org)

Dated: \_\_\_\_\_, 20\_\_.

CONTRACTOR:

\_\_\_\_\_

RESOLUTION NO. 24-R-084

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA, APPROVING LEASE FORM FOR LOTS 1, 3, 5 AND 6 IN WOODLAND CROSSING

Whereas, the Commission has purchased Lots 1,3,5 and 6 in the recorded Plat of Woodland Crossing (the "Property"), and desires to establish a standard form of Tenant Lease for future tenants of the leasable spaces; and

Whereas, the Commission has reviewed the attached form of Lease and finds the same acceptable.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the attached form of Lease as the basic form to be used for all future leases on the Property, subject to revision as needed to satisfy market conditions.
2. The Officers of the Commission are hereby authorized to do all acts which they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE ON THE 10th DAY OF DECEMBER 2024.

CITY OF ELKHART, REDEVELOPMENT COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Dina Harris, Secretary

**COMMERCIAL LEASE AGREEMENT**

between

**City of Elkhart, Department of Redevelopment**  
(Landlord)

and

« (Tenant Name) »  
(Tenant)

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**COMMERCIAL LEASE AGREEMENT**

*[Throughout this Lease, complete all blanks and check all boxes that apply. Blanks not completed and boxes not checked do not apply.]*

For good and valuable consideration, the parties to this Commercial Lease Agreement (the “Lease”) agree as follows:

**DEFINED TERMS**

As used in this Lease, the terms set forth in this **Article One** have the following meanings:

**1.01 Effective Date.**

The last date beneath the signatures of Landlord and Tenant on this Lease.

**1.02 Landlord.**

Landlord: City of Elkhart, Department of Redevelopment  
Address: 201 South Second Street, Elkhart, IN 46516  
Telephone: (574) 322-4472 Fax: \_\_\_\_\_  
Email: mary.kaczka@coei.org

**1.03 Tenant.**

Tenant: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**1.04 Premises.**

*[Include Suite or Unit No., if applicable]*

- A. Building Name: Woodland Crossing Shopping Center
- B. Street Address: 148 W. Hively, Suite 5, Elkhart, IN 46516  
In Elkhart County, Indiana
- C. Legal Description: The property on which the premises are situated is described as: Woodland Crossing Lot 5 (TIF 117) and Woodland Crossing Lot 6 (TIF 117) and may be

more particularly described on the attached Exhibit A, *Survey or Legal Description* (the “Property”). The term “Property” includes the land described on Exhibit A, and any improvements on the land (including the Premises).

D. Floor Plan or Site Plan. Being a floor area of approximately \_\_\_\_\_ square feet, or a land area of approximately \_\_\_\_\_ square feet approximately \_\_\_\_\_, and being more particularly shown in outline form on the attached Exhibit B, *Floor Plan or Site Plan*.

E. Tenant’s Pro Rata Share. ( ) %

**1.05 Term.**

( ) ( ) years and zero (0) months beginning on ( ) (the “Commencement Date”), and ending on **December 31, ( )** (the “Expiration Date”). Unless the context requires otherwise, references in this Lease to the “Term” include any renewal or extension of this Lease. [See **Addendum A**, *Renewal Options*, if applicable.]

**1.06 Base Rent.**

Base Rent is due and payable in monthly installments during the Term of this Lease as set forth in this Section. Base Rent and all other sums due or payable by Tenant to Landlord under this Lease are collectively referred to in this Lease as the “Rent.”

**Base Rent Payment Schedule**

On or before the first day of each month during the Term of this Lease, Tenant shall pay monthly installments of Base Rent as follows:

Dates	Monthly Base Rent
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ .

*[Rent for any Renewal Term is determined pursuant to a separate Addendum, if applicable, and should not be set forth here.]*

**1.07 Percental Rental Rate.**

N/A% [See **Addendum D**, *Percentage Rental and Gross Sales Reports*, if applicable].

1.08 **Security Deposit.**

\$  (due upon execution of this Lease). [See **Section 3.04**]

1.09 **Expense Reimbursements.**

A. Tenant shall pay Landlord as additional Rent (or pay the charges directly to the service provider, if applicable) the following expenses (or a portion of the expenses, if applicable) (each an “**Expense Reimbursement**” and collectively the “**Expense Reimbursements**”) that are incurred by or assessed against the Premises (as each of these terms is defined in this Lease). [Check all boxes that apply:]

- Real Estate Taxes;
- Insurance Premiums;
- Common Area Maintenance (CAM) Expenses;
- Operating Expenses;
- Roof and Structural Maintenance Expenses;
- Electricity;
- Cable;
- Gas;
- Internet Access;
- Water;
- Sewer;
- Telephone;
- Trash Removal; and
- All Other Utilities

B. Expense Definitions.

1. *Real Estate Taxes.* “**Real Estate Taxes**” means all general real estate taxes, ad valorem taxes, general and special assessments, parking surcharges, rent taxes, and other similar governmental charges levied against or applicable to the Property payable during each calendar year.

2. *Insurance Premiums.* “**Insurance Premiums**” means all Landlord’s Insurance premiums attributable to the Property, including but not limited to insurance for fire, casualty, general liability, property damage, medical expenses, extended coverage, and loss of rents coverage for up to twelve (12) months’ Rent.

3. *Common Area Maintenance Expenses.* “**Common Area Maintenance**” or “**CAM Expenses**” shall have the same meaning set forth in the Declaration of Covenants, Conditions, and Restrictions recorded June 2, 2023, as Doc. 2023-08680, as amended by the First Amendment thereto recorded November 1, 2023, as Doc. 2023-18329, and by the Second Amendment thereto recorded on January 19, 2024, as Doc. 2024-01025, in the

office of the Recorder of Elkhart County Indiana, as the same may be further amended from time to time, including, without limitation, all costs of maintenance, inspection and repairs of the Common Areas of the Property, including, but not limited to, those costs for security, lighting, painting, cleaning, decorations and fixtures, utilities, ice and snow removal, parking lot maintenance and repair, trash disposal, project signs, roof repairs, pest control, project promotion expenses, property owners' association dues, wages and salary costs of maintenance personnel, and other expenses benefitting the Property that may be incurred by the Landlord, in its discretion, including sales taxes and reasonable service charge for the administration thereof. The term "**Common Areas**" is defined as that part of the Property intended for the collective use of all the tenants including, but not limited to, the parking areas, driveways, loading areas, landscaping, gutters and downspouts, plumbing, electrical systems, HVAC systems, roof, exterior walls, sidewalks, malls, promenades (enclosed or otherwise), meeting rooms, doors, windows, corridors, and public restrooms. CAM Expenses do not include the cost of capital improvements, real estate brokers' fees, advertising of space for lease, or interest or depreciation on capital investments.

4. *Operating Expenses.* "**Operating Expenses**" means all costs of ownership, building management, maintenance, repairs and operation of the Property, including but not limited to roof and structural maintenance, Real Estate Taxes, Insurance Premiums, CAM Expenses, reasonable management fees, wages and salary costs of building management personnel, overhead and operational costs of a management office, janitorial, utilities, and professional services such as accounting and legal fees. Operating Expenses do not include the cost of capital improvements, the cost of management, office, equipment and furnishings, depreciation on Landlord's original investment, the cost of tenant improvements, real estate brokers' fees, advertising of space for lease, or interest or depreciation on capital investments.

5. *Roof and Structural Maintenance Expenses.* "**Roof and Structural Maintenance Expenses**" means all costs of maintenance, repair and replacement of the roof, roof deck, flashings, skylights, foundation, floor slabs, structural soundness of the building in general.

6. *Utilities.* "**Utilities**" means charges for electricity, cable, gas, Internet access, water, sewer, telephone, trash removal, and any other services that are commonly understood to be utilities, including connection charges.

C. Expense Reimbursement Limitations. The amount of Tenant's Expense Reimbursement will be determined by one of the following methods as described and defined below, *[check only one]*:

- Base Year Adjustment;
- Expense Stop Adjustment;
- Pro Rata Adjustment;
- Fixed Amounts; or
- Net Lease

D. Expense Reimbursement Limitation Definitions.

1. *Base Year Adjustment.* If “**Base Year Adjustment**” has been checked above, Tenant shall pay to Landlord as additional Rent Tenant’s Pro Rata Share of increases in the applicable expenses (those checked in Section 1.09A, above) for the Property for any calendar year during the Term or during any Extension of this Lease, over such amounts paid by Landlord or the Base Year N/A (the “**Base Year**”).

2. *Expense Stop Adjustment.* If “**Expense Stop Adjustment**” has been checked above, Tenant shall pay to Landlord as additional Rent Tenant’s Pro Rata Share of increases in the applicable expenses (those checked in Section 1.09A, above), for the Property for any calendar year during the Term or during any Extension of this Lease over \$ N/A per square foot of floor area (as set forth in Section 1.04D) per year.

3. *Pro Rata Adjustment.* If “**Pro Rata Adjustment**” has been checked above, Tenant shall pay to Landlord as additional Rent Tenant’s Pro Rata Share of the total amount of the applicable expenses (those checked in Section 1.09A above) for every calendar year during the Term and during any extension of this Lease.

4. *Fixed Amounts.* If “**Fixed Amounts**” has been checked above, Tenant shall pay to Landlord as additional Rent the following monthly amounts (regardless of whether they have been checked in Section 1.09A above) as Tenant’s Expense Reimbursements to Landlord for the following expenses that are incurred by or assessed against the Property:

Real Estate Taxes	\$	N/A	per month
Insurance Premiums	\$	N/A	per month
CAM Expenses	\$	N/A	per month
Operating Expenses	\$	N/A	per month
Roof & Structural Maintenance Expenses	\$	N/A	per month
Electricity	\$	N/A	per month
Cable	\$	N/A	per month
Gas	\$	N/A	per month
Internet Access	\$	N/A	per month
Water	\$	N/A	per month
Sewer	\$	N/A	per month
Telephone	\$	N/A	per month
Trash Removal	\$	N/A	per month
All Other Utilities	\$	N/A	per month

5. *Net Lease.* If “**Net Lease**” has been checked above, then notwithstanding anything contained in this Lease to the contrary in Section 6.02, Article Seven, or otherwise, Tenant shall be responsible for paying Tenant’s Pro Rata Share of all costs of compliance with laws, ownership, maintenance, repairs, replacements, operation of the Premises, and operation of the Property, including but not limited to all costs of Real Estate Taxes, Insurance Premiums, Common Area Maintenance Expenses, Operating Expenses, Roof and Structural Maintenance Expenses, and all Utilities (regardless of whether they

have been checked in Section 1.09A above).

E. First Payment. The sum of the Monthly Base Rent for the first month of the Term for which Base Rent is due (which may be later than the first month of the Term, if there is a free rent period), and the initial estimated monthly Expense Reimbursement payments (before adjustments) is set forth below. Upon the execution of this Lease, in addition to the Security Deposit, Tenant shall pay the first monthly payment in the sum of the amounts set forth below.

Initial Monthly Base Rent	\$ ( ) )
Real Estate Taxes	\$ ( ) )
Insurance Premiums	Included in \$ ( ) ) above
CAM Expenses	Included in \$ ( ) ) above
Operating Expenses	Included in \$ ( ) ) above
Roof & Structural Maintenance Expenses	Pd by Tenant
Electricity	Pd by Tenant
Cable	Pd by Tenant
Gas	Pd by Tenant
Internet Access	Pd by Tenant
Water	Pd by Tenant
Sewer	Pd by Tenant
Telephone	Pd by Tenant
Trash Removal	Pd by Tenant
All Other Utilities	Pd by Tenant
<b>Total</b>	<b>\$ ( ) )</b>

*[Complete the amount of the first Base Rent payment to be due, as well as estimated amounts of any other monthly payments that start at the beginning of the Term of this Lease. Put N/A or strikethrough the rest. Any estimated amounts are subject to adjustment pursuant to other provisions of this Lease. If any expense payments are not due at the beginning of the Term, they may begin later in the Term pursuant to other provisions of this lease.]*

F. Expense Reimbursement Payments. Tenant agrees to pay any end-of-year lump sum Expense Reimbursement within thirty (30) days after receiving an invoice from Landlord. Any time during the Term, Landlord may direct Tenant to pay monthly an estimated portion of the projected Future Expense Reimbursement amount. Any such payment directed by Landlord will be due and payable monthly on the same day that the Base Rent is due. Landlord may, at Landlord's option and to the extent allowable by law, impose a Late Charge on any Expense Reimbursement payments that are not actually received by Landlord on or before the due date, in the amount and manner set forth in Section 3.03 of this Lease. Any Expense Reimbursement relating to partial calendar years will be prorated accordingly. If Tenant's Pro Rata Share is not expressed in Section 1.04E of this Lease, Tenant's proportionate share of the Expense Reimbursements shall be determined by a fraction, the numerator of which shall be the number of

square feet of floor space in the Premises and the denominator of which shall be the number of square feet of the gross leasable floor space in all the buildings now or hereafter on Landlord's Property. Tenant may audit or examine those items of expense in Landlord's records that relate to Tenant's obligations under this Lease. Landlord shall promptly refund to Tenant any overpayment that is established by an audit or examination. If the audit or examination reveals an error of more than five percent (5%) over the figures billed to the Tenant, Landlord shall pay the reasonable cost of the audit or examination.

G.  **Gross-Up Provisions.** *[Check this only if applicable.]* If the Property is a multi-tenant building and is not fully occupied during the Base Year or any portion of the Term, an adjustment will be made in computing the variable costs for the Base Year and each applicable calendar year of the Term. Variable costs will include only those items of expense that vary directly proportionately to the occupancy of the Property. Variable costs that are included in the CAM Expenses, Operating Expenses, and Utilities will be increased proportionately to the amounts that, in Landlord's reasonable judgment, would have been incurred had ninety-five percent (95%) of the useable area of the Property been occupied during those years.

1.10 **Permitted Use.**

\_\_\_\_\_  [See **Section 6.01**].

1.11 **Payment Delivery.**

**The party to whom Tenant is to deliver payments under this Lease** is the Landlord, unless one of the following boxes is checked, in which case Tenant shall deliver payments to:  **Principal Broker**, or  **Other** *[Set forth name and address, if other than Landlord or Principal Broker]:*

City of Elkhart, Redevelopment Department, 229 S. Second Street, Elkhart, IN 46516  
EFT payments can be set up through the City of Elkhart Controller's Office

1.12 **Principal Broker.**

\_\_\_\_\_  is acting as the agent for Tenant exclusively, unless one of the following boxes is checked, in which case Principal Broker is acting as:  the agent for Tenant exclusively, or  an intermediary.

Principal Broker's Address:  \_\_\_\_\_   
Telephone:  \_\_\_\_\_   
Fax:  \_\_\_\_\_   
Email:  \_\_\_\_\_

1.13 **Cooperating Broker.**

\_\_\_\_\_  is acting as the agent for Tenant exclusively, unless one of the following boxes

is checked, in which case Cooperating Broker is acting as:  the agent for Landlord exclusively, or  an intermediary.

Cooperating Broker's Address:   
Telephone:   
Fax:   
Email:

**1.14 The Professional Service Fee (the "Fee").**

The percentages applicable to leases will be  percent (%) of the Base Rent to Managing Partner and N/A% of the Base Rent to Cooperating Broker.

**1.15 Disclosure of Dual Capacity as Broker and Principal [Complete if applicable]**

A. N/A is a licensed Indiana real estate broker and is acting in a dual capacity as broker for Landlord and as principal in this transaction, as he or she may be Landlord (or one of the owners of Landlord).

B. N/A is a licensed Indiana real estate broker and is acting in a dual capacity as broker for Tenant and as a principal in this transaction, as he or she may be Tenant (or one of the owners of Tenant).

**1.16 Exhibits and Addenda.**

Any exhibit or addendum attached to this Lease (as indicated by the boxes checked below) is incorporated as part of this Lease. Any term not specifically defined in an Addendum will have the same meaning given to it in the body of this Lease.

- Exhibit "A" Survey and/or Legal Description of Property
- Exhibit "B" Floor Plan and/or Site Plan
- Exhibit "C" Information about Brokerage Services
- Exhibit "D" Other: \_\_\_\_\_
- Addendum "A" Renewal Options
- Addendum "B" Construction of Improvements by Landlord
- Addendum "C" Construction of Improvements by Tenant
- Addendum "D" Percental Rental and Gross Sales Reports
- Addendum "E" Right of First Refusal for Additional Space
- Addendum "F" Guaranty
- Addendum "G" Rules and Regulations
- Addendum "H" Rooftop Lease
- Addendum "I" Parking

- Addendum “J”      Additional Provisions Addendum
- Addendum “K”      Other: \_\_\_\_\_

**ARTICLE TWO      LEASE AND TERM**

**2.01      Lease of Premises for Term.**

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term stated in **Section 1.05**. The Commencement Date is the date specified in **Section 1.05**, unless advanced or delayed under any provision of this Lease.

**2.02      Delays in Commencement.**

Landlord will not be liable to Tenant if Landlord does not deliver possession of the Premises to Tenant on the Commencement Date specified in **Section 1.05** above. Landlord’s non-delivery of possession of the Premises to Tenant on the Commencement Date will not affect this Lease or the obligations of Tenant under this Lease. However, the Commencement Date will be delayed until possession of the Premises is delivered to Tenant. The Term will be extended for a period equal to the delay in delivery of possession of the Premises to Tenant, plus the number of days necessary for the Term to expire on the last day of a month. If Landlord does not deliver possession of the Premises to Tenant within sixty (60) days after the Commencement Date specified in **Section 1.05**, Tenant may cancel this Lease by giving a written notice to Landlord at any time after the 60-day period ends, but before Landlord actually delivers possession of the Premises to Tenant. If Tenant gives such notice, this Lease will be canceled effective as of the date of its execution, any prepaid amounts will be reimbursed to Tenant, and no party will have any rights or obligations under this Lease. If Tenant does not give such notice within the time specified, Tenant will have no right to cancel this Lease, and the Term will commence upon the delivery of possession of the Premises to Tenant. If delivery of possession of the Premises to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the revised Commencement Date and Expiration of the Term.

**2.03      Early Occupancy.**

If Tenant occupies the Premises before the Commencement Date, Tenant’s occupancy of the Premises will be subject to all of the provisions of this Lease. Early occupancy of the Premises will not advance the Expiration Date. Unless otherwise provided in this Lease, Tenant shall pay Base Rent and all other charges specified in this Lease for the period of occupancy.

**2.04      Holding Over.**

Tenant shall vacate the premises immediately upon the expiration of the Term or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages incurred by Landlord as a result of any delay by Tenant in vacating the Premises. If Tenant does not vacate the Premises upon the expiration of the Term or earlier termination of this Lease, Tenant’s occupancy of the Premises will be a day-to-day tenancy subject to termination by

three (3) days' written notice by Landlord over all terms of this Lease.

## ARTICLE THREE RENT AND SECURITY DEPOSIT

### 3.01 Manner of Payment.

Tenant shall pay the Rent to Landlord at the address set forth in **Section 1.02**, unless another person is designated in **Section 1.11**, or to any other party or address Landlord may designate in any written notice delivered to Tenant. Landlord may designate, in a written notice delivered to Tenant, the party authorized to receive Rent and act on behalf of Landlord to enforce this Lease. Any such authorization will remain in effect until it is revoked by Landlord in a subsequent written notice delivered to Tenant. Any payments made to a third party designated by Landlord will be deemed made to Landlord when received by the designated third party. All sums payable by Tenant under this Lease, whether or not expressly denominated as Rent, will constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code and for all other purposes.

### 3.02 Time of Payment.

Upon execution of this Lease, Tenant shall pay the installment of Base Rent for the first month of the Term for which Base Rent is due (which may be later than the first month of the Term if there is a free rent period). On or before the **first day** of the next month and each month thereafter, the installment of Base Rent and other sums due under this Lease will be due and payable, in advance, without offset, deduction or prior demand. Tenant shall cause payments to be properly mailed or otherwise delivered so as to be actually received (and not merely deposited in the mail) by Landlord (or the party identified in **Section 1.11**, or any other third party designated by Landlord) on or before the due date. If the Term commences or ends on a day other than the first or last day of a calendar month, the rent for any partial calendar month following the Commencement Date or preceding the end of the Term will be prorated. Tenant shall pay any such prorated portion for a partial calendar month at the beginning of the Term on the Commencement Date. Tenant shall pay any such prorated portion for a partial calendar month at the end of the Term on the first day of that calendar month.

### 3.03 Late Charges.

Tenant's failure to promptly pay sums due under this Lease may cause Landlord to incur unanticipated costs. The exact amount of those costs is impractical or extremely difficult to ascertain. The costs may include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by any ground lease or deed of trust encumbering the Premises. Payments due to Landlord under this Lease are not an extension of credit. Therefore, if a payment under this Lease is not actually received on or before the due date (and not merely deposited in the mail), Landlord may, at Landlord's option and to the extent allowed by applicable law, impose a Late charge on any late payments in an amount equal to 10% of the amount of the past due payment (the "**Late Charge**") after the payment is more than five days past due. A Late Charge may be imposed only once on each past due payment. Any Late Charge will be in addition to Landlord's other remedies for nonpayment of Rent. If any check tendered by Tenant under this Lease is dishonored for any reason, Tenant shall pay to Landlord a dishonored check fee of \$30.00,

plus (at Landlord's option) a Late Charge as provided above until Good Funds (defined below) are received by Landlord. The parties agree that any Late Charge and dishonored check fee represent a fair and reasonable estimate of the costs Landlord will incur by reason of the late payment or dishonored check. If there are any Late Charges, dishonored check fees, installments of Base Rent, and any other unpaid charges or reimbursements due to Landlord, then Landlord may apply any payments received from Tenant to any amounts due in any order Landlord may choose. Notwithstanding the foregoing, Landlord will not impose a Late Charge as to the first late payment in any calendar year, unless Tenant fails to pay the late payment to Landlord within three business days after the delivery of a written notice from Landlord to Tenant demanding the late payment be paid. However, Landlord may impose a Late Charge without advance notice to Tenant on any subsequent late payment in the same calendar year.

### 3.04 Security Deposit.

Upon execution of this Lease, in addition to the installment of Base Rent due under **Section 3.02**, and in addition to any other amounts that are due from Tenant upon the execution of this Lease, Tenant shall deliver to Landlord a Security Deposit in the amount stated in **Section 1.08**. Landlord may apply all or part of the Security Deposit to any unpaid Rent, and damages and charges for which Tenant is legally liable under this Lease, and damages and charges that result from such a breach of this Lease, including but not limited to, the cost to cure Tenant's failure to comply with **Section 7.05** and any other provision that requires Tenant to leave the Premises in a certain condition upon the expiration or termination of this Lease. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written demand. Tenant's failure to restore the full amount of the Security Deposit within the time specified will be a default under this Lease. No interest will be paid on the Security Deposit. Landlord will not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After the expiration of this Lease, Landlord shall refund the unused portion of the Security Deposit, if any, to Tenant within sixty (60) days after the date Tenant surrenders possession of the Premises and provides a written notice to Landlord of Tenant's forwarding address for the purpose of refunding the Security Deposit. The provisions of this section will survive the expiration or termination of this Lease.

### 3.05 Good Funds Payment.

If any two or more payments by check from Tenant to Landlord for Rent are dishonored and returned unpaid, thereafter Landlord may, at Landlord's option, by the delivery of a written notice to Tenant, require that all future payments of Rent for the remaining Term of this Lease must be made by cash, certified check, cashier's check, official bank check, money order, wire transfer or automation electronic funds transfer ("**Good Funds**"), and that the delivery of Tenant's personal or corporate check will no longer constitute payment of Rent under this Lease. Any acceptance by Landlord of a payment for Rent by Tenant's personal or corporate check thereafter will not be construed as a waiver of Landlord's rights to insist upon payment by Good Funds as set forth in this Section.

## ARTICLE FOUR TAXES

### 4.01 Payment by Landlord.

Landlord shall pay the real estate taxes on the Premises during the Term, subject to reimbursement by Tenant pursuant to any other provision in this Lease.

### 4.02 Improvements by Tenant.

If the real estate taxes levied against the Premises for the year in which the Term commences are increased as a result of any additions or improvements made by Tenant, or by Landlord at the Tenant's request, Tenant shall pay to Landlord upon demand the amount of the increase and continue to pay the increase during the Term. Landlord shall use reasonable efforts to obtain from the tax assessor a written statement of the amount of the increase due to such additions or improvements.

### 4.03 Joint Assessment.

If the real estate taxes are assessed against the Premises jointly with other property that is not part of the Premises, the real estate taxes applicable to the Premises will be equal to the amount bearing the same proportion to the aggregate assessment that the total square feet of the building area included in the joint assessment. If there are no improvements on the Property or the other property, then land area will be used instead of building area for the calculation of the proportional assessment. If there are improvements on one of the jointly assessed properties but not on the other property, then the calculation of the proportional assessment must be done in a reasonable manner.

### 4.04 Personal Property Taxes.

Tenant shall pay all taxes assessed against trade fixtures, furnishings, equipment, inventory, products, or any other personal property belonging to Tenant. Tenant shall use reasonable efforts to have Tenant's property taxed separately from the Premises. If any of Tenant's property is taxed with the Premises, Tenant shall pay the taxes for the Tenant's property to Landlord within fifteen (15) days after Tenant receives a written statement from Landlord for the property taxes.

### 4.05 Waiver of Right to Protest Taxes.

Unless otherwise provided in this Lease: (i) Landlord retains the right to protest the tax assessment of the Property, and Tenant waives the right to protest; and (ii) Tenant waives Landlord's obligation to provide Tenant with a notice of the tax valuation of the Property.

## ARTICLE FIVE INSURANCE AND INDEMNITY

### 5.01 Property Insurance.

During the Term, Landlord shall maintain insurance policies covering damage to the Premises in

an amount or percentage of replacement value as Landlord deems reasonable in relation to the age, location, type of construction, and physical condition of the Premises and the availability of insurance at reasonable rates. The policies will provide protection against risks and causes of loss that Landlord reasonably deems necessary. Landlord may, at Landlord's option, obtain insurance coverage for Tenant's fixtures, equipment, and improvements in or on the Premises. Promptly after the receipt of a written request from Tenant, Landlord shall provide a certificate of insurance showing the insurance coverage then in effect. Tenant shall, at Tenant's expense, obtain and maintain insurance on Tenant's fixtures, equipment, and improvements in or on the Premises as Tenant reasonably deems necessary to protect Tenant's interest. Any property insurance carried by Landlord or Tenant will be for the sole benefit of the party carrying the insurance and under its sole control.

#### **5.02 Increase in Premiums.**

Tenant shall not conduct or permit any operation or activity, or store or use any materials, in or around the Premises that would cause suspension or cancellation of any insurance policy carried by Landlord. If Tenant's use or occupancy of the Premises causes Landlord's insurance premiums to increase, then Tenant shall pay to Landlord, as additional Rent, the amount of the increase within ten (10) days after Landlord delivers written evidence of the increase to Tenant.

#### **5.03 Liability Insurance.**

During the Term, Tenant shall maintain a commercial general liability insurance policy, at Tenant's expense, insuring Tenant against liability arising out of the use or occupancy of the Premises, and naming Landlord as an additional insured. The initial amounts of the insurance must be at least \$1,000,000 or, if the following blank is completed \$N/A for Each Occurrence, \$2,000,000, or if the following blank is completed \$N/A General Aggregate per policy year, and \$10,000 for Medical Expense. If Tenant's liability insurance coverage is less than \$5,000,000, and if this box  is checked, then Tenant must also maintain a commercial liability umbrella policy in amount to provide a combination of liability insurance coverage to equal a \$5,000,000 total limit. The coverage amounts will be subject to periodic increases as Landlord may reasonably determine from time to time. The amounts of the insurance will not limit Tenant's liability or relieve Tenant of any obligation under this Lease. The policies must contain cross-liability endorsements and must insure Tenant's performance of the indemnity provisions of **Section 5.04**. The policies must contain a provision that prohibits cancellation or modification of the policy except upon thirty (30) days' prior written notice to Landlord. Tenant shall deliver a copy of the policy or certificate of insurance to Landlord before the Commencement Date and before the expiration of the policy during the Term. If Tenant fails to maintain the policy, Landlord may elect to maintain the insurance at Tenant's expense.

#### **5.04 Indemnity.**

Landlord will not be liable to Tenant or to Tenant's employees, agents, invitees, or visitors, or to any other person for any injury to persons or damage to property on or about the Premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, subtenants, agents, licensees, or concessionaires or any other person entering the

Premises under express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of Tenant's business, or arising out of any breach or default by Tenant in the performance of Tenant's obligations under this Lease. Tenant hereby agrees to defend, indemnify and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury. Tenant will not be liable for any injury or damage caused by the negligence or misconduct of the Landlord, or Landlord's employees or agents, and Landlord agrees to indemnify and hold Tenant harmless from any loss, expense or damage arising out of such damage or injury.

#### **5.05 Waiver of Subrogation.**

Each party to this Lease waives any and every claim that arises or may arise in its favor against the other party during the Term of this Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, to the extent the loss or damage is covered by and recoverable under valid and collectible insurance policies. These mutual waivers are in addition to, and not limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties. Inasmuch as these mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party agrees to immediately give to each insurance company that has issued an insurance policy to such party written notice of the terms of such mutual waivers, and to cause the policies to be endorsed to prevent the invalidation of the insurance coverage by reason of these waivers.

### **ARTICLE SIX USE OF PREMISES**

#### **6.01 Permitted Use.**

Tenant may use the Premises only for the Permitted Use stated in **Section 1.10**. Tenant acknowledges that (i) the current use of the Premises or the improvements located on the Premises, or both, may not conform to city ordinances or restrictive covenants with respect to the permitted use, zoning, height limitations, setback requirements, minimum parking requirements, coverage ratio of improvements to land area, and other matters that may have a significant impact upon the Tenant's intended use of the Premises; (ii) Tenant has independently investigated and verified to Tenant's satisfaction the extent of any limitations or non-conforming uses of the Premises; and (iii) Tenant is not relying upon any representations of Landlord or the Brokers with respect to any such matters.

#### **6.02 Compliance with Laws.**

Tenant shall comply with all governmental laws, ordinances, and regulations applicable to the use of the Premises, and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the Premises, all at Tenant's sole expense, including any expense or cost resulting from the construction or installation of fixtures and improvements or other accommodations for handicapped or disabled persons required for the compliance with governmental laws and regulations, including but not limited to the Americans with Disabilities Act (the "ADA"). To the extent any alterations to the Premises are required by the ADA or other applicable laws or

regulations, Tenant shall bear the expense of the alterations. To the extent any alterations to areas of the Property outside the Premises are required by the ADA or other applicable laws or regulations (for “path of travel” requirements or otherwise), Landlord shall bear the expense of the alterations.

### 6.03 **Certificate of Occupancy.**

If required, Tenant shall apply for a Certificate of Occupancy from the municipality in which the Property is located before the Commencement Date, and obtain a Certificate of Occupancy before Tenant occupies the Premises. If Tenant is unable to obtain a Certificate of Occupancy after making an application and diligently pursuing it, then Tenant may terminate this Lease by delivering a written notice to Landlord, unless either Landlord or Tenant is willing and able to cure the defects that prevented the issuance of the Certificate of Occupancy. Either Landlord or Tenant may cure any such defects, at their own expense, including any repairs, replacements, or installations of any items that are not presently existing on the Premises, but neither of them have any obligation to do so (unless another provision of this Lease states otherwise). If Tenant delivers a written termination notice to Landlord under this Section, and then any defects are cured and a Certificate of Occupancy is issued within fifteen (15) days after Tenant delivered the notice, then this Lease will remain in force. If this Lease is terminated because Landlord and Tenant cannot get a Certificate of Occupancy, then Landlord will return to Tenant any prepaid rent and any Security Deposit, and the parties will have no further obligations under this Lease. References in this Lease to a “**Certificate of Occupancy**” mean a Certificate of Occupancy sufficient to allow the Tenant to occupy the Premises for the Permitted Use.

### 6.04 **Signs.**

Without the prior written consent of the Landlord, Tenant may not place any signs, ornaments, or other objects on the Premises or the Property, including but not limited to the roof or exterior of the building or other improvements on the Property, or paint or otherwise decorate or deface the exterior of the building or other improvements on the Property. Any signs installed by Tenant must conform to applicable laws, deed restrictions, and other applicable requirements. Tenant must remove all signs, decorations and ornaments at the expiration or termination of this Lease and must repair any damage and close any holes caused by installation or removal.

### 6.05 **Utility Services.**

Unless otherwise provided in this Lease, Tenant shall pay the cost of all Utilities used for the Premises, and the cost of replacing light bulbs and tubes. Unless otherwise required by law, Landlord is the party entitled to designate utility and telecommunications service providers to the Property and the Premises. Landlord may, at Landlord’s option, allow Tenant to select the provider. If Tenant selects the provider, any access or alterations to the Property or Premises necessary for the Utilities may be made only with Landlord’s prior consent, which Landlord will not unreasonably withhold or delay. If Landlord incurs any utility or connection charges that Tenant is responsible to pay and Landlord pays the charges, Tenant shall reimburse Landlord immediately upon receipt of a written notice from Landlord stating the amount of the charges.

#### **6.06 Landlord's Access.**

Landlord and Landlord's agents will have the right to, upon reasonable advance notice, and without unreasonably interfering with Tenant's business, enter the Premises: (a) to inspect the general condition and state of repair of the Premises, (b) to make repairs required or permitted under this Lease, (c) to show the Premises or the Property to any prospective tenant or purchaser, (d) for any other reasonable purpose, and (e) the negligence of the Landlord. If Tenant changes the locks on the Premises, Tenant must provide Landlord with a copy of each separate key upon Landlord's request. During the last 150 days of the Term, Landlord and Landlord's agents may erect signs on or about the Premises advertising the Premises for lease or sale.

#### **6.07 Possession.**

If Tenant pays the Rent, properly maintains the Premises, and complies with all other terms of this Lease, Tenant may occupy and enjoy the Premises for the full Term, subject to the provisions of this Lease.

#### **6.08 Exemptions from Liability.**

Landlord will not be liable for any damage to the business (including any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees or customers, or for any injury to Tenant or Tenant's employees, invitees, customers or any other person in or about the Premises, whether the damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas, or wind; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures or any other cause; (c) conditions arising on or about the Premises or other portions of the Property, or from other sources or places; or (d) any act or omission of any other occupant of the Property. The provisions of this Section will not, however, exempt Landlord from liability for Landlord's gross negligence or willful misconduct.

### **ARTICLE SEVEN PROPERTY CONDITION, MAINTENANCE, REPAIRS AND ALTERATIONS**

#### **7.01 Property Condition.**

Except as disclosed in writing by Landlord to Tenant before the execution of this Lease, to the best of Landlord's actual knowledge: (i) the Premises have no known latent structural or construction defects of a material nature; and (ii) none of the improvements to the Premises have been constructed with materials known to be a potential hazard to occupants of the Premises. Unless otherwise expressly set forth in this Lease, Landlord represents that on the Commencement Date (and for a period of thirty (30) days thereafter); (a) the fixtures and equipment serving the Premises are in good operating condition including the plumbing, electrical and lighting systems, any fire protection sprinkler system, the HVAC (defined below) systems and equipment, the roof, skylights, doors, overhead doors, windows, dock levelers and elevators; and (b) the interior of the Premises in in good condition. Tenant will have a period of thirty (30) days after the Commencement Date to inspect the Premises and notify Landlord in writing of any defects and

maintenance, repairs or replacements required to the above-named fixtures, equipment and interior. Within a reasonable period of time after the timely receipt of any such written notice from Tenant, Landlord shall, at Landlord's expense, correct the defects and perform the maintenance, repairs, and replacements.

#### 7.02 Acceptance of Premises.

Tenant has inspected, or has had an opportunity to inspect, the Premises, before the execution of the Lease. Tenant has determined that the Premises may be used for the Permitted Use. Subject to the provisions in **Section 7.01**, and any other express obligation of Landlord in this Lease to construct any improvements, make repairs, or correct defects, Tenant agrees to accept the Premises in "AS IS" condition and with all faults (other than latent defects). **TO THE EXTENT PERMITTED BY APPLICABLE LAW, TENANT WAIVES ANY IMPLIED WARRANTIES OF LANDLORD AS TO THE QUALITY OF CONDITION OF THE PREMISES OR THE PROPERTY, OR AS TO THE FITNESS OR SUITABILITY OF THE PREMISES OR THE PROPERTY FOR ANY PARTICULAR USE.**

#### 7.03 Maintenance and Repairs.

Landlord will not be required to perform any maintenance or repairs or management services, in the Premises, except as otherwise provided in this Lease. Tenant will be fully responsible, at Tenant's expense, for all maintenance and repairs, and management services, other than those that are expressly set forth in this Lease as Landlord's responsibility.

##### A. Landlord's Obligations.

1. Subject to the provisions of **Article Eight** (Damage or Destruction) and **Article Nine** (Condemnation) and except for damage caused by any act or omission of Tenant, Landlord shall keep the roof, skylights, foundation, structural components and the structural portions of exterior walls of the Premises in good order, condition and repair. Landlord will not be obligated to maintain or repair windows, doors, overhead doors, plate glass or the surfaces of walls. In addition, Landlord will not be obligated to make any repairs under this Section until a reasonable time after receipt of written notice from Tenant of the need for repairs. If any repairs are required to be made by Landlord, Tenant shall, at Tenant's sole cost and expense, promptly remove Tenant's furnishings, fixtures, inventory, equipment and other property, to the extent required to enable Landlord to make repairs. Landlord's liability under this Section will be limited to the cost of those repairs or corrections. Tenant waives the benefit of any present or future law that might give Tenant the right to repair the Premises at Landlord's expense or to terminate this Lease because of the condition.

2. All repairs, maintenance, management and other services to be performed by Landlord or Landlord's agents involve the exercise of professional judgment by service providers, and Tenant expressly waives any claims against Landlord for breach of warranty arising from the performance of those services.

B. Tenant's Obligations.

Subject to the provisions of **Section 7.01**, **Section 7.03**, **Article Eight** (Damage of Destruction), and **Article Nine** (Condemnation), Tenant shall, at all times, keep all other portions of the Premises in good order, condition, and repair (except normal wear and tear), including but not limited to maintenance, repairs and all necessary replacements of the windows, plate glass, doors, overhead doors, HVAC equipment, electrical and lighting systems, fire protection sprinkler system, dock levelers, elevators, interior and exterior plumbing, the interior and exterior of the Premises in general, pest control and extermination, down spouts, gutters, paving, railroad siding, care of landscaping and regular mowing of grass. In addition, Tenant shall, at Tenant's expense, repair any damage to any portion of the Property, including the roof, skylights, foundation, or structural components and exterior walls of the Premises, caused by Tenant's acts or omissions. If Tenant fails to maintain and repair the Property as required by this Section, Landlord may, on ten (10) days' prior written notice, enter the Premises and perform the maintenance or repair on behalf of Tenant, except that no notice is required in case of emergency, and Tenant shall reimburse Landlord immediately upon demand for all costs incurred in performing the maintenance or repair, plus a reasonable service charge.

C. HVAC Service.

This section pertains to the heating, ventilation, and air-conditioning ("HVAC") systems and equipment that service the Premises. *[Check one box only.]*

Landlord is obligated to provide the HVAC services to the Premises only during the operating hours of the Property (as described below).

Landlord will provide the HVAC services to the Premises during the operating hours of the Property (as described below) for no additional charge and will, at Tenant's request, provide HVAC services to the Premises during other hours for an additional charge of \$N/A per hour. Tenant will pay Landlord the charges under this paragraph promptly after receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services in advance.

Tenant will pay for the HVAC services under this Lease. For any HVAC system that services only the Premises, Tenant shall, at Tenant's own cost and expense, enter into a regularly scheduled preventative maintenance and service contract for all such HVAC systems and equipment during the Term. If Tenant fails to enter into such a service contract acceptable to Landlord, Landlord may do so on Tenant's behalf and Tenant agrees to pay Landlord the cost and expense thereof, plus a reasonable service charge, periodically upon demand.

D. Operating Hours of the Property.

The operating hours of the Property are the times reasonably determined by Landlord unless they are specified here. *[Specify the operating hours of the property, including the days of*

*the week, and whether Saturdays, Sundays, and holidays are included*]: **Property is open 24/7.**  
**Tenant will open**                       **).**

E. Cleaning.

Tenant must keep the Premises clean and sanitary and promptly dispose of all trash in appropriate receptacles. Tenant will provide, at Tenant's expense, janitorial services to the Premises, unless this box  is checked, in which case Landlord will provide janitorial services to the Premises that are customary for the property type. Tenant will maintain, at Tenant's expense, any grease trap on the Property that Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.

**7.04 Alterations, Additions, and Improvements.**

Tenant may not create any openings in the roof or exterior walls without the prior written consent of the Landlord. Tenant may not make any alterations, additions, or improvements to the Premises ("Alterations") without the prior written consent of the Landlord. However, Tenant is not required to obtain the Landlord's prior written consent for non-structural Alterations that do not cost more than \$5,000 and that do not modify or affect the roof, plumbing, HVAC systems or electrical systems. Consent for non-structural Alterations in excess of \$5,000 or that modify or affect plumbing, HVAC systems or electrical systems, will not be unreasonably withheld conditioned, or delayed by Landlord. Tenant may erect or install trade fixtures, shelves, bins, machinery, HVAC systems, and refrigeration equipment, provided that Tenant complies with all applicable governmental laws, ordinances, codes, and regulations. At the expiration or termination of this Lease, Tenant may, subject to the restrictions of **Section 7.05**, remove items installed by Tenant, provided Tenant is not in default at the time of the removal and Tenant repairs, in a good and workmanlike manner, any damage caused by the installation or removal. Tenant shall pay for all costs incurred or arising out of Alterations and will not permit any mechanic's or materialmen's lien to be filed against the Premises or the Property. Upon request by Landlord, Tenant shall deliver to Landlord proof of payment, reasonably satisfactory to Landlord, of all costs incurred in connection with any Alterations.

**7.05 Condition Upon Termination.**

Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in the same condition as received, except for normal wear and tear and any damage caused by a casualty that Tenant is not otherwise obligated to repair under any provision of this Lease. Tenant will not be obligated to repair any damage that Landlord is required to repair under Article Seven (Property Condition) or Article Eight (Damage or Destruction). In addition, Landlord may require Tenant to remove any Alterations before the expiration or termination of this Lease and to restore the Premises to their prior condition, all at Tenant's expense. However, Tenant will not be required to remove any Alterations that were made with Landlord's consent or that were otherwise permitted under the terms of this Lease. All Alterations that Tenant does not remove will become Landlord's property upon the expiration or termination of this Lease. In no event may Tenant remove any of the following items without Landlord's prior written consent: (i)

electrical wiring or power panels; (ii) lighting or lighting fixtures; (iii) wall coverings, drapes, blinds or other window coverings; (iv) carpets or other floor coverings; (v) HVAC equipment; (vi) plumbing equipment; (vii) fencing or gates; or (viii) any fixtures, equipment or other items that, if removed, would affect the operation or the appearance of the Property. However, Tenant may remove Tenant's trade fixtures, equipment used in Tenant's business, and personal property. The provisions of this Section will survive the expiration or termination of this Lease.

## **ARTICLE EIGHT DAMAGE OR DESTRUCTION**

### **8.01 Notice.**

If any buildings or other improvements situated on the Property are damaged or destroyed by fire, flood, windstorm, tornado or other casualty, Tenant shall immediately give written notice of the damage or destruction to Landlord.

### **8.02 Partial Damage.**

If the Premises are damaged by fire, tornado, or other casualty, and rebuilding and repairs can be completed within 120 days after the date Landlord receives written notification from Tenant of the occurrence of the damage, then this Lease will not terminate, but Landlord shall proceed with reasonable diligence to rebuild and repair the Premises (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) to substantially the condition they were in before the damage. To the extent the Premises cannot be occupied (in whole or in part) after the casualty, the Rent payable under this Lease during the period the Premises cannot be fully occupied will be adjusted equitably.

If the casualty occurs during the last eighteen (18) months of the Term, Landlord will not be required to rebuild or repair the damage unless Tenant exercises Tenant's renewal option (if any) within fifteen (15) days after the date the Landlord receives written notification of the occurrence of the damage. If the casualty occurs during the last eighteen (18) months of the Term and Tenant does not so exercise Tenant's renewal option, or if there is no renewal option in this Lease, Landlord may, at Landlord's option, terminate the Lease by delivering a written termination notice to Tenant, in which case the Rent will be abated for the unexpired portion of the Term, effective on the date Landlord received written notification of the damage.

### **8.03 Substantial or Total Destruction.**

If the Premises are substantially or totally destroyed by fire, tornado, or other casualty, or so damaged that rebuilding and repairs cannot reasonably be completed within 120 days after the date Landlord receives written notification from Tenant of the occurrence of the damage, either Landlord or Tenant may terminate this Lease by promptly delivering a written termination notice to the other party, in which event the monthly installments of Rent will be abated for the unexpired portion of the Term, effective on the date of the damage or destruction. If neither party promptly terminates this Lease, Landlord shall proceed with reasonable diligence to rebuild and repair the Premises (except that Tenant shall rebuild and repair Tenant's fixtures and improvements in the Premises). To the extent the Premises cannot be occupied (in whole or in part) after the casualty,

the Rent payable under this Lease during the period the Premises cannot be fully occupied will be adjusted equitably.

## ARTICLE NINE CONDEMNATION

If the Premises shall be totally taken or surrendered pursuant to a condemnation or eminent domain action, or threat thereof, then this Lease shall terminate, and Tenant shall be liable for Rent only up to the date of such termination. If only a portion of the Premises is so taken, and if Tenant is able to continue the operation of its business in, on or about the remaining portion of the Premises, any future Base Rent and the Tenant's Pro Rata Share, if applicable, will be adjusted on a pro-rata basis to reduce the total Base Rent and the Tenant's Pro Rata Share, if applicable, to the extent the Leased Premises has been diminished in a material quantity and material usefulness to Tenant by the partial condemnation. Tenant shall have no claim against Landlord or any other person or governmental authority on account of any such taking for the value of the unexpired Term, and Renewal Options, if applicable. All damages awarded for taking of the Premises shall belong solely to Landlord; except that Tenant may recover its moving expenses and any other compensation to which it is entitled under applicable law.

## ARTICLE TEN ASSIGNMENT AND SUBLETTING

Tenant may not assign this Lease or sublet the Premises or any portion thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed. Any assignment or subletting will be expressly subject to all terms and provisions of this Lease, including the provision of **Section 6.01** pertaining to the use of the Premises. In the event of any assignment or subletting, Tenant will remain fully liable for the full performance of all Tenant's obligations under this Lease. Tenant may not assign Tenant's rights under this lease or sublet the Premises without first obtaining a written agreement from the assignee or sublease whereby the assignee or sublessee agrees to assume the obligations of Tenant under this Lease and to be bound by the terms of this Lease. If a Default occurs while the Premises is assigned or sublet, Landlord may, at Landlord's option, in addition to any other remedies provided in this Lease or by law, collect directly from the assignee or subtenant all rents becoming due under the terms of the assignment or subletting and apply the rents against any sums due to Landlord under this Lease. No direct collection by Landlord from any assignee or subtenant will release Tenant from Tenant's obligation under this Lease.

## ARTICLE ELEVEN DEFAULT AND REMEDIES

### 11.01 Default.

Each of the following events is a default under this Lease (a "Default"):

A. Failure of Tenant to pay any installment of the Rent or other sum payable to Landlord under this Lease on the date that it was due, and the continuance of that failure for a period of five days after Landlord delivers written notice of the failure to the Tenant. This clause will not be construed to permit or allow a delay in paying Rent beyond the due date and will not affect Landlord's right to impose a Late Charge as permitted in **Section 3.03**.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of Rent or other sum of money, and the continuance of that failure for a period of 30 days after Landlord delivers written notice of the failure to Tenant;

C. Failure of Tenant or any guarantor of Tenant's obligations under this Lease to pay its debts as they become due or an admission in writing of inability to pay its debts, or the making of a general assignment for the benefit of creditors;

D. The commencement by Tenant or any guarantor of Tenant's obligations under this Lease of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;

E. The commencement of any case, proceeding or other action against Tenant or any guarantor of Tenant's obligations under this Lease seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property, and Tenant or any guarantor: (i) fails to obtain a dismissal of such case, proceeding, or other action within sixty (60) days of its commencement; or (ii) converts the case from one chapter of the Federal Bankruptcy Code to another chapter; or (iii) is the subject of an order of relief that is not fully stayed within seven business days after the entry thereof; and

F. Vacancy or abandonment by Tenant of any substantial portion of the Premises or cessation of the use of the Premises for the purpose leased, and the continuance of that vacancy, abandonment or cessation for a period of thirty (30) days after Landlord delivers a written notice to Tenant.

## 11.02 Remedies.

Upon the occurrence of any Default listed in **Section 11.01**, Landlord may pursue any one or more of the following remedies without any prior notice or demand.

A. Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to the Landlord. If Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy that landlord may have for possession of the Premises or Rent in arrears, enter upon and take possession of the Premises and expel Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for any claim for damages due to the termination of this Lease or termination of possession. Tenant shall pay to Landlord on demand the amount of all Rent and loss and damage Landlord may suffer by reason of the termination or inability to relet the Premises up to the date of termination, in addition to any other liabilities that survive the termination of this Lease.

B. Landlord may enter upon and take possession of the Premises, without terminating this Lease and without being liable for any claim for damages due to termination of possession and expel Tenant and any other person who may be occupying the Premises or any part thereof. Landlord may relet the Premises and received rent from the new occupant. Tenant agrees to pay to Landlord monthly, or on demand from time to time, any deficiency that may arise by reason of any such reletting, in determining the amount of the deficiency, professional service fees, reasonable attorneys' fees, court costs, remodeling expenses and other costs of reletting will be subtracted from the amount of rent received from the new occupant.

C. Landlord may enter upon the Premises, without terminating this Lease and without being liable for any claim for damages due to such entry and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for expenses that Landlord incurs in performing Tenant's obligations under this Lease, together with interest thereon at the rate of twelve percent (12%) per annum from the date spent until paid.

D. Landlord may sue Tenant for damages for breach of this Lease after Tenant's Default and abandonment of the Premises, or after Landlord terminates Tenant's possession and Tenant vacates the Premises, in which case the measure of damages is the sum of: (i) the unpaid Rent up to the date of the abandonment or vacancy, plus (ii) the difference between the Rent for the remainder of the Term after abandonment or vacancy, and the fair market rental value of this Lease for the remainder of the Term after abandonment or vacancy. Neither the enforcement or collection by Landlord of those amounts nor the payment by Tenant of those amounts will constitute a waiver by Landlord of any breach, existing or in the future, of any of the terms or provisions of this Lease by Tenant or a waiver of any rights or remedies that the Landlord may have with respect to any breach.

E. No re-entry or taking possession of the Premises by Landlord will be construed as an election to terminate this Lease unless a written notice of that intention is given to Tenant. Notwithstanding any re-entry, taking possession or reletting, Landlord may, at any time thereafter, elect to terminate this Lease for a previous Default. Pursuit of any of the foregoing remedies will not preclude pursuit of any other remedies provided by law, nor will pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any Rent due to Landlord under this Lease or any damages accruing to Landlord by reason of the violation of any provisions of this Lease. Failure of Landlord to declare any Default immediately upon its occurrence, or failure to enforce one or more of Landlord's remedies, or forbearance by Landlord to enforce one or more of Landlord's remedies upon a Default, will not be deemed to constitute a waiver of any of Landlord's remedies for any Default. Pursuit of any one of the remedies will not preclude pursuit by Landlord for any of the other remedies provided in this Lease. The loss or damage that Landlord may suffer by reason of a Default by Tenant under this Lease, or the deficiency from any reletting, will include the expense of taking possession and any repairs performed by Landlord after a Default by Tenant. If Landlord terminates this Lease at any time for any Default, in addition to other Landlord's remedies, Landlord may recover from Tenant all damages Landlord may incur by reason of the Default, including the cost of recovering the Premises and the Rent then remaining unpaid.

F. Nothing in this Lease will be construed as imposing any duty upon Landlord to

relet the Premises. Landlord will have no duty to mitigate Landlord's damages except as required by applicable law. Any duty imposed by law on Landlord to mitigate damages after a Default by Tenant will be satisfied if Landlord undertakes to lease the Premises to another tenant (a "**Substitute Tenant**") in accordance with the following criteria:

1. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full possession of the Premises including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

2. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Property is suitable for the prospective tenant's use is (or soon will be) available;

3. Landlord will not be obligated to lease the Premises to a Substitute Tenant for an amount less than the current fair market rent then prevailing for similar uses in comparable buildings in the same market area as the Property, nor will Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Property;

4. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would

a. violate any restriction, covenant, or requirement contained in the lease of another tenant of the Property;

b. adversely affect the reputation of the Property; or

c. be incompatible with other uses of the Property.

5. Landlord will not be obligated to enter into a lease with a Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to pay the Rent under the new lease and operate the Premises in a first-class manner; and

6. Landlord will not be required to spend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

a. Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's Default under this Lease); or

b. Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease

with the Substitute Tenant.

G. No right or remedy of Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy now or hereafter existing under this Lease, at law, in equity or by statute. **Landlord will not be liable for any damages resulting to Tenant from any right or remedy exercised by Landlord, regardless of the cause, even if it is caused by the sole, joint or concurrent negligence of the Landlord.**

#### 11.03 Notice of Default.

Tenant shall give written notice of any failure by Landlord to perform any of Landlord's obligations under this Lease to Landlord and to any ground lessor, mortgagee, or beneficiary under any deed of trust encumbering the Premises whose name and address have been furnished to Tenant in writing. Landlord will not be in default under this Lease unless Landlord (or the ground lessor, mortgagee, or beneficiary) fails to cure the nonperformance within thirty (30) days after receipt of Tenant's notice. However, if the nonperformance reasonably requires more than thirty (30) days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is thereafter diligently pursued to completion.

#### 11.04 Limitation of Landlord's Liability.

As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Premises, or the leasehold estate under a ground lease of the Premises at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such title or estate. Any Landlord who transfers its title, estate or other interest is relieved of all liability with respect to the obligations of the Landlord under this Lease accruing on or after the date of the transfer, and Tenant agrees to recognize the transferee as Landlord under this Lease. However, each Landlord shall deliver to its transferee the Security Deposit held by Landlord, to the extent the Security Deposit has not then been applied under the terms of this Lease.

## ARTICLE TWELVE LANDLORD'S CONTRACTUAL LIEN

Tenant hereby grants to Landlord a security interest to secure payment of all Rent and other sums of money become due under this Lease from Tenant, upon all inventory, goods, wares, equipment, fixtures, furniture and all other personal property of Tenant's situated in or on the Premises, together with the proceeds from the sale thereof. Tenant may not remove such property without consent of the Landlord until all Rent in arrears and other sums then due to Landlord under this Lease have been paid. Upon the occurrence of a Default, Landlord may, in addition to any other remedies provided in this Lease or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated in or on the Premises without liability for trespass or conversion, and sell the property at public or private sales, with or without having the property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Unless otherwise required by law, notice to Tenant of the sale will be deemed sufficient if given in the manner prescribed in this Lease at least ten (10) days

before the time of the sale. Any public sale made under this Article will be deemed to have been conducted in a commercially reasonable manner if held on the Premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in the county where the Premises is located for five consecutive days before the date of the sale. Landlord or its assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition pursuant to this Article, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this Article. Any surplus will be paid to Tenant as otherwise required by law, and Tenant shall promptly pay any deficiencies. Landlord is authorized to file a financing statement to perfect the security interest of the Landlord in the aforementioned property and proceeds thereof. Provided Tenant is not in default under any of the terms of this Lease, upon written request by Tenant, Landlord shall deliver a written subordination of Landlord's contractual liens to any liens and security interests securing any institutional third-party financing of Tenant. Landlord shall not unreasonably withhold or delay the delivery of Landlord's written subordination.

## **ARTICLE THIRTEEN      PROTECTION OF LENDERS**

### **13.01 Subordination and Attornment.**

Landlord may subordinate this Lease to any future ground Lease, deed of trust or mortgage encumbering the Premises, and advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Landlord's right to subordinate is subject to Landlord providing Tenant with a written Subordination, Non-disturbance and Attornment Agreement from the ground lessor, beneficiary or mortgagee wherein Tenant's right to peaceable possession of the Premises during the Term will not be disturbed if Tenant pays the Rent and performs all of the Tenant's obligations under this Lease and is not otherwise in default, in which case Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize the transferee or successor as Landlord under this Lease. Tenant's rights under this Lease are subordinate to any existing ground lease, deed of trust or mortgage encumbering the Premises. However, if any ground lessor, beneficiary or mortgagee elects to have this Lease be superior to its ground lease, deed of trust or mortgage and gives Tenant written notice thereof, then this Lease will be deemed superior to the ground lease, deed of trust or mortgage whether this Lease is date prior or subsequent to the date of the ground lease, deed of trust or mortgage or the date of recording thereof.

### **13.02 Signing of Documents.**

Tenant shall sign and deliver any document that may be requested to evidence any attornment or subordination, or any agreement to attorn or subordinate, as long as the document is consistent with the provisions of **Section 13.01**. If Tenant fails to do so within ten (10) days after a written request, Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver the attornment or subordination document.

### 13.03 Estoppel Certificates.

A. Upon Landlord's written request, Tenant shall execute and deliver to Landlord a written statement (an "**Estoppel Certificate**") certifying:

1. whether Tenant is an assignee or subtenant;
2. the Expiration Date of this Lease;
3. the number of renewal options under this Lease, if any, and the total period of time covered by the renewal options;
4. that none of the terms or provisions of this Lease have been changed since the original execution of this Lease, except as shown on any attached amendments or modifications;
5. that no default exists under the terms of this Lease by either Landlord or Tenant;
6. that Tenant has no claim against Landlord under this Lease and has no defense or right of offset against collection of Rent or other charges accruing under this Lease;
7. the amount and payment date of the last payment of Rent, the period of time covered by that payment, and the amount of any rental payments made in advance;
8. the amount of any Security Deposit and other deposits, if any, and
9. the identity and address of any guarantor of this Lease.

Tenant shall deliver the statement to Landlord within 10 days after Landlord's request. Landlord may forward any such statement to any prospective purchaser or lender of the Premises. The purchaser or lender may rely conclusively upon the statement as true and correct.

B. If Tenant does not deliver the Estoppel Certificate to Landlord within the 10-day period, Landlord, and any purchaser or lender, may conclusively presume and rely upon the following facts: (1) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (2) that this Lease has not been terminated except as otherwise represented by Landlord; (3) that not more than one monthly installment of Base Rent and other charges have been paid in advance; (4) that there are no claims against Landlord nor any defenses or rights of offset against collection of Rent; and (5) that Landlord is not in default under this Lease. In such event, Tenant will be estopped from denying the truth of the presumed facts.

C. Also, if Tenant does not deliver the Estoppel Certificate to Landlord within the 10-day period, Landlord may deliver a written notice to Tenant stating that Tenant must deliver an Estoppel Certificate under this Section within five (5) days after Tenant receives the notice. If Tenant does not deliver an Estoppel Certificate to Landlord within five days after Tenant receives the notice, then Tenant's failure to deliver an Estoppel Certificate will constitute a Default under this Lease, notwithstanding any longer period of time under **Section 11.01** that Tenant would otherwise be allowed to cure a failure before the failure would become a Default.

### 13.04 Tenant's Financial Condition.

Within ten (10) days after a written request from a Landlord, but not more than two times in any

calendar year, Tenant shall deliver to Landlord financial statements as are reasonably required by Landlord to verify the net worth of Tenant, or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by the lender to facilitate the financing or refinancing of the Premises. Tenant represents to the Landlord that each financial statement is a true, complete and accurate statement as of the date of the statement. All financial statements will be confidential and will be used only for the purpose set forth in this Lease.

## **ARTICLE FOURTEEN ENVIRONMENTAL REPRESENTATIONS AND INDEMNITY**

### **14.01 Tenant's Compliance with Environmental Laws.**

Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to Tenant's use of the Property and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as defined in Section 14.05), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord and Tenant with respect to the use or occupancy of the Property.

### **14.02 Tenant's Indemnification.**

Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Property by Tenant, or Tenant's agents, employees, contractors or invitees without the prior written consent of Landlord. If the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property or any other property, or if contamination of the Property or any other property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or unusable space or any amenity or appurtenance of the Property, damages arising from any adverse impact on marketing of building space or land area, sums paid in settlement of claims, reasonable attorneys' fees, court costs consultant fees and expert fees) that arise during or after the Term as a result of the contamination. This indemnification of Landlord by tenant includes, without limitation, costs incurred in connection with any investigation of site conditions, or any clean-up, remedial work, removal or restoration work required by any Federal, State or local government agency because of Hazardous Materials present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property (or any other property) caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided that Landlord's approval of such actions is first obtained.

**14.03 Landlord’s Representations.**

Landlord represents, to the best of Landlord’s actual knowledge, that: (i) any handling, transportation, storage, treatment or usage of Hazardous Materials that has occurred on the Property to date has been in compliance with all applicable Federal, State, and local laws, regulations and ordinances; and (ii) no leak, spill, release, discharge, emission or disposal of Hazardous Materials has occurred on the Property to date and that the soil or groundwater on or under the Property is free of Hazardous Materials as of the Commencement Date, unless expressly disclosed by Landlord to Tenant in writing.

**14.04 Landlord’s Indemnification.**

Landlord hereby indemnifies, defends and holds Tenant harmless from any claims, judgments, damages, penalties, fines, costs, liabilities, (including sums paid in settlements or claims) or loss, including, without limitation, reasonable attorneys’ fees, court costs, consultant fees, and expert fees which arise during or after the Term of this Lease from or in connection with the presence or suspected presence of Hazardous Materials in the soil or groundwater on or under the Property, unless the Hazardous Material is released by the Tenant or is present as a result of the negligence or willful conduct of the Tenant. Without limiting the generality of the foregoing, the indemnification provided by this Section will specifically cover costs incurred in connection with any investigation, of site conditions or any clean-up, remedial work, removal or restoration work required by any Federal, State, or local governmental authority.

**14.05 Definition.**

For purposes of this Lease, the term “**Hazardous Materials**” means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, the Water Pollution Control Act, as amended, the Solid Waste Disposal Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, or rule, whether existing as of the date of this Lease or subsequently enacted.

**14.06 Survival.**

The representations and indemnities contained in this Article Fourteen will survive the expiration or termination of this Lease.

**ARTICLE FIFTEEN INTENTIONALLY LEFT BLANK**

**ARTICLE SIXTEEN MISCELLANEOUS AND ADDITIONAL PROVISIONS**

**16.01 Disclosure.**

Landlord and Tenant understand that a real estate broker is not an expert in matters of law, tax, financing, surveying, hazardous materials, engineering, construction, safety, zoning, land

planning, architecture, the TABA, or the ADA. The Brokers hereby advise Tenant to seek expert assistance on such matters. Brokers do not investigate a property's compliance with building codes, governmental ordinances, statutes, and laws that relate to the use or condition of a property and its construction, or that relate to its acquisition. If the Brokers provide names of consultants or sources for advice or assistance, Tenant acknowledges that the Brokers do not warrant the services of the advisors or their products and cannot warrant the suitability of property to be acquired or leased. Furthermore, the Brokers do not warrant that the Landlord will disclose any or all property defects, although the Brokers will disclose to Tenant any actual knowledge possessed by Brokers regarding defects of the Premises and the Property. In this regard, Tenant agrees to make all necessary and appropriate inquiries and to use diligence in investigating the Premises and the Property before signing this Lease. Tenant acknowledges and agrees that neither the Managing Partner nor any Cooperating Broker has made any representation to Tenant with respect to the condition of the Premises, and that Tenant is relying exclusively upon Tenant's own investigation and the representations of the Landlord. If any, with respect to the condition of the Premises, Landlord and Tenant agree to hold the Brokers harmless from any and all damages, claims, costs and expenses resulting from or related to Landlord furnishing to the Brokers any inaccurate information with respect to the Premises, or Landlord's concealing any material information with respect to the Premises. Landlord and Tenant hereby agree to indemnify and defend the Brokers against any and all liabilities, claims, debts, damages, costs, or expenses, including but not limited to reasonable attorneys' fees and court costs, related to or arising out of in any way connected to (a) representations concerning matters properly the subject or advice by experts; or (b) any dispute directly between Landlord and Tenant regarding this Lease. In addition, to the extent permitted by applicable law, the Brokers' liability for errors, omissions, or negligence is limited to the return of the Fee, if any, paid to the Brokers pursuant to this Lease.

#### **16.02 Force Majeure.**

If performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of the Landlord, the period for performance of the term, condition or covenant will be extended for a period equal to the period Landlord is so delayed or prevented.

#### **16.03 Interpretation.**

The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular will include the plural and the plural will include the singular, and the masculine, feminine and neuter genders will each include the other.

#### **16.04 Waivers.**

Any waivers of any provisions of this Lease must be in writing and signed by the waiving party. Landlord's delay or failure to enforce any provisions of this Lease or Landlord's acceptance of late installments of Rent will not be a waiver and will not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a check from Tenant

or in a letter accompanying a check will be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate, cash, or endorse the check without being bound to the conditions of any such statement.

#### 16.05 Severability.

A determination by a court of competent jurisdiction that any provision of this Lease is invalid or unenforceable will not invalidate the remainder of that provision or any other provision of this Lease, which will remain in full force and effect.

#### 16.06 Joint and Several Liability.

All parties signing this Lease as Tenant will be jointly and severally liable for all obligations of Tenant. Tenant will be responsible for the conduct, acts and omissions of Tenant's agents, employees, customers, contractors, invitees, agents, successors or others using the Premises with Tenant's express or implied permission.

#### 16.07 Amendments or Modifications.

This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective unless made a part of this Lease. All amendments to this Lease must be in writing and signed by all parties.

#### 16.08 Notices.

All notices and other communications required or permitted under this Lease must be in writing and will be deemed delivered, whether actually received or not, on the earlier of; (i) actual receipt if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("**Fax**") with confirmation of delivery; or (iii) upon deposit in the United States Mail as required below. Notices may be transmitted by Fax to the Fax telephone numbers specified in **Article One** of this Lease, if any. Notices, delivered by mail must be deposited in the U.S. Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient as set forth in **Article One**. Notices sent by any other means will be deemed delivered when actually received, with proof of delivery. After possession of the Premises by Tenant, Tenant's address for notice purposes will be the address of the Premises unless Tenant notifies Landlord in writing of a different address to be used for that purpose. Any party may change its address for notice by delivering written notice of its new address to all other parties in the manner set forth above. Copies of all notices should also be delivered to the Brokers, but failure to notify the Brokers will not cause an otherwise properly delivered notice to be ineffective. Also, copies of all notices must be delivered to the following persons [if the blanks have been completed]:

Copies of notices to Landlord are to be delivered to:

Landlord: City of Elkhart, Department of Redevelopment  
Address: 201 South Second Street, Elkhart, IN 46516

Telephone: ATTN: Mary Kaczka or her designee or successor  
(574) 322-4472  
Fax: \_\_\_\_\_  
Email: [mary.kaczka@coei.org](mailto:mary.kaczka@coei.org)

Copies of notices to Tenant are to be delivered to:

Landlord: ( )  
Address: ( )  
Telephone: ( )  
Fax: ( )  
Email: ( )

- Landlord also consents to receive any notices by email. *[Check box if applicable.]*
- Tenant also consents to receive any notices by email. *[Check box if applicable.]*

**16.09 Attorneys' Fees.**

If on account of any breach or default by any party to this Lease in its obligations to any other party to this Lease (including, but not limited to, the Brokers), it becomes necessary for a party to employ an attorney to enforce or defend any of its rights or remedies under this Lease, the non-prevailing party agrees to pay the prevailing party its reasonable attorneys' fees and court costs, if any, whether or not suit is instituted in connection with the enforcement or defense.

**16.10 Venue.**

All obligations under this Lease, including, but not limited to, the payment of Fees to the Broker will be performed and payable in the county in which the Property is located. The laws of the state of Indiana will govern this Lease.

**16.11 Survival.**

All obligations of any party to this lease that are not fulfilled at the expiration, or the termination of this Lease will survive such expiration or termination as continuing obligations of the party.

**16.12 Binding Effect.**

This Lease will inure the benefit of, and be binding upon, each of the parties to this Lease and their respective heirs, representatives, successors and assigns. However, Landlord will not have any obligation to Tenant's successors or assigns unless the rights or interests of the successors or assigns are acquired in accordance with the terms of this Lease.

**16.13 Right to Claim a Lien.**

If a commission agreement or other agreement to pay Fees to the Brokers is not included in this Lease, then be advised that each Broker hereby discloses the Broker's right to claim a lien based on separate written commission agreement or other agreement to pay Fees to the Broker, and this disclosure is incorporated in the commission agreement or other agreement to pay Fees.

**16.14 Patriot Act Representation.**

Landlord and Tenant each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49079; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.

**16.15 Counterparts.**

This Lease may be executed by a number of identical counterparts, and all counterparts will be construed together as one agreement.

**16.16 Offer.**

The execution of this Lease by the first party to do so constitutes an offer to lease the Premises. Unless this Lease is signed by the other party and a fully executed copy is delivered to the first party by the earlier of this date **December 15, 2024**, or the date that is ten (10) days after the date of execution by the first party, such offer to lease will be deemed automatically withdrawn. Any acceptance of an offer that has been withdrawn will only be effective if the party that withdrew the offer subsequently agrees to the acceptance either in writing or by course of conduct.

**16.17 Additional Provisions.**

Landlord and Tenant agree to any provisions set forth on the attached Addenda (if any) and the following additional provisions (if any): \_\_\_\_\_

**16.18 Consult an Attorney.**

This Lease is an enforceable, legally binding agreement. Read it carefully. The Brokers involved in the negotiation of this Lease cannot give you legal advice. Landlord and Tenant acknowledge that they have been advised by the Brokers to have this Lease reviewed by competent legal counsel of their choice before signing this Lease. Landlord and Tenant each agree to the provisions contained in this Lease.

*[signature page follows]*

This Lease has been executed as of the Effective Date (as defined in **Section 1.01**).

LANDLORD

TENANT

**City of Elkhart Department of Redevelopment**

( )

By: \_\_\_\_\_

Sandra Schreiber

Its: President

Date: ( )

By: \_\_\_\_\_

( )

Its: ( )

Date: ( )

PRINCIPAL BROKER

( )

By: \_\_\_\_\_

( )

Its: ( )

Address: ( )

( )

License No. ( )

Tax ID No. ( )

## EXHIBIT A

### **Description of Property**

Being all of Lots Numbered 1, 2, 3, 4, 5 and 6, as designated on the recorded Plat of Woodland Crossing located in Concord Township, Elkhart, Indiana and recorded April 6, 2023 as Instrument No. 2023-05393, in Plat Book 42, Page 89 in the Office of the Recorder of Elkhart County, Indiana; as amended by Affidavit of Correction recorded April 14, 2023 as Document No. 2023-05809, Affidavit of Correction recorded April 26, 2023 as Document No. 2023-06478, and Affidavit of Correction recorded June 14, 2023 as Document No. 2023-09428, all of the Elkhart County, Indiana Records.



EXHIBIT B

**Description of Premises**

Rod Roberson  
Mayor

Michael Huber  
Director of Development Services



Development Services  
Community Development  
Economic Development  
Planning Services  
Redevelopment  
229 S. Second St.  
Elkhart, IN 46516  
574.294.5471  
Fax: 574.295.7501

# Warrick & Boyn November 2024

## Invoice

# Total Current

# Work

# \$



City of Elkhart

City of Elkhart

# Treasurers Report Summary

Date Range: 01/01/2024 - 10/31/2024

Fund	Beginning Cash Balance	Revenues	Expenses	Net Change Assets	Net Change Liabilities	Calculated Ending Balance	Actual Ending Balance	Calculated - Actual Ending
2552 - REDEVELOPMENT	43,627.62	14,000.00	998.00	0.00	0.00	56,629.62	56,629.62	0.00
4445 - TIF DOWNTOWN ALLOCATION	5,306,051.52	1,785,774.21	2,411,106.21	0.00	0.00	4,680,729.52	4,680,729.52	0.00
4446 - TIF ALLOCATION PIERRE MOR	182,258.23	49,818.59	232,076.82	0.00	0.00	0.00	0.00	0.00
4447 - TIF SOUTHWEST ALLOCATION	642,809.11	785,370.34	1,428,179.45	0.00	0.00	0.00	0.00	0.00
4448 - TIF AEROPLEX ALLOCATION	1,895,292.86	322,435.75	2,497.63	0.00	0.00	2,215,230.98	2,215,230.98	0.00
4449 - TIF ALLOCATION STERLING E	189,561.38	226,983.93	416,545.31	0.00	0.00	0.00	0.00	0.00
4450 - TIF ALLOCATION CASS ST AR	15,154,047.86	2,224,230.72	3,929,681.83	0.00	0.00	13,448,596.75	13,448,596.75	0.00
4451 - TIF BAYER/TECH PARK ALLOC	1,243,629.82	171,395.84	18,764.46	0.00	0.00	1,396,261.20	1,396,261.20	0.00
4452 - TIF ALLOCATION S.MAIN GAT	340,350.46	351,217.23	691,567.69	0.00	0.00	0.00	0.00	0.00
4453 - TIF CONSOLIDATED S ALLOCA	6,253,824.58	2,790,944.69	4,722,480.07	0.00	0.00	4,322,289.20	4,322,289.20	0.00
4692 - TIF DOWNTOWN CAPITAL	68,478.32	0.00	0.00	0.00	0.00	68,478.32	68,478.32	0.00
<b>Report Total:</b>	<b>31,319,941.76</b>	<b>8,722,171.30</b>	<b>13,853,897.47</b>	<b>0.00</b>	<b>0.00</b>	<b>26,188,215.59</b>	<b>26,188,215.59</b>	<b>0.00</b>