



FINANCE AND PERSONNEL COMMITTEE MEETING AGENDA

March 11, 2024 at 5:00 PM

Council Chambers, 828 Center Avenue, Sheboygan, WI

It is possible that a quorum (or a reverse quorum) of the Sheboygan Common Council or any other City committees/boards/commissions may be in attendance, thus requiring a notice pursuant to State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

Persons with disabilities who need accommodations to attend this meeting should contact the Finance Department at 920-459-3311. Persons other than council members who wish to participate remotely shall provide notice to the Finance Department at 920-459-3311 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

OPENING OF MEETING

1. Call to Order
2. Roll Call - Alderperson Felde may attend remotely
3. Pledge of Allegiance
4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes - February 22, 2024

ITEMS FOR DISCUSSION AND POSSIBLE ACTION

6. R. O. No. 116-23-24 / March 4, 2024: Submitting a memo requesting replacing the City of Sheboygan's current on-premises Exchange server and Microsoft Office products with Microsoft Office 365.
7. Res. No. 170-23-24 / March 4, 2024: A RESOLUTION extending the life of Tax Incremental Financing District No. 001E (TID 1E) for one year to fund affordable housing programs and projects within the City of Sheboygan, Wisconsin.
8. Res. No. 171-23-24 / March 4, 2024: A RESOLUTION authorizing the Finance Director to complete a 2024 budget amendment to cover the costs of transitioning the City's current Microsoft Office products to Microsoft Office 365.
9. Res. No. 173-23-24 / March 4, 2024: A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 1.
10. Res. No. 174-23-24 / March 4, 2024: A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 2.

- [11.](#) Res. No. 175-23-24 / March 4, 2024: A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 4.
- [12.](#) Res. No. 176-23-24 / March 4, 2024: A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 5.
- [13.](#) Res. No. 178-23-24 / March 4, 2024: A RESOLUTION authorizing the appropriate City officials to execute a Ground Lease between Sheboygan WP, LLC and the City of Sheboygan regarding land in the Sheboygan Business Center.

DATE OF NEXT REGULAR MEETING

14. Next Meeting Date - March 25, 2024

ADJOURN

15. Motion to Adjourn

In compliance with Wisconsin's Open Meetings Law, this agenda was posted in the following locations more than 24 hours prior to the time of the meeting:

*City Hall • Mead Public Library
Sheboygan County Administration Building • City's website*

**CITY OF SHEBOYGAN
R. O. 116-23-24**

BY IT DIRECTOR ERIC BUSHMAN.

MARCH 4, 2024.

Submitting a memo requesting replacing the City of Sheboygan's current on-premises Exchange server and Microsoft Office products with Microsoft Office 365.

To: Common Council
 From: IT Director Eric Bushman - February 22, 2024
 Memo RE: Transition to Microsoft Office 365

The City of Sheboygan is requesting replacing our current on-premises Exchange server and Microsoft Office products with Microsoft Office 365. This will be a significant step forward in our efforts to enhance collaboration, communication, and productivity within our organization.

Key Benefits:

1. **Enhanced Collaboration:** Office 365 provides a robust set of collaboration tools, including SharePoint, OneDrive, and Teams, enabling seamless communication and collaboration across the organization.
2. **Flexibility and Accessibility:** With Office 365, you can access your emails, documents, and applications from anywhere with an internet connection, promoting flexibility and remote work capabilities.
3. **Automatic Updates:** Office 365 ensures that you always have the latest features and security updates without the need for manual installations.
4. **Cost-Efficiency:** Moving to the cloud allows us to optimize our resources, reduce maintenance costs, and provide a scalable solution for our growing organization.

As we look to the future we need to replace our on-premise Exchange Email Server, Microsoft Office Products (Excel, Word, PowerPoint, etc.) and SharePoint solution. Our SharePoint End-of-support was 4/11/2023, Exchange is 10/14/2025 and our Office 2019 is 10/13/2026. To purchase on-premise perpetual licenses with 3 years of software assurance (allows free upgrades) for these solutions is estimated to cost \$284,815.

We are requesting a transfer of \$225,000 from the IT Fund Balance to the IT Outside Services account to cover the cost of the Microsoft Office 365 licensing. This \$225,000 will cover the cost of the licensing for the next 3 years. The estimated IT Fund Balance at the end of 2023 is \$913,000.

In addition to saving the city \$59,815 over the cost of purchasing the perpetual licenses we estimate that we will save another \$26,250 when it comes to upgrading our on-premise servers and storage.

Software	End Of Support	Server License with SA	CALs with SA Each	Users	Total CAL Cost	Total Cost
On-Prem Exchange 2019	10/14/2025	\$ 885	\$ 109.98	450	\$ 49,491	\$ 50,376
On-Prem Sharepoint 2013	4/11/2023	\$ 8,496	\$ 153.52	110	\$ 16,887	\$ 25,383
On-Prem MS Office Std 2021	10/13/2026	\$ -	\$ 746.63	280	\$ 209,056	\$ 209,056
Totals		\$ 9,381			\$ 275,435	\$ 284,815
3Year avg cost/Year		\$ 3,127			\$ 91,812	\$ 94,938
Hardware 7Year		Cost	Over 7 Years			
Exchange Server	1	\$ 1,500	\$ 214			
Exchange Storage in TB	1.5	\$ 4,650	\$ 664			
File Server	1	\$ 1,500	\$ 214			
File Storage in TB	6	\$ 18,600	\$ 2,657			
	Totals	\$ 26,250	\$ 3,750			

**CITY OF SHEBOYGAN
RESOLUTION 170-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION extending the life of Tax Incremental Financing District No. 001E (TID 1E) for one year to fund affordable housing programs and projects within the City of Sheboygan, Wisconsin.

WHEREAS, the City of Sheboygan created TID 1E on August 5, 2002, successfully completed implementation of the project plan and collected sufficient increment to pay off its aggregate project costs; and

WHEREAS, while § 66.1105(7), Wis. Stats. requires termination of a TID after all project costs have been paid, § 66.1105(6)(g), Wis. Stats. permits extension of a TID for a specified number of months, using the last year of tax increment to improve the City's housing stock; and

WHEREAS, at least 75 percent of the final increment must benefit affordable housing in the City, with the remaining portion used to improve housing stock.

NOW, THEREFORE, BE IT RESOLVED: That the City of Sheboygan hereby extends the life of TID 1E for twelve (12) months to use the final year's tax increment, collected in 2025 from the 2024 tax roll, to benefit affordable housing.

BE IT FURTHER RESOLVED: That the City of Sheboygan shall use the final year's tax increment to improve the City's housing stock (including quality and affordability) by depositing the funds in the City's Affordable Housing Fund; such funds shall be used to assist with funding of projects which create and/or improve affordable single-family housing stock in the City of Sheboygan.

BE IT FURTHER RESOLVED: That the City of Sheboygan shall timely adopt a termination resolution as required by § 66.1105(7), Wis. Stats.

BE IT FURTHER RESOLVED: That the City of Sheboygan City Clerk shall notify the Wisconsin Department of Revenue of this extension by providing a copy of this resolution.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

**CITY OF SHEBOYGAN
RESOLUTION 171-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION authorizing the Finance Director to complete a 2024 budget amendment to cover the costs of transitioning the City's current Microsoft Office products to Microsoft Office 365.

WHEREAS, the City of Sheboygan currently utilizes an on-premise exchange server and associated Microsoft Office products; and

WHEREAS, the current Microsoft products the City utilizes will see the end of support over the next two years which would result in the need to upgrade current hardware and software; and

WHEREAS, a transition to Microsoft Office 365 will allow for enhanced collaboration, increased flexibility and accessibility, automatic updates and cost efficiency; and

WHEREAS, there has been an accumulation of reserve funds in the IT Fund to assist with the costs associated with this transition; and

WHEREAS, IT staff believes that the benefits of transitioning to the Microsoft Office 365 products are significant and should be completed as soon as possible.

NOW, THEREFORE, BE IT RESOLVED: That the Finance Director is authorized to make the following 2024 budget amendment to fund the costs associated with the transition to Microsoft Office 365:

INCREASE:

Info Tech Fund – IT – Fund Equity Applied (Acct. No. 713-493000)	\$75,000.00
Info Tech Fund – IT – Software Maintenance (Acct. No. 713170-563122)	\$75,000.00

BE IT FURTHER RESOLVED: That the Finance Director is authorized to pay for the three-year contract utilizing the on-hand cash balance to record a prepaid expense for future years of the contract.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 173-23-24 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 1

REPORT PREPARED BY: Finance Director Kaitlyn Krueger

REPORT DATE: March 11, 2024

MEETING DATE: March 11, 2024

FISCAL SUMMARY:

Budget Line Item: N/A
 Budget Summary: N/A
 Budgeted Expenditure: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
 Municipal Code: N/A

BACKGROUND / ANALYSIS:

Each year the City of Sheboygan assess each parking district for its portion of expenses related to the operating and maintenance of off-street parking. Revenues for each district offset the expenses and any residual is assessed to the businesses in that district.

STAFF COMMENTS:

The assessment is calculated after the year is complete and all known expenses are accounted for. For the year 2023, the amount that will be assessed to the businesses is \$54,719.28.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 173-23-24

ATTACHMENTS:

- I. Res. No. 173-23-24

**CITY OF SHEBOYGAN
RESOLUTION 173-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 1.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 1, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 174-23-24 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 2

REPORT PREPARED BY: Finance Director Kaitlyn Krueger

REPORT DATE: March 11, 2024

MEETING DATE: March 11, 2024

FISCAL SUMMARY:

Budget Line Item: N/A
 Budget Summary: N/A
 Budgeted Expenditure: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
 Municipal Code: N/A

BACKGROUND / ANALYSIS:

Each year the City of Sheboygan assess each parking district for its portion of expenses related to the operating and maintenance of off-street parking. Revenues for each district offset the expenses and any residual is assessed to the businesses in that district.

STAFF COMMENTS:

The assessment is calculated after the year is complete and all known expenses are accounted for. For the year 2023, the amount that will be assessed to the businesses is \$58,554.30.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 174-23-24

ATTACHMENTS:

- I. Res. No. 174-23-24

**CITY OF SHEBOYGAN
RESOLUTION 174-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 2.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 2, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 175-23-24 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 4

REPORT PREPARED BY: Finance Director Kaitlyn Krueger

REPORT DATE: March 11, 2024

MEETING DATE: March 11, 2024

FISCAL SUMMARY:

Budget Line Item: N/A
 Budget Summary: N/A
 Budgeted Expenditure: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
 Municipal Code: N/A

BACKGROUND / ANALYSIS:

Each year the City of Sheboygan assess each parking district for its portion of expenses related to the operating and maintenance of off-street parking. Revenues for each district offset the expenses and any residual is assessed to the businesses in that district.

STAFF COMMENTS:

The assessment is calculated after the year is complete and all known expenses are accounted for. For the year 2023, the amount that will be assessed to the businesses is \$10,739.42.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 175-23-24

ATTACHMENTS:

- I. Res. No. 175-23-24

**CITY OF SHEBOYGAN
RESOLUTION 175-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 4.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 4, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 176-23-24 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 5

REPORT PREPARED BY: Finance Director Kaitlyn Krueger

REPORT DATE: March 11, 2024

MEETING DATE: March 11, 2024

FISCAL SUMMARY:

Budget Line Item: N/A
 Budget Summary: N/A
 Budgeted Expenditure: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
 Municipal Code: N/A

BACKGROUND / ANALYSIS:

Each year the City of Sheboygan assess each parking district for its portion of expenses related to the operating and maintenance of off-street parking. Revenues for each district offset the expenses and any residual is assessed to the businesses in that district.

STAFF COMMENTS:

The assessment is calculated after the year is complete and all known expenses are accounted for. For the year 2023, the amount that will be assessed to the businesses is \$23,603.82.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 176-23-24

ATTACHMENTS:

- I. Res. No. 176-23-24

**CITY OF SHEBOYGAN
RESOLUTION 176-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 5.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 5, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

**CITY OF SHEBOYGAN
RESOLUTION 178-23-24**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

MARCH 4, 2024.

A RESOLUTION authorizing the appropriate City officials to execute a Ground Lease between Sheboygan WP, LLC and the City of Sheboygan regarding land in the Sheboygan Business Center.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Ground Lease between Sheboygan WP, LLC and the City of Sheboygan, a copy of which is attached hereto and incorporated herein.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

GROUND LEASE

Between

Sheboygan WP, LLC

a Wisconsin limited liability company,

as Landlord

and

City of Sheboygan,

a Wisconsin municipality,

as Tenant

dated _____, 2024

GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into as of _____, 2024 (the "Effective Date"), by and between Sheboygan WP, LLC, a Wisconsin limited liability company ("Landlord"), and the City of Sheboygan, a Wisconsin municipality ("Tenant").

1. **LEASED PREMISES.** For and in consideration of the payment of rents and the performance of the covenants and agreements set forth in this Lease, and on the terms and conditions that are set forth herein, Landlord hereby rents, and leases to Tenant that certain real property situated in Sheboygan County, State of Wisconsin, as legally described on the attached Exhibit A (the "Premises"). The Premises shall not include buildings, structures, and improvements hereafter located upon the Premises (the "Improvements"), the ownership of which shall be acquired by and maintained by Tenant, subject to the provisions of this Lease. It is the intention of Landlord and Tenant that the separation of title to the Premises and the Improvements is not to change the character of the Improvements as real property and that the Improvements shall be and remain real property.

2. **TERM AND TRANSFER OF PREMISES.**

2.1. Original Term. Unless sooner terminated pursuant to other provisions of this Lease, the original term of this Lease (the "Term") shall be for a period commencing on the Effective Date and ending on May 1, 2027.

2.2. Transfer of Premises at End of Term. At the end of the Term, Landlord shall be obligated to sell to Tenant the Premises upon the terms set forth herein, or upon such other terms as the parties may mutually agree upon. Closing for such purchase transaction shall occur upon a date mutually agreeable to the parties, provided such closing shall occur within five (5) business days of the end of the Term ("Closing Date"). At closing, upon payment of the Purchase Price, Landlord shall transfer fee simple title in the Premises to Tenant by special warranty deed, free and clear of all liens and encumbrances, excepting therefrom municipal and zoning ordinances, easements, covenants, conditions, reservations and other matters of record reflected in the title work provided hereunder, and general taxes levied in the year of closing. Tenant shall be responsible for the preparation of all closing documents, at its cost, which shall be acceptable in form and content to both parties, and for payment of all recording fees necessary to vest the title in the Premises in Tenant, but Landlord shall be responsible for Wisconsin real estate transfer fees as the grantor of the Premises. The parties shall execute closing statements and such other closing documents as are customary for a transaction of this type or which are otherwise agreed upon by the parties.

2.3. Proof of Title. Twenty (20) calendar days prior to the end of the Term, Landlord shall furnish to Tenant a title commitment for an owner's policy of title insurance in an amount equal to the One Hundred Fifteen Thousand and 00/100s Dollars (\$115,000.00) on a current ALTA form, including gap coverage, issued by a title insurance company selected by Landlord and licensed to provide such title insurance in the state of Wisconsin. Such title commitment and the resulting title policy issued based thereupon as of the closing shall show fee simple title in the name of Landlord, for the special warranty deed at closing as described herein. Such title commitment shall be updated as of the Closing Date showing no changes to the title of the Premises (or gap coverage applied), except any changes reasonably requested by Tenant. Tenant agrees to

notify Landlord of any objections to title within ten (10) days after Tenant's review of the title commitment and Landlord shall have a reasonable time to rectify the title objections. If such objections to title are not cured, Tenant shall not be required to close. All costs associated with the procurement of this policy of title insurance and rectifying title shall be the sole responsibility of Tenant and Tenant shall be responsible for obtaining the title commitment

3. **RENT.**

This Lease shall be an absolutely net lease to Landlord. Tenant will pay Basic Rent to Landlord in the amount of One Hundred Fifteen Thousand and 00/100s Dollars (\$115,000.00), in advance, within five (5) business days of the Effective Date. Tenant will make all Basic Rent payments to Landlord at the address specified in the Notice section hereunder or at such other place as Landlord may from time to time designate in writing to Tenant. Tenant will make all Basic Rent payments without Landlord's previous demand, invoice or notice for payment.

4. **TAXES, UTILITIES AND OTHER COSTS.**

4.1. Tenant to Pay all Taxes, Utilities and Other Costs. During the Term, seven (7) days prior to earliest due date each year, Tenant will pay to Landlord an amount equal to all Property Taxes on, relating to, or arising out of the Premises. To the extent the Property Taxes are due in installments, Tenant shall only be obligated to pay Landlord on each such installment. "Property Taxes" means any general real property tax, improvement tax, assessment, special assessment, reassessment, commercial rental tax, tax, in lieu tax, levy, charge, penalty and similar imposition imposed by any authority having the direct or indirect power to tax, including, but not limited to, (a) any City, County, State or federal entity, (b) any school, agricultural, lighting, drainage or other improvement or special assessment district, (c) any governmental agency, or (d) any private entity having the authority to assess the Premises under any of the permitted encumbrances. The term "Property Taxes" also includes all charges or burdens of every kind and nature Landlord incurs in connection with using, occupying, owning, operating, leasing or possessing the Premises, without particularizing by any known name and whether any of the foregoing are general, special, ordinary, extraordinary, foreseen or unforeseen; any tax or charge for fire protection, street lighting, streets, sidewalks, road maintenance, refuse, sewer, water or other services provided to the Premises and any personal property taxes on personal property used on the Premises. The term "Property Taxes" does not include Landlord's state or federal income, franchise, estate or inheritance taxes. Neither party hereto is obligated, but either or both shall, if they or one of them determines in its reasonable discretion that a reasonable basis for a contest exists, contest the amount or validity, in whole or in part, of any Property Taxes. Both parties shall pay their own costs and expenses, or share the cost and expenses if both pursue such contest. Only the party(ies) having pursued such contest shall receive any benefit, i.e. lower taxes, from such contest. If both parties pursue such contest, Landlord shall control such case upon reasonable consultation with Tenant.

4.2. Utilities. The Tenant shall pay for all utilities provided or otherwise chargeable to the Premises or the Improvements, including, without limitation, gas, electricity, phone services, cable television, sewer and water. Tenant shall pay each utility company or service provider directly for such service promptly when payments are due (unless contesting the same diligently and in good faith) and shall indemnify and hold Landlord harmless from any and all costs and

charges associated therewith, including reasonable attorneys' fees incurred by Landlord in the defense of any claim against Landlord or the Premises initiated by a provider of such utility services or in connection with the enforcement of Tenant's obligations hereunder by Landlord (provided such costs and charges are not the result of Landlord's default hereunder). Landlord shall not be responsible for or liable to Tenant in any manner for damage or injury to Tenant, its business, personal property or to its employees, subtenants, concessionaires, agents, customers, invitees or permittees, which results from the interruption of such utility services unless and to the extent caused by the gross negligence or willful misconduct of Landlord or its employees and no such interruption of services shall constitute a breach or default hereunder on the part of Landlord, unless and to the extent caused by the gross negligence or willful misconduct of Landlord or its employees.

4.3. Other costs and expenses. Except as expressly provided in this Lease, Tenant shall pay all other costs, expenses and charges relating to or arising out of the Premises and to the use of the Premises by Tenant, including without limitation, all site development work, all construction of improvements, maintenance, risk of loss and all other costs, expenses and charges.

5. **USE, QUIET ENJOYMENT AND TENANT EXCLUSIVE.**

5.1. Permitted Use. Tenant shall have the right to use and occupy the Premises for any use permitted under applicable law; and for no other purpose (the "Permitted Use"). In no case shall Tenant have the right to use the Premises for any of the following: (a) activities causing fire, explosion or other damaging or dangerous hazards, including storage, display or sale of explosives or fireworks; (b) drilling for and/or removal of subsurface substances; (c) dumping of garbage or refuse; (d) massage parlor, adult novelty or book store; or (e) any business engaged in the sale or exhibition or pornographic material or drug paraphernalia.

5.2. Limitations on Use. Tenant shall not at any time during the Term cause or allow the Premises to be used in whole or in part for any purpose which constitutes a nuisance or which is not permitted by law or applicable insurance requirements. At all times during the Term (and any Renewal Term), Tenant, at its own cost, shall take all action necessary to comply promptly and effectively with all laws and insurance requirements applicable to Tenant or the Premises.

5.3. Inspection of the Premises. Landlord shall have the right to enter upon the Premises leased to Tenant at any reasonable time after reasonable notice (in writing given at least twenty-four (24) hours in advance except in cases of emergency) for the purpose of making any inspection it may deem reasonably necessary to the proper enforcement of the covenants, restrictions or conditions of this Lease.

5.4. Covenant of Quiet Enjoyment. Landlord agrees that Tenant shall peacefully and quietly hold and enjoy the Premises throughout the Term of this Lease without hindrance or interference by Landlord or any other person claiming by, through, or under Landlord.

6. **LEASEHOLD TITLE INSURANCE.** Landlord shall cause a leasehold policy of title insurance ("Leasehold Policy") to be issued to Tenant (in form and substance acceptable to Tenant (in Tenant's reasonable discretion)), and such Leasehold Policy shall contain the following minimum requirements: (1) the Leasehold Policy shall insure Tenant's leasehold interest created

by this Lease; (2) the Leasehold Policy shall be issued by a title insurance company reasonably acceptable to Tenant (the "Title Company"); (3) the Leasehold Policy shall be in a policy amount of \$115,000.00; (4) the Leasehold Policy shall provide for coverage over the general exceptions and shall be subject to no conditions other than encumbrances permitted by Tenant; (5) the Premises legal description as contained in the Leasehold Policy shall match word-for-word the Premises legal description as contained in an ALTA survey, if any, prepared by the Tenant; and (6) the Leasehold Policy shall contain insurance over the general exceptions including mechanics lien coverage. The cost of the Leasehold Policy shall be paid by Landlord.

7. **TENANT IMPROVEMENTS.**

7.1. Tenant's Improvements. After the Effective Date and subject to Tenant's acquisition of all approvals and permits necessary to permit Tenant's intended development of the Premises, Tenant may, at Tenant's own cost and expense, subject to Landlord's approval from time to time, of plans, construct, alter and improve pursuant to such approved plans, the Premises with a building of Tenant's design (the "Building"), improvements to the Premises and other additions or alterations, including outdoor signs (collectively with the Building, the "Improvements"). Landlord shall not unreasonably withhold, condition or delay its approval of such plans. Such Improvements shall be in accordance with all applicable laws and regulations and any recorded covenants applicable to the Premises.

7.2. Alterations and Additions. Tenant shall have the right to make alterations ("Alterations") to the Improvements in accordance with this section. Alterations under this Lease include interior and exterior changes, demolition and renovation.

7.3. Ownership of Improvements. All Improvements shall remain the property of Tenant until and beyond the end of the Term, and shall not be included in the Transfer of Premises contemplated in Section 2.2 of this Lease.

7.4. Removal of Tenant's Property. At Landlord's option, Tenant shall remove (and repair damage caused by such removal) all or part of Tenants trade fixtures and Tenants personal property from the Premises at the end of the Term or Renewal Term pursuant to written notice regarding such removal given by Landlord to Tenant at least thirty (30) days prior to the end of the Term or Renewal Term as the case may be, provided Tenant shall not be required to remove the building from the Premises.

7.5. Construction Liens. Tenant agrees to keep the Premises free and clear of any lien or encumbrance of any kind created by their acts or omissions, except as otherwise specifically provided herein. Tenant shall notify all its contractors in writing that their lien rights attach only to the Improvements and to Tenant's interest in the Premises under this Lease as Tenant, and not to Landlord's interest in the Premises; Landlord shall be entitled to post notice to the same effect upon the Premises during the performance of any work on the Premises by Tenant. Tenant shall promptly pay for all materials, equipment, labor and any other charges and services ordered by it in connection with any and all work on, and materials furnished to the Premises, and shall remove any and all liens claimed against all or any portion of the Premises as a result of such work within sixty (60) days after receiving notice of such lien. Tenant shall indemnify, defend and hold the Landlord harmless from any liens, liabilities, costs, damages, claims, suits, judgments or expenses,

including, without limitation, reasonable attorneys' fees and costs of discovery and trial or other proceedings before any arbitrator or tribunal, incurred by the Landlord arising out of or connected with any work performed by the Tenant, or the use or occupancy of the Premises by the Tenant in performing such work and any injury to persons or property occurring in or on the Premises or Improvements or the adjoining sidewalks, streets or ways or in any manner growing out of the performance of such work by the Tenant.

8. **TENANT SIGNAGE.** Subject to all applicable laws, the Tenant shall have the right to place signage within and upon the Premises with the prior written consent of the Landlord, which shall not be unreasonably withheld, conditioned or delayed.

9. **HAZARDOUS SUBSTANCES.**

9.1. Compliance with Hazardous Materials Laws. Tenant will not cause or permit any Hazardous Material to be brought upon, kept or used on the Premises in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Premises and will notify Landlord of any and all Hazardous Materials Tenant brings upon, keeps or uses on the Premises. On or before the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, will completely remove from the Premises (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Tenant causes to be present in, on, under or about the Premises. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Premises, nor enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to or in any way connected with Hazardous Materials in, on, under or about the Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord's interest in the Premises. As used herein "Hazardous Material" shall mean any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste" or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies. As used herein "Hazardous Material Laws" shall mean any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Effective Date that control, classify, regulate, list or define Hazardous Materials.

9.2. Notice of Actions. Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Premises that result from or in any way relate to Tenant's use of the Premises immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any claim made or threatened by any person relating to damage,

contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Tenant will also deliver to Landlord, as promptly as possible and in any event within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use of the Premises. Upon Landlord's written request, Tenant will promptly deliver to Landlord documentation acceptable to Landlord reflecting the legal and proper disposal of all Hazardous Materials for which Tenant is responsible and that are removed or to be removed from the Premises by Tenant (all such documentation will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord).

9.3. Disclosure and Warning Obligations. Tenant acknowledges and agrees that all reporting and warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant's use of the Premises are Tenant's sole responsibility, regardless whether the Hazardous Materials Laws permit or require Landlord to report or warn.

9.4. Indemnification. Tenant will release, indemnify, defend, protect and hold harmless the Landlord from and against any and all claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Premises (including water tables and atmosphere) and any and all other environmental risks, hazards, damages and claims public and private, of any kind, in any way resulting from or in any way related to Tenant's use of the Premises. Tenant's obligations under this section include, without limitation and whether foreseeable or unforeseeable, (a) the costs of any required or necessary repair, clean-up, detoxification or decontamination of the Premises; (b) the costs of implementing any closure, remediation or other required action in connection therewith as stated above; (c) the value of any loss of use and any diminution in value of the Premises; and (d) attorneys and consultants' fees, experts' fees and response costs.

10. **CREDITORS; ESTOPPEL CERTIFICATES.**

10.1. Subordination. This Lease, all rights of Tenant in this Lease, and all interest or estate of Tenant in the Premises, is subject and subordinate to the lien of any Mortgage of Landlord. Tenant, on Landlord's reasonable demand, will execute and deliver to Landlord or to any other person Landlord designates any instruments, releases or other documents reasonably required to confirm the self-effectuating subordination of this Lease as provided in this section to the lien of any Mortgage by Landlord. The subordination to any Mortgage provided for in this section is expressly conditioned upon the mortgagee's agreement that as long as Tenant is not in default in the payment of Rent or the performance and observance of any covenant, condition, provision, term or agreement to be performed and observed by Tenant under this Lease, beyond any applicable grace or cure period this Lease provided Tenant, the holder of the Mortgage will not disturb Tenant's rights under this Lease. The lien of any existing or future Mortgage will not cover Tenant's moveable trade fixtures or other property of Tenant located in or on the Premises. As used in this section, "Mortgage" shall mean any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of the Property and

any replacements, renewals, amendments, modifications, extensions or refinancings thereof, and each advance (including future advances) made under any such instrument.

10.2. Attornment. If any holder of any Mortgage of Landlord at a foreclosure sale or any other transferee acquires Landlord's interest in this Lease or the Premises, Tenant will attorn to the transferee of or successor to Landlord's interest in this Lease or the Premises (as the case may be) and recognize such transferee or successor as landlord under this Lease. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

10.3. Estoppel Certificates.

a. Contents. Upon Landlord's written request, Tenant will execute, acknowledge and deliver to Landlord a written statement in form satisfactory to Landlord certifying: (a) if true, that this Lease (and all guaranties, if any) is unmodified and in full force and effect (or, if there have been any modifications, that the Lease is in full force and effect, as modified, and stating the modifications); (b) if true, that this Lease has not been canceled or terminated; (c) the last date of payment of Rent or other payments due from Tenant and the time period covered by such payment; (d) to the best of Tenant's actual knowledge, whether there are then existing any breaches or defaults by Landlord under this Lease known to Tenant, and, if so, specifying the same; (e) specifying any existing claims or defenses in favor of Tenant against the enforcement of this Lease (or of any guaranties); and (f) such other factual statements as Landlord, any lender, prospective lender, investor or purchaser may reasonably request. Tenant will deliver the statement to Landlord within fifteen (15) days after Landlord's request. Landlord may give any such statement by Tenant to any lender, prospective lender, investor or purchaser of all or any part of the Property and any such party may conclusively rely upon such statement as true and correct.

b. Failure to Deliver. If Tenant does not timely deliver the statement referenced in Section 10.3(a) to Landlord, and continues to fail to provide the same within five (5) days after a written request by Landlord to Tenant, Landlord may execute and deliver the statement to any third party on behalf of Tenant. Further, if Tenant so fails to timely deliver the statement, and continues to fail to provide the same within five (5) days after a written request by Landlord to Tenant, Landlord and any lender, prospective lender, investor or purchaser may conclusively presume and rely, except as otherwise represented by Landlord, (a) that the terms and provisions of this Lease have not been changed; (b) that this Lease has not been canceled or terminated; and (c) that Landlord is not in default in the performance of any of its obligations under this Lease. In such event, Tenant is estopped from denying the truth of such facts.

11. **INSURANCE.**

11.1. Tenant. From the Commencement Date and continuing throughout the Term, Tenant shall maintain commercial general liability, property damage, fire, and extended casualty coverage insurance on the Premises for the benefit of both Landlord and Tenant under the same terms and conditions as Tenant insures its public facilities. Tenant shall deliver to Landlord a certificate from its insurer declaring such insurance to be in full force and effect as of the Commencement Date and annually thereafter.

11.2. Waiver of Subrogation. To the extent that waiver of subrogation is permitted under Tenant's insurance policies, Tenant and all parties claiming under them mutually release and discharge Landlord from all claims and liabilities arising from or caused by any casualty or hazard, covered or required hereunder to be covered in whole or in part by insurance on the Premises or in connection with property on or activities conducted on the Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof.

12. **CONDEMNATION.** From and after the Effective Date, Tenant shall have the following rights in the event of a taking of the entire Premises or any part thereof, by reason of any exercise of the power of eminent domain, including any transfer in lieu thereof:

12.1. Total Permanent. In the event of a taking of the entire Premises or, in Tenant's reasonable discretion, a substantial portion as would render the balance of the Premises not suitable for Tenant's then current use, this Lease shall terminate upon the date that Tenant surrenders possession to the condemning authority (the "Taking Date"), at which time all rights and obligations between the parties shall cease and Rent and other charges payable by Tenant under this Lease shall be apportioned. The taking of any portion of the building, twenty percent (20%) or more of the then existing parking area on the Premises, or the loss of the rights of access or ingress and egress as then established, which cannot be replaced with substantially equal access or ingress and egress, shall be, at Tenant's reasonable discretion and option, but not exclusively considered, such a substantial taking as would render the use of the Premises not suitable for Tenant's then current use. In the event this Lease is terminated as a result of a taking, Tenant shall have the right to make a claim with the condemning authority for an award for the loss of Tenant's leasehold estate and moving and relocation expenses; provided, however, Tenant's award shall not diminish Landlord's award for the loss of its fee simple interest.

12.2. Partial Permanent. In the event of a taking of less than the entire Premises or, in the reasonable discretion of Tenant, less than a substantial portion as would render the balance of the Premises not suitable for Tenant's then current use, Tenant shall be entitled to a reduction of Rent in such amount as shall be just and equitable, which amount shall be agreed upon by the parties within thirty (30) days of the Taking Date or if no agreement has been reached within such thirty (30) day period, such matter will be submitted to a binding arbitration procedure. In consideration of such reduction, Tenant waives any claim for damage to or loss of its leasehold estate, all of such award being payable to Landlord, who shall use so much thereof as may be necessary to restore the Premises, including, but not limited to, access rights to and from the Premises, as nearly as possible to its condition immediately prior to the Taking Date. Notwithstanding any law, statute, ordinance or provision of this Lease which provides that leasehold improvements may be or shall become the property of Landlord at the termination of this Lease, the loss of the building and other improvements paid for or pursuant to this Lease owned by Tenant, the loss of Tenant's leasehold estate and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only one award is made.

12.3. General. Should Landlord and Tenant be unable to agree as to the division of any singular award or the amount of any reduction of Rents or other charges payable by Tenant under this Lease, such dispute shall be submitted for resolve to the court exercising jurisdiction of the condemnation proceedings or to a binding arbitration procedure, each party bearing its respective

costs for such determination. Landlord shall not agree to any settlement in lieu of condemnation involving a proposed condemnation in which Tenant would be entitled to a share of the award with the condemning authority without Tenant's prior written consent, not to be unreasonably withheld.

13. **INDEMNIFICATION.**

13.1. Landlord's Indemnification. Landlord hereby indemnifies and holds Tenant, Tenant's nominees, officers, directors, agents, employees, successors, and assigns harmless from and against any and all claims, demands, liabilities, and expenses, including attorneys' fees and litigation expenses, arising from the negligence or willful acts of Landlord or its agents, employees, or contractors occurring on the Premises, except to the extent caused by Tenant's or third party's negligence or willful misconduct. In the event any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord shall defend the same at Landlord's expense.

13.2. Tenant's Indemnification. Tenant hereby indemnifies and holds Landlord, Landlord's nominees, officers, directors, agents, employees, successors, and assigns harmless from and against any and all claims, demands, liabilities, and expenses, including attorneys' fees and litigation expenses, arising from the negligence or willful acts of Tenant or its agents, employees, customers, invitees, vendors, contractors, or others occurring on the Premises, except to the extent caused by Landlord's negligence or willful misconduct. In the event any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant shall defend the same at Tenant's expense.

14. **TENANT'S PROPERTY AND WAIVER OF LANDLORD'S LIENS.**

14.1. Tenant's Property. Title to the Improvements as defined herein, and all changes, additions and alterations therein, and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the Premises by Tenant, shall be and remain in Tenant. While this Lease remains in effect, Tenant alone shall be entitled to claim depreciation on the buildings, improvements, additions and alterations therein and all renewals and replacements thereof, for all taxation purposes. Landlord acknowledges and agrees that all furniture, fixtures leased from an equipment lessor, equipment, machinery, signs, and any personal property bearing any of Tenant's trade names or trademarks, service marks, trade style, designs, logos, indicia, corporate names, company names, business names, fictitious business names and any other service or business identifier, and related applications, whether registered or unregistered (collectively, "Tenant's Intellectual Property"), shall not be deemed to become part of the Premises however attached to or incorporated into the Premises (unless the same impact the structural integrity of the Premises), and shall remain the property of Tenant. Notwithstanding any provision herein to the contrary, in the event of default by Tenant hereunder, Landlord may not sell, lease or encumber any of Tenant's Intellectual Property. Any personal property, equipment, furniture, inventory, trademarked items, signs, decorative items, counters, shelving, showcases, mirrors and other movable trade fixtures installed in or on the Premises by Tenant ("Tenant's Property"), shall remain the property of Tenant. Landlord agrees that Tenant shall have the right, at any time or from time to time, to

remove any and all of Tenant's Property. Notwithstanding anything contained herein to the contrary, Landlord has no right to use, sell or convey Tenant's Intellectual Property.

All buildings, structures and improvements erected or placed upon the Premises by or on behalf of Tenant shall be and remain the property of Tenant, and Tenant shall have all tax benefits and obligations related thereto.

15. **TENANT ASSIGNMENT AND SUBLETTING.** Tenant may assign or sublet Tenant's interest in this Lease and the Premises or any portion thereof, provided no such assignment or subletting shall relieve the Tenant from Tenant's obligations hereunder.

16. **TENANT'S DEFAULT.**

16.1. Event of Default. The occurrence of any of the following constitutes an "Event of Default" by Tenant under this Lease:

a. Failure to Pay Rent. Tenant fails to pay Basic Rent or any other Additional Rent or other due amount as and when due.

b. Failure to Perform. Tenant breaches or fails to perform any of Tenant's non-monetary obligations under this Lease and the breach or failure continues for a period of thirty (30) days after written notice from Landlord of Tenant's breach or failure; provided that if Tenant cannot reasonably cure its breach or failure within a thirty (30) day period, Tenant's breach or failure is not an Event of Default if Tenant commences to cure its breach or failure within the thirty (30) day period and thereafter diligently pursues the cure and effects the cure within a reasonable period of time.

c. Other Defaults. (a) Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not dismissed within ninety (90) days; (d) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within ninety (90) days; or (e) substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure not discharged within ninety (90) days. If a court of competent jurisdiction determines that any act described in this section does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor in possession of the Premises) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord is entitled to receive, as Additional Rent, the amount by which the Rent (or any other consideration) paid in connection with the transfer exceeds the Rent otherwise payable by Tenant under this Lease.

d. Notice Requirements. The notices required by this Section 16.1 are intended to satisfy any and all notice requirements imposed by the Laws and are not in addition to any such requirements.

16.2. Remedies. Upon the occurrence of any Event of Default, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:

a. Termination of Lease. Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord shall return a pro-rated portion of the rent paid pursuant to Section 3, but may subtract from said pro-rated portion of the rent all damages Landlord incurs by reason of Tenant's default, including, without limitation, (a) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including, but not limited to, any Re-entry Costs.

b. Self Help. Perform the obligation on Tenant's behalf without waiving Landlord's rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease. Tenant will pay to Landlord, as Additional Rent, all sums Landlord pays and obligations Landlord incurs on Tenant's behalf under this section.

c. Other Remedies. Any other right or remedy available to Landlord under this Lease, at law or in equity.

16.3. Waiver and Release by Tenant. Tenant waives and releases all claims Tenant may have resulting from Landlord's re-entry and taking possession of the Premises by any lawful means and removing and storing Tenant's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the Laws, Tenant will release, indemnify, defend (with counsel reasonably chosen by Landlord), protect and hold harmless the Landlord and Landlord's Affiliates from and against any and all claims occasioned thereby. No such re-entry is to be considered or construed as a forcible entry by Landlord.

16.4. Costs. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to any breach or default of Tenant under this Lease, regardless whether the breach or default constitutes an Event of Default, and regardless whether suit is commenced or judgment is entered. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, by exercising and advocating rights under Section 365 of the Bankruptcy Code, by proposing a plan of reorganization and objecting to competing plans, and by filing motions for relief from stay. Such fees and expenses are payable within thirty (30) days of written demand together with reasonable evidence of such fees and expenses, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

17. **LANDLORD'S DEFAULT.**

17.1. Default. Landlord shall be in default if Landlord fails to perform any of the terms or provisions of this Lease and Landlord fails to cure such default within thirty (30) days after receipt of written notice from Tenant stating the nature and extent of the default, or if such default cannot reasonably be cured within such thirty (30) day period, then such additional time as may reasonably be necessary to cure such default as long as Landlord is diligently proceeding to cure same.

17.2. Remedies. Tenant may, after notifying Landlord, elect one or more of the following:

- a. Termination. Terminate this Lease and immediate application of Section 2.2 of this Lease;
- b. Other Remedies. Exercise available legal and equitable remedies;
- c. Self-Help. Perform the obligation on Landlord's behalf without waiving Tenant's rights under the Lease, at law or at equity and without releasing Landlord from any obligation under this Lease. Tenant shall have the right to offset rent as to all sums Tenant pays and obligations Tenant incurs on Landlord's behalf under this section.

The remedies provided above are cumulative and non-exclusive. Pursuit of any one remedy shall not preclude, waive or impair Tenant's right to pursue any other above-listed remedy.

Within ten (10) days after receipt by Landlord of notice of election by Tenant to terminate this Lease, the parties shall by an instrument in writing, in recordable form, terminate this Lease and Tenant shall surrender and deliver to Landlord the Premises, including the building and other improvements, except Tenant's Property.

17.3. Costs. Landlord will reimburse and compensate Tenant on demand for any actual loss Tenant incurs in connection with, resulting from or related to any breach or default of Landlord under this Lease, and regardless whether suit is commenced or judgment is entered including, but not limited to, reasonable attorney's fees and paralegal and other professional fees and expenses.

18. **NOTICES.** All notices, demands, or other communications of any type given by Landlord to Tenant or by Tenant to Landlord, whether required by this Lease or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Lease. All notices shall be legible and in writing and shall be delivered personally to the addressee with a receipt requested therefor or shall be sent by a recognized overnight courier service for next day delivery or by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth in Section 1. Notices sent in compliance with this Section shall be effective (a) upon receipt or refusal; (b) one (1) business day after depositing with such an overnight courier service; or (c) three (3) business days after deposit in the mails if mailed, as provided above. Either party hereto may change the address for notice and the person to whom notices are sent specified above by giving the other party ten (10) days advance written notice of such change of address, given in accordance with this provision.

19. **COMMISSION.** Landlord and Tenant represent and warrant to each other that they have not had any dealings with any real estate broker, finders or agents in connection with this Agreement. Landlord and Tenant indemnify and hold each other harmless from and against any liability and cost which Landlord or Tenant may suffer in connection with any real estate broker, etc. claiming by, through or under either party seeking any commission, fee or payment in connection with this Lease.

20. **REPRESENTATIONS AND WARRANTIES OF LANDLORD.** Landlord represents and warrants to Tenant on and as of the date of execution and delivery of this Lease as follows:

20.1. Title. Landlord owns the Premises in fee simple.

20.2. Authorization. Landlord has full capacity, right, power and authority to execute, deliver and perform this Lease and all documents to be executed by Landlord pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Lease and all other documents executed or to be executed pursuant hereto on behalf of Landlord are and shall be duly authorized to sign the same on Landlord's behalf and to bind Landlord thereto. This Lease and all documents to be executed pursuant hereto by Landlord are and shall be binding upon and enforceable against Landlord in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration of maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which Landlord or the Premises are subject or by which Landlord or the Premises is bound.

20.3. Litigation. There are no claims, causes of action or other litigation or proceedings pending or, to Landlord's actual knowledge, threatened in respect to the ownership, operation or environmental condition of the Premises or any part thereof (including disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining land owners or suppliers of goods or services).

20.4. Violation. There are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Premises, which have not been heretofore entirely corrected. In the event Landlord has knowledge of any such violations, Landlord shall cure such violations prior to the date that Tenant takes possession of the Premises.

20.5. Compliance with Laws. As of the Effective Date, it has, and as of the Rent Commencement Date it will have, materially complied with all laws, rules and regulations affecting the Premises.

20.6. Miscellaneous. Without investigation, Landlord has no actual knowledge of (i) enacted, pending or proposed condemnation proceedings or other governmental action against the Premises, (ii) pending or proposed plans to alter access to the Premises, (iii) the presence on the Premises of Hazardous Materials, or (iv) any reason or condition that would materially, adversely affect Tenant's ability to secure any permits, licenses or other approvals required by governmental agencies for Tenant's use, enjoyment or improvement of the Premises, including without limitation a certificate of occupancy.

21. REPRESENTATIONS AND WARRANTIES OF TENANT.

21.1. Authorization. Subject to approval of this Lease by the City of Sheboygan Common Council, Tenant has full capacity, right, power and authority to execute, deliver and perform this Lease and all documents to be executed by Tenant pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Lease and all other documents executed or to be executed pursuant hereto on behalf of Tenant are and shall be duly authorized to sign the same on Tenant's behalf and to bind Tenant thereto. This Lease and all documents to be executed pursuant hereto by Tenant are and shall be binding upon and enforceable against Tenant in accordance with their respective terms.

21.2. Compliance with Laws. As of the Effective Date, Tenant has, and as of the Rent Commencement Date Tenant will have, materially complied with all laws, rules and regulations affecting the Premises.

21.3. Miscellaneous. Without investigation, Tenant has no actual knowledge of (i) enacted, pending or proposed condemnation proceedings or other governmental action against the Premises, (ii) pending or proposed plans to alter access to the Premises, (iii) the presence on the Premises of Hazardous Materials, or (iv) any reason or condition that would materially, adversely affect Landlord's ability to secure any permits, licenses or other approvals required by governmental agencies for Landlord's use, enjoyment or improvement of the Premises or Development, including without limitation a certificate of occupancy.

22. **CONFIDENTIALITY.** Landlord and Tenant shall use commercially reasonable efforts to keep the terms of this Lease confidential except to the extent disclosure is reasonably necessary in the conduct of each party's business or is otherwise required by law, including Public Records Laws applicable to the Tenant as a municipal entity.

23. **SURVIVAL.** All indemnities contained in this Lease and obligations which by their terms are to be performed after the termination or expiration of this Lease shall survive the termination or expiration of this Lease.

24. MISCELLANEOUS.

24.1. Merger. This Lease represents the entire agreement between Landlord and Tenant pertaining to the subject matter of this Lease, and any and all discussions and negotiations between Landlord and Tenant have been merged into this Lease. No rights are conferred upon Landlord until this Lease has been executed by Tenant. Any and all representations and agreements by either of the parties or their agents made during negotiations prior to execution of this Lease and which representations are not contained in this Lease shall not be binding upon either of the parties.

24.2. Interpretation. All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any portion of this Lease may require, the same as if such words had been fully and properly written in the number and gender.

24.3. Counterpart Execution. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

24.4. No Joint Venture or Partnership. Landlord and Tenant are not and shall not be considered joint venturers nor partners and neither shall have power to bind or obligate the other except as set forth in this Lease.

24.5. Separability. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

24.6. Waiver of Claim. Any claim which either party may have against the other for default in performance of any of the obligations herein contained to be kept and performed by the other party shall be deemed waived unless such claim is asserted by written notice thereof to the other party within six (6) months of discovery of the alleged default or of accrual of the cause of action and unless suit be brought thereon within six (6) months after such notice. Furthermore, the parties waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other (except for personal injury or property damage) on all matters connected with this Lease, their relationship as landlord and tenant, tenant's use or occupancy of the Premises and any statutory or other remedy. Tenant shall not interpose any noncompulsory counterclaims in a summary proceeding or other action based on termination or holdover. Finally, Tenant agrees to look solely to Landlord's interest in the Premises for the recovery of any judgment from Landlord, it being agreed that Landlord, or if Landlord is a partnership, its partners, whether limited or general, or if Landlord is a corporation, its directors, officers or shareholders, shall never be personally liable for any such judgment.

24.7. Memorandum of Lease, Commencement Agreement. Within ten (10) days of the Commencement Date, Landlord and Tenant execute a short form or memorandum of this lease, in substantially the form attached hereto as Exhibit B. (the "Memorandum") setting forth the legal description of the Premises, the Commencement Date and the termination date of the Term. Such Memorandum may be recorded by Tenant in the real property records in Sheboygan County, Wisconsin as record notice of Tenant's rights and obligations under this Lease.

24.8. Modification of Lease. No modification, alteration or amendment of this Lease shall be binding unless in writing and executed by both parties hereto.

24.9. Headings. The headings to the Sections of this Lease are inserted only as a matter of convenience and for reference, and in no way confine, limit or proscribe the scope or intent of any Section of this Lease, nor in any way affect this Lease.

24.10. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, any subtenants and their heirs, administrators, executors, successors and assigns.

24.11. Time of the Essence and Business Day. Time is of the essence of this Lease and each provision; provided, however, if the final (but not any interim) date of any period set forth

herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

24.12. Permitted Delays. If either party is delayed or prevented from performing any of its non-monetary obligations under this Lease by reason of strike, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or any other cause beyond such party's control ("Permitted Delays"), the period of such delay or such prevention shall be deemed added to the time period herein provided for the performance of any such obligation.

24.13. Governing Law. This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of Wisconsin.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed and sealed this _____ day of _____, 2024.

LANDLORD
SHEBOYGAN WP, LLC

By: _____
Roland Lokre, Manager

IN WITNESS WHEREOF, Tenant has caused this Lease to be executed and sealed this _____ day of _____, 2024.

TENANT
CITY OF SHEBOYGAN

By: _____
Ryan Sorenson, Mayor

Attest: _____
Meredith DeBruin, City Clerk

Approved:

By: _____
Evan Grossen, Deputy Finance Director/Comptroller

Approved as to Form:

By: _____
Charles Adams, City Attorney

This document is authorized by and in accordance with Resolution No. _____.

EXHIBIT A**Legal Description of Premises**

Lot 4, Sheboygan Business Center, according to the recorded plat thereof. Said land being in the City of Sheboygan, County of Sheboygan, State of Wisconsin.

Tax Key Number: 59281479010

EXHIBIT B
Memorandum

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into effect as of the ____ day of _____, 2024, by and between Sheboygan WP, LLC, a Wisconsin limited liability company, (“Landlord”), and the City of Sheboygan, a Wisconsin municipality (“Tenant”).

1. **TERM AND PREMISES.** For a term expiring on May 1, 2027 and upon the provisions set forth in that certain written lease of even date herewith from Landlord to Tenant (the “Lease”), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord that certain real property consisting of land and improvements (“Premises”) located or to be located thereon in the City of Sheboygan, Sheboygan County, Wisconsin, legally described on Exhibit A, which exhibit is attached hereto and made a part hereof, together with all rights of ingress and egress and all other rights, easements and appurtenances pertaining to said Premises, all of which rights are more particularly described in the Lease.

2. **USE.** Reference is particularly made to Article 5 of the Lease wherein Tenant is granted the right to use the Premises for any use permitted under applicable law.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum of Lease is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** It is the intention of Landlord and Tenant that the covenants described and referred to herein shall not be personal to Landlord and Tenant and shall be binding on successors and assigns and shall run with the Premises. Each successive owner of the real property described in Exhibit B, or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants for the benefit of the Premises.

5. **COUNTERPARTS.** This Memorandum of Lease may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Lease.

6. **CAPITALIZED TERMS.** All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Lease.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed and sealed this _____ day of _____, 2024.

LANDLORD
SHEBOYGAN WP, LLC

By: _____
Roland Lokre, Manager

IN WITNESS WHEREOF, Tenant has caused this Lease to be executed and sealed this _____ day of _____, 2024.

TENANT
CITY OF SHEBOYGAN

By: _____
Ryan Sorenson, Mayor

Attest: _____
Meredith DeBruin, City Clerk