

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A LEASE AGREEMENT WITH 10th STREET WAREHOUSE ASSOCIATES, LLC FOR WAREHOUSE SPACE LOCATED AT 10TH STREET, SUITES 417 & 425; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (the "City") currently utilizes a warehouse on property it owns on Buckeye Street for storage of City property; and

WHEREAS, on February 11, 2019, the City Council passed Resolution No. 9618, authorizing the sale of the Buckeye Street property to Bruce Oakley Inc.; and

WHEREAS, the sale of the Buckeye Street property to Bruce Oakley, Inc. is anticipated to close in the near future and the City is in need of another storage facility to house the City property that is currently stored in the Buckeye warehouse; and

WHEREAS, it is in the City's best interests to enter into a lease agreement with 10th Street Warehouse Associates, LLC to lease a warehouse located on 10th Street, Suites 417 and 425 (see map attached hereto as Exhibit A).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into a Lease Agreement between the City of North Little Rock and 10th Street Warehouse Associates, LLC (substantially similar to Exhibit B attached hereto) for the premises located at 10th Street, Suites 417 and 425 in North Little Rock, Arkansas.

SECTION 2: That the City shall pay Four Thousand Seven Hundred Fifty and 00/100 Dollars (\$4,750.00) a month, escalating two percent (2%) annually, to 10th Street Warehouse Associates, LLC for the term of the lease agreement.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Mayor Joe A. Smith

Diane Whitbey, City Clerk

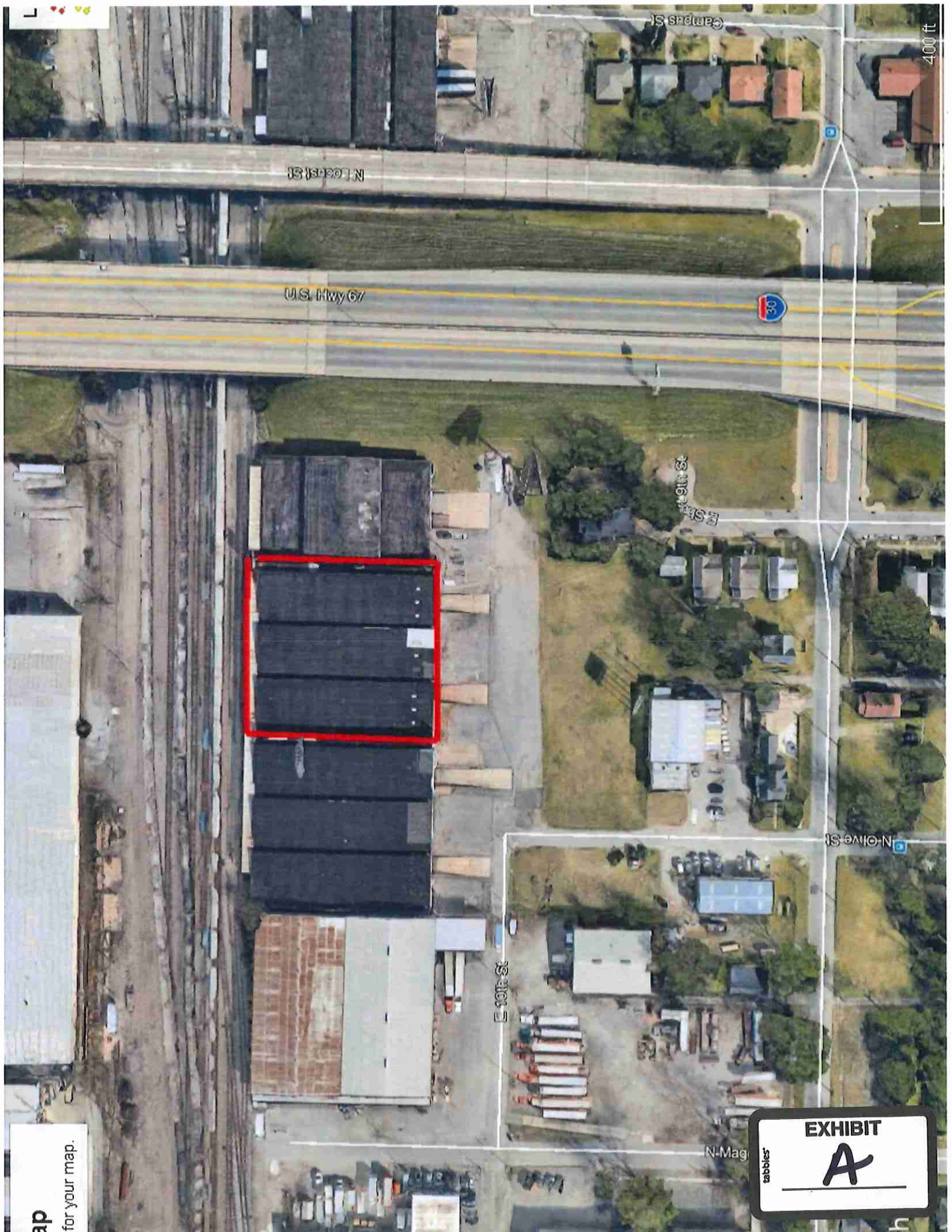
APPROVED AS TO FORM:

Amy Beckman Fields m-1011

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED	<u>10:50</u>	A.M.	_____	P.M.
By	<i>M. Miller, Asst City Atty</i>			
DATE	<u>10/22/19</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<i>DA Whitbey</i>			



400 ft

N Olive St

U.S. Hwy 67

Campus St

E 91st St

E 101st St

N Olive St

N-Mag

tabbles

EXHIBIT

A

ap

n for your map.

COMMERCIAL LEASE AGREEMENT

BETWEEN

10TH STREET WAREHOUSE ASSOCIATES, LLC, Landlord

AND

City of North Little Rock, Arkansas, Tenant

**Project: Plant 2 West
10th and Olive, North Little Rock**

**Address: Suite 417 & 425 10th Street
North Little Rock, AR 72114**



TABLE OF CONTENTS

1. Premises, Term and Initial Improvements
2. Base Rent, Security Deposit and Rent
3. Landlord's Maintenance
4. Tenant's Maintenance and Repair Obligations
5. Alterations
6. Signs
7. Utilities
8. Insurance
9. Casualty Damage
10. Use
11. Inspection
12. Assignment and Subletting
13. Condemnation
14. Surrender of Premises; Holding Over
15. Quiet Enjoyment
16. Events of Default
17. Remedies
18. Landlord's Default
19. Mortgages
20. Encumbrances
21. Non-Appropriation of Funds or Change of Law
22. Miscellaneous
23. Notices
24. Hazardous Waste
25. Landlord's Lien

LEASE AGREEMENT

This Lease Agreement (this "Lease") is entered into by 10th Street Warehouse Associates, LLC ("Landlord"), and The City of North Little Rock, AR ("Tenant").

1. PREMISES, TERM, AND INITIAL IMPROVEMENTS.

(a) Landlord leases to Tenant, and Tenant leases from Landlord, an approximate 40,000 square foot space (the "Premises") identified as suite 417 and suite 425 10th Street, North Little Rock, AR which is part of an approximately 97,540 square foot building (the "Building") located on the real property described on Exhibit A (the "Land"), subject to the terms and conditions in this Lease.

(b) The Lease term shall be five (5) years, beginning November 1, 2019 (the "Commencement Date"), and ending October 31, 2024 (the "Term", which defined term shall include all renewals and extensions of the Term, if any); however, if the Commencement Date is not the first day of a calendar month, then the Term shall end on the last day of the 12-month period that begins on the first day of the first full calendar month of the Term.

(c) Landlord will install at its own expense, two (2) 12 foot overhead doors.

(d) If this Lease is in full force and effect and Tenant is not in default under any provision of the Lease at the time of the exercise of this option, then Tenant is granted two (2), five (5) year Renewal Options to extend this Lease with two percent (2%) annual escalations to Rent if the option is exercised with sixty (60) days written notice prior to Expiration Date.

2. BASE RENT, SECURITY DEPOSIT AND RENT.

(a) Tenant shall pay to Landlord monthly installments of "Base Rent", in advance, without demand, deduction or set off, equal to \$4,750.00 per month escalating two percent (2%) annually. The first monthly installment of Base Rent shall be due on the date hereof; thereafter, monthly installments of Base Rent shall be due on the first day of each calendar month following the Commencement Date. If the Term begins on a day other than the first day of a month or ends on a day other than the last day of a month, the Base Rent and other rent (defined below) for such partial month shall be prorated.

(b) If any payment required of Tenant under this Lease is not paid within 15 days when due, Landlord may charge Tenant a fee equal to 5% of the delinquent payment.

(c) All payments and reimbursements required to be made by Tenant under this Lease shall constitute "rent".

3. LANDLORD'S MAINTENANCE.

(a) Landlord's maintenance obligations are limited to the replacement of the Building's roof and maintenance of the foundation piers and structural members of the exterior walls (collectively, the "Building's Structure"); however, Landlord shall not be responsible (1) for any such work until Tenant delivers to Landlord written notice of the need therefore or (2) for alterations to the Building's Structure required by Law because of Tenant's use of the Premises (which alterations shall be performed by Tenant). The Building's Structure does not include windows or components thereof (including caulking, flashing, etc.), glass or plate glass, doors, special store fronts or office entries, all of which shall be maintained by Tenant. Landlord's liability for any defects, repairs, replacement or maintenance for which Landlord is responsible hereunder shall be limited to the cost of performing such work.

(b) Additionally, Landlord shall, at Landlord's expense, maintain the parking areas, driveways, alleys and grounds surrounding the Premises in a manner substantially similar to the level of maintenance that is typical in other similar class industrial buildings in the vicinity of the Building, including prompt maintenance, repairs and replacements of (1) the exterior of the Building (including painting), sewage lines, (3) skylights, and (4) any other items normally associated with the foregoing. Tenant shall promptly notify Landlord of any work required to be performed under this Section 4.(b), and Landlord shall not be responsible for performing such work until Tenant delivers to Landlord such notice and only to the extent Landlord reasonably determines that such work is in fact required under this Section 4.(b).

4. TENANT'S MAINTENANCE AND REPAIR OBLIGATIONS.

(a) Tenant shall maintain all parts of the Premises (except for maintenance work which Landlord is expressly responsible for under Section 4. (a) In good condition and promptly make all necessary repairs and

replacements to the Premises including lighting, doors, repairs to columns.. Tenant shall repair and pay for any damage caused by a Tenant Party (defined below) or caused by Tenant's default hereunder.

5. **ALTERATIONS.** Tenant shall make any alterations, additions or improvements to the Premises with the prior written consent of Landlord.

6. **SIGNS.** Tenant shall place, install or attach any signage, or security installations to the Premises or the building with Landlord's prior written approval.

7. **UTILITIES.** Tenant shall obtain and pay for all gas, electricity, water, sewer, heat, telephone and other utilities and services used at the Premises.

8. **INSURANCE.** Tenant shall maintain (a) worker's compensation insurance (with a waiver of subrogation endorsement to the extent permitted by Arkansas law and the worker's compensation policy).

9. **CASUALTY DAMAGE.**

(a) Tenant immediately shall give written notice to Landlord of any damage to the Premises or the Building. If the Premises or the Building are totally destroyed by an insured peril, or so damaged by an insured peril that, in Landlord's estimation, rebuilding or repairs cannot be substantially completed within 180 days after the date of Landlord's actual knowledge of such damage, then either Landlord or (if a Tenant Party did not cause such damage) Tenant may terminate this Lease by delivering to the other written notice thereof within 30 days after such damage, in which case, the rent shall be abated during the unexpired portion of this Lease, effective upon the date such damage occurred. Time is of the essence with respect to the delivery of such notices.

(b) Subject to Section 10.(c), if this Lease is not terminated under Section 9(a), then Landlord may restore the Premises to substantially its previous condition, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements or personal property required to be covered by Tenant's insurance under Section 8. If the Premises are untenantable, in whole or in part, during the period beginning on the date such damage occurred and ending on the date of substantial completion of Landlord's repair or restoration work (the "**Repair Period**"), then the rent for such period shall be reduced to such extent as may be fair and reasonable under the circumstances and the Term shall be extended by the number of days in the Repair Period.

(c) If the Premises are destroyed or substantially damaged by any peril not covered by the insurance maintained by Landlord or any Landlord's Mortgagee (defined below) requires that insurance proceeds be applied to the indebtedness secured by its Mortgage (defined below) or to the Primary Lease (defined below) obligations, Landlord may terminate this Lease by delivering written notice of termination to Tenant within 30 days after such destruction or damage or such requirement is made known by any such Landlord's Mortgagee, as applicable, whereupon all rights and obligations hereunder shall cease and terminate, except for any liabilities of Tenant which accrued before this Lease is terminated.

10. **USE.**

(a) The Premises shall be used any legal purpose consistent with operations of the City of North Little Rock, AR.

(b) Tenant and its employees and invitees shall have the exclusive right to use the portion of the parking lot immediately in front of the leased Premises and may, at Tenant's expense, erect fencing and utilize a portion of the parking lot area for outdoor storage to the extent permitted by the City's zoning and land use ordinances. Landlord shall not be responsible for enforcing Tenant's parking rights against third parties.

11. **INSPECTION.** Landlord and Landlord's agents and representatives may enter the Premises during business hours to inspect the Premises; to make such repairs as may be required or permitted under this Lease; to perform any unperformed obligations of Tenant hereunder; and to show the Premises to prospective purchasers, mortgagees, ground lessors, and (during the last six months of the Term) tenants.

12. **ASSIGNMENT AND SUBLETTING.**

(a) Tenant shall not, without the prior written consent of Landlord assign any portion of this lease agreement.

13. **CONDEMNATION.** It is expected the Arkansas Department of Transportation will take approximately 30,000/sf of the eastern portion of the warehouse adjacent to Interstate 30. This condemnation shall not affect the terms of this lease agreement. All compensation awarded for any Taking shall be the property of Landlord and Tenant assigns any interest it may have in any such award to Landlord; however, Landlord shall have no interest in any award made to Tenant for loss of business or goodwill or for the taking of Tenant's trade fixtures, if a separate award for such items is made to Tenant.

14. **SURRENDER OF PREMISES; HOLDING OVER.**

(a) If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a Tenant at will and Tenant shall pay, in addition to the other rent due hereunder, a daily base rental equal to 200% of the daily Base Rent payable during the last month of the Term, even if Landlord consents to such holdover, unless Landlord agrees otherwise in writing.

15. **QUIET ENJOYMENT.** Provided Tenant has fully performed its obligations under this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise.

16. **EVENTS OF DEFAULT.** Each of the following events shall constitute an "**Event of Default**" under this lease:

(a) Tenant fails to pay any rent when due or any payment or reimbursement required under any other lease with Landlord when due, and in either case such failure continues for a period of 30 days from the date such payment was due.

(b) Tenant fails to comply with any term, provision or covenant of this Lease (other than those listed in this Section 18), and such failure continues for 20 days after written notice thereof to Tenant.

(c) Tenant fails to pay its obligations as they become due or Tenant has defaulted under any agreement executed in connection with or evidencing indebtedness of Tenant in excess of \$10,000.

17. **REMEDIES.**

(a) Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by Law, take any of the following actions:

(1) Terminate this Lease by giving Tenant written notice thereof, in which event, Tenant shall pay to Landlord the sum of all rent accrued hereunder through the date of termination, or

(2) Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (A) all rent and other amounts accrued hereunder to the date of termination of possession, and (B) all rent and other sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to exclude or dispossess Tenant of the Premises shall be deemed to be taken under this Section 17.(a)(2). If Landlord elects to proceed under this Section 17.(a)(2), it may at any time elect to terminate this Lease under Section 17.(a)(1).

18. **LANDLORD'S DEFAULT.** If Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure, Tenant's exclusive remedy shall be an action for damages. Unless Landlord fails to so cure such default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. Notwithstanding any other provision of this Lease, any agreement contemplated by this Lease, or any rights which Tenant might otherwise have at law, equity, or by statute, whether based on contract or some other claim, any liability of Landlord to Tenant will be limited to Tenant's actual, direct, but not consequential, damages therefore.

19. **MORTGAGES.**

(a) This Lease shall be subordinate to any deed of trust, mortgage or other security instrument (a "**Mortgage**"), and to increases, renewals, modifications, consolidations, replacements, and extensions thereof. However, Tenant shall from time to time within ten days after request therefore, execute any instruments that may be required by any Landlord's Mortgagee to evidence the subordination of this Lease to any such Mortgage.. If Tenant fails to execute the same within such ten-day period, Landlord may execute the same as attorney-in-fact for Tenant.

20. **ENCUMBRANCES.** Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind Landlord's property or the interest of Landlord or Tenant in the Premises or to charge the rent for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant shall pay or cause to be paid all sums due for any labor performed or materials furnished in connection with any work performed on the Premises by or at the request of Tenant.

21. **NON-APPROPRIATION OF FUNDS OR CHANGE OF LAW.** Notwithstanding any other provision of this Lease, and subject to the limitations set forth below, the City shall have the right to terminate this Lease without penalty and without any advance notice as a result of any of the following:

- (a) Non-appropriation of funds sufficient to allow the City to either meet its obligations under this Lease or to operate as required and to fulfill its obligations under Lease; or
- (b) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the City to make any payment hereunder are insufficient or unavailable for any other reason as determined by the City in its sole discretion; or
- (c) If the City's authorization to conduct its business or engage in activities or operations related to the subject matter of this Lease is withdrawn or materially altered or modified; or
- (d) If the City's duties, programs or responsibilities are modified or materially altered; or
- (e) If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the City's ability to fulfill any of its obligations under this Lease. The City shall provide Landlord with written notice of termination pursuant to this section.

As used herein, the term "non- appropriation" shall mean and include the due adoption of a budget by ordinance not including sufficient funds for the performance of fiscal obligations arising under this Lease.

All payments for rents up to and including the date of termination of this Lease will be paid within thirty (30) days of date of termination.

22. **MISCELLANEOUS.**

(a) Words of any gender used in this Lease shall include any other gender, and words in the singular shall include the plural, unless the context otherwise requires. The following terms shall have the following meanings: "**Laws**" shall mean all federal, state, and local laws, rules, and regulations; "**Tenant Party**" shall include Tenant, any assignees claiming by, through, or under Tenant, any subtenants claiming by, through, or under Tenant, and any of their respective agents, contractors, employees, and invitees.

(b) Landlord may transfer and assign, in whole or in part, its rights and obligations in the Building and property that are the subject to this Lease, in which case Landlord shall have no further liability hereunder.

(c) This Lease constitutes the entire agreement of the Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

(d) All obligations of Tenant hereunder not fully performed by the end of the Term shall survive, including, without limitation, all payment obligations with respect to Taxes and insurance and all obligations concerning the condition and repair of the Premises.

(e) All references in this Lease to "the date hereof" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.

(f) Landlord and Tenant each warrant to the other that it has not dealt with any broker or agent in connection with this Lease, other than Colliers International, whose commission shall be paid by Landlord pursuant to a separate written agreement. Tenant and Landlord shall each indemnify the other against all costs, attorneys' fees, and other liabilities for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

(g) All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notices given in accordance with the provisions of Section 24 to the same effect as if each had received such notice.

(h) The terms and conditions of this Lease are confidential and Tenant shall not disclose the terms of this Lease to any third party except as may be required by law or to enforce its rights hereunder.

23. **NOTICES.** Each provision of this instrument with reference to the sending, mailing or delivering of notice or the making of any payment hereunder shall be deemed to be complied with when and if the following steps are taken:

(a) All rent shall be payable to Landlord at the address for Landlord set forth below or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent shall not be deemed satisfied until such rent has been actually received by Landlord.

(b) All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address set forth below, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

(c) Any written notice or document required or permitted to be delivered hereunder shall be deemed to be delivered in each case, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith.

24. **HAZARDOUS WASTE.** The term "**Hazardous Substances**," as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "**Environmental Law**," which term shall mean any Law relating to health, pollution, or protection of the environment. Tenant hereby agrees that no activity will be conducted on the Premises that will produce any Hazardous Substances, except for such activities that are part of the ordinary course of Tenant's business activities (the "**Permitted Activities**") provided such Permitted Activities are conducted in accordance with all Environmental Laws, and the Premises will not be used in any manner for the storage of any Hazardous Substances except for any temporary storage of such materials that are used in the ordinary course of Tenant's business. If at any time during or after the Term, the Premises are found to be so contaminated or subject to such conditions, Tenant shall defend, indemnify and hold Landlord harmless from all claims, demands, actions,, costs, expenses, damages and obligations of any nature arising from or as a result of the use of the Premises by Tenant.

25. **OFFER TO PURCHASE.** Tenant shall have an option to purchase the Premises with a sixty (60) day notice by Tenant during the initial term in the amount of \$950,000.00. In the event that a portion of the Premises has been transferred to the Arkansas Department of Transportation, either voluntarily or by eminent domain, the purchase price will be reduced by the net amount of compensation paid by the Arkansas Department of Transportation to Landlord. Provided, however, in the event that Landlord receives an offer to purchase the Premises from a third party, Tenant will be given ninety (90) days to exercise its option to purchase upon the terms stated herein. If Tenant does not exercise its option within that 90-day period, Landlord may sell the Premises to the third party subject to the lease terms stated herein, and Tenant's option shall be terminated.

TENANT ACKNOWLEDGES THAT (1) IT HAS INSPECTED AND ACCEPTS THE PREMISES IN AN "AS IS, WHERE IS" CONDITION, (2) THE BUILDINGS AND IMPROVEMENTS COMPRISING THE SAME ARE SUITABLE FOR THE PURPOSE FOR WHICH THE PREMISES ARE LEASED AND LANDLORD HAS MADE NO WARRANTY, REPRESENTATION, COVENANT, OR AGREEMENT WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PREMISES, (3) THE PREMISES ARE IN GOOD AND SATISFACTORY CONDITION, (4) NO REPRESENTATIONS AS TO THE REPAIR OF THE PREMISES, NOR PROMISES TO ALTER, REMODEL OR IMPROVE THE PREMISES HAVE BEEN MADE BY LANDLORD AND (5) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, THAT EXTEND BEYOND THE DESCRIPTION OF THE PREMISES.

Executed by Landlord on _____, 2019.

LANDLORD: **10TH STREET WAREHOUSE ASSOCIATES, LLC**

By: _____
Kenneth G. McRae IV, Managing Partner

Address: c/o Colliers International
P. O. Box 3546
Little Rock, AR 72203

Telephone: 501-372-6161
Fax: 501-372-0671

Executed by Tenant on _____, 2019.

TENANT: **City of North Little Rock**

By: _____

Name: _____

Title: _____

Address: 300 Main Street
North Little Rock, AR
72114

Telephone: _____

Fax: _____

Notices to:

Amy Beckman Fields
City Attorney
North Little Rock ,AR
72114

