

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING RENEWAL OF A LEASE AGREEMENT WITH CREATE APPALACHIA AGREEMENT FOR THE USE OF SPACE AT 225 W. CENTER STREET AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION

WHEREAS, on November 16, 2021, the board adopted Resolution No. 2022-092 approving a lease agreement with Create Appalachia, a Tennessee not for profit tax exempt organization, leasing city property consisting of the first and second floor and office space on first floor formerly occupied by the Mayor and City Managers offices located at 225 W. Center Street; and

WHEREAS, Create Appalachia is a not for profit charitable organization as defined by Tenn. Code Ann. §§ 6-54-111 and 48-51-101 et seq. providing recreational and educational opportunities to citizens; and

WHEREAS, Create Appalachia continues to make good use of the space, from which it provides valuable benefits and services to citizens; and

WHEREAS, the terms will be for 12 months with the right to renew for an additional 12 months, and also a 90 day termination for convenience clause; and

WHEREAS, Create Appalachia desires and the board finds it beneficial to renew the lease with Create Appalachia.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That renewal of a Lease Agreement between the City of Kingsport and Create Appalachia for space located at 225 W. Center Street, is approved subject to approval of the Interlocal Agreement by the County Commission.

SECTION II. That the mayor or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the a Lease Agreement between the City of Kingsport and Create Appalachia for space located at 225 W. Center Street, to deliver the Agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**LEASE**

**THIS LEASE** (herein "Lease") is made and entered into as of the last date entered with the signatures below, by and between CITY OF KINGSPORT, TENNESSEE, a municipal corporation of the State of Tennessee, (herein "Lessor") and CREATE APPALACHIA, a public benefit not for profit corporation chartered under the laws of the State of Tennessee (herein "Lessee").

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the premises and mutual covenants of the parties contained herein the parties agree as follows:

**SECTION 1. PREMISES.** Lessor in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Lessee and the restrictions contained herein does hereby lease to the Lessee and the Lessee does hereby lease and take from the Lessor the following described property (herein "Premises") and all improvements located thereon:

a.) Approximately 4,026 square feet of office/general space which makes up the first floor, northeastern wing, of the City/County Administrative building as further depicted by the first floor plan prepared by Allen N. Dryden dated May 15, 1961.

b.) Approximately 4,026 square feet of office/general spaces which makes up the second floor, northeastern wing, of the City/County Administrative building as further depicted by the second floor plan prepared by Allen N. Dryden dated May 15, 1961.

c.) Approximately 725 square feet of conference/meeting space identified as the Council Room, (room 202) by the second floor plan prepared by Allen N. Dryden dated May 15, 1961

And being portions of the structure referred to as the City-County Administrative Building in the Deed dated May 12, 1966 and recorded in Deed Book 224A Page 435, Sullivan County Register of Deed's office; situated on the property acquired by Lessor through a deed dated November 21, 1946 and recorded in Deed Book 87A, Page 519 in the Sullivan County Register of Deed's office.

**SECTION 2. LEASE TERM.** The term of this Lease (herein "Initial Term") shall be twelve (12) months beginning on last date entered with the signatures below, at noon and terminating the ending on the same day and month twelve (12) months thereafter, at noon, unless sooner terminated as herein provided. Provided Lessee is not in default, Lessor grants to Lessee the right to extend this Lease for one (1) additional consecutive twelve (12) month term (herein "Renewal Term") upon the terms, covenants and conditions contained herein. Lessee may exercise such right to extend the Initial Term upon written notice to Lessor at least ninety (90) days prior to the expiration of the Initial Term of the Lease. In no event will the Initial Term and Renewal Term extend beyond three years, except on written agreement of the parties.

**SECTION 3. RENT.** Lessee shall pay to Lessor, as rent, without demand or deduction, as rent One Dollar (\$1.00) per month with the first payment due on the date of the beginning of the Initial Term and on the same day each month thereafter during the Initial Term, and likewise for the Renewal Term without offset or deduction. All payments shall be made to Lessor at City of Kingsport, Tennessee, 415 Broad Street, Kingsport, Tennessee 37660, Attention: Lisa Winkle or designee, or at such other place as is designated in writing by Lessor. It is the intention of the Lessor and Lessee that utilities described in Section 5 shall be paid by Lessee and the Lessor shall be indemnified by Lessee and is hereby so indemnified by Lessee against such costs, charges, expenses, and obligation. In addition to the rent provided herein, Lessee must pay to Lessor any and all real estate taxes, assessments, and other governmental levies and charges, general and special, ordinary or extraordinary, unforeseen or foreseen, of any kind which are assessed against or imposed in respect of the Premises.

**SECTION 4. USE OF PREMISES.** Lessee shall use the Premises for the purpose for office requirements, parking, and storage, and for no other purpose. Lessee agrees not to use the Premises in any way that may be unlawful, improper, noisy, offensive, or contrary to any applicable statute, regulation, ordinance or bylaw. Lessee hereby acknowledges the Law Court and Chancery Court for the Second Judicial District conduct proceedings within the structure and Lessee's activities shall not interfere with court proceedings. Lessee shall not permit the sale, service, use, consumption, display, storage, or presence of alcoholic beverages, wine, or beer, including brown bagging, on the Premises at any time.

**SECTION 5. UTILITIES.** During the Initial Term or Renewal Term, Lessee shall be solely responsible for the payment of garbage collection, telephone, cable, internet, and any service fees required for the installation of these utilities. Costs for water/sewer bills, power bills and natural gas bills shall be Lessee's responsibility on a pro rata basis determined by square footage occupied by Lessee.

**SECTION 6. CLEAN AND SANITARY CONDITION.** During the Initial Term and Renewal Term, Lessee shall keep and maintain the Premises in a clean and sanitary condition at all times, free of all garbage and debris. All garbage and similar debris shall be deposited by Lessee in facilities specifically for garbage collection. Lessee shall further comply with all local ordinances and regulations imposed by Lessor relating to maintaining the Premises in a clean and sanitary condition and collection of garbage and similar debris. Lessee shall be responsible for janitorial services and pest control for the Premises.

**SECTION 7. LESSEE'S MAINTENANCE.** Except as otherwise stated in this Lease it shall be Lessee's sole responsibility to keep and maintain the entire Premises, and every part thereof, in good condition and repair at all times during the Initial Term or Renewal Term. Lessee shall maintain the Premises in compliance with the laws of the state of Tennessee and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officials of the governmental agencies having jurisdiction. Lessee shall comply with all requirements of law,

ordinance and otherwise, affecting the Premises. If Lessee refuses or neglects to commence and to complete repairs promptly and adequately, Lessor may declare the Lessee in breach of this Lease. Lessee shall, upon the expiration or termination of this Lease, surrender the Premises in good condition, broom clean, reasonable wear and tear excepted.

**SECTION 8. LESSOR'S MAINTENANCE.** Except for any repairs necessitated by the negligent act or omission of Lessee, its agents, servants, or invitees, or by any unusual use of the Premises by Lessee, Lessor shall, upon receipt of notice in writing from Lessee when such repairs are necessary, repair and maintain in good order and condition the roof, maintain the sewer, water lines, and other matters related to plumbing, maintain the HVAC systems in the building, and be responsible for all other items of maintenance not specifically assigned to the Lessee. Additionally, prior to occupancy by Lessee, Lessor will broom clean the Premises including the removal of loose items on the office floor, clean the area of the Premises outside the building including the removal of any trash and debris, and ensure all light bulbs and ballasts in the Premises are in good and working condition as of the lease commencement date, after which point Lessee will be responsible for all light bulbs and ballasts.

**SECTION 9. COMPLIANCE WITH APPLICABLE LAWS.** Throughout the Initial Term or Renewal Term, Lessee shall comply with all present and future laws, statutes, codes, ordinances, rules and regulations of the federal government, state of Tennessee, or City of Kingsport, restrictive covenants and all orders, decrees and like actions of any court of competent jurisdiction which may be applicable to the Premises.

**SECTION 10. ALTERATIONS.** The Lessee shall have the right, at its sole expense, from time to time, to maintain security of Lessee's material and equipment inside the Premises, including the right to restrict access to the Premises through the installation of security devices (locks, cameras, card readers, door buzzers, intercom, and door alarms) to install an independent computer network within the Premises, and redecorate the Premises and to make such non-structural alterations and changes in such parts thereof as Lessee shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall neither impair the structural soundness nor diminish the value of the Premises and shall otherwise comply with the requirements of this Lease. Lessee agrees to pay promptly when due the entire cost of any work performed by it upon the Premises so that the Premises at all times shall be free of liens for labor and materials. Lessee further agrees that in doing such work that it shall employ materials of good quality and comply with all governmental requirements, and perform such work in a good and workmanlike manner. Lessee agrees that it shall procure all necessary permits for making any repairs, alterations, or other improvements for installations, when applicable.

**SECTION 11. SURRENDER OF PREMISES.** On the expiration or earlier termination of this Lease pursuant to its terms, Lessee shall peaceably and quietly leave and surrender the Premises to the Lessor, in good order, condition and repair, broom clean, reasonable wear and tear excepted and free and clear of all liens.

**SECTION 12. CONDITION OF PREMISES.** Lessee has examined the Premises and accepts the same "AS IS" and "WHERE IS" in its present state and condition without any representations or warranties, express or implied, in fact or in law, by Lessor as to the nature, condition or usability thereof, or as to the use or uses to which the Premises may be put.

**SECTION 13. FIRE, CASUALTY, EMINENT DOMAIN.** Should a substantial portion of the Premises, be substantially damaged by fire or other casualty, or be taken by eminent domain, Lessor may elect to terminate this Lease. When such fire, casualty or taking renders the Premises substantially unsuitable for its intended use, a proportionate abatement of rent shall be made, and Lessee may elect to terminate this Lease if: (a) Lessor fails to give written notice within 30 days after a fire, casualty or taking of its intention to restore the Premises; or (b) Lessor fails to restore the Premises to a condition substantially suitable for its intended use within 90 days after a fire, casualty or taking. Notwithstanding the foregoing, in the event of damage by fire or other casualty resulting from the carelessness, negligence, intentional, or other improper conduct of Lessee, its agents, employees, contractors, or others acting on its behalf, or from the carelessness, negligence, intentional, or other conduct of Lessee's customers, guest, or visitors, Lessee shall have the full liability and responsibility for repairing and/or rebuilding from such casualty loss and for other damages and losses incurred by Lessor. Lessor reserves all rights for damages or injury to the Premises for any taking by eminent domain, except for damage to Lessee's property or equipment.

**SECTION 14. FIRE INSURANCE.** Lessee shall not permit any use of the Premises which shall adversely affect or make voidable any insurance on the property of which the Premises are a part, or on the contents within the property, or which shall be contrary to any law, regulation or recommendation made by the state fire prevention agency, local fire department, Lessor's insurer or any similar entity. Lessee shall not vacate the Premises or permit same to be unoccupied other than during Lessee's customary non-business days or hours, or cause or allow the utilities serving the

Premises to be terminated.

**SECTION 15. SIGNS.** Any sign on the Premises shall conform to all applicable laws. The cost for all signs shall be borne by Lessee. Lessor grants Lessee permission to place a sign on the side and front of the building, provided it complies with the requirements of this Section 15

**SECTION 16. ASSIGNMENT OR SUBLEASE.** Lessee may, subject to the approval of Lessor, sublet the Premises, to allow another entity or individual to occupy the a part of the Premises. Lessor's prior consent to any sublease may be withheld for any or no reason. Lessee shall notify Lessor of its intention to sublease no less than 90 days prior to commencement of any sublease. A sublease shall only be approved for entity's which are not for profit corporations under the laws of the State of Tennessee. Furthermore, Lessee shall not sublease more than 50% of the Premises. If Lessee assigns this Lease or sublets the Premises without prior approval of Lessor, Lessor shall have the option to terminate this Lease, at an effective date to be determined by Lessor, upon written notice to Lessee.

**SECTION 17. LESSOR'S ACCESS.** Lessor, its agents and designates, may examine and inspect the Premises at reasonable times and Lessee shall provide Lessor, if not already available, with a set of keys for the purpose of such examination, provided that Lessor shall not thereby unreasonably interfere with the conduct of Lessee's business. Lessee shall permit Lessor to enter the Premises to inspect such repairs, improvements, alterations, or additions thereto as may be required under the provisions of this Lease. Lessor, its agents and designates, may at any reasonable time enter to show the Premises to others without creating any obligation or liability for Lessor. In the event of any emergency, Lessor, its agents and other representatives, may enter at any time, without notice and without the presence of Lessee. No compensation shall be asked or claim made by Lessee by reason of any inconvenience or annoyance arising from anything that may be done in repairing, altering, working on, or protecting the Premises or building, however the necessity may arise. Nothing in this Section 17 shall be construed as imposing any duty on Lessor to make any repairs, alterations or additions. A city police officer shall accompany Lessor, or its agents or designees, when entering the Premises pursuant to this Section 17.

**SECTION 18. LIABILITY.** Lessee shall, and does hereby, assume all risk of loss or injury to the property or person of all persons at any time coming upon the Premises during the Initial Term or Renewal Term. Lessee shall be solely responsible, as between Lessor and Lessee, for deaths or personal injuries to all persons and damage to any property, including damage by fire or other casualty, occurring in or on the Premises and arising out of the use, control, condition, or occupancy of the Premises by Lessee, except for death, personal injuries or property damage to the extent resulting from the negligence or willful misconduct of Lessor or Lessor's employees, agents, or representatives. Lessee agrees to indemnify and hold harmless Lessor from any and all liability, including but not limited to out of pocket costs, expenses, damages, causes of action, claims, judgments and reasonable attorney fees to the extent caused by or arising out of any of the aforesaid matters.

**SECTION 19. INSURANCE.** Lessee shall, during the initial term and any subsequent renewals, keep in full force and effect at its own expense the following types of insurance with, at least, the limits specified herein. :

All policies shall be from insurers that have a Certificate of Authority issued by or are otherwise eligible to operate in the State of Tennessee. Each insurer shall have a rating of A or better by AM Best or its equivalent as determined by the City. A Certificate of Insurance is required upon award and shall include the following language: "The City of Kingsport, Tennessee, its governing body, elected officials, officers, volunteers, agents, and employees as additional insureds for the full limits of all policies listed herein or otherwise applicable on a primary and noncontributory basis." And, "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail thirty (30) days written notice to the certificate holder." Lessee's insurance policies shall include appropriate clauses waiving all rights of subrogation against Lessor with respect to losses payable under such policies.

The Lessee shall promptly provide a complete certified copy of any policy including all endorsements and exclusions upon request.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(a) Commercial General Liability Coverage issued on an Insurance Services Office (ISO) Special Coverage Form or its equivalent for Bodily Injury, Property Damage, and Contractual coverages in the amount of \$1,000,000 per occurrence and \$2,000,000 in a general aggregate. The policy shall have no sublimits and sufficient a fire legal liability limit to reimburse for any fire damage to Lessee's or other leased and unleased spaces. Should the Lessee contract for any services or sub-lease any portion of the premises, those parties shall have the same or greater requirements as the Lessee including listing the Lessor as an additional insured.

(b) Property Insurance. Lessor may maintain, for its sole use and benefit property insurance coverage insuring the building. The Lessee is responsible for insuring any of its property located within the Premises.

(c) Lessee hereby releases Lessor from any and all liability and responsibility to anyone claiming any loss or damage to property arising from a risk insured against under the insurance required to be carried by Lessee. Proceeds from any insurer shall first be applied to the repair or restoration of the building, leased premises, and satisfaction of this lease before payment is made to benefit the Lessee.

**SECTION 20. DEFAULT AND ACCELERATION OF RENT.** In the event that (a) any assignment for the benefit of creditors, trust mortgage, receivership, or other insolvency proceeding shall be made or instituted with respect to Lessee or Lessee's property or (b) Lessee shall default in the observance or performance of any of Lessee's covenants, agreements, or obligations hereunder and such default shall not be corrected within 10 days after written notice thereof, then Lessor shall have the right thereafter, while such default continues and without demand or further notice, to re-enter and take possession of the Premises, to declare the Initial Term or Renewal Term ended, and/or to remove Lessee's effects, without being guilty of trespass or conversion, and without prejudice to any remedies which might be otherwise used for arrears of rent or other default or breach of the Lease. If Lessee defaults in the payment of the rent, or substantial invoice from Lessor or Lessor's agent, and such default continues for 10 days after written notice thereof, and because both parties agree that nonpayment of those sums when due is a substantial breach of the Lease, and, because the payment of rent in monthly installments is for the sole benefit and convenience of Lessee, then, in addition to any other remedies, the net present value of the entire balance of rent due hereunder as of the date of Lessor's notice, using the published prime rate then in effect, shall immediately become due and payable as liquidated damages. No actions taken by Lessor under this Section 20 shall terminate Lessor's obligation to pay rent under this Lease, as liquidated damages or otherwise. Any sums received by Lessor from or on behalf of Lessee at any time shall be applied first to offset any unpaid invoice or other payment due to Lessor and then to unpaid rent. Lessee shall also pay Lessor interest at the rate of 18 percent per annum on any past due payment. In addition to the foregoing, if after default, a debt collector or an attorney is employed or directed to collect or enforce the monetary or other obligations evidenced by this Lease or to assist Lessor in connection with its exercise of any right, power, privilege, or remedy referred to herein, the parties hereby agree that the Lessee shall pay promptly all costs incurred by Lessor with respect to collection or enforcement including reasonable attorney fees and court costs.

**SECTION 21. TERMINATION FOR CONVENIENCE.** In addition to the termination rights otherwise set forth in this Lease Lessor may terminate this Lease for its convenience at any time by giving written notice to Lessee at least thirty (30) days prior to the date when such termination shall become effective. Should Lessor exercise its right to terminate for convenience, Lessee shall fulfill those obligations set forth in this agreement regarding the surrender of the premises.

**SECTION 22. WASTE OR NUISANCE.** Lessee shall not commit or suffer to be committed any waste upon the Premises, and Lessee shall not use or permit the use of any medium that might constitute a nuisance.

**SECTION 23. NOTICE.** Any notice from Lessor to Lessee relating to the Premises or this Lease shall be deemed duly served when served by constable, or delivered to Lessee by certified or registered mail, return receipt requested, postage prepaid, or by recognized courier service with a receipt therefor, addressed to Lessee at:

City of Kingsport  
Attn: Steve Bower, Economic Development Director  
415 Broad Street  
Kingsport, TN 37660

With a copy to:

City of Kingsport  
Office of the City Attorney  
415 Broad Street  
Kingsport, TN 37660

Any notice from Lessee to Lessor relating to the Premises or this Lease shall be deemed duly served when served by constable, or delivered to Lessor by certified or registered mail, return receipt requested, postage prepaid, or by recognized courier service with a receipt therefor, addressed to Lessor at 225 W Center Street, Kingsport, Tennessee 37660, Attention: Lisa Winkle or designee, or at Lessor's last designated address. No oral notice or representation shall have any force or effect. Time is of the essence in the service of any notice.

**SECTION 24. OCCUPANCY.** If Lessee continues to occupy, control, or encumber all or any part of the Premises after termination of this Lease without the written permission of Lessor, Lessee shall

be liable to Lessor for any and all loss, damages or expenses incurred by Lessor resulting from the continued occupancy by Lessee and Lessee shall be considered subject to immediate eviction.

**SECTION 25. FIRE PREVENTION.** Lessee agrees to use reasonable precaution against fire, to provide and maintain approved, labeled fire extinguishers, emergency lighting equipment and exit signs, and to complete any other modifications within the Premises as required or recommended by the Insurance Services Office (or successor organization), OSHA, TNOSHA, the local fire department, fire marshal, insurer of Lessor, regulatory, safety, or any similar entity.

**SECTION 26. ENVIRONMENTAL MATTERS.** The term "hazardous substances", as used herein shall mean pollutants, contaminants, toxic or hazardous wastes or any other substances the use and/or the removal of which is restricted, prohibited, or penalized by an "environment law", which term shall mean any federal, state or local law, ordinance, or other statute of a governmental authority relating to pollution or protection of the environment. Lessee hereby agrees that (a) no activity shall be conducted on the Premises that shall produce any hazardous substance; (b) the Premises shall not be used in any manner for the storage of any hazardous substances; (c) Lessee shall not install or place upon the Premises any underground or aboveground tanks of any type and shall not store, or allow the storage law, on the Premises any gasoline, oil, diesel fuel or other petroleum products; (d) Lessee shall not allow any surface or subsurface conditions to exist or come into existence that constitutes or with the passage of time may constitute a public or private nuisance; and (e) Lessee shall not permit any hazardous substances to be brought onto the Premises. If at any time during or after of the Initial Term or Renewal Term, the Premises are found to be in violation of any of the covenants set forth in this Section 24 due to acts or occurrences during the occupancy of Lessee, or caused by Lessee, then Lessee shall diligently institute proper and thorough cleanup and remediation procedures at Lessee's sole cost. Lessee agrees to indemnify and hold Lessor harmless from all claims, demands, actions, liabilities, costs and expenses (including Lessor's reasonable attorney fees), damages and obligations of any nature to the extent arising from or as a result of the use of the Premises by Lessee. The foregoing indemnification and the responsibilities of Lessee shall survive the termination or expiration of this Lease. Lessee shall not use the Premises so as to interfere in any way with the use and enjoyment of other portions of the same or neighboring buildings by reason of odors, smoke, exhaust, smells, vibrations, noise, pets, accumulation of garbage or trash, vermin or other pests, or otherwise, and shall at its expense employ a professional pest control service if determined necessary by Lessor. Lessee agrees to maintain effective devices for preventing damage to plumbing and heating equipment from de-ionized water and chemicals which may be present at the Premises.

**SECTION 27. SURRENDER.** On or before the termination of this Lease, Lessee shall remove all of Lessee's goods and effects from the Premises, and shall deliver to Lessor actual and exclusive possession of the Premises and all keys and locks thereto, all fixtures, equipment and workstations of any type connected therewith, and all alterations, additions and improvements made to or upon the Premises, whether completed by Lessee, Lessor or others, including but not limited to any offices, window blinds, floor coverings, computer floors, plumbing and plumbing fixtures, heating, ventilating and air conditioning equipment, ductwork, exhaust fans, water coolers, security, surveillance and fire protection systems, telecommunications and data wiring, telephone equipment, air and gas distribution piping, compressors, hoists, cabinets, counters, shelving, signs, electrical work, including but not limited to lighting fixtures of any type, wiring, conduit, EMT, transformers, generators, distribution panels, bus ducts, raceways, outlets and disconnects, and furnishings and equipment which have been bolted, welded, nailed, screwed, glued or otherwise attached to any wall, floor, ceiling, roof, pavement or ground, or which have been directly wired or plumbed to any portion of any building or other system serving the Premises, including but not limited to water supply, drainage, venting or air or gas distribution systems. Notwithstanding the foregoing, it is understood that cabinets, sinks, removable floor covering, shelving and other equipment and furnishings provided by Lessee remain the personal property of Lessee as long as such items are removed upon termination of the Lease without damage to the Premises. Notwithstanding the foregoing, prior to termination of this Lease, Lessee shall, if requested by Lessor, remove or tag for future use any and all wiring and cabling installed and/or used by Lessee. Lessee shall deliver the Premises fully sanitized from any chemicals or other contaminants, broom clean, and in at least the same condition as they were at the commencement of the Lease or any prior lease between the parties for the Premises, or as they were modified during the Initial Term or Renewal Term with Lessor's written consent, reasonable wear and tear only excepted, and Lessee shall be deemed to be encumbering the Premises until it delivers the Premises to Lessor in the condition required under this Lease. Any of Lessee's property that remains in the Premises upon termination of the Lease shall be deemed abandoned and shall be disposed of as Lessor sees fit, with no liability to Lessee for loss or damage thereto, and at the sole risk of Lessee. Lessor may remove and store any such property at Lessee's expense; retain the same under Lessor's control; sell the same at public or private sale (without notice) and apply the net

proceeds of such sale to the payment of any sum due hereunder; or destroy same. In no case shall the Premises be deemed surrendered to Lessor until the termination date provided herein or such other date as may be specified in a written agreement between the parties, notwithstanding the delivery of any keys to Lessor.

**SECTION 28. HOLDING OVER.** In the event Lessee occupies the Premises after the expiration or termination of this Lease with the consent of the Lessor, express or implied, such possession shall be considered to be a tenancy from month to month, terminable on 30 days advance written notice by either party. Lessee shall continue to pay all charges as provided in this Lease, and shall be bound by all of the other terms and conditions of this Lease as if it were still in full force and effect.

**SECTION 29. LOSS AND DAMAGE TO LESSEE'S PROPERTY.** Lessor shall not be responsible or liable to Lessee for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part adjacent to the Premises or any part, or for any loss or damages resulting to the Lessee or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or for any damage or loss of property within the Premises from any cause whatsoever, except to the extent due to the negligence or willful misconduct of Lessor or Lessor's employees, agents, or representatives.

**SECTION 30. NOTICE BY LESSEE.** Lessee shall give immediate notice to Lessor in case of fire or accidents in the Premises or in the building on the Premises or of defects therein or in any fixtures or equipment.

**SECTION 31. SUCCESSORS.** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the parties, except that Lessor shall only be liable for obligations occurring while it is the owner of the Premises. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by Lessor in writing as provided in Section 16 herein.

**SECTION 32. GENERAL.** The following shall apply to this Lease:

(a) The invalidity or unenforceability of any clause or provision of this Lease shall not affect or render invalid or unenforceable any other clause or provision hereof;

(b) Any action or proceeding arising out of the subject matter of this Lease shall be brought by Lessee within one year after the cause of action has occurred and only in a state court in Kingsport, Tennessee;

(c) This Lease is made and delivered in the state of Tennessee, and shall be interpreted, construed, and enforced in accordance with the laws thereof;

(d) This Lease is the result of negotiations between parties of equal bargaining strength, and when executed by both parties shall constitute the entire agreement between the parties, superseding all prior oral and written agreements, representations, statements and negotiations relating in any way to the subject matter herein. This Lease may not be extended or amended except by written agreement signed by both parties, or as otherwise provided herein, and no other subsequent oral or written representation shall have any effect hereon;

(e) Notwithstanding any other statements herein, Lessor makes no warranty, express or implied, concerning the suitability of the Premises for Lessee's intended use;

(f) Lessee agrees that if Lessor does not deliver possession of the Premises as herein provided for any reason, Lessor shall not be liable for any damages to Lessee for such failure, but Lessor agrees to use reasonable efforts to deliver possession to Lessee at the earliest practical date. A proportionate abatement of rent, excluding the cost of any amortized improvements to the Premises, for such time as Lessee may be deprived of possession of the Premises shall be Lessee's sole remedy, except where a delay in delivery is caused in any way by Lessee;

(g) Neither the submission of this Lease or any amendment hereof shall constitute a reservation of or option for the Premises, or an offer to lease, it being expressly understood and agreed that neither this Lease nor any amendment shall bind either party in any manner whatsoever unless and until it has been executed by both parties;

(h) Subject to the provisions of Section 23, neither Lessor nor Lessee shall be liable for any special, incidental, indirect or consequential damages, including but not limited to lost profits or loss of business, arising out of or in any manner connected with performance or nonperformance under this Lease, even if any party has knowledge of the possibility of such damages;

(i) The headings and captioned in this Lease are for convenience only and shall not be considered part of the terms hereof;

(j) No restriction, condition or other endorsement by Lessee on any check, nor Lessor's deposit of any full or partial payment, shall bind Lessor in any way or limit Lessor's rights under this Lease;

(k) Lessee shall conform to all rules and regulations now or hereafter made by Lessor for parking, for the care, use or alteration of the building, its facilities and approaches, and for the administration of this Lease, and shall not permit any employee or visitor to violate this or any other covenant or

obligation of Lessee;

(l) Lessee's covenants under this Lease shall be independent of Lessor's covenants, and Lessor's failure to perform any of its covenants under this Lease, including a covenant constituting a significant inducement to Lessee to enter into this lease, shall not excuse the payment of rent or any other charges by Lessee or allow Lessee to terminate this Lease; and

(m) Lessor and Lessee hereby waive any and all rights to a jury trial in any proceeding in any way arising out of the subject matter of this Lease.

**SECTION 33. WAIVERS, ETC.** No consent or waiver, express or implied, by Lessee or Lessor to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. If Lessee is several persons, corporations, or other legal entities, or a partnership, or some combination thereof, Lessee's obligations are joint and several. Unless repugnant to the context, "Lessor" and "Lessee" mean the person or persons, natural or corporate, named above as Lessor and as Lessee respectively, and their respective heirs, executors, administrators, successors and assigns.

**SECTION 34. TIME.** Time is of the essence in this Lease.

**SECTION 35. SURVIVAL OF TERMS.** Wherever in this Lease either Lessee or Lessor shall have agreed or promised to perform certain acts or otherwise where the context of this Lease would require such performance to occur after the termination or expiration of the Lease, then those agreements and covenants shall survive the termination or expiration of the Lease and continue to bind Lessee and Lessor.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Lease in duplicate originals.

[Acknowledgements Deleted for Inclusion in This Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 3rd day of December, 2024.

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PAUL W. MONTGOMERY, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY