

RIVERFRONT IMPROVEMENT COMMISSION MEETING

CITY OF DAVENPORT, IOWA

TUESDAY, FEBRUARY 27, 2024; 5:00 PM

CITY HALL | 226 WEST 4TH STREET | COUNCIL CHAMBERS

I. Call to Order

II. Approval of Minutes

A. Approval of Minutes | January 23, 2024

III. Old Business

IV. New Business

A. Flood Mitigation | Presentation

B. Approval of Antonella's II Lease

C. Approval of Farmers' Market Lease

D. OneSound Grant | Discussion

E. Freight House | Focus Group Update

F. Florian Keen Electrification Project | Discussion

V. Future Business

A. Approval of Nestle Purina Lease

VI. Management Update

A. Facilities Maintenance | Update

VII. Park Liaison Report

VIII. Public with Business

IX. Adjournment | Next Meeting Date: March 26, 2024



## **Riverfront Improvement Commission**

Minutes

January 23, 2024

**Present:** Dee Bruemmer, Bill Churchill, Kelli Grubbs, Victoria Keninger, Gwendolyn Lee, Andrea Olson, Scott Pettis, Mary Pruess, Angela Stone, and Julie Tonn.

**Others Present:** Christopher Meyer, Parks Liaison; and Stephanie Bley, Riverfront Community Engagement Coordinator.

Chairwoman Lee called the meeting to order at 5:03 p.m. and welcomed all in attendance.

### Approval of Minutes

Lee asked for approval of the minutes from the November 28, 2023 meeting. Churchill moved to approve the minutes; Pettis seconded, and the motion was carried unanimously.

### New Business

The Commission discussed the open Ward 5 Commissioner seat and reviewed the 2023 Commission Goals. Recommendations were made for updated verbiage. The Commission also requested an update on flood mitigation efforts, which will be addressed at the February meeting.

### Future Business

The upcoming lease renewals for the Farmers' Market and Antonella's were reviewed. The leases will be up for approval at the February meeting.

### Management Update

Riverfront Community Engagement Coordinator, Stephanie Bley, provided an update on the construction projects at the Freight House, including anticipated timelines and plans for tenant communications throughout the construction process. Bley shared that the Farmers' Market window project was completed, and noted that the Florian Keen parking lot had been added to the Freight House and Union Station snow removal contract.

### Park Liaison Report

Parks Advisory Board Liaison, Christopher Meyer, provided an update on snow removal at the Dog Park and plans to improve upon the current procedures. Meyer explained what the Parks Development Program is and how they select projects for funding. Meyer also shared that the Parks Department is looking at possible locations for Davenport Junior Theatre as the ongoing Annie Wittenmyer redevelopment discussions continue.

No public comments were made. With no further business, the meeting adjourned at 5:45 p.m.

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Gwendolyn Lee, Chair

## **LEASE - BUSINESS AGREEMENT**

**THIS LEASE** is made and entered into at Davenport, Iowa, on this 27<sup>th</sup> day of February 2024, by and between the City of Davenport, Iowa, through its Riverfront Improvement Commission, hereinafter designated as "Landlord," and Antonella's II, hereinafter designated as "Tenant."

### **1. LEASED PREMISES**

- A. The Landlord has leased, and by this instrument does lease, to the Tenant the following described property located in Davenport, Iowa, together with all appurtenances thereto and with easements of ingress and egress necessary and adequate for the conduct of Tenant's business, a restaurant, as hereafter described:

*The Freight House complex, first floor at 421 West River Drive, Davenport, Scott County, Iowa, to include approximately 2,000 square feet.*

- B. The Landlord represents and warrants that it is the sole owner of the building and Leased Premises, that it has full right, power, and authority to make the Lease, and that no other person or entity needs to join in the execution thereof in order for the Lease to be binding on all parties having an interest in the Leased Premises. The Landlord also warrants that the building is in full compliance with existing local, state, and federal codes, rules, and ordinances.

### **2. TERM**

- A. The term of this Lease shall be for a period of three (3) years, and shall have possession on March 1, 2024 and shall terminate on February 28, 2027. The Tenant shall have the right of first refusal upon exercising renewal to lease the subject premise.

### **3. RENTAL**

- A. Beginning on March 1, 2024, the landlord will bill the tenant for March rent. Bills will be mailed on the first of each month and due by the last day of that month according to the following schedule. A late payment of ten Percent (10%) of the monthly payment shall be assessed for payments not received by the end of the fifteenth (15th) day of the month following the due date.

| Rent Schedule |                   |                    |                    |
|---------------|-------------------|--------------------|--------------------|
| Rent          | Bill Date         | Due Date           | Late Fee Assessed  |
| March         | March 1, 2024     | March 31, 2024     | April 15, 2024     |
| April         | April 1, 2024     | April 30, 2024     | May 15, 2024       |
| May           | May 1, 2024       | May 31, 2024       | June 15, 2024      |
| June          | June 1, 2024      | June 30, 2024      | July 15, 2024      |
| July          | July 1, 2024      | July 31, 2024      | August 15, 2024    |
| August        | August 1, 2024    | August 31, 2024    | September 15, 2024 |
| September     | September 1, 2024 | September 30, 2024 | October 15, 2024   |
| October       | October 1, 2024   | October 31, 2024   | November 15, 2024  |
| November      | November 1, 2024  | November 30, 2024  | December 15, 2024  |
| December      | December 1, 2024  | December 31, 2024  | January 15, 2025   |
| January       | January 1, 2025   | January 31, 2025   | February 15, 2025  |
| February      | February 1, 2025  | February 28, 2025  | March 15, 2025     |

- B. For the three (3) years of this lease, the Tenant shall pay to the Landlord for use of the Leased Premises the following sums:

|            | <u>Annual</u> | <u>Per month</u> |
|------------|---------------|------------------|
| Year 1 - 3 | \$18,900.00   | \$1,575.00       |

- C. The Tenant has non-exclusive access to the Freight House parking lot, located to the south of the complex. It is intended that all tenants and related uses will work with the Landlord to accommodate needs.

#### 4. PAYMENT OF RENTAL

- A. The Tenant shall pay the rentals herein specified, and all other charges, to the Landlord at:

City of Davenport  
Finance - Revenue Division  
P.O. Box 8003  
Davenport, Iowa, 52801

or to such other address or addresses as the Landlord shall, from time to time, designate in writing.

#### 5. USE OF LEASED PREMISES

- A. The Tenant shall occupy and use the Leased Premises for the operation of a restaurant and associated uses incidental to this operation. No other uses shall be permitted without the written consent of the Landlord, which shall not be unreasonably withheld. The Tenant shall not sell or permit to remain in or about the Leased Premises any article that may be prohibited by standard form fire insurance policies.

- B. The Tenant shall not display merchandise, nor permit merchandise to remain, outside the exterior walls and permanent doorway of the Leased Premises without first securing the prior written consent of the Landlord.

**6. FIRE INSURANCE**

- A. The Tenant shall be responsible for carrying fire insurance and other risk insurance on personal property owned or used by the Tenant. The Landlord shall be responsible for fire and extended coverage, including casualty, on the building that the Leased Premises are located in.

**7. LIABILITY INSURANCE AND INDEMNIFICATION OF LANDLORD**

- A. The Lessee shall secure and maintain such primary insurance policies as will protect themselves or their Subcontractors from claims for bodily injuries, death, or property damage which may arise from operations under this Agreement whether such operations be by themselves or by any Subcontractor or anyone employed by them directly or indirectly.
- B. The following insurance policies are required unless other limits are specified. The City shall be identified as a certificate holder and specifically named as an additional insured under General Liability.

**(1) Commercial General Liability**

|                   |             |
|-------------------|-------------|
| Each Occurrence   | \$1,000,000 |
| General Aggregate | \$2,000,000 |

**(2) Commercial Automobile Liability  
(if autos are used)**

|  |             |
|--|-------------|
| Any Auto, Hired & Non-Owned<br>Combined Single Limit | \$1,000,000 |
|--|-------------|

**(3) Excess Liability Umbrella \$1,000,000**

**(4) Statutory Worker's Compensation** with waiver of subrogation in favor of the City.

- C. Contractual Liability; the insurance required above under "LESSEE INSURANCE", shall:

**(1) be Primary insurance and non-contributory.**

**(2) include contractual liability insurance coverage for the Lessee's obligations under the INDEMNIFICATION section below.**

**8. CERTIFICATES OF INSURANCE**

- A. Certificates of Insurance, acceptable to the City indicating insurance required by the Contract is in force, shall be filed with the City before approval of the Contract by the City. The Lessee shall ensure that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. The Lessee will accept responsibility for damages and the City's defense in the event no insurance is in place and the City has not been notified.

**9. INDEMNIFICATION**

- A. To the fullest extent permitted by the law, the Lessee shall defend, indemnify, and hold harmless the City, its officials, and its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to, all attorneys' fees provided that any such claim, damage, loss or expense:
- (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and
  - (2) is caused in whole or in part by any negligent act or omission of the Lessee, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- B. In any and all claims against the City, its officials or any of its agents, or employees by any employee of the Lessee, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- C. The Lessee shall not be responsible for damage or injury caused by the Landlord's negligence relating to items that remain the exclusive responsibility of the City.

**10. ALTERATIONS**

- A. The Tenant shall not make, or suffer to be made, any alterations, after the build-out, of the Leased Premises, or any part thereof, without the prior written consent of the Landlord, which shall not be unreasonably withheld, and any additions to, or alterations of, said Leased Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to the Landlord.

**11. MAINTENANCE AND SANITATION**

- A. The Tenant, at its sole cost and expense, shall maintain in a good state or repair the following areas: windows and doors, except for those used commonly with other tenants, along with the interior of the Leased Premises. Notwithstanding the foregoing, the Tenant may not paint, change, or modify in any manner the exterior of the Leased Premises without first securing the written consent of the Landlord. The Tenant shall be responsible for the exterior glass replacement of the demised area, should they become damaged or broken, and shall be replaced to the original specification.
- B. The Tenant shall provide and maintain sufficient sanitary receptacles in and about the interior and exterior of the Leased Premises in which to place any refuse or trash produced by the Tenant or its customers and patrons, and the Tenant shall cause such refuse or trash to be removed from the area as often as required to maintain a sanitary condition. The Landlord shall provide space near the Leased Premises for such sanitary receptacles to the extent practical.

**12. SURRENDER OF LEASED PREMISES**

- A. The Tenant shall, upon expiration of the term hereby created, or upon earlier termination hereof for any reason, quit and surrender said Leased Premises in good order, condition, and repair, reasonable wear and tear expected, and clean and free of refuse. If alterations, additions, and/or installations have been made by the Tenant as provided for in this Lease, the Tenant shall not be required to restore the Leased Premises to the condition in which they were prior to such alterations, additions, and/or installations.

**13. FIXTURES**

- A. The Tenant shall provide, install, and maintain, at its expense, fixtures of a special nature that the Tenant's business may require. All such fixtures that are not permanently affixed to the realty shall remain the property of the Tenant and may be removed by the Tenant no later than the expiration of the term hereof, provided that the Tenant is not then in default hereunder and that the Tenant shall promptly repair, at its own expense, any damages occasioned by such removal. All other fixtures, except any water purification equipment (including, without limitation, air conditioning units, heating equipment, plumbing fixtures, water heaters, carpeting, or other floor covering cemented or otherwise affixed to the floor) that may be placed upon, installed in, or attached to, the Leased Premises by the Tenant shall, at the expiration or earlier termination of this Lease for any reason, be the property of the Landlord and remain upon, and be surrendered with Leased Premises, without disturbance, molestation, or injury. The Tenant shall have the right, from time to time during the term of this lease, to remove any such fixtures,



equipment, or property to replace the same with items of like character, quality, or value.

**14. TENANT IMPROVEMENTS**

- A. Prior to commencing any Tenant improvements, the Tenant shall provide to the Landlord, for its review and approval, a plan and specifications for the proposed work to be performed. All improvements shall be completed in a timely and workman-like manner and in accordance with all applicable codes and ordinances.

**15. FREE FROM LIENS**

- A. The Tenant shall keep the Leased Premises and the property on which the Leased Premises are situated free from any Mechanics Liens arising out of work performed, material furnished, or obligation incurred by or at the instance of the Tenant, and indemnify and save the Landlord harmless from all such liens and all attorney's fees and other costs and expenses incurred by reason thereof. Notice is hereby given that neither the Landlord nor the Landlord's interest in the Leased Premises shall be liable or responsible to persons who furnish material or labor for or in connection with such work.

**16. ABANDONMENT**

- A. The Tenant shall not vacate or abandon the Leased Premises at any time during the term of this Lease; and if the Tenant shall abandon, vacate, or surrender the Leased Premises, or be dispossessed by process of law or otherwise, any personal property belonging to the Tenant and left on the Leased Premises shall be deemed to be abandoned, at the option of the Landlord. The Tenant shall not be deemed to have vacated or abandoned the Leased Premises caused by reasons beyond its control (casualty, strikes, and acts of God).

**17. SIGNS AND ADVERTISING MATERIALS**

- A. The Tenant recognizes there are Signage Restrictions for the demised area. All proposed signage must be submitted and approved by the City of Davenport prior to installation, whether it be affixed to the building or window-type display signs. The Tenant shall submit its signage plan to the Landlord for review and approval.

**18. EXTERIOR LIGHTING**

- A. The Tenant shall not install any exterior lighting on the Leased Premises unless and until the Landlord shall have approved, in writing, the design, type, kind, and location of the lighting to be installed.

**19. UTILITIES**

- A. The Tenant shall provide and be responsible for payment of all charges for water, gas, heat, air conditioning, electricity, and sewer for the Leased Premises. The Tenant shall pay all charges for telephone and internet service, trash, garbage, and rubbish removal used by the Tenant. Any security deposit or connection charges required by any utility company to furnish service to the Tenant shall be paid by the Tenant. In the event that one or more such utilities or related services shall be supplied to the Leased Premises and to one or more other tenants within the Freight House complex without being individually metered or measured to the Premises, Tenant's proportionate share thereof shall be paid as additional rent and shall be determined by Landlord based upon their estimate of Tenant's anticipated usage. The Landlord shall provide and maintain the necessary mains, conduits, wires, and cables to bring water, electricity, gas, and other utilities to the Leased Premises.

**20. ENTRY AND INSPECTION**

- A. The Tenant shall permit the Landlord and the Landlord's agents to enter into and upon the Leased Premises at all reasonable times, acceptable to the Tenant, to inspect the same or for the purpose of maintaining the building in which said Leased Premises are situated, or to make repairs, alterations, or additions to any other portion of said building. If the Tenant shall notify the Landlord that it does not intend to exercise any renewal option, the Landlord shall have the right to advertise and show the property to prospective users of the Leased Premises during the final Ninety (90) Days of the initial lease term or any option renewal.

**21. DAMAGE AND DESTRUCTION OF LEASED PREMISES**

- A. At its cost and expense, the Landlord agrees to maintain the roof, walls, and foundation of the Leased Premises and building in reasonably good order and condition and to make all necessary repairs and replacements in and to the building, including the building flood protection system. If the Landlord fails to perform obligations under this Lease, which creates a condition that interferes substantially with normal use, and as a consequence, the Tenant is compelled to discontinue business in the Leased Premises in whole or in part, the rental shall be proportionally abated. If the Landlord defaults for more than thirty (30) days after written notice by the Tenant, the Tenant shall have the right but not be obligated to remedy such default. All such sums expended or obligations incurred by the Tenant in connection with the foregoing shall be paid by the Landlord to the Tenant upon demand. If the Landlord fails to reimburse the Tenant, the Tenant may, in addition to any other right or remedy that it may have, deduct such amount from the next month's rent or rentals.

- B. In the event of a destruction of the Leased Premises or the building containing the same during said term, which requires repairs to either said Leased Premises or said building, or is declared to be unfit for occupancy by any authorized public authority for any reason other than the Tenant's act, use, or occupation, which declaration requires repairs provided the Tenant gives to the Landlord written notice of the necessity therefore. If those repairs are not, or cannot be, completed within thirty (30) days of said notice, then the Tenant may, at its option, cancel this Lease. However, suppose the Tenant does not desire to cancel the Lease. In that case, rent shall be abated during the period which those repairs are made and the Tenant is compelled to discontinue business in the Leased Premises. Further, in the event of flooding, rent shall be abated during that time period the leased premises are declared to be unfit for occupancy by any authorized public authority.

**22. ASSIGNMENT AND SUBLETTING**

- A. The Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Leased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agent and servants of the Tenant excepted) to occupy or use the Leased Premises, or any portion thereof without first obtaining the written consent of the Landlord, which shall not be unreasonably withheld. Consent by the Landlord to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Consent to an assignment shall not release the original named Tenant from liability that accrued or occurred prior to the date of assignment. If the Landlord does not release the Tenant from liability, the Landlord shall give the Tenant notice of defaults by the assignee and an opportunity to cure the same. Any assignment or subletting without the Landlord's prior written consent shall be void and shall, at the option of the Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of the Tenant by operation of law without the Landlord's prior written consent. The Landlord shall give the Tenant previous notice of the assignment of this Lease and any interest of the Landlord therein.

**23. DEFAULT, RE-ENTRY REMEDIES**

- A. If the Tenant shall fail to pay any part of the rent herein provided, or any other sum required by this Lease to be paid to the Landlord at the times or in the manner provided, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, and such failure to perform other covenants shall continue for Thirty (30) Days after written notice thereof from the Landlord to the Tenant, then the Landlord, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises without liability to any person for damages sustained by reason of such removal. Such property

may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of, the Tenant.

**24. DEFAULT, COSTS, AND ATTORNEY FEES**

- A. If the Tenant shall fail to pay any part of the rent herein provided, or any other sum required by this Lease to be paid to the Landlord at times or in the manner provided, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, then the Tenant shall be responsible for payment of all reasonable costs and attorney fees of the Landlord that result from the Landlord pursuing its rights and remedies.

**25. SALE OF LEASED PREMISES BY LANDLORD**

- A. In the event of any sale of the Leased Premises or assignment of this Lease by the Landlord, the Landlord shall give the Tenant prior notice of any such sale or assignment. The Landlord shall be relieved of liability under the Lease only if the new Landlord agrees to the Lease and not to disturb the Tenant.

**26. REIMBURSEMENT**

- A. All covenants and terms herein contained to be performed by the Tenant shall be performed by the Tenant at its expense, and if the Landlord shall pay any sum of money or do any act which requires the payment of money because of the failure, neglect, or refusal of the Tenant to perform such covenant or term, the sum or sums of money so paid by the Landlord shall be considered as additional rent and shall be payable by the Tenant to the Landlord on the first of the month next succeeding such payment, together with interest at the maximum rate permitted by law from the date of payment.
- B. All covenants and terms herein contained to be performed by the Landlord shall be performed by the Landlord at its expense, and if the Tenant shall pay any sum of money or do any act which requires the payment of money because of the failure, neglect, or refusal of the Landlord to perform such covenant or term after written notice by the Tenant, the sum or sums of the money so paid by the Tenant shall be considered as rental and shall be deducted by the Tenant from the rent on the first of the month next succeeding such payment.

**27. WAIVER**

- A. No covenant, term, or condition of this Lease shall be waived except by written waiver of the Landlord. The Landlord's forbearance or indulgence in any shall not constitute a waiver of the covenant, term, or condition to be performed by the Tenant to which the same shall apply. Until complete performance by it of such covenant, term, or condition, the Landlord shall be entitled to invoke any remedy available under this Lease or by law despite such forbearance or indulgence. The waiver by the Landlord of any breach or term, covenant, or condition hereof shall apply to, and be limited to, the

specific instance involved and shall not be deemed to apply to any other instance or any subsequent breach of the same or any other term, covenant, or condition.

**28. SUCCESSORS IN INTEREST**

- A. The covenants herein contained shall, subject to the provisions as to assignment, subletting, and sale of Leased Premises, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, and all of the parties shall be jointly and severally liable hereunder.

**29. PARTIAL INVALIDITY**

- A. Suppose any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable. In that remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**30. TIME**

- A. Time is of the essence in the performance of any obligations under this Lease.

**31. EMINENT DOMAIN**

- A. If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding, and all rentals shall be paid up to that date, and the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease.
- B. If any part of the Leased Premises shall be acquired or condemned by eminent domain or public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Leased Premises unsuitable for the business of the Tenant, which shall be at the Tenant's reasonable discretion, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease. In the event the Tenant determines the Leased Premises are not suitable, then it shall be relieved from further obligation of this Lease.
- C. In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, the Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to its respective interests in any condemnation proceeding.
- D. Nothing herein shall be construed to preclude the Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business or depreciation to, damage to, or cost of removal of, or for value of stock, trade fixtures, furniture, or other personal property belonging to the Tenant.

**32. MISCELLANEOUS**

- A. The Tenant shall be responsible for pay for the Tenant's proportionate share of the Real Estate Taxes of the Leased Premises and any personal property taxes assessed on the equipment or fixtures the Tenant owns. The Tenant is solely responsible for keeping informed of the assessment and collection of taxes.
- B. The Landlord shall be responsible and pay for snow removal, exterior landscaping, and other exterior maintenance of the building and public areas surrounding the Leased Premises. Tenant shall remove snow from the deck on the south side of the building; specifically, the Tenant is responsible for keeping the area in front of their respective unit clear; plastic snow removal tools should be used to protect the composite deck surface. Only the Tenant shall be responsible for the interior and exterior window cleaning of the Leased Premises.
- C. The Tenant is hereby provided the exclusive use of the space agreed to on the first floor of the Freight House building.
- D. The Tenant is responsible for obtaining and renewing all licenses and permits necessary for its operation. The Tenant shall comply with all Federal, State, or local rules and regulations applicable to its operation.

**33. GENERAL**

- A. This Lease shall be construed in accordance with the laws of the State of Iowa.
- B. This Lease, and any exhibits attached hereto, sets forth all the covenants, promises, agreements, conditions, or undertakings, either oral or written, between the Landlord and Tenant. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by both parties.
- C. If the Landlord or Tenant herein shall be more than one party, then the obligations of such party or parties shall be joint and several.
- D. The Landlord and Tenant acknowledge reliance on their judgment and the advice and counsel of their attorney in interpreting this Agreement, and not in any manner on the other party.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this lease in duplicate the day and year above written.

**ANTONELLA'S II, INC.**

**RIVERFRONT IMPROVEMENT COMMISSION**

By \_\_\_\_\_

By \_\_\_\_\_

**Gwendolyn Lee, Chair**

Date \_\_\_\_\_

Date \_\_\_\_\_

## LEASE - BUSINESS AGREEMENT

**THIS LEASE** is made and entered into at Davenport, Iowa, on this 27<sup>th</sup> day of February 2024, by and between the City of Davenport, Iowa, through its Riverfront Improvement Commission, hereinafter designated as "Landlord," and the Freight House Farmers Market, Inc., hereinafter designated as "Tenant."

### 1. LEASED PREMISES

- A. The Landlord has leased, and by this instrument does lease, to the Tenant the following described property located in Davenport, Iowa, together with all appurtenances thereto and with easements of ingress and egress necessary and adequate for the conduct of Tenant's business, the sale of produce, plants, food products, and arts and crafts, as hereafter described:

*The Freight House complex, first floor at 421 West River Drive, Davenport, Scott County, Iowa, to include a total of 4,998 square feet of indoor and 7,874 square feet of adjacent outdoor area, in addition to 160,260 square feet of Florian Keen parking lot and the portion of the lot south of the Freight House and Gaines Street from River Drive south to the railroad tracks.*

- B. The Landlord represents and warrants that it is the sole owner of the building and Leased Premises, that it has full right, power, and authority to make the lease, and that no other person or entity needs to join in the execution thereof for the lease to be binding on all parties having an interest in the Leased Premises. The Landlord also warrants that the building fully complies with existing local, state, and federal codes, rules, and ordinances.

### 2. TERM

- A. The term of this Lease shall be for one (1) year and shall have possession on March 1, 2024, and terminate on February 28, 2025. The Tenant shall have the right of first refusal upon exercising renewal to Lease the subject premise, subject to reasonable negotiation procedures.
- B. The Tenant shall be allowed to use the Florian Keen premises on Wednesdays from 2:00 PM to 9:00 PM, Saturdays from 6:00 AM to 2:00 PM (as noted in Exhibit A), and Sundays from 8:00 AM to 3:00 PM, except should the Landlord determine that an emergency condition exists, including but not limited to, a flood that must displace the Tenant for a temporary period. Regarding the interior premises, this Agreement assumes daily usage (active and passive) by the Tenant.



### 3. **RENTAL**

- A. Beginning on March 1, 2024, the landlord will bill the tenant for March rent. Bills will be mailed on the first of each month and due by the last day of that month according to the following schedule. A late payment of ten Percent (10%) of the monthly payment shall be assessed for payments not received by the end of the fifteenth (15th) day of the month following the due date.

| Rent Schedule |                   |                    |                    |
|---------------|-------------------|--------------------|--------------------|
| Rent          | Bill Date         | Due Date           | Late Fee Assessed  |
| March         | March 1, 2024     | March 31, 2024     | April 15, 2024     |
| April         | April 1, 2024     | April 30, 2024     | May 15, 2024       |
| May           | May 1, 2024       | May 31, 2024       | June 15, 2024      |
| June          | June 1, 2024      | June 30, 2024      | July 15, 2024      |
| July          | July 1, 2024      | July 31, 2024      | August 15, 2024    |
| August        | August 1, 2024    | August 31, 2024    | September 15, 2024 |
| September     | September 1, 2024 | September 30, 2024 | October 15, 2024   |
| October       | October 1, 2024   | October 31, 2024   | November 15, 2024  |
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| December      | December 1, 2024  | December 31, 2024  | January 15, 2025   |
| January       | January 1, 2025   | January 31, 2025   | February 15, 2025  |
| February      | February 1, 2025  | February 28, 2025  | March 15, 2025     |

- B. For the one (1) year of this Lease, the Tenant shall pay to the Landlord for use of the Leased Premises the following sums:

|        | <u>Annual</u> | <u>Per month</u> |
|--------|---------------|------------------|
| Year 1 | \$21,000.00   | \$1,750.00       |

- C. The Tenant has non-exclusive access to the Freight House parking lot, located south of the complex. All tenants and related uses are intended to will work with the Landlord to accommodate needs.

### 4. **PAYMENT OF RENTAL**

- A. The Tenant shall pay the rentals herein specified, and all other charges, to the Landlord at:

City of Davenport  
Finance - Revenue Division  
P.O. Box 8003  
Davenport, Iowa, 52801

or to such other address or addresses as the Landlord shall, from time to time, designate in writing.

5. **USE OF LEASED PREMISES**

- A. The Tenant shall occupy and use the Leased Premises to operate of a farmers' market and associated uses incidental to this operation. No other uses shall be permitted without the written consent of the Landlord which shall not be unreasonably withheld. The Tenant shall not sell or permit to remain in or about the Leased Premises any article that standard form fire insurance policies may prohibit.
- B. The Tenant shall not display merchandise, nor permit merchandise to remain, outside the exterior walls and permanent doorway of the Leased Premises without first securing Landlord's prior written consent.

6. **FIRE INSURANCE**

- A. The Tenant shall be responsible for carrying fire insurance and other risk insurance on personal property owned or used by the Tenant. The Landlord shall be responsible for fire and extended coverage, including casualty, on the building in which the Leased Premises are located.

7. **LIABILITY INSURANCE AND INDEMNIFICATION OF LANDLORD**

- A. The Lessee shall secure and maintain such primary insurance policies as will protect themselves or their Subcontractors from claims for bodily injuries, death, or property damage which may arise from operations under this Lease whether such operations be by themselves or by any Subcontractor or anyone employed by them directly or indirectly.
- B. The following insurance policies are required unless other limits are specified. The City shall be identified as a certificate holder and specifically named as an additional insured under General Liability.

**(1) Commercial General Liability**

|                   |             |
|-------------------|-------------|
| Each Occurrence   | \$1,000,000 |
| General Aggregate | \$2,000,000 |

**(2) Commercial Automobile Liability  
(if autos are used)**

|  |             |
|--|-------------|
| Any Auto, Hired & Non-Owned<br>Combined Single Limit | \$1,000,000 |
|--|-------------|

**(3) Excess Liability Umbrella** \$1,000,000

**(4) Statutory Worker's Compensation** with waiver of subrogation in favor of the City.

- C. Contractual Liability: the insurance required above under “LESSEE INSURANCE” shall:
  - (1) be Primary insurance and non-contributory.
  - (2) include contractual liability insurance coverage for the Lessee's obligations under the INDEMNIFICATION section below.

## 8. **CERTIFICATES OF INSURANCE**

- A. Certificates of Insurance, acceptable to the City indicating insurance required by the Contract is in force, shall be filed with the City prior to approval of the Contract by the City. The Lessee shall ensure that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. The Lessee will accept responsibility for damages and the City's defense in the event no insurance is in place and the City has not been notified.

## 9. **INDEMNIFICATION**

- A. To the fullest extent permitted by the law, the Lessee shall defend, indemnify, and hold harmless the City, its officials, and its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to, all attorneys' fees provided that any such claim, damage, loss or expense:
  - (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and
  - (2) is caused in whole or in part by any negligent act or omission of the Lessee, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- B. The Lessee shall not be responsible for damage or injury caused by the Landlord's negligence relating to items that remain the exclusive responsibility of the City.

## 10. **ALTERATIONS**

- A. The Tenant shall not make, or suffer to be made, any alterations, after the build-out, of the Leased Premises, or any part thereof, without the prior written consent of the Landlord, which shall not be unreasonably withheld, and any additions to, or alterations of, said Leased Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to the Landlord.

**11. MAINTENANCE AND SANITATION**

- A. The Tenant, at its sole cost and expense, shall maintain in a good state or repair the following areas: windows and doors, except for those used commonly with other tenants, along with the interior of the Leased Premises. Notwithstanding the foregoing, the Tenant may not paint, change, or modify the exterior of the Leased Premises without first securing the Landlord's written consent. The Tenant shall be responsible for the exterior glass replacement of the demised area, should they become damaged or broken, and shall be replaced to the original specification.
- B. The Tenant shall provide and maintain sufficient sanitary receptacles in and about the interior and exterior of the Leased Premises in which to place any refuse or trash produced by the Tenant or its customers and patrons, and the Tenant shall cause such refuse or trash, to be removed from the area as often as required to maintain a sanitary condition. The Landlord shall provide space near the Leased Premises for such sanitary receptacles to the extent practical.

**12. CLEAN-UP**

- A. The Tenant shall expeditiously clean up the premises after each use to eliminate all waste paper, boxes, spoiled produce, and all other items resulting from the market activity.

**13. SANITARY FACILITIES**

- A. Public restroom facilities are available inside the Freight House indoor market location. The Tenant takes full responsibility for the cleanliness of the sanitary facilities.

**14. SURRENDER OF LEASED PREMISES**

- A. The Tenant shall, upon expiration of the term hereby created, or upon earlier termination hereof for any reason, quit and surrender said Leased Premises in good order, condition, and repair, reasonable wear and tear expected, and clean and free of refuse. If alterations, additions, and/or installations have been made by the Tenant as provided for in this Lease, the Tenant shall not be required to restore the Leased Premises to the condition in which they were prior to such alterations, additions, and/or installations.

**15. FIXTURES**

- A. The Tenant shall provide, install, and maintain, at its expense, fixtures of a special nature the business may require. All such fixtures that are not permanently affixed to the realty shall remain the property of the Tenant and may be removed by the Tenant no later than the expiration of the term hereof, provided that the Tenant is not then in default hereunder and that the Tenant shall promptly repair, at its own expense, any damages occasioned by such removal. All other fixtures, except any water purification equipment (including, without limitation, air conditioning units, heating equipment,

plumbing fixtures, water heaters, carpeting, or other floor covering cemented or otherwise affixed to the floor) that may be placed upon, installed in, or attached to, the Leased Premises by the Tenant shall, at the expiration or earlier termination of this Lease for any reason, be the property of the Landlord and remain upon, and be surrendered with Leased Premises, without disturbance, molestation, or injury. The Tenant shall have the right, from time to time during the term of this lease, to remove any such fixtures, equipment, or property to replace the same with items of like character, quality, or value.

**16. TENANT IMPROVEMENTS**

- A. Prior to commencing any Tenant improvements, the Tenant shall provide to the Landlord, for its review and approval, a plan and specifications for the proposed work to be performed. All improvements shall be completed in a timely and workman-like manner and in accordance with all applicable codes and ordinances.

**17. FREE FROM LIENS**

- A. The Tenant shall keep the Leased Premises and the property on which the Leased Premises are situated free from any Mechanics Liens arising out of work performed, material furnished, or obligation incurred by or at the instance of the Tenant, and indemnify and save the Landlord harmless from all such liens and all attorney's fees and other costs and expenses incurred by reason thereof. Notice is hereby given that neither the Landlord nor the Landlord's interest in the Leased Premises shall be liable or responsible to persons who furnish material or labor for or in connection with such work.

**18. ABANDONMENT**

- A. The Tenant shall not vacate or abandon the Leased Premises at any time during the term of this Lease; and if the Tenant shall abandon, vacate, or surrender the Leased Premises, or be dispossessed by process of law or otherwise, any personal property belonging to the Tenant and left on the Leased Premises shall be deemed to be abandoned, at the option of the Landlord. The Tenant shall not be deemed to have vacated or abandoned the Leased Premises caused by reasons beyond its control (casualty, strikes, and acts of God).

**19. SIGNS AND ADVERTISING MATERIALS**

- A. The Tenant recognizes there are Signage Restrictions for the demised area. All proposed signage must be submitted and approved by the City of Davenport before installation, whether affixed to the building or window-type display signs. The Tenant shall submit its signage plan to the Landlord for review and approval.

- B. The Tenant shall provide all traffic and parking control signs and barricades as necessary for the safety of all patrons. The Tenant is responsible for the additional moveable signage for handicapped parking during market hours, as noted in Exhibit A.

**20. EXTERIOR LIGHTING**

- A. The Tenant shall not install any exterior lighting on the Leased Premises unless and until the Landlord shall have approved, in writing, the design, type, kind, and location of the lighting to be installed.

**21. UTILITIES**

- A. The Tenant shall provide and be responsible for payment of all charges for water, gas, heat, air conditioning, electricity, and sewer for the Leased Premises. The Tenant shall pay all charges for telephone and internet service, trash, garbage, and rubbish removal used by the Tenant. Any security deposit or connection charges required by any utility company to furnish service to the Tenant shall be paid by the Tenant. In the event that one or more such utilities or related services shall be supplied to the Leased Premises and to one or more other tenants within the Freight House complex without being individually metered or measured to the Premises, Tenant's proportionate share thereof shall be paid as additional rent and shall be determined by Landlord based upon their estimate of Tenant's anticipated usage. Landlord shall provide and maintain the necessary mains, conduits, wires, and cables to bring water, electricity, and gas to the Leased Premises.

**22. ENTRY AND INSPECTION**

- A. The Tenant shall permit the Landlord and the Landlord's agents to enter into and upon the Leased Premises at all reasonable times, acceptable to the Tenant, to inspect the same, or to maintain the building in which said Leased Premises are situated, or to make repairs, alterations, or additions to any other portion of said building. If the Tenant notifies the Landlord that it does not intend to exercise any renewal option, the Landlord shall have the right to advertise and show the property to prospective users of the Leased Premises during the final Ninety (90) Days of the initial lease term or any option renewal.

**23. DAMAGE AND DESTRUCTION OF LEASED PREMISES**

- A. It its cost and expense, the Landlord agrees to maintain the roof, walls, and foundation of the Leased Premises and building in reasonably good order and condition and to make all necessary repairs and replacements in and to the building, including the building flood protection system. If the Landlord fails to perform obligations under this Lease, which creates a condition that interferes substantially with normal use, and consequently, the Tenant is compelled to discontinue business in the Leased Premises in whole or in part, the rental shall be proportionally abated. If the Landlord defaults for more than thirty (30) days after written notice by the Tenant, the Tenant shall

have the right but not be obligated to remedy such default. All such sums expended or obligations incurred by the Tenant in connection with the foregoing shall be paid by the Landlord to the Tenant upon demand. If the Landlord fails to reimburse the Tenant, the Tenant may deduct such amount from the next month's rent in addition to any other right or remedy it may have.

- B. In the event of destruction of the Leased Premises or the building containing the same during the said term, which requires repairs to either said Leased Premises or said building, or is declared to be unfit for occupancy by any authorized public authority for any reason other than the Tenant's act, use, or occupation, which declaration requires repairs provided the Tenant gives to the Landlord written notice of the necessity therefore. If those repairs are not, or cannot be, completed within Thirty (30) Days of said notice, then the Tenant may, at its option, cancel this Lease. However, if the Tenant does not desire to cancel the Lease, rent shall be abated during the period which those repairs are made and the Tenant is compelled to discontinue business in the Leased Premises. Further, in the event of flooding, rent shall be abated during that period when the Leased Premises are declared unfit for occupancy by any authorized public authority.

#### **24. ASSIGNMENT AND SUBLETTING**

- A. The Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Leased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agent and servants of the Tenant excepted) to occupy or use the Leased Premises, or any portion thereof without first obtaining the written consent of the Landlord, which shall not be unreasonably withheld. Consent by the Landlord to one assignment, subletting, occupation, or use by another person shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Consent to an assignment shall not release the original named Tenant from liability that accrued or occurred prior to the date of assignment. If the Landlord does not release the Tenant from liability, the Landlord shall give the Tenant notice of defaults by the assignee and an opportunity to cure the same. Any assignment or subletting without the Landlord's prior written consent shall be void and shall, at the option of the Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of the Tenant by operation of law without the Landlord's prior written consent. The Landlord shall give the Tenant prior notice of the assignment of this Lease and any interest of the Landlord therein.

#### **25. DEFAULT, RE-ENTRY REMEDIES**

- A. If the Tenant shall fail to pay any part of the rent herein provided, or any other sum required by this Lease to be paid to the Landlord at times or in the manner provided, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, and such failure to perform other covenants shall continue for Thirty (30) Days after written notice thereof from the Landlord to the Tenant, then the Landlord, besides other

rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises without liability to any person for damages sustained because of such removal. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of the Tenant.

**26. DEFAULT, COSTS, AND ATTORNEY FEES**

- A. If the Tenant shall fail to pay any part of the rent herein provided, or any other sum required by this Lease to be paid to the Landlord at the times or in the manner provided, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, then the Tenant shall be responsible for payment of all reasonable costs and attorney fees of the Landlord that result from the Landlord pursuing its rights and remedies.

**27. SALE OF LEASED PREMISES BY LANDLORD**

- A. In the event of any sale of the Leased Premises or assignment of this Lease by the Landlord, the Landlord shall give the Tenant prior notice of any such sale or assignment. The Landlord shall be relieved of liability under the Lease upon such assignment.

**28. REIMBURSEMENT**

- A. All covenants and terms herein contained to be performed by the Tenant shall be performed by the Tenant at its expense, and if the Landlord shall pay any sum of money or do any act which requires the payment of money because of the failure, neglect, or refusal of the Tenant to perform such covenant or term, the sum or sums of money so paid by the Landlord shall be considered as additional rent and shall be payable by the Tenant to the Landlord on the first of the month next succeeding such payment, together with interest at the maximum rate permitted by law from the date of payment.
- B. All covenants and terms herein contained to be performed by the Landlord shall be performed by the Landlord at its expense, and if the Tenant shall pay any sum of money or do any act which requires the payment of money because of the failure, neglect, or refusal of the Landlord to perform such covenant or term after written notice by the Tenant, the sum or sums of the money so paid by the Tenant shall be considered as rent and shall be deducted by the Tenant from the rent on the first of the month next succeeding such payment.

**29. WAIVER**

- A. No covenant, term, or condition of this Lease shall be waived except by written waiver of the Landlord. The Landlord's forbearance or indulgence in any regard shall not constitute a waiver of the covenant, term, or condition to be performed by the Tenant to which the same shall apply. Until complete performance by it of such covenant, term, or condition, the Landlord shall be entitled to invoke any remedy available under this Lease or by law despite



such forbearance or indulgence. The waiver by the Landlord of any breach or term, covenant, or condition hereof shall apply to, and be limited to, the specific instance involved and shall not be deemed to apply to any other instance or any subsequent breach of the same or any other term, covenant, or condition.

**30. SUCCESSORS IN INTEREST**

- A. The covenants herein contained shall, subject to the provisions as to assignment, subletting, and sale of Leased Premises, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, and all of the parties shall be jointly and severally liable hereunder.

**31. PARTIAL INVALIDITY**

- A. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**32. TIME**

- A. Time is of the essence with regard to the performance of any obligations under this Lease.

**33. EMINENT DOMAIN**

- A. If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding, and all rentals shall be paid up to that date, and the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease.
- B. If any part of the Leased Premises shall be acquired or condemned by eminent domain or public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Leased Premises unsuitable for the business of the Tenant, which shall be at the Tenant's reasonable discretion, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease. In the event the Tenant determines the Leased Premises are not suitable, then it shall be relieved from further obligation of this Lease.
- C. In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, the Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to its respective interests in any condemnation proceeding.
- D. Nothing herein shall be construed to preclude the Tenant from prosecuting

any claim directly against the condemning authority in such condemnation proceedings for loss of business or depreciation to, damage to, or cost of removal of, or for value of stock, trade fixtures, furniture, or other personal property belonging to the Tenant.

**34. MISCELLANEOUS**

- A. The Tenant shall be responsible for paying for the Tenant's proportionate share of the Real Estate Taxes of the Leased Premises and any personal property taxes assessed on the equipment or fixtures the Tenant owns. The Tenant is solely responsible for keeping themselves informed of the assessment and collection of taxes.
- B. The Landlord shall be responsible and pay for snow removal, exterior landscaping, and other exterior maintenance of the building and public areas surrounding the Leased Premises. Tenant shall remove snow from the deck on the south side of the building; specifically, the Tenant is responsible for keeping the area in front of their respective unit clear; plastic snow removal tools should be used to protect the composite deck surface. Only the Tenant shall be responsible for the interior and exterior window cleaning of the Leased Premises.
- C. The Tenant is hereby provided the exclusive use of the space agreed to on the first floor of the Freight House building. In addition, the Landlord retains the right to use the loading dock and restroom facilities during non-market times.
- D. The Tenant shall use the premises only for assigning indoor and outdoor space to vendors to sell products, including fresh garden produce, fruit, honey, herbs, nuts, plants, flowers, baked goods, and hand-crafted items. Potentially hazardous foods, defined as any perishable food capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, such as cider and lemonade, cannot be sold unless licensed by proper authorities. All fresh produce not grown in Iowa or Illinois must be labeled as "broker produce" and given the point of origin.
- E. The Tenant shall have a representative who shall be on the premises during the time of the market operation whose duties shall be to set up signs, barricades, trash containers, etc., and to enforce the provisions of this Lease. The Tenant shall also store and service any equipment as necessary and secure the premises at the end of each market day.
- F. The Tenant is responsible for obtaining and renewing all licenses and permits necessary for its operation. The Tenant shall comply with and ensure all vendors comply with City, County, State, and Federal laws and regulations.

**35. GENERAL**

- A. This Lease shall be construed in accordance with the laws of the State of Iowa.
- B. This Lease, and any exhibits attached hereto, sets forth all the covenants, promises, agreements, conditions, or undertakings, either oral or written, between the Landlord and Tenant. Unless otherwise provided, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by both parties.
- C. If the Landlord or Tenant herein shall be more than one party, then the obligations of such party or parties shall be joint and several.
- D. The Landlord and Tenant acknowledge reliance on their judgment and the advice and counsel of their attorney in interpreting this Agreement, and not in any manner on the other party.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this lease in duplicate the day and year above written.

**FREIGHT HOUSE FARMERS  
MARKET, INC**

**RIVERFRONT IMPROVEMENT COMMISSION**

By \_\_\_\_\_

By \_\_\_\_\_

**Gwendolyn Lee, Chair**

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_