

RESOLUTION NO. 22-036

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER A LEASE AGREEMENT WITH THE CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION, AND DECLARING AN EMERGENCY**

WHEREAS, the City is party to an agreement to purchase the real property located at 20 South Hight Street in the City of Canal Winchester ("the Property"); and

WHEREAS, the Canal Winchester Industry and Commerce Corporation (CWICC) is the City's designated agent for economic development pursuant to Section 1724.10 of the Ohio Revised Code; and

WHEREAS, the City desires to lease the Property to CWICC to facilitate the subleasing of the Property for economic development purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

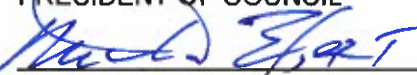
Section 1: That the Mayor is hereby authorized to enter into a Lease Agreement, in substantially the form attached hereto as Exhibit A, subject to such technical revisions as are determined by the Mayor and Law Director to be in the interest of the City, with the CWICC and with respect to the Property.

Section 2: That this resolution is hereby declared to be an emergency measure, to be effective immediately upon passage, such emergency being necessary for the immediate preservation of the public peace, health, safety, or welfare, to wit: to accommodate the timely closing of the purchase of the Property and to permit the timely subleasing of the Property to its current occupant while it secures an alternative location.

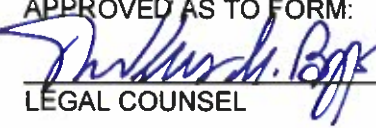
DATE PASSED 9-6-22

  
\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST   
\_\_\_\_\_  
CLERK OF COUNCIL

  
\_\_\_\_\_  
MAYOR

DATE APPROVED 9-7-22

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the resolution as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

  
\_\_\_\_\_  
Clerk of Council

## LEASE

**City of Canal Winchester, Ohio**, an Ohio municipal corporation, with a mailing address of 45 East Waterloo Street, Canal Winchester, Ohio 43110 ("Landlord"), and **Canal Winchester Industry and Commerce Corporation**, an Ohio community improvement corporation, with a mailing address of 45 East Waterloo Street, Canal Winchester, Ohio 43110 ("Tenant"), agree to the following "Lease" made effective as of \_\_\_\_\_, 2022 ("Effective Date").

**1. Premises and Term.** Landlord, in consideration of the rents, covenants, terms and conditions hereinafter stipulated to be paid and performed by Tenant, hereby leases to Tenant and the Tenant hereby leases from Landlord the real estate known as 20 South High Street, Canal Winchester, Ohio, with all improvements and appurtenances thereon, including a building (the "Building"), subject to existing easements, covenants and restrictions (the "Premises") as described in **EXHIBIT A**, for an initial term of three (3) years, beginning on the Effective Date. Provided that the Tenant is not in default, Tenant shall have the option to renew this Lease for additional successive one-year periods (the initial term and any renewal term are sometimes referred to herein as the "Term"). If Tenant does not wish to renew, Tenant must provide Landlord with written notice 30 days prior to the end of the then current Term. The Lease terms during any such renewal term shall be the same as those contained in this Lease except that the Base Rent (defined below) shall be increased by three percent over the Base Rent in effect during the immediately preceding term.

**2. Base Rent.**

(a) Tenant shall pay to Landlord during the Term of this Lease base rent ("Base Rent") at the rate of \$\_\_\_\_\_ per year, due and payable in monthly installments of \$\_\_\_\_\_ in advance on the first day of each calendar month without prior demand, and without abatement, deduction or set off. Base Rent for any period of less than a full calendar month will equal 1/30th of the monthly Base Rent for each day of such period.

(b) If any installment of Base Rent or any other "Additional Rent" (as defined in Section 3, below) is not received by Landlord within five (5) days of the date due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the amount due as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord shall incur by reason of the late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

**3. Costs and Expenses.**

(a) In addition to the Base Rent, Tenant also covenants to pay and discharge during the Term, when the same will become due, any and all other amounts, liabilities and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof (collectively, "Additional Rent," and together with the Base Rent, the "Rent"), and in the

event of any failure on the part of Tenant to pay or discharge any of the same, Landlord will have all rights, powers and remedies provided herein or by law or equity or otherwise in the case of non-payment of the Base Rent. Base Rent and Additional Rent are collectively referred to in this Lease as "Rent".

(b) If Tenant defaults in making any payment required to be made by Tenant when due, or shall default in performing any covenant, term or condition of this Lease which involves the expenditure of money by Tenant, then Landlord may at its option, but shall not be obligated to, make such payment or expend such sums on behalf of Tenant as may be necessary to perform and fulfill such covenant, term or condition, and any and all sums so expended by Landlord, with interest thereon at a rate equal to eighteen percent (18%) per annum from the date of such expenditure, shall be repaid by Tenant to Landlord on demand, but no such payment or expenditure by Landlord shall be deemed a waiver of such default by Landlord.

4. **Taxes and Assessments.** Tenant shall promptly pay all taxes and assessments which may be levied, assessed, or otherwise imposed by any federal, state, county or local government authority upon the Premises or any part thereof or upon the owner or user thereof, or upon any personal property attached to the Premises or used in connection with the business conducted thereon, or upon the owner, user or operator thereof, and which become due and payable during the period covered by the Term of this Lease. If any assessments are levied, assessed or otherwise imposed upon the Premises or any part thereof during the Term, Landlord may elect to pay such assessments in installments and the Tenant shall pay any installments becoming due and payable during the Term of this Lease. Tenant may, with the consent of Landlord, contest any such tax or assessment, in any manner permitted by law, in the Tenant's name, and whenever necessary in Landlord's name, provided that Tenant indemnify and hold harmless Landlord for and from any and all expenses, costs and liabilities in connection with any such contest. However, notwithstanding such contest, Tenant will pay the contested tax or assessment in the manner and when required by the terms of this Lease, unless enforcement of any lien, tax, imposition or assessment may be stayed by Tenant during such contest by the filing of a bond or the payment of a monetary deposit in court in connection therewith or any other similar action permitted by the local authority having jurisdiction in connection with the foregoing.

5. **Utilities.** Tenant shall arrange to have all utilities serving the Premises put into Tenant's name and shall promptly pay all charges accruing during the Term of this Lease for water, electricity, gas, power, heating, sanitary service and all other utilities and services.

6. **Maintenance; Net Lease.** Tenant shall, at its expense, maintain the Premises and all buildings and improvements and appurtenances thereto, both interior and exterior, including all electrical, plumbing, heating, ventilating and air conditioning systems, equipment and fixtures in as good order and condition as at the commencement of this Lease, or as may be put by Landlord or Tenant, reasonable use and ordinary wear and tear excepted; and Tenant shall make any and all repairs, replacements, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, and structural or otherwise, necessary for such purpose and to keep all such items in good working order, all at Tenant's expense. Landlord shall not be responsible for making any such repairs or replacements, this being a net lease and the intention of the parties being that the Base

Rent to be received by Landlord hereunder shall be free of any expense in connection with the use, ownership, care, maintenance, operation or repair of the Premises or of the building, improvements and appurtenances located thereon.

7. **Alterations.** Tenant shall not commence any construction, improvement, alteration, addition, or installation on the Premises unless and until Landlord has approved the detailed plans and specifications for the same. The costs of any such changes, alterations, improvements, additions, construction and installation shall be at the sole expense of Tenant and shall be done in a good and workmanlike manner. Tenant shall have the right to remove any or all machinery, trade fixtures, furnishings, equipment and exterior signs installed by Tenant at any time and from time to time during the Term of this Lease, whether or not the same shall be deemed to be affixed to the realty; provided, however, that Tenant, if it does remove such items, shall, at its expense, restore the Premises to the same condition in which they were prior to the installation, attachment or placement of such machinery, trade fixtures, furnishings, equipment and exterior signs. Tenant agrees that upon expiration or termination of this Lease, it will, at its own expense, if Landlord shall so request, restore the Premises and all buildings, improvements and appurtenances thereto, to their former condition, ordinary wear and tear and damage by the elements excepted and in good working order.

8. **Insurance.** Tenant shall obtain and keep in full force at the sole cost and expense of Tenant policies of insurance (i) to keep the Premises insured against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy for not less than one hundred percent (100%) of the replacement cost thereof (including foundation and excavation), evidenced by "replacement cost" and "agreed amount" endorsements in the policy, and (ii) maintain comprehensive general public liability insurance covering the legal liability of Tenant against claims for bodily injury, death and/or property damage arising out of the use, maintenance and/or operation of the Premises and all areas appurtenant thereto. All such insurance shall be written by a company or companies acceptable to Landlord.

9. **Damage to Premises.**

(a) If the Premises or any part thereof are damaged or destroyed by fire or other casualty, but are not made "substantially untenable", then Tenant shall promptly commence and diligently proceed to repair and restore the Premises to a condition at least equal to that which existed prior to the date of such fire or other casualty. Tenant shall not proceed to make such repairs without Landlord's prior approval and shall only engage contractors approved by Landlord. Base Rent shall abate in proportion to the extent of the damage or destruction from the date of such fire or other casualty until the earlier to occur of (i) the completion of the repair or restoration, or (ii) such time as Tenant is able to fully utilize the Premises. For the purpose of this Section, the term "substantially untenable" shall describe a situation in which fifty (50%) or more of the Premises is rendered untenable or a situation in which the Building is so damaged or destroyed that the Premises cannot be used by Tenant in substantially the same manner as before the fire or other casualty.

(b) If the Premises are made substantially untenable by fire or other casualty, then Landlord shall, no later than thirty (30) days following the casualty, notify Tenant in writing

stating Landlord's good faith estimate of the time required to substantially complete the repair, rebuilding and restoration of the Premises (said notice is hereinafter referred to as the "Estimate Notice"). If the time set forth in the Estimate Notice exceeds ninety (90) days from the date the Estimate Notice is given, Landlord or Tenant may elect, by written notice to the other, to terminate this Lease. If either party fails to exercise such right to terminate this Lease, or if the Estimate Notice indicates that the repair, rebuilding and restoration can be substantially completed within ninety (90) days, this Lease shall remain in full force and effect, Tenant shall proceed with due diligence to repair, rebuild and restore the Premises, and all Base Rent will abate from the date of such fire or other casualty until the earlier to occur of (i) the completion of the repair or restoration or (ii) such time as Tenant is able to fully utilize the Premises. Tenant shall not proceed with any such repair, rebuilding or restoration without Landlord's prior approval and shall only engage contractors approved by Landlord.

(c) Proceeds available under the insurance policies to be maintained by Tenant as a result of any damage or destruction to the Premises shall be made available to Tenant to the extent necessary to repair and restore the Premises. All other insurance proceeds, which shall include all proceeds payable thereunder if this Lease is terminated, shall be paid to Landlord. Landlord shall have the right to negotiate and settle all claims with the insurance companies arising as a result of any damage or destruction to the Premises, and Tenant shall not accept any settlements from the insurance companies without Landlord's prior consent.

#### **10. Condemnation.**

(a) In the event of a taking of the whole of the Premises as the result of the exercise of any power of eminent domain or condemnation or any voluntary transfer by agreement entered into in order to avoid the requirements of court procedure under threat of such a taking, this Lease shall terminate automatically as of the date when Tenant is required to surrender possession of the Premises. Prior to Tenant's surrender of possession, Tenant shall continue to pay Base Rent and other charges due under this Lease to the person, corporation or government unit having title to the property at the time when such payments are due, or to Landlord, according to the terms of the taking.

(b) In the event of a taking of less than the whole of the Premises as a result of the exercise of any power of eminent domain or condemnation, or any voluntary transfer by agreement entered into in order to avoid the requirements of court procedure under threat of such taking, the Base Rent under this Lease shall be reduced in proportion to the value of the property taken for the period subsequent to the date of such taking or transfer, or if as a result of the taking the part of the Premises remaining is insufficient in Landlord's reasonable judgment to enable Tenant to reasonably conduct its business thereon, Tenant shall have the option to terminate this Lease as of the date of such taking or transfer by written notice to Landlord.

**11. Use of Premises; Compliance with Laws.** Tenant shall continually use the entire Premises for general/medical office purposes and for no other use or purpose without the prior written consent of Landlord. Tenant shall not commit or suffer any waste on the Premises nor use the Premises for any unlawful purpose. Tenant shall at its sole expense comply with all laws, regulations, ordinances, policies and orders of any federal, state or local governmental body relating to the Premises, or the ownership, use, occupation or operation of the Premises, including but not limited to (i) those relating to the correction, prevention and abatement of nuisances in, upon or about the Premises and (ii) "Environmental Laws" (as defined below).

**12. Assignment and Subletting.** Except as specifically provided in this Section, Tenant shall not assign, pledge, mortgage or otherwise encumber this Lease, nor sublet the Premises or any part thereof without the prior written consent of Landlord. In the event Tenant should assign this Lease or sublet the Premises, the assignee or sublessee shall become subject to and perform all the terms, covenants and conditions of this Lease to be kept and performed by Tenant. Any purported assignment or subletting without Landlord's prior written consent (except as specifically provided in this Section) shall be void. No assignment of this Lease or subletting of the Premises shall release Tenant from liability under this Lease, and Tenant shall at all times remain liable to Landlord for payment of the Base Rent and for performance of all the terms, covenants and conditions of this Lease. The foregoing notwithstanding, Landlord hereby consents to the Sublease between Tenant and \_\_\_\_\_ (the "Murray Sublease") provided the Murray Sublease is substantially in the form attached hereto as **EXHIBIT B**

**13. Remedies on Default.**

(a) If any installment of Base Rent, or any advancement made by Landlord under Section 4, shall remain unpaid for ten (10) days after the same becomes due; or if Tenant shall fail to keep and perform any of the terms, covenants or conditions of this Lease to be kept and performed by it and such default continues for twenty (20) days after Landlord gives Tenant written notice of default; or if Tenant's interest in the Premises shall be sold under execution, attachment or other legal process; or if proceedings in bankruptcy shall be instituted by Tenant; or if proceedings in bankruptcy shall be instituted against Tenant and such proceedings shall not have been dismissed within sixty (60) days of the filing thereof; or Tenant shall make an assignment for the benefit of creditors; or if Tenant shall be subjected to a receivership; then Landlord, in any such event and without notice, shall have the right to: (i) declare the Lease terminated and to reenter and take possession of the Premises and remove all persons therefrom, whereupon Tenant shall have no further claim thereon or hereunder; (ii) without declaring this Lease terminated, to reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and to remove all persons therefrom and to collect any Rent which has become payable, or which may thereafter become payable; (iii) even though Landlord may have reentered the Premises pursuant to the foregoing subparagraph (ii), to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises; (iv) in the event of any re-entry or taking possession of the Premises by Landlord, to remove therefrom all or any part of the personal property located therein and to place the same in storage at a public warehouse at the expense and risk of the Tenant.

(b) Should Landlord have reentered the Premises under the provisions of subparagraph (a)(ii) above, Landlord shall not be deemed to have terminated this Lease, the liability of Tenant to pay any Rent thereafter accruing, or Tenant's liability for damages under any provisions of the Lease, by any such reentry or by any action to obtain possession of the Premises, unless Landlord has notified Tenant in writing that it has so elected to terminate this Lease.

(c) In any case of Landlord's reentry or repossession of the Premises, whether or not the same is the result of the institution of summary or other proceedings, Tenant shall remain liable (in addition to accrued liabilities) for the difference between (i) the sum of all Rent which would have been payable through the date this Lease would have expired had such reentry or repossession not occurred, together with any and all expenses to which Landlord may be put in retaking possession, removing any personal property left on the Premises, repairing any damage to the Premises for which Lessee is responsible or otherwise curing any default of Tenant, readying the Premises for another tenant or tenants (including the cost of any alterations) and reletting the Premises (including but not limited to brokerage commissions); and (ii) the rental received by the Landlord as a consequence of any reletting.

(d) In the event of termination of the Lease, Landlord shall be entitled to recover from Tenant (i) all costs and expenses of reentry and repossession, repair and reletting described in paragraph (c) above and (ii) as liquidated damages (and not as a penalty), a sum equal to the present worth of the excess, if any, of the Rent reserved in this Lease for the remainder of the Term over the aggregate of the then reasonable rental value of the Premises for the remainder of the Term, discounted at a rate equal to the U.S. Treasury Bill rate for the bill or bond equivalent to the balance of the Term at the time of default.

(e) Landlord's rights and remedies hereunder shall be cumulative and not exclusive of any other rights or remedies at law or in equity.

**14. Quiet Enjoyment.** Landlord covenants and agrees with Tenant that Tenant, having paid the Rent and observed and kept the terms, covenants and conditions of this Lease on its part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Premises without any let, hindrance, ejection or molestation by Landlord or any person or persons lawfully claiming under it.

**15. Personal Property on Premises; Risk of Damage.** Tenant agrees that all personal property of every kind or description, including inventory and trade fixtures, which may at any time be in the Premises shall be at Tenant's sole risk, or at the risk of those claiming by, through or under Tenant, and Landlord shall not be liable for, and shall be held harmless by Tenant against, all claims, losses, liability, and expenses for any damage to said property or for any loss suffered by the business or property of Tenant arising from bursting, overflowing or leaking of water or sewer pipes or condensate lines from the heating or plumbing fixtures or equipment, or from the electric wiring or from gas, fumes or odors or caused in any manner.

**16. Condition of Premises Initially and Upon Surrender.** Tenant acknowledges that the Premises are being leased on an "as is" basis, that Landlord is not required to make any

alterations or improvements to the Premises and that Tenant is relying solely upon its own investigations with regard to the condition of the Premises. Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Premises to Landlord in at least a condition equivalent to the condition of the Premises at the commencement of the Term, as improved during the Term, ordinary wear and tear excepted, and in good working condition without notice from Landlord, all such notice being waived. Notwithstanding the foregoing, if Tenant shall hold over, such holdover shall be deemed to constitute only a month-to-month holdover tenancy upon all of the same terms as existed immediately prior to the termination or expiration, except that monthly Base Rent shall be an amount equal to one and one-half times the monthly Base Rent due the month preceding the termination or expiration.

17. **Notices.** All notices and other communications required to be given or which may be given in connection with this Agreement shall be in writing and shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, (b) national prepaid overnight delivery service, or (c) personal delivery with receipt acknowledged in writing, directed to the applicable party at its address specified in the first paragraph of this Agreement. Any notice so sent by certified or registered mail shall be deemed given on the date of receipt or refusal as indicated on the return receipt. All other notices shall be deemed given when actually received or refused by the party to whom the same is directed. A notice may be given either by a party or by such party's attorney. Either party may change its address for notices by giving written notice to the other party in accordance with this Section.

18. **Amendment.** This Lease may not be modified except by instrument in writing signed by Landlord and Tenant.

19. **Memorandum.** The parties shall not record this Lease but upon request of either party, they will execute and cause to be recorded a Memorandum of this Lease.

20. **Complete Understanding; Governing Law.** This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same. This Lease shall be governed by the laws of the State of Ohio, without regard to any conflicts of law provisions.

21. **Severability.** No determination by any court, governmental body or otherwise that any provision of this Lease is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision or such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

(SIGNATURES ON FOLLOWING PAGE)



LANDLORD:

CITY OF CANAL WINCHESTER, OHIO,  
an Ohio municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF OHIO     )  
                                      ) ss  
COUNTY OF FRANKLIN   )

This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Canal Winchester, Ohio, an Ohio municipal corporation, on behalf of said community improvement corporation. No oath or affirmation was administered to the signer with regard to the notarial act.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

TENANT:

CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION,  
an Ohio community improvement corporation

By: \_\_\_\_\_  
Printed Name: Lucas Haire  
Title: Executive Vice President

THE STATE OF OHIO     )  
                                      ) ss  
COUNTY OF FRANKLIN   )

This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_ 2022, by Lucas Haire, the Executive Vice President of CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION, an Ohio community improvement corporation, on behalf of said community improvement corporation. No oath or affirmation was administered to the signer with regard to the notarial act.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT A**  
**PROPERTY**

**EXHIBIT B**  
**FORM OF MURRAY SUBLEASE**  
**(TO BE ATTACHED)**

0128850.0615530 4856-2435-4608v1