



City of Omaha  
Jean Stothert, Mayor

Office of the Mayor  
1819 Farnam Street, Suite 300  
Omaha, Nebraska 68183-0300  
(402) 444-5000  
FAX: (402) 444-6059

Honorable President  
and Members of the City Council,

Transmitted herewith is a Resolution approving a lease agreement between the City of Omaha and 1402 Howard, LLC, for the lease of certain property generally located at 1410 Howard Street. The space to be leased consists of approximately 2,570 gross square feet and will serve as an interim public library facility/computer lab, beginning August 1, 2022, for a term of six (6) months.

Finance will pay the cost of this lease, in the amount of \$27,000.00, plus expenses as provided for in the lease agreement, from the General Fund 11111, Library Facilities Capital Organization 131593, year 2022 funding.

The Mayor requests your consideration and approval of the attached Resolution and Agreement.

Respectfully submitted,

Approved as to Funding:

Jean Stothert 7/22/22  
Mayor Jean Stothert Date

Stephen B. Curtiss 7/22/22  
Stephen Curtiss Date  
Finance Director

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

City Clerk Office Use Only:

Publication Date (if applicable): \_\_\_\_\_

Agenda Date: \_\_\_\_\_

Department: \_\_\_\_\_

Submitter: \_\_\_\_\_

CITY OF OMAHA  
LEGISLATIVE CHAMBER  
Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, interim public library/computer lab space needed in conjunction with the relocation of the W. Dale Clark (Main) Library; and,

WHEREAS, a lease agreement has been negotiated for the lease of certain property generally located at 1410 Howard Street consisting of approximately 2,570 gross square feet, beginning August 1, 2022, for a term of six (6) months, at a rate of \$4,500.00 per month.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, as recommended by the Mayor, the lease agreement with 1402 Howard, LLC, to lease certain property generally located at 1410 Howard Street consisting of approximately 2,570 gross square feet, beginning August 1, 2022, for a term of six (6) months, for the purposes of interim public library/computer lab space, in conjunction with the relocation of the W. Dale Clark (Main) Library, is hereby approved; and authorizes execution of the same.

BE IT FURTHER RESOLVED:

THAT, the Finance Department is authorized to pay \$27,000.00, from the General Fund 11111, Library Facilities Capital Organization 131593, year 2022 funding.

APPROVED AS TO FORM

Asst.   7/22/2022  
CITY ATTORNEY DATE

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
Mayor

## **LEASE**

This Lease is made and entered into this 12<sup>th</sup> day of July 2022, by and between

1402 HOWARD, L.L.C.,  
a Nebraska Limited Liability Company,  
by its Manager Eric Wieseler,  
with offices at  
Suite 550 – The Center  
1941 South 42nd Street  
Omaha, NE 68105

hereinafter called the "Owner", and

CITY OF OMAHA  
with offices at  
1819 Farnam Street  
Omaha, Nebraska 68183

hereinafter called the "Tenant".

**The Owner does hereby lease to Tenant the following demised premises:**

Said demised premises contains approximately 2,570 gross square feet of floor area constructed in accordance with the provisions of Section 1 hereof.

The mailing address of the demised premises is:

1410 Howard Street  
Omaha, Nebraska 68102

In addition to the demised premises, Tenant shall, subject to control and regulation by Owner, enjoy the nonexclusive use of all common areas including parking areas, access roads and sidewalks provided by Owner, provided Owner shall have the right to locate fountains, planters, vending machines, telephones, benches and similar items within such common areas. Said demised premises are a portion of a development known as **1402 HOWARD** located at 1402-1410 Howard Street, Omaha, Nebraska, and are located within such development.

The term of this lease shall begin on (A) the first day of the initial lease year if an initial lease year occurs, as described in Section 2, otherwise (B) the first day of the first full lease year, as described in Section 2; and the term shall continue thereafter for **six (6) months**, ending at 12 o'clock midnight on the last day of the last full lease year.

**The remaining terms and conditions of this lease are as follows:**

1. **CONSTRUCTION**

The demised premises are hereby leased to Tenant in as-is condition.

2. **DELIVERY OF DEMISED PREMISES**

If Owner is to complete any additional work in accordance with Section 1 above, it shall give Tenant ten days written notice of the date on which Owner will deliver possession of the demised premises to Tenant with Owner's Additional Work substantially completed. Prior to Tenant's occupancy of the demised premises for any finishing, fixturing, or stocking, Tenant shall arrange for its utilities and insurance coverage and execute and deliver to Owner an Acceptance of Space, which Acceptance may be subject to a punch list of remaining Owner work items, if any, and Tenant's taking of possession of the demised premises without execution and delivery of such an

Acceptance shall be deemed a confirmation by Tenant that the Owner's Additional Work has been fully completed and accepted. If no additional work is to be completed by Owner in accordance with Section 1, Tenant hereby acknowledges delivery and acceptance of the demised premises upon execution of this lease by both Tenant and Owner, and Tenant agrees to arrange for its utilities and insurance coverage prior to occupancy of the demised premises.

#### **RENT BEGINNING DATE**

Rent for said space shall begin **August 1, 2022**. After rent beginning has been established, time shall be of essence for the performance of this lease.

#### **LEASE YEAR**

The term of the lease shall begin on August 1, 2022. If the rent beginning date falls on a day other than the first day of a calendar month, then the period from the delivery date to the first day of first full calendar month next following the rent beginning date shall be an initial lease year for which Tenant shall pay appropriately apportioned rent, and the first day of the first full calendar month next following the rent beginning date shall be the beginning day of the first full lease year. If the rent beginning date falls on the first day of a calendar month, then the period from the delivery date to the rent beginning date shall be the initial lease year, and the rent beginning date shall be the beginning day of the first full lease year. A full lease year shall consist of twelve full, consecutive calendar months.

#### **OCCUPANCY CONDITIONS**

Tenant shall not enter into occupancy of the demised premises until delivery of same by Owner, provided, if Owner is to complete any additional work in accordance with Section 1, then, with written permission from the Owner and providing Tenant assumes responsibility for any damage done to the development, the Tenant may enter said premises for purposes of fixturing and preparation for occupancy prior to completion of the Owner's additional work. Tenant agrees to withdraw or replace any of its workmen or contractors who in the opinion of the Owner may cause strikes, work stoppage or picketing of said development. Tenant's property kept, stored or maintained in the demised premises shall be kept, stored or maintained at the risk of the Tenant.

#### **3. LEASE CONSIDERATION**

The consideration for this lease is the mutual covenants of the parties. Upon execution of this lease, Tenant shall deliver to Owner a lease deposit in the amount of **\$4,500.00** to be applied to the first rent due hereunder.

#### **4. RENT**

Tenant shall and hereby agrees to pay to the Owner, without demand, deduction, or setoff, at such place or places as the Owner may designate from time to time in writing, rent for the demised premises as follows:

A. Guaranteed rent, payable monthly, in advance:

<u>Partial Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Months 1 – 6	N/A	\$4,500.00

B. Percentage Rent: N/A

~~For periods of less than a full lease year, percentage rent, if any, shall be computed on a prorated daily basis.~~

In addition to all of the rent set forth hereinabove, the Tenant shall pay any tax that any governmental authority (acting under any present or future law) may levy, assess, or impose upon the rent reserved hereunder. Said tax, if any, shall be paid not less than three (3) days before such tax is due and payable.

#### **5. OMITTED**

#### **6. OMITTED**

#### **7. OMITTED**

#### **8. MAINTENANCE OF COMMON AREAS**

Owner shall operate and maintain common areas and common facilities provided by the Owner for the common use or benefit of the occupants of the development. Tenant shall be liable for and shall pay Owner each month, in advance and in addition to the rent, 1/12 of a proportionate share, as hereinafter defined, of the estimated annual costs of operating and maintaining common areas and common facilities. Common areas and common facilities include without limitation all parking areas, access roads, sidewalks, development identification signs, landscaped space and any other space used in common or available for use by the Tenant, the Tenant's customers, employees, agents, servants or other invitees of the Tenant. The costs of operating and maintaining common areas and common facilities shall include, but not be limited to costs for lighting, cleaning, trash removal, maintenance equipment, fire protection, snow and ice removal, landscaping, water and sewer charges, electricity, personal property taxes, policing and security, defending and preserving common areas and facilities, insurance secured with respect to common areas and facilities pursuant to Section 14, losses attributable to operation of common areas and facilities, parking lot repair and line repainting, labor and payroll costs to provide such operation and maintenance, management fees and costs relating to the development and all other costs to repair, replace, and maintain all common areas and facilities provided by the Owner for the common use or benefit of the occupants of the development. As an addition to the foregoing and as part of the costs to be shared by the Tenant for operation and maintenance of common areas and common facilities, fifteen percent (15%) shall be added to the total thereof as an administrative charge. Tenant's proportionate share of such costs shall be a fraction, the numerator of which shall be the square feet of area leased to Tenant, and the denominator of which shall be the total square feet of area leased to all tenants in the development on the first day of the applicable month, excluding leased area in any portion of the development for which the applicable common areas and facilities are separately operated and maintained or for which the costs thereof are excluded from the costs allocated hereunder. Within sixty days following the end of each calendar or partial year, Owner shall furnish Tenant with a statement of Tenant's share of actual costs for such period, and an adjustment of the amount paid by Tenant for estimated costs shall be made so that the Owner shall receive and the Tenant shall pay Tenant's proportionate share of the actual costs for such period.

**9. USE**

Tenant shall use, occupy, and operate the demised premises. Premises shall be used, occupied, and operated only for

**a computer lab**

and for no other purposes without the written consent of the Owner.

Tenant agrees to conduct its business at all times in a responsible and reputable manner. The Tenant shall promptly comply with all laws affecting the premises hereby leased and the cleanliness, safety, occupation and use of same. No auction, fire, bankruptcy or similar sale, or sale for purpose of closing the store may be conducted in the demised premises without previous written consent of the Owner. In the event that the Tenant uses the demised premises for the storage or sale of odorous materials or products and such odor is detectable in other rentable areas of the development, the Tenant shall forthwith and not later than ten (10) days after written request from the Owner either remove and forego the storage and sale of said materials or products, or ventilate the premises with a ventilation system satisfactory to the Owner. Tenant shall not use the parking lot, sidewalks or other area outside of the demised premises for business purposes.

**10. MECHANIC'S AND OTHER LIENS**

Tenant shall not permit any mechanic's, laborer's or materialman's lien to stand against the demised premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on said premises by or at the direction of Tenant. Tenant shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the demised premises and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) business days after written request by Owner.

**11. MAINTENANCE AND CARE OF PREMISES**

The Owner shall keep the foundation, the exterior of the load-bearing outer walls and roofing of the building in good repair, except that the Owner shall not be called on to make any such repairs occasioned by any act or omission of the Tenant, its agents or employees or customers. The Owner shall not be called upon to make any

other improvements, repairs or replacements of any kind upon said premises; and, at the sole cost and expense of the Tenant, said premises shall at all times be kept in good order, condition and repair by the Tenant, and shall also be kept in a clean, sanitary and safe condition and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officers of the governmental agencies having jurisdiction. The Tenant shall at its own expense maintain, repair or replace any glass windows, show windows and doors in or enclosing the demised premises. Tenant shall clean and maintain the interior and exterior of its store front and its signs and its show windows, if any, and shall at all times keep its show windows and glass doors in a neat and clean condition. If Tenant engages in any food service, cooking, or similar or related activity within the demised premises, as permitted by Section 9 hereof, Tenant shall provide, install and operate complete smoke, grease and odor control systems including adequate exhaust and ventilation systems with make-up air, grease catch pans, fire extinguishing systems with automatic fuel shut-offs, sanitary sewer grease traps, and such similar or other devices as Owner may reasonably request or direct, with all such systems or devices to be regularly maintained and serviced by and at the expense of Tenant.

#### **AT EXPIRATION**

At the expiration of this lease, all leasehold improvements and fixtures attached to the walls, floors, or ceiling, whether installed by the Tenant or the Owner, shall at the option of the Owner be considered a part of the building and remain in the demised premises as a part of the realty. Tenant shall surrender the premises in good condition, reasonable wear and tear excepted. Tenant agrees to remove all of its signs of identification at expiration of this lease and to restore the surface to which they attached.

#### **12. SIGNS AND CONSTRUCTION BY TENANT**

The Tenant agrees to provide signs of identification outside of its demised premises, which signs shall be installed prior to Tenant's opening for business, but not prior to Tenant's receipt of Owner's written approval of drawings and descriptions of such signs, which shall be designed and installed by Tenant. Tenant agrees to keep its' signs repaired and in an attractive and safe condition. Tenant shall obtain any permits or bonds required for signs by governmental regulations. The Tenant agrees not to use any media in the demised premises that shall be deemed objectionable by the Owner, such as loudspeakers, phonographs, radio broadcasts, speakers, amplifiers, or flashing lights in a manner to be heard or otherwise distracting outside the demised premises. The Tenant shall not install any plumbing fixtures, exterior lighting fixtures, shades or awnings or any exterior decorations or paintings or use any flammable materials above the finished ceiling line of the demised premises or build any fences, paint, drill, attach to or make any change to the store front, entrances, exterior walls, exterior signs of identification, marquees, roof or abutting sidewalks or attach any temporary or permanent signs, advertisements, displays, or prices to its show windows and/or store front glass without previous written consent of the Owner. Tenant shall not repartition or otherwise remodel or make any structural changes in the demised premises without the written consent of the Owner.

#### **13. COVENANT TO HOLD HARMLESS**

Tenant will indemnify Owner and save it harmless from and against any and all claims, actions, damages, liability and expense arising from or out of any occurrence in, about, in connection with, upon or at the demised premises, arising from or out of the occupancy or use by Tenant of the demised premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, lessees or concessionaires. In case Owner shall, without fault on its part, be made a party or witness or become involved in any claim, action, damage, liability, expense, or litigation commenced by or against Tenant, then Tenant shall protect and hold Owner harmless and shall pay all costs, expenses and reasonable attorney's fees incurred by Owner in connection with such claims, actions, damages or litigation.

#### **HAZARDOUS MATERIALS**

Tenant shall not cause or permit any toxic or hazardous substance or material including, without limitation, explosives, radioactive materials, oil, petroleum based products, paints, cleaner agents, solvents, lead, cyanide, DDT, printing ink, acids, pesticides, ammonia compounds, and any other products and materials which are known to have, or are subsequently found to have, adverse effects on the environment or the health and safety of persons, to be generated, produced, brought upon, used, stored, discharge, released, spilled or disposed of on, in, under or about the demised premises or the development, and Tenant does hereby agree to indemnify, defend and hold Owner and its' partners, members, officers, successors and assigns harmless from and against any and all actions, costs, claims, damages, fines, penalties, liabilities or losses arising from a breach of this provision.

**14. INSURANCE**

Tenant at all times during the term of this lease shall at its expense provide and maintain with respect to the demised premises (a) comprehensive general public liability insurance on an occurrence basis in form customarily written for protection of tenants and owners, insuring Tenant and Owner as the named insureds and providing coverage of not less than One Million Dollars (\$1,000,000), single limit, for injuries to any one person, for injuries to persons in any one occurrence and for damage to property, provided, such minimum of insurance coverage shall not limit Tenant's liability under Section 13 hereinabove; (b) plate glass insurance covering all show windows, plate glass, and/or glass entrance doors in its demised premises; and, (c) casualty insurance against fire, vandalism, malicious mischief, sprinkler leakage if applicable, and such other perils as are from time to time included in a standard extended coverage endorsement, or such broader form of coverage as Tenant may select, insuring all alterations, additions or other leasehold improvements and betterments made by Tenant to the demised premises at any time, in an amount sufficient to replace them. Such casualty insurance shall be provided on a building form issued in the name and for the benefit of Tenant and Owner as their respective interests may appear. Proceeds received from such insurance shall be used to repair or replace the insured improvements in accordance with Tenant's obligation in Section 21 of this lease to standards of construction and quality of materials which are not less than equal to the prior standards and qualities provided, however, in the event the Owner elects to terminate this lease in accordance with Section 21 hereof, the full amount of such proceeds shall be paid to the Owner and the Tenant shall be released from its obligation to restore such improvements. Tenant shall provide Owner with current duplicate policy or policies of all such insurance required of Tenant, which policy or policies shall include an endorsement that the insurance company or companies cannot amend or cancel such insurance policy or policies without giving ten (10) days' prior written notice to the Owner. All fixtures, inventories, leasehold improvements and betterments, equipment or other property kept, stored or maintained in the demised premises shall be so kept, stored or maintained at the risk of the Tenant only.

Owner at all times during the term of this lease shall secure with respect to the parking area and other common areas of said development (a) comprehensive general public liability insurance providing coverage of not less than One Million Dollars (\$1,000,000), single limit, for injuries to any one person, for injuries to persons in any one occurrence and for damage to property, and (b) such other insurance as Owner shall deem necessary for the parking areas, common areas or for equipment used in common areas of the development. The cost of insurance secured by Owner with respect to this paragraph shall be prorated as a common area cost in accordance with Section 8 of this lease.

Owner at all times during the term of this lease shall secure with respect to the development, (a) casualty insurance against physical loss or damage from fire, vandalism, malicious mischief and such other perils as are from time to time included in a standard extended coverage endorsement, or such broader form of coverage as Owner may select, insuring the insurable building improvements constructed, or required under the terms of this lease to be constructed, by Owner, (b) sprinkler leakage insurance, if applicable, and (c) loss of rents insurance. Tenant shall be liable for and shall pay Owner each month, in advance and in addition to the rent, 1/12 of a proportionate share of the annual premium costs for such insurance secured by Owner, which proportionate share shall be a fraction, the numerator of which shall be the square feet of area lease to Tenant and the denominator of which shall be the total square feet of leaseable area in the development on the first day of the applicable month, excluding leaseable area in any portion of the development which is separately insured or for which the premium thereon is excluded from the costs allocated hereunder. Insurance secured by Owner may bear a loss payable endorsement to protect any mortgagee's interest. Proceeds received from such insurance shall be used for rebuilding in accordance with Owner's obligation in Section 21 of this lease. Nothing in this section shall require Owner to insure the fixtures, inventories, leasehold improvements and betterments, equipment or other property of Tenant or any other occupant of the development.

Tenant agrees to pay any increase in rates for insurance that may at any time from and after the rent beginning date be charged to the Owner resulting from Tenant's extra-hazardous use or occupancy of the demised premises whether or not Owner has consented to same. Tenant agrees to maintain in operation and connected to a monitoring system any sprinkler, smoke detection, or heat or fire prevention or detection device or system located within the demised premises.

**15. ABUSE OF UTILITY SERVICES**

The plumbing facilities shall not be used for any purpose other than that purpose for which they are constructed, and no foreign substance of any kind shall be thrown therein. The expense of any stoppage, breakage or damage resulting from a violation of this provision shall be borne by the Tenant causing same. If the Tenant installs any equipment that overloads utility lines to or in the demised premises, the Tenant shall at its own expense remove the overload or increase the capacity of such lines and make whatever changes are necessary to comply with the requirements of the Owner, insurance underwriters and governmental authorities having jurisdiction.

16. **OMITTED**

17. **ASSIGNMENT AND VOTING CONTROL**

The Tenant agrees that it will not assign or in any manner transfer this lease or any part thereof or any interest or estate therein without the previous written consent of the Owner, nor shall the Tenant sublet the demised premises or any part thereof without the previous written consent of Owner, nor shall the Tenant assign this lease to an entity owned wholly or in part by the Tenant, nor shall the Tenant enter into any management contract or other relationship whereby the Tenant or its employees are in less than direct and immediate control of the demised premises and the business operated therein without the previous written consent of the Owner. Owner may accept rent or other payments due under this lease from any person, or entity offering to pay same; and such acceptance by Owner shall not be construed to be an acceptance of such payor as Tenant hereunder nor as a consent or waiver of consent of any of the Owner's rights hereunder. If Tenant is a corporation, limited liability company or partnership and if at any time during the lease term the person or persons who own a majority interest of such entity at the time of the execution of this lease cease to own a majority of such interest (except as the result of transfers by gift, bequest, or inheritance) Tenant shall so notify Owner and Owner may terminate this lease by notice to Tenant given within ninety (90) days thereafter. The Tenant agrees not to change the advertised name of the place of business operated herein without the written permission of the Owner.

18. **ACCESS TO PREMISES**

The Owner shall have the right to enter upon the demised premises at all reasonable hours for the purpose of inspecting the same or adding or rerouting pipes, sprinkler systems, smoke detection systems, heat or fire detection systems or equipment, conduits or drains to serve the demised premises or premises other than the demised premises or for making repairs, additions or alterations, provided such adding or rerouting shall be handled so as to interfere as little as possible with the Tenant's use of the premises and Owner shall repair any damage caused by such work. The exercise of said right by Owner shall not give rise to any claim by Tenant for damages, and Tenant expressly waives any such claim or claims. If the Owner deems any repairs required to be made by the Tenant necessary, it may demand that the Tenant make the same forthwith. For a period commencing one year prior to expiration of the term of this lease, the Owner may have reasonable access to the premises herein demised for the purpose of exhibiting the same to prospective tenants.

19. **UTILITIES**

The Owner agrees to provide the existing mains and conduits to the demised premises in order that the existing utilities may be supplied, provided Owner shall not be responsible for Tenant's telephone, cable or related service lines. Tenant shall pay for all utilities including water, sewer use, gas, and electricity used in the demised premises. Tenant shall maintain all heating and cooling equipment serving the demised premises. As a material condition to this lease, Tenant agrees to have all HVAC and ventilation systems and related equipment professionally serviced and cleaned no less than on a quarterly basis and agrees to supply Owner with a copy of the maintenance contract as well as maintenance records upon request. The Owner shall not be liable in damages or otherwise for any failure or defect in the furnishing of any of the above utilities, heating or cooling, or for any interruption due to civil insurrection, war, fire, accident, strike, riot, act of God, the making of necessary repairs or improvements, or any other causes beyond the control of the Owner.

20. **CONDEMNATION**

If the whole of the demised premises or the parking area in said development shall be taken under the power of eminent domain by any public or quasi-public authority, this lease shall terminate and expire as of the date of such taking, and rent and any other payments shall be paid and adjusted as of such date, and Owner and Tenant shall be released from any further liability hereunder. If twenty percent (20%) or more of the floor area of the demised premises shall be taken or condemned for public use or if fifty percent (50%) or more of the total parking area in



said development shall be taken or condemned for public use and the Owner does not promptly begin the construction of substituted parking replacing at least the majority of the parking area so taken using double decking, contiguous land, or underground areas, then either Tenant or Owner may cancel and terminate this lease by serving upon the other party a written notice of its intention to cancel within thirty (30) days after the condemnation judgment shall be entered. In the event that such option to terminate is exercised, rent and any other payments shall be prorated to the date of taking and Owner and Tenant shall be released of further liability hereunder. If any portion of the demised premises is taken for public use and if neither party exercises its option to terminate this lease as permitted in this section above, then the minimum guaranteed rent provided for under Section 4 shall be reduced as of the date of taking in the proportion which the actual floor area taken bears to all of the floor area demised and the Owner shall promptly repair, restore, or rebuild for occupancy by Tenant the portion not so taken. If, during the repair, restoration, or rebuilding required, the demised premises are not usable in the opinion of either the Owner or Tenant, then the Owner or its contractors shall temporarily have possession and the minimum guaranteed rent shall be abated during the period of repair, restoration, or rebuilding. All damages awarded or other sums or awards paid on account of any condemnation or taking under the power of eminent domain of the demised premises, the parking areas, the common facilities or the development, or any portion or portions thereof, shall belong to and be the sole property of Owner whether such damages or other sums are awarded as compensation for loss or diminution in value of the leasehold, or for the fee of the demised premises, or otherwise; and in no event shall Tenant have any claim whatsoever against Owner or the condemning authority for loss or diminution in value of the leasehold or for the value of any unexpired term of this lease, Tenant hereby expressly waiving any such right or claim, provided, however, Tenant shall be entitled to any award or portion thereof made for or on account of any loss or cost to which Tenant might be put in removing Tenant's merchandise, fixtures, equipment or furnishings and for any loss or damage to the same.

**21. DESTRUCTION OR DAMAGE TO PREMISES**

If the demised premises become untenable because of fire or other casualty insurable under insurance required to be maintained by Owner and Tenant as described in Section 14, the same shall be repaired as speedily as possible at the expense of the Owner and Tenant in accordance with their respective covenants to insure provided, however, if more than twenty-five percent (25%) of the floor area of the development becomes untenable because of such fire or other casualty or if less than five (5) years of the original term of this lease remain from the date of such fire or other casualty, the Owner may, if it so elects, give notice to Tenant in writing terminating this lease. If the demised premises become untenable because of any damage or destruction that is not insured, the Owner may, if it so elects, give notice to Tenant in writing terminating this lease. If Owner elects not to terminate this lease, it shall, within ninety (90) days after such damage or destruction, give the Tenant notice of its intention not to terminate and shall proceed with its portion of restoration, if any, and Tenant shall proceed forthwith with its portion of restoration, each thereafter being obligated to restore in accordance with their respective covenants to insure as set out in Section 14 and each proceeding with reasonable speed to restore the premises. Rent shall be abated during any insured untenability period.

**22. BANKRUPTCY**

In the event Tenant becomes the subject of voluntary or involuntary proceedings under the federal bankruptcy statutes as are in effect from time to time, Owner shall have all of the rights and remedies available to a landlord under such statutes. Such an event shall constitute a default under this lease, and Owner thereupon may exercise all of its rights and remedies under Section 34 hereof unless prohibited from doing so by such federal bankruptcy statutes.

**23. HOLDING OVER**

In the event the Tenant remains in possession of the demised premises, for restoration or otherwise, after the expiration of this lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month. If Tenant does so continue to remain in possession of the demised premises, it shall pay rent to the Owner at a prorated daily rate of two (2) times the last periodic guaranteed rent rate specified in Section 4 of this lease; such occupancy shall be subject to all of the other conditions, provisions, and obligations of this lease.

**24. WAIVER**

One or more waivers of any covenant or condition by Owner shall not be a waiver of a subsequent breach of the same covenant or condition, and consent or approval by Owner to or of any act by Tenant requiring Owner's

consent or approval shall not waive or render unnecessary Owner's consent or approval to or of any subsequent similar act by the Tenant.

25. **PROTECTION FROM SUBROGATION**

Neither Owner nor Tenant shall be liable to the other for any business interruption or loss or damage to property or injury to or death of persons occurring on the demised premises or the adjoining properties, sidewalks, streets or alleys, or in any manner growing out of or connected with Tenant's use and occupation of said premises, or the condition thereof, or of sidewalks, streets or alleys adjoining caused by the negligence or other fault of Owner or Tenant or of their respective agents, employees, subtenants, licensees or assignees, to the extent that such loss or damage to property or injury to or death of persons is covered by or indemnified by proceeds received from insurance carried by the other party (regardless of whether such insurance is payable to or protects Owner or Tenant or both) or for which such party is otherwise reimbursed; and Owner and Tenant each hereby respectively waive all right of recovery against the other, its agents, employees, subtenants, licensees and assignees, for any such business interruption or loss or damage to property or injury to or death of persons to the extent the same is covered or indemnified by proceeds received from any such insurance, or for which reimbursement is otherwise received, providing that such waiver shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof. Such waiver of claims and rights by Tenant shall also operate as a similar waiver in favor of other tenants of the development and the respective officers, agents, and employees of such other tenants. Nothing in this section contained shall be construed to impose any other or greater liability upon either Owner or Tenant than would have existed in the absence of this section.

26. **NOTICES**

Whenever under this lease a provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if sent in writing by certified mail with postage prepaid; to Tenant at:

City of Omaha  
1819 Farnam Street  
Omaha, Nebraska 68183

or at the last office address of Tenant; and to Owner at:

1941 South 42nd Street, Suite 550  
Omaha, Nebraska 68105-2982.

27. **CONSTRUCTION OF THIS LEASE**

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of Owner and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the feminine and masculine genders. The captions of the Sections of this lease have been inserted for convenience and reference only and shall not be deemed in any manner to define, limit, or affect the scope, meaning, intent or construction of the language contained, or not contained, in the particular Sections. If any provision of this lease shall be held to be invalid, such provision shall be deemed to be a severable provision and the lease itself shall remain in full force and effect as though the invalid provision had not been included herein. This lease shall be governed by and construed in accordance with the laws of the State in which the demised premises are located.

28. **NONLIABILITY OF OWNER**

The Owner shall not be responsible or liable to the Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying premises above, below, adjoining or in any other part of the development of which the demised premises are a part or for any loss or damage resulting to the Tenant or its property from bursting, stoppage, or leaking water, gas, sewers, downspouts, drains, roofs, fixtures or similar sources.

29. **TAXES**

Tenant shall be liable for and shall pay before delinquent all taxes levied against or for any leasehold interest or on Tenant's right to occupy the demised premises or on personal property and trade fixtures of whatever kind and to whomever belonging situated or installed in or upon the demised premises. If any such taxes are levied against Owner or Owner's property or if the assessed value of Owner's property is increased by inclusion of personal property, trade fixtures or other Tenant property located in the demised premises and Owner elects to pay the taxes based on such increase, Tenant shall pay Owner upon demand that part of such taxes for which Tenant is primarily liable hereunder.

Tenant shall be liable for and shall pay Owner each month, in advance and in addition to the rent, that amount determined by (a) adding 1/12 of all taxes payable in the calendar year in which the applicable month falls, and (b) multiplying such sum by a fraction, the numerator of which shall be the square feet of area leased to Tenant and the denominator of which shall be the total square feet of leaseable area in the development on the first day of the applicable month, excluding leaseable area in any portion of the development which comprises a separate tax lot and for which taxes thereon are excluded from (a) above. If for any month the amount of any tax payable during the then current calendar year shall not have been determined by the taxing authority, then the tax payable shall be estimated based on the amount of the corresponding tax for the immediately preceding calendar year, subject to immediate adjustment when the actual amount of such tax shall be determined. If any tax shall be levied, assessed or imposed for any fiscal period which does not contain 12 months, then, in making the computation of taxes pursuant to (a) above for each month in such fiscal period, there shall be used in lieu of 1/12 of such tax, that proportion arrived at by dividing such tax by the number of months in such fiscal period.

For the purposes of determining (a) above the term "taxes" shall include all real estate taxes, assessments, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the term of this lease be levied, assessed, imposed, become due and payable, become liens upon, arise in connection with the use, occupancy or possession of, or grow due or payable out of, or for, the development or any part thereof, or any land, buildings or other improvements therein, excluding, however, any of the foregoing relating to any parcel included in the development which comprises a separate tax lot occupied by a single occupant building or by building(s) owned other than by Owner, or for which the taxes are separately paid by others. Nothing herein contained shall be construed to include as "taxes" any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy that is or may be imposed upon Owner; provided, however, that if at any time the methods of taxation prevailing at the commencement of the term of this lease shall be altered so that in lieu of or as a supplemental, additional or alternative tax for the whole or any part of the taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed any substitute, supplemental, additional or alternative tax or license fee imposed upon Owner which is otherwise measured by or based in whole or in part upon the development or any portion thereof, then the same shall be included in the computation of taxes hereunder, computed as if the amount of such tax or fee so payable were that due if the development were the only property of Owner subject thereto.

If Owner receives a refund of any portion of the taxes previously paid by Tenant, Owner shall refund to Tenant the proportion of such refund net of expenses (including attorneys' and appraisers' fees) incurred in obtaining such refund, that is equivalent to the proportion of the original tax paid by Tenant. Tenant shall not institute any proceedings with respect to the assessed valuation of the development or any part thereof for the purpose of securing a tax reduction. Owner, at Owner's sole discretion, may apply for a reduction or correction of any assessment and may appeal or contest any assessment provided all costs and expenses (including attorneys' and appraisers' fees) of such application, appeal or contest shall be, and are hereby specifically agreed to be, included in the definition of "taxes" under this section for purposes of computing the amount defined in (a) above. It is further agreed that if Owner does not institute or file such application, appeal or contest, then if tenants (including Tenant) occupying seventy-five percent (75%) of the floor area of the development (excluding floor area on any parcel included in the development which comprises a separate tax lot occupied by a single occupant building or by building(s) owned other than by Owner, or for which the taxes are separately paid by others) shall desire to have such proceedings instituted or filed and shall give Owner written notice of such desire at least twenty (20) days prior to the last day for the institution or filing of same, then Owner shall institute and diligently prosecute such proceeding provided all costs and expenses (including attorneys' and appraisers' fees) thereof shall be included in the definition of "taxes" hereinabove and provided Owner may at any time settle such proceedings without the consent of Tenant and said other Tenants. Any application, appeal or contest instituted hereunder shall

be prosecuted under the sole discretion and control of the Owner, and Tenant agrees to cooperate with Owner in any such application, appeal or contest.

30. **EXCUSE FOR NONPERFORMANCE**

The performance of any obligation or undertaking provided for herein by Owner shall be excused and no default shall be deemed to exist in the event, and so long as the performance of any such obligation is prevented, delayed, retarded, or hindered by act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; inability to procure or general shortage of labor, equipment, facilities, materials, or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; laws; orders of government or civil or military or naval authorities; or any other cause beyond the control of the Owner.

31. **OMITTED**

32. **SPRINKLER SYSTEM**

Owner has installed, is hereby granted the option to install, or may cause to be installed, an automatic sprinkler system (which may include any fire, smoke, or heat detection system) within the demised premises. If a sprinkler system is installed, Tenant agrees that it will operate it, maintain it in good operating condition, and update and remodel it from time to time as may be made necessary by any remodeling, repartitioning, refinishing, or redecorating of the demised premises by the Tenant. The term "update and remodel" as used herein shall include the moving or adding of any sprinkler heads, modification, or other alterations to the system as may be required within the demised premises to keep the system in compliance with the standards and recommendations of any governmental authority or inspection or insurance rate setting authority. If a sprinkler system is installed, Tenant further agrees that it will carry insurance as necessary to protect against any losses arising from operation or malfunction of the sprinkler system. Owner shall not be liable for any interruption of water service to the sprinkler system.

33. **TENANT'S DEFAULT IN PAYMENTS**

If any rent or other sums due and payable under this lease are not paid by the Tenant within five (5) days after same are due and payable, it is agreed that the rent or other sums payable shall be one and one-tenth (1-1/10th) times the amount otherwise due and shall in addition to such increased rent bear interest at the maximum rate allowed by law from the date same are due and payable until paid. If any rent or any other sums payable by Tenant hereunder shall remain unpaid ten (10) days after written notice that same are due and payable, then it shall be optional for the Owner to re-enter the demised premises, with or without process of law, declare this lease forfeited and said term ended. Owner may use such force as may be necessary to move or remove all persons or chattels therein and the Owner shall not be liable for damages by reason of such re-entry or forfeiture and any claims for trespass or otherwise arising out of such repossession are hereby expressly waived by Tenant.

In the event that Owner declares the lease forfeited as provided for in this Section 34, the Owner shall have full and uncontested right to take possession of the premises along with the Tenant's fixtures, inventory or other property on the premises, holding same as security for the rent due hereunder. But notwithstanding such re-entry by the Owner and the holding of Tenant's fixtures, inventory or other personal property, the liability of the Tenant for the rent and other covenants for the balance of the term provided for herein shall not be relinquished or extinguished. It is further agreed that the Tenant will pay, in addition to the rent and other sums agreed to be paid hereunder, all costs and expenses incurred by the Owner as well as such sums as the court may adjudge reasonable as attorneys' fees in any suit or action instituted by the Owner to enforce the provisions of this lease or the collection of the rent or other payments due hereunder.

**OTHER DEFAULT**

If the Tenant shall violate or default covenants, agreements, stipulations (including the Tenant's obligation to fixture, open, and operate the demised premises) or any other conditions other than the payment of rent and sums payable hereunder and such violation or default shall continue for a period of thirty (30) days after written notice of such violation or default, then it shall be optional for the Owner to re-enter said premises, with or without process of law, and to declare this lease forfeited and the said term ended. Owner shall use such force as may be necessary to remove all persons or chattels therefrom; and the Owner shall not be liable for damages by reason of such re-entry or forfeiture; and any claims for trespass or otherwise arising out of such repossession are hereby

expressly waived by Tenant. But notwithstanding such re-entry by the Owner, the liability of the Tenant for the rent and other covenants for the balance of the term provided for herein shall not be relinquished or extinguished. It is further agreed that the Tenant will pay such additional sums the court may adjudge reasonable as attorneys' fees in any suit or action instituted by the Owner to enforce the provisions of this lease.

**34. LIEN ON PERSONAL PROPERTY**

Tenant agrees not to remove its fixtures or other personal property from the demised premises during the term of this lease or at the expiration of the term hereof until all rent and other sums due under this lease have been paid in full. All goods, chattels, fixtures and other personal property belonging to the Tenant which are in the demised premises during said term, whether exempt or not from sale under execution and attachment under the laws of the state in which the premises are located, shall at all times be bound by and subject to a lien in favor of Owner and shall be chargeable for all rent and/or other payments due hereunder and the fulfillment of the other covenants and agreements herein contained.

**35. EXISTING IMPROVEMENTS AND FINISHES**

In the event the demised premises contain previously installed or previously constructed improvements and interior finishes including, but not limited to, store front, finished ceilings, interior partitions, wall finishes, lighting, floor covering, electrical wiring, air handling or heating and air conditioning equipment including ducts and diffusers and controls, Tenant recognizes said improvements and finishes and assumes the obligation therefor in accordance with all applicable provisions of this lease.

**36. LEASE IN SHORT FORM**

Tenant agrees not to record this lease; but each party hereto agrees, on the request of the other, to execute a so-called "short form" of lease in form recordable and reasonably satisfactory to Owner's attorneys. In no event shall such "short form" set forth the rent or other charges payable by Tenant under this lease, and any such "short form" shall expressly state that it is executed pursuant to the provisions contained in this lease and is not intended to vary the terms and conditions of this lease.

**37. ASSIGN**

The Owner may assign its rights under this lease as security to the holder of one or more mortgages (which term shall include mortgage, trust deed, or other encumbrance) now or hereafter in force against all or any part of the land or improvements of the development and to all advances made or hereafter to be made upon the security thereof.

**SUBORDINATE**

Upon request of the Owner, Tenant will subordinate its rights hereunder to the lien of one or more mortgages (which term shall include mortgage, trust deed, or other encumbrance) now or hereafter in force against all or any part of the land and improvements of the development and to all advances made or hereafter to be made upon the security thereof.

**ATTORNMEN**

In the event of Owner's default under any mortgage (which term shall include mortgage, trust deed, or other encumbrance) whereby Owner loses title to or ownership of the demised premises in favor of a mortgagee, Tenant agrees to attorn to such mortgagee, any of its successors or assigns (including anyone purchasing said premises at a foreclosure sale) and to recognize said mortgagee or purchaser as the Owner under this lease.

**ESTOPPEL CERTIFICATES**

Within ten business days after receipt of Owner's written request, Tenant agrees to execute, acknowledge, and deliver to Owner, in form reasonably satisfactory to Owner, a written statement certifying that Tenant has accepted the demised premises, that this lease is in full force and effect and unmodified (or, if modified, setting forth such modifications), that Owner has performed all of its obligations under this lease and is not in default hereunder, the date to which the rent and other sums payable by Tenant under this lease have been paid, the commencement and expiration dates of the lease, and such additional facts as may be reasonably requested by Owner. Tenant acknowledges and agrees that any such statement delivered pursuant to this Section may be relied upon by any mortgagee or prospective mortgagee of the demised premises, any beneficiary or prospective beneficiary under a deed of trust, or any purchaser or prospective purchaser of the demised premises, and by their respective

successors and assigns.

**OWNER LIABILITY**

Notwithstanding anything to the contrary provided in this lease, it is specifically understood and agreed, such agreement being a primary consideration for execution of this lease, that there shall be absolutely no liability on the part of the Owner, Owner's managing agent, or individual stockholders or partners in the aforementioned entities, their successors or assigns, with respect to any of the terms, covenants and conditions of this lease except to the extent of equity in the property, and that Tenant shall look solely to the equity in the property for satisfaction of any and all remedies of Tenant in the event of any breach of any of the terms, covenants and conditions of this lease to be performed by Owner or Owner's managing agent, such exculpation of liability to be absolute and without any exception whatsoever.

**38. REMEDIES CUMULATIVE**

The rights, options, elections, and remedies of the Owner contained in this lease shall be cumulative; and no one of them shall be construed as excluding any other or any right, priority, or remedy allowed or provided by law.

**39. SUCCESSORS**

All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by the Owner in writing as required in Section 17. In the event of a sale or transfer of all or any portion of the landlord's ownership or interest in the development, the grantor or transferor landlord shall thereafter be relieved of all obligations to be performed by Owner under this lease to the extent of the ownership or interest sold or transferred; and, without further agreement between any of the parties to this lease and the purchaser or transferee, such purchaser or transferee shall be deemed to have assumed and agreed to carry out all of the obligations of Owner under this lease. Notwithstanding the provisions of the preceding sentence, the grantor or transferor landlord shall not be relieved of any liability to Tenant arising or occurring prior to any sale or transfer.

**40. TENANT'S PLANS FOR OWNER'S RECORDS**

In order to enable the Owner to have permanent records of the demised premises as constructed, Tenant agrees that prior to the first opening of the demised premises if any construction is accomplished by Tenant and simultaneously with the completion of any major remodeling or any remodeling of plumbing lines of the demised premises it will submit to the Owner one set of its store front plans, interior plans, interior partitioning plans, heating and cooling plans, lighting and electrical plans, and plumbing plans.

**41. SIGNATURES OF BOTH PARTIES**

This lease shall not be in effect or binding upon either party until it is signed by both parties.

**42. OTHER AGREEMENTS**

The Tenant and the Owner hereby agree that this lease as written represents the entire agreement between the parties and there are no other agreements, written or verbal, between the parties hereto.

IN WITNESS WHEREOF, the Owner and the Tenant have executed this lease on the day and year first above written.

1402 HOWARD, L.L.C.,  
By its Manager,  
ERIC WIESELER

By  
\_\_\_\_\_  
Manager

OWNER

CITY OF OMAHA

\_\_\_\_\_  
TENANT

STATE OF NEBRASKA            )  
  )  
COUNTY OF DOUGLAS        )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022  
by ERIC WIESELER as Manager of 1402 HARNEY, L.L.C., for and on behalf of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  )  
COUNTY OF DOUGLAS        )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022  
by \_\_\_\_\_ of CITY OF OMAHA, for and on behalf of said company.

\_\_\_\_\_  
Notary Public