

RIVERFRONT IMPROVEMENT COMMISSION MEETING

CITY OF DAVENPORT, IOWA

TUESDAY, JANUARY 23, 2024; 5:00 PM

PD COMMUNITY ROOM

- I. Call to Order
- II. Approval of Minutes
 - A. Approval of Minutes | November 28, 2023
- III. Old Business
- IV. New Business
 - A. Open Commission Seat | Discussion
 - B. Revisit Commission Goals | Discussion
- V. Future Business
 - A. Approval of Antonella's II Lease
 - B. Approval of Farmers' Market Lease
- VI. Management Update
- VII. Park Liaison Report
- VIII. Public with Business
- IX. Adjournment | Next Meeting Date: February 27, 2024



Riverfront Improvement Commission

Minutes

November 28, 2023

Present: Dee Bruemmer, Bill Churchill, Kelli Grubbs, Gwendolyn Lee, Scott Pettis, Mary Pruess, Angela Stone, Roma Taylor, and Julie Tonn.

Others Present: Christopher Meyer, Parks Liaison; Courtney Jones, Administrative Services Manager and Staff Liaison; and Stephanie Bley, Riverfront Community Engagement Coordinator.

Chairwoman Lee called the meeting to order at 5:31 p.m. and welcomed all in attendance.

Approval of Minutes

Lee asked for approval of the minutes from the October 24, 2023 meeting. Grubbs moved to approve the minutes; Churchill seconded, and the motion was carried unanimously.

New Business

The Commission reviewed the Nestle Purina Lease. Churchill moved to approve the lease; Grubbs seconded, and the motion was carried unanimously.

Future Business

With no scheduled December meeting, Bruemmer proposed a meeting with Chairwoman Lee and City staff to discuss the budget before it goes to Council. The Commission also discussed a proposal to integrate property taxes into rental rates for upcoming lease renewals and directed staff to explore this option.

Management Update

Riverfront Community Engagement Coordinator, Stephanie Bley, shared a recap of the Holiday Train event, where the Riverfront Improvement Commission hosted a table as an activation for the community. Bley also shared that the Riverfront Improvement Commission would be hosting the kids tent at Jingle and Mingle on the Mississippi on December 2, 2023.

Staff Liaison, Courtney Jones, shared upcoming goals and focus areas for the winter months, including securing grant funding for 2024 summer and fall events, working toward completing a building evaluation of the Freight House, and managing progressive movement of secured CIP projects.

Park Liaison Report

Parks Advisory Board Liaison, Christopher Meyer, provided an update on the new RecDeck software. This is a replacement of RecPro, which was utilized by Parks and Recreation staff to track revenue and sign up for classes.

Meyer also shared that the second sheet of ice is currently under construction at The River's Edge.

No public comments were made. The Commission moved to change the start time of meetings to 5:00 p.m., beginning in January. With no further business, the meeting adjourned at 5:56 p.m.

Gwendolyn Lee, Chair

Riverfront Improvement Commission | Goals 2023

1. Role of Riverfront Improvement Commission in aiding the Davenport City Council:

- Lead strategic planning process for riverfront initiatives: RiverWest, etc.
- Convene public meetings on planning efforts as needed
- Develop and manage external partnerships where expertise and grants can be leveraged for pushing ahead on strategic goals; ex: Corps of Engineers, Iowa DNR, etc.

2. Prioritize work plans on riverfront areas:

- CIP requests
- Advocate for CIP funding to be earmarked for a comprehensive review of riverfront building improvements; including but not limited to: Union Station and the Freight House. Improvements would allow the City to rent to businesses that significantly contribute to the downtown economy, establishes our role in the future development of the sky bridge, and will act as a guide to what improvements have the greatest return on investment
- Long range vision of riverfront by sector: break out each sector and work with City Council to prioritize which are most beneficial to drive forward.

3. Manage properties and land that fall under the Riverfront Improvement Commission:

- Utilize City Departments | Divisions: Finance Administration, Public Works, and Parks to oversee day to day tenant needs; i.e. communication, maintenance, park operations, etc.
- Continue to advocate for and on behalf of the Farmers' Market; i.e. related activities, needs, etc.
- Create an economic environment through leasing that will bring people to the riverfront and support local business enterprises

4. Lead the way in activating the riverfront:

- Provide guidance to Staff Liaison, Courtney Jones in creating and facilitating events with the help of the Riverfront Community Engagement Coordinator
- Provide a representative from the RIC to work with the City on all major events on the Riverfront; i.e. RAGBRAI, Red, White & Boom, etc.

LEASE - BUSINESS AGREEMENT

THIS LEASE is made and entered into at Davenport, Iowa on this 22nd day of January, 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, as shown on the attached floor plan, marked Exhibit A, and made a part hereof and referred to as Leased Premises.

- 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, tenant shall pay to the Landlord on the first day of each month for use of the Leased Premises, 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.

- 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

The Tenant shall pay the rentals herein specified, and all other charges, to the Landlord at: Finance—Revenue Department, 226 West Fourth Street, 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

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 contract 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 Combined Single Limit	\$1,000,000
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(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 insure that coverage afforded under the policies will not be cancelled 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 anyway 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

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

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

The Tenant shall provide, install, and maintain at its expense, fixtures of a special nature that may be required by the Tenant's business. All such fixtures which 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, with the exception of any water purification equipment (including, without limitation, air conditioning units, heating equipment, plumbing fixtures, hot 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 for the purpose of replacing the same with items of like character, quality, or value.

14. TENANT IMPROVEMENTS

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

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

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

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

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

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, and other utilities to the Leased Premises.

20. ENTRY AND INSPECTION

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, for the purpose of inspecting the same, or for the purpose of maintaining the building in which said Leased Premises are situated, or for the purpose of making 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. The Landlord agrees, at its cost and expense, 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 which 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, rental shall be proportionally abated. If 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, and 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, 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 time period the Leased Premises are declared to be unfit for occupancy by any authorized public authority.

22. ASSIGNMENT AND SUBLETTING

The Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Leased Premises or and 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 which has 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 assignee and an opportunity to cure the same. Any assignment or subletting without the prior written consent of the Landlord 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 prior written consent of the Landlord. The Landlord shall give the Tenant prior notice of the assignment of this Lease and/or any interest of the Landlord therein.

23. DEFAULT, RE-ENTRY REMEDIES

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

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.

25. SALE OF LEASED PREMISES BY LANDLORD

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 in the event that the new Landlord agrees to the Lease and to not 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 by reason 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 by reason 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

No covenant, term, or condition of this Lease shall be waived except by written waiver of the Landlord, and the forbearance or indulgence by the Landlord in any regard whatsoever shall not constitute a waiver of the covenant, term, or condition to be performed by the Tenant to which the same shall apply, and 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 to any subsequent breach of the same or any other term, covenant, or condition hereof.

28. SUCCESSORS IN INTEREST

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

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.

30. TIME

Time is of the essence with regard to 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 to pay for Tenant's proportionate share of the Real Estate Taxes of the Leased Premises and any personal property taxes assessed on the equipment or fixtures owned by the Tenant. Tenant is solely responsible to keep itself 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, however, 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.

The Landlord and Tenant acknowledge reliance on its own judgment and advice and counsel of its own 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 _____

DRAFT

LEASE - BUSINESS AGREEMENT

THIS LEASE is made and entered into at Davenport, Iowa on this 22nd day of January 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 as shown on Exhibits A-B attached hereto and made a part of this Lease.

- 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 one (1) year, and shall have possession on March 1, 2024 and shall 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 of time. Regarding the interior premises, this agreement assumes daily usage (active and passive) by the Tenant.

3. RENTAL

- A. Beginning on March 1, 2024, tenant shall pay to the Landlord on the first day of each month for use of the Leased Premises, 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.
- 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 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

The Tenant shall pay the rentals herein specified, and all other charges, to the Landlord at: Finance—Revenue Department, 226 West Fourth Street, 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 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 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

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 contract 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 Combined Single Limit	\$1,000,000
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(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 insure that coverage afforded under the policies will not be cancelled 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

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. CLEAN-UP

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

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

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

The Tenant shall provide, install, and maintain at its expense, fixtures of a special nature that may be required by the Tenant's business. All such fixtures which 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, with the exception of any water purification equipment (including, without limitation, air conditioning units, heating equipment, plumbing fixtures, hot 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 for the purpose of replacing the same with items of like character, quality, or value.

16. TENANT IMPROVEMENTS

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

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

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

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.

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 during market hours for handicapped parking as noted in Exhibit A.

20. EXTERIOR LIGHTING

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

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

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, for the purpose of inspecting the same, or for the purpose of maintaining the building in which said Leased Premises are situated, or for the purpose of making 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.

23. DAMAGE AND DESTRUCTION OF LEASED PREMISES

- A. The Landlord agrees, at its cost and expense, 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 which 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, rental shall be proportionally abated. If 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, and 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.
- 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, 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 time period the Leased Premises are declared to be unfit for occupancy by any authorized public authority.

24. ASSIGNMENT AND SUBLETTING

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 which has 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 assignee and an opportunity to cure the same. Any assignment or subletting without the prior written consent of the Landlord 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 prior written consent of the Landlord. The Landlord shall give the Tenant prior notice of the assignment of this Lease and/or any interest of the Landlord therein.

25. DEFAULT, RE-ENTRY REMEDIES

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.

26. DEFAULT, COSTS, AND ATTORNEY FEES

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

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 by reason 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 by reason 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

No covenant, term, or condition of this Lease shall be waived except by written waiver of the Landlord, and the forbearance or indulgence by the Landlord in any regard whatsoever shall not constitute a waiver of the covenant, term, or condition to be performed by the Tenant to which the same shall apply, and 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 to any subsequent breach of the same or any other term, covenant, or condition hereof.

30. SUCCESSORS IN INTEREST

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

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

Time is of the essence with regard to 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 to pay for Tenant's proportionate share of the Real Estate Taxes of the Leased Premises and any personal property taxes assessed on the equipment or fixtures owned by the Tenant. Tenant is solely responsible to keep itself 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, however, 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, which are 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/or give 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 and all 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 that 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. 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 its own judgment and advice and counsel of its own attorney in interpreting this Agreement, and not in any manner on the other party.

DRAFT

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 _____

DRAFT