

FACILITIES, CAPITAL & STRATEGIC PLANNING COMMITTEE
DRAFT - MEETING MINUTES
Wednesday, October 5, 2022 – 9:00 a.m.
Howard Male Conference Room/Zoom Room

Commissioners Present: Don Gilmet, Chair
Brenda Fournier
Bill Peterson
Kevin Osbourne
Bob Adrian

Others Present: Kim MacArthur, Board Assistant
Wes Wilder, County Maintenance Superintendent
Tim McCloney, Michigan Municipal Risk Management Authority
Chuck LeFebvre, Liaison
Jake Bowen, Fairboard President
Kim Ludlow, Treasurer (zoom)
Phil Heimerl, True North Radio (zoom)
Steve Mousseau, IT Director (zoom)

CALL TO ORDER

Chair Don Gilmet called the meeting to order at 9:00 a.m.

ROLL CALL

All members present.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

APPROVE AGENDA

Chair Gilmet presented the agenda for approval as presented. Moved by Commissioner Fournier and supported by Commissioner Peterson to adopt the agenda as presented. Motion carried.

INFORMATION ITEM: Veterans Affairs Director Dan Perge presented a renewal of the 4-year lease agreement for office space with Alpena Harborside, LLC (attachment #1). There is an increase of \$50 per month with this lease term and no other changes to the lease were made. Motion by Commissioner Peterson and supported by Commissioner Fournier to approve action item below. Roll call vote was taken: AYES: Commissioners Fournier, Osbourne, Peterson, Adrian, and Gilmet. NAYS: None. Motion carried.

ACTION ITEM #1: The Committee recommends approval of Veterans Affairs Office lease renewal between Alpena Harborside, LLC and the County of Alpena for 4 years beginning January 1, 2023 and ending December 31, 2026 in the amount of \$811.67 per month and authorize the County Administrator to execute as presented.

INFORMATION ITEM: Maintenance Superintendent Wes Wilder updated the Committee on the following projects:

1. Courthouse Sanitary Sewer: Superintendent Wilder will be working with the contractor to get our portion done and the City will take care of the rest.
2. Courthouse Boiler Repair: Parts have been ordered.
3. Fairgrounds shed/tools for caretaker: Superintendent Wilder has obtained a permit and the truck barn is getting cleaned out with concrete potentially being poured next week.
4. Fairgrounds Restrooms – Block work can still be done this year. The fence will not be able to be repaired until next spring and the interior parts for the restroom are ordered and waiting for arrival.
5. DHD Air Conditioning: Waiting on parts.
6. Tower Project for 911: Project continues to move along.
7. Courthouse & Annex Roofs: Portions of both roofs are complete and work will resume tomorrow and Friday.
8. Pool Water Flow Meter: On hold until next year.
9. Annex Restroom Improvements: Will be started as soon as the fairgrounds truck barn is complete.

INFORMATION ITEM: County Administrator Mary Catherine Hannah presented the County insurance bid proposals for review. Two bid proposals were received, and Administrator Hannah invited Tim McCloney from Michigan Municipal Risk Management Authority to present to the Committee. The other bid proposal by Alpena Agency will be presented at the next meeting. MMRMA has a different model on how they do insurance and how they are structured. MMRMA Representative McCloney reported they are not an insurance company but a group of self-insured governmental entities that pool together for insurance purposes. They have a net asset distribution policy and a risk avoidance program policy that sets them apart from their competitors. Discussion and question were made on what MMRMA can do for the County. Chair Gilmet encouraged the Committee to review all information as this would be a different approach for insurance.

INFORMATION ITEM: Administrator Hannah presented discussion on the Fair Board. There were issues with the Fair Board not taking down stalls and not cleaning up the grandstands after the fair. The Fair Board also proposed to lease the horse barn for the winter season and

originally offered \$2,000 for the winter storage. Fair Board President Jake Bowen reported the horse stalls did not get taken down due to lack of communication and that they are not meant to be moved. The stalls are getting bent and banged up which is part of the reason they would like to rent the barn, so they do not need to be taken down each year. The grandstands were not cleaned due to dumpster problems. Discussion was made on the rental of the horse barn and Superintendent Wilder offered a space in the draft horse barn at no cost for this year with renegotiations of the contract for next year. Commissioner Gilmet asked that the contract be in place sooner than it was for 2022.

INFORMATION ITEM: Administrator Hannah discussed a draft lease RFP on the DHHS Building and whether to include a range of rental rates or leave open and see what is proposed. Administrator Hannah will send a proposed draft lease out with the proposal. Discussion was made that if the renter would like to do update themselves, this could impact the amount charged. The Committee agreed to carry on with RFP with no minimum and to send to next week's Full Board meeting.

INFORMATION ITEM: Administrator Hannah presented discussion on wayfinding signage at the Courthouse and Annex buildings. Omega Electric sent in a sign quote of \$13,850.00 which does not include the building signage and interior signage for the Annex building. Fabrication of the signs will take between 6-8 weeks. Motion was made by Commissioner Peterson and supported by Commissioner Osbourne to send to Finance Ways & Means. Roll call vote was taken: AYES: Commissioners Osbourne, Peterson, Adrian, Fournier, and Gilmet. NAYS: None. Motion carried.

ACTION ITEM #2: The Committee recommends approval of wayfinding signage for the Courthouse and Annex Buildings in the amount of \$13,850.00 from Omega Electric with monies to come from the Building and Grounds Fund as presented.

INFORMATION ITEM: Administrator Hannah presented the Committee with a draft of the CIP spreadsheet from Munetrix for review. The Planning Commission will review and make recommendations as far as priorities, additional projects, and timing. There will be more discussion at Full Board as part of the budget. Administrator Hannah reported the closing on the old jail building will be on October 17, 2022, and the disposition of the funds from that sale can be further discussed by the Commissioners as where they would like that money placed.

Liaison Chuck LeFebvre asked for a copy of the MMRMA documents along with the draft CIP reports.

PUBLIC COMMENT

None.

***Next Meeting: Wednesday, October 19, 2022 at 9:00 a.m. in Howard Male Conference Room/Zoom Room**

ADJOURNMENT

Moved by Commissioner Peterson and supported by Commissioner Fournier to adjourn the meeting. Motion carried. The meeting adjourned at 11:37 a.m.

Don Gilmet, Chairman

Kim MacArthur, Board Assistant

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#1

Memo for Facilities, Capital and Strategic Planning Committee

From: Alpena County Veterans Affairs Office

Subject: Renewal of Lease

We are requesting approval for the renewal of the attached lease agreement for office space with Alpena Harborside, LLC. This lease agreement is for 48 months and will commence January 1, 2023 at the end of our current lease agreement, and expire on December 31, 2026. The monthly rate will increase to \$811.67 from the current rate of \$761.67 for a total increase of \$50.00 per month. This will be the 4th lease agreement for this space and the cost has only increased, including the proposed lease agreement, \$85.80 over that time. The location of this space is ideal for the Veterans Office as it is located across the hall from the Lieutenant Colonel Clement C. Van Wagoner VA Community Based Outpatient Clinic. Approval of the proposed renewal will allow the Alpena County Veterans Affairs Office to remain in its current location without disrupting any day to day operations.

LEASE AGREEMENT

THIS LEASE AGREEMENT IS MADE the _____ day of _____ 2022, by and between Alpena Harborside, LLC whose address is, 666 McKinley Ave., Alpena, Michigan 49707 ("Landlord"), and County of Alpena (Veterans Affairs), whose address is 150B North State Street, Alpena, Michigan 49707.

ARTICLE I PRIMARY LEASE PROVISIONS

The following are the primary terms and provisions of this Lease:

- 1.01. Landlord: Alpena Harborside, LLC
666 McKinley Ave.
Alpena, MI 49707
(Tel): 989-356-2294
(Fax): 989-356-2297
- 1.02. Tenant: County of Alpena Daniel Perge, Director
720 Chisholm Street perged@alpenacounty.org
Alpena, MI 49707 989-354-9671
- 1.03. Demised Premises: 150B North State Street, Alpena, MI 49707 (approx. 665 sq. ft.)
- 1.04. Term: 48 months
a. Commencement Date: January 1, 2023
b. Possession Date: January 1, 2023
c. Termination Date: December 31, 2026
- 1.05. Rental Fee:

County of Alpena will lease the Premises from Landlord under a four year lease. The rent will be \$811.67 per month for each month of the four year term.
- 1.06. Permitted Use: Office Services.
- 1.07. Security Deposit: None
- 1.08. Last Month's Rental Paid in Advance? YES NO

ARTICLE II GRANT AND TERM

- 2.01. Grant. Landlord, in consideration of the monies to be paid and the covenants to be performed by Tenant, does hereby demise unto Tenant, and Tenant hereby leases from Landlord, the Demised Premises specified in Paragraph 1.03 hereof (the "Leased Premises") located in that certain property commonly known as Harborside Mall (the "Property").
- 2.02. Description of Premises. The Premises are described in Section 1.03 hereof and have been occupied by Tenant since January 1, 2011. The current lease term is set to expire December 31, 2026.

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- 2.03. Reservation. The exterior portion of the walls and roof of the Leased Premises and the area beneath and above the Leased Premises are not demised hereunder, and the use thereof, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements leading through, around, over and under the Leased Premises are hereby specifically reserved unto Landlord.
- 2.04. Term. The term of this Lease shall be for the period specified in Paragraph 1.04 hereof, commencing on the Commencement Date and ending on the Termination Date, unless sooner terminated as provided herein (the "Term").
- 2.05. Submission. The mere submission by Landlord of an unexecuted copy of this Lease to Tenant shall have no binding effect against Landlord unless this Lease is executed by Landlord and Tenant as provided herein. In no event shall the Term be deemed to have commenced nor shall this Lease be binding or enforceable against Landlord unless and until Tenant delivers to landlord, and Landlord accepts from Tenant: a fully executed copy of this Lease, the first month's Monthly Installment, and payment of the Security Deposit.
- 2.06. Acceptance of Condition. Tenant accepts the Leased Premises "AS-IS" and "WITH ALL FAULTS", and except as expressly provided herein, without representation as to condition by Landlord, and Tenant acknowledges its satisfaction with and acceptance of the condition thereof.
- 2.07. Hold Over. In the event Tenant holds over in possession of the Leased Premises after the expiration of the Term, or earlier termination of this Lease, Landlord, at its exclusive option and sole discretion, may (a) deem Tenant to be occupying the Leased Premises from month-to-month at a monthly rental fee which is one and one-half the Monthly Installment provided for herein, and otherwise subject to all of the terms, conditions and other charges of this Lease, or (b) Landlord may exercise any rights or remedies it has under this Lease, including an action against Tenant for trespass. No payment by Tenant or acceptance by Landlord of an amount less than the rental provided for herein shall be deemed to be other than a payment on account for the benefit of Landlord, and Landlord may accept such amount without prejudice to its right to recover the balance of the rent or other amount owed, or to pursue any other remedy provided herein in the event of a Default.

ARTICLE III RENT

3.01. Rental Fee: Tenant shall pay to Landlord the sum indicated in Paragraph 1.05 hereof, as base rental of the Leased Premises for the Term (the "Rental Fee"). Tenant's obligation to pay the Rental Fee is independent of every other covenant of this Lease.

3.02. Installment Payment.

(a) Monthly Installments. The Rental Fee shall be paid by Tenant to landlord in equal monthly installments in the amount indicated in Paragraph 1.05 hereof (the "Monthly Installments").

(b) Terms of Payment. All Monthly Installments of the Rental Fee shall be paid in advance, on the first day of each month during the Term, without any offset, deduction, or delay whatsoever, or any demand therefore, by a check or draft for legal tender of the United States of America, at the address for Landlord stated herein, or at such other place as Landlord may, for time to time, designate in writing. No payment by check or draft shall be deemed timely made unless honored and paid by the drawee bank upon presentment for payment. In the event the Term commences on a day other than the first day of a month, or ends on a day other than the last day of a month, the first and/or last Monthly Installment payment of the Rental Fee shall be prorated accordingly, based upon a thirty (30) day month.

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3.03. Service Charge. TIME IS OF THE ESSENCE FOR ALL PURPOSES OF THIS LEASE.

- (a) Service Charge. If Tenant fails to pay any Monthly Installment of the Rental Fee on or before the fifth day of the month in which the same becomes due, or any other monies payable to Landlord hereunder on or before the date due, then Tenant shall immediately, without demand therefore, pay to Landlord a service charge of the greater of Fifty (\$50.00) Dollars or Five (5%) Percent of the delinquent amount hereof ("Service Charge"). The Service Charge is in addition to and not in limitation of any other remedy or right provided herein, and is intended to compensate Landlord for the additional expenses associated with monitoring, administering and otherwise handling delinquent payments. The Service Charge shall not be deemed a penalty. Landlord reserves the right to increase the Service Charge at any time upon prior written notice to Tenant.
- (b) Returned Check Charge. In the event any check or draft tendered in payment of any monies due hereunder, including rental, is dishonored for any reason and/or returned unpaid by the drawee bank, Tenant shall, immediately, without demand therefore, pay to Landlord a returned check charge of Thirty Five (\$35.00) Dollars ("Returned Check Charge"). The Service Charge and Returned Check Charge are separate and cumulative remedies, and in addition to all other remedies provided herein. Landlord reserves the right to increase the Returned Check Charge at any time upon prior written notice to Tenant.

3.04. Security Deposit. As a condition precedent to the enforceability of this Lease by Tenant and the commencement of the Term, Tenant shall pay to Landlord a security deposit in the amount indicated in Paragraph 1.07 hereof ("Security Deposit"). The Security Deposit shall be held by Landlord, without interest or fiduciary duty, to secure the full and timely performance by Tenant of all terms and conditions required to be observed or performed by Tenant hereunder, including, without limitation, the payment of rent. In the event Landlord uses or applies all or any portion of the Security Deposit prior to the expiration of the Term, Tenant shall immediately deposit with Landlord such additional sums as may be required to reinstate the Security or use all or any portion of the Security Deposit to cure or mitigate any Default by Tenant or damages caused thereby. The right of landlord to retake possession of the Leased Premises for non-payment of rent or other charges, or for any other shall in no event be affected by Landlord's possession of the Security Deposit. Landlord may mix and commingle the Security Deposit with such other funds and monies as Landlord deems appropriate. Within a reasonable time after the expiration of the Term of this Lease, Landlord shall return to Tenant that portion of the Security Deposit, if any, not otherwise applied or used as permitted herein. Landlord shall have the right to transfer the Security Deposit to any purchaser of the Property and shall be released of all liability to Tenant for the return of same.

ARTICLE IV USE OF LEASED PREMISES

- 4.01. Permitted Use. The Leased Premises shall be used by Tenant solely for the purpose specified in Paragraph 1.06 hereof.
- 4.02. Compliance, Conduct, and Care of Premises. Tenant shall use, maintain and occupy the Leased Premises in a careful, safe, and lawful manner, and shall not commit waste thereon. Tenant, at its sole expense, shall at all time comply with all existing and future public laws, ordinances, rules, and governmental regulations, and Tenant shall promptly obtain and continuously maintain during the Term every license or other governmental permit required by Tenant to lawfully operate its business. Tenant shall conduct its business in a prudent, businesslike manner according to the highest ethical standards and shall not injure the reputation of character of the Property or Landlord. Tenant shall take good and proper care of, and shall not misuse, neglect,

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damage or deface the Leased Premises or the Property. Tenant shall do nothing to disturb, nor cause damage to any other tenant of the Property.

- 4.03. Rules and Regulations. Tenant shall fully and promptly comply with all existing and future rules and regulations as may be adopted by Landlord.
- 4.04. Insurance. Tenant shall engage in no conduct or activity, nor permit any use of the Leased Premises, nor cause to be stored thereat any material or substance which may be dangerous to life or property, or which may increase the premium of or invalidate any insurance policy carried by Landlord.
- 4.05. Improvements. Tenant shall make no alterations, additions, improvements or other changes to the Leased Premises or to the Property, or attach or affix thereto, or build therein or thereon any fixture or other article without the prior written approval of Landlord, which approval may not be unreasonably withheld.
- 4.06. Signs. All signs to be erected, placed or displayed in, on or about the Leased Premises or the Property by Tenant, and the method of their installation shall be subject to the prior written approval of Landlord. Immediately upon expiration or termination of this Lease Tenant shall, at its sole cost and expense, remove all signs erected, placed or displayed, and repair all damage caused by such removal.
- 4.07. Hazardous Substances. Tenant shall not cause or permit, directly, indirectly, or otherwise, intentionally, incidentally or otherwise, the use, production, storage, generation, disposal, treatment or other presence in, on, or about the Leased Premises of any toxic or otherwise hazardous material, substance or waste, whether liquid, solid, gaseous or otherwise ("Hazardous Substance"). Tenant shall not discharge or release on, under or about the Leased Premises, or permit to be discharged or released on, under or about the Leased Premises, or into any drain, toilet, basin, or otherwise into the sanitary or storm sewer(s) servicing the Leased Premises any such Hazardous Substance. Tenant shall indemnify, defend and hold Landlord, its successors and assigns, harmless from any and all liabilities, clean-up and/or response costs and other costs, including without limitation, attorney's and expert consultant's fees, incurred on account of any breach of this provision by Tenant, notwithstanding the termination of this Lease. In the event at any time after the commencement hereof, Landlord, its successors or assigns, discovers the existence of any environmental hazard caused or created by Tenant, then, in such event, Tenant, and its successors and assigns, shall fully clean-up, remove and remediate such condition, at its sole cost, to the complete satisfaction of Landlord, its designees, and all applicable government authorities, notwithstanding the termination of the Lease. Such liability shall include, without limitation, the cost of environmental consultants to direct, engineer and perform the clean-up to Landlord's sole satisfaction, all removal, remediation and disposal costs, costs of containment and security, all costs of reclaiming or replacing the land and/or structures affected by such remediation and/or removal, and every other cost associated with rendering the Leased Premises completely safe and free from environmental hazards.

ARTICLE VI ADDITIONAL OBLIGATIONS OF TENANT

In addition to the other covenants and agreements of Tenant set forth herein, Tenant also covenants to Landlord all of the following:

- 6.01. Timely Payment. Tenant shall timely and promptly pay to Landlord when due the Monthly Installments of the Rental Fee which includes Tenants share of CAM Charges and real property taxes.

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- 6.02. Utilities. Tenant shall timely pay for all separately metered utility services supplied to, and/or consumed on, the Leased Premises during the Term, except for gas, water and electricity. Landlord shall not be responsible for the quality or quantity of any such utility services.
- 6.03. No Record. Tenant shall not record this Lease or any memorandum hereof with any recorder or register of deeds or other governmental office.
- 6.04. Plate Glass. Tenant shall insure and maintain the plate glass portion of the Leased Premises, and promptly replace any breakage thereof with glass of like size, color and quality, and provide and pay for the installation thereof, and the cleanup of any breakage.
- 6.05. Surrender. At the expiration or termination of this Lease, Tenant shall restore the Leased Premises to the condition as exists as of the Commencement Date hereof, except as may have been bettered by any Tenant improvements accepted by landlord and shall surrender the Leased Premises, broom clean, and in good condition. Tenant shall at its own expense, repair any damage occasioned or resulting from its possession of the Leased Premises, and shall surrender and deliver to Landlord any and all keys, authorizations, and related items in its possession or control to the Leased Premises or to the Property, all of which items shall at all times be and remain the exclusive property of the Landlord. Any personal property of Tenant remaining in the Leased Premises or the Property after the expiration or termination of this Lease or surrender of the Leased Premises, shall be deemed to have been abandoned by Tenant.
- 6.06. Repairs. Tenant shall immediately inform Landlord of any condition in the Leased Premises in need of repair or replacement, regardless of the reason therefore. Tenant shall keep and maintain in good order, condition and repair the Leased Premises including the interior portion of all walls, the floor, the ceiling, and the interior and exterior portion of all doors, windows, store front, sign, lighting (including all tube, ballast and bulb replacement) The plumbing and sewage facilities shall not be used for any purpose other than that for which they were constructed, and no foreign, hazardous or toxic substance or object of any kind shall be introduced therein.
- 6.07. Sublease or Assignment. Tenant shall not sublease the Leased premises or any part thereof, nor assign, negotiate or otherwise transfer any of its rights, obligations or interest under this Lease, without the prior written approval of landlord, which approval may be withheld for any reason. The sale, issuance or transfer of any voting capital stock of Tenant, if Tenant is a corporation, which results in a substantial change in voting or effective control of Tenant shall be deemed to be an assignment or other transfer prohibited by this Paragraph or under this Lease shall not be deemed to be a consent by Landlord to any such assignment or other transfer, nor shall same be deemed to be a waiver of any right or remedy of Landlord hereunder. Assignments for the benefit of creditors of Tenant, or by operation, of law, shall not be effective against Landlord without Landlord's prior written approval, which approval may be withheld for any reason or for no reason. In the event Landlord agrees to any sublease, the Landlord shall be entitled to the net positive difference, if any, of the amount of rent paid by any sublessee and the Rental Fee due hereunder.
- 6.08. Subordination. In the event the Property is now encumbered by any mortgage, Tenant does hereby subordinate all rights and interest it may have in and to the Leased Premises to Landlord and any mortgagee of this Lease and all of Tenant's rights hereunder shall be subordinated to the lien of any such mortgagee, and Tenant shall, upon written request of Landlord or any mortgagee, execute any Letter of Estoppel or other instrument required by Landlord or any such mortgagee to effect such subordination, and Tenant shall also execute a Letter of Estoppel, certifying to such information and facts as Landlord or any such mortgagee of the Property may

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require, including, without limitation, (a) that his Lease is in full force and effect, (b) the date of commencement of the Term, (c) that rent is paid currently without any off-set or defense thereto, (d) the amount of rent, if any, paid in advance, and (e) that there are no uncured defaults by Landlord or stating those claims by Tenant; provided, however, that such facts are accurate and/or ascertainable. In the event that proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under, any mortgage made by Landlord covering the Leased Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

- 6.09. Sale of Property. In the event Landlord sells the Property Tenant shall, upon the written request of Landlord, execute a letter of estoppel, setting forth such information and facts as any such purchaser of the Property shall require. Tenant shall also release Landlord of all of its liabilities and obligations set forth herein, including, without limitation, those which relate to the return of the Security Deposit, and substitute and attorn therefor such purchaser of the Property.
- 6.10. Attorney-in-Fact. Tenant does hereby irrevocably appoint Landlord as its lawful attorney-in-fact, with full authority and right to execute and deliver any letter of estoppel or other instrument required to be provided by Tenant pursuant to paragraph 6.08 and 6.10 hereof, and to execute and deliver any such letter of estoppel or other instrument for and in the name of Tenant.

ARTICLE VII RESERVED RIGHTS

In addition to all of the other rights and privileges of Landlord hereunder, Landlord specifically reserves unto itself the following rights:

- 7.01. Entry of Repairs and Exhibition. To enter the Leased Premises during business hours with Tenant present, for the purpose of making inspections, alterations, improvements or repairs which Landlord, in its sole discretion, deems necessary or desirable and to exhibit the Leased Premises to insurers, contractors, prospective tenants, lenders, purchasers, and other parties.
- 7.02. Property. To alter the size, shape, appearance, number and/or location of the buildings (other than the Leased Premises), the parking areas, and other Common Areas and every part thereof which makes up and comprises the Property, or to change the name of the Property.
- 7.03. Errors and Mistakes. Landlord may, unilaterally, make such changes, amendments and/or corrections to this Lease as are necessary to correct any clerical, typographical, arithmetic or other error or mistake in the preparation and /or execution of this Lease.

ARTICLE VIII INDEMNIFICATION

- 8.01. Blanket Indemnification. Tenant shall indemnify, defend and hold Landlord free and harmless, including, without limitation, all partners, shareholders, directors, officers, employees, attorneys and agents of landlord, and each of their respective heirs, representatives, successors and assigns, from and against any and all claims, expenses, and liabilities of every kind and nature whatsoever, including, without limitation, attorneys fees, court costs, litigation expenses, penalties, and all direct, indirect, consequential and incidental damages of and to Landlord, arising out of, caused by or related to any of the following:
- (a) the execution of this Lease and the performance of this Lease by Tenant;
 - (b) the use or occupancy of the Leased Premises, or the Property by Tenant, and its agents and employees, as well as any act of any customer, business invitee, supplier, guest or other visitor of Tenant ("Visitors");

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- (c) any damage to or destruction of any property, records, equipment, inventory, or other personal property, tangible and intangible, of every nature and description, now owned or hereafter acquired by Tenant, its agents, its employees, or Visitors, regardless of the cause thereof;
- (d) damage to the business of Tenant, regardless of the cause thereof, including, without limitation, any act of Landlord, any act of any agent of Landlord, or any act of other tenants of the Property, the bursting of pipes, power outages, flooding, vandalism, burglary, malicious mischief, and any and every other cause whatsoever, regardless of whether the same is specifically provided for herein;
- (e) The employment, use or retention of a broker, finder or other agent by Tenant in connection with the ultimate execution of this Lease.

8.02. Insurance. Landlord has in place a general policy of insurance for the Harborside Mall property which does not cover Tenant's property. Tenant shall obtain and maintain any and all insurance(s) which it deems appropriate and/or are required by law to cover its property, employees, etc. Tenant hereby holds Landlord harmless for any and all loss or liability resulting from its decision to obtain or not obtain insurances.

8.03. Non-Recourse. Neither Landlord nor its partners or employees shall have any duty or liability to Tenant except as expressly provided for herein, and, in the event of any such liability to Tenant hereunder, or under any law, Landlord's liability to Tenant shall be non-recourse and strictly limited to Landlord's equity position, if any in the Property.

8.04. No Security. Landlord shall have no obligation or duty whatsoever to provide, or pay for, security or other personal or physical property protection services or devices with regard to the Leased Premises or the Property. In no event shall Landlord be held responsible or liable for the act of any person or persons unrelated to Landlord, whether criminal or not, which occur on or at the Leased Premises or the Property. In the event Landlord does provide any such protection service or device, Tenant shall pay, as a Common Area Charge, its Proportionate Share of the cost thereof.

8.05. Waiver of Subrogation. Except in the case of willful actions by either Landlord or Tenant, each party hereto does hereby remise, release and discharge the other party hereto, and any officer, agent, employee or representative of such party, of and from any liability whatsoever hereafter arising from loss, damage or injury caused by fire or other casualties for which insurance is required to be carried hereunder by the injured party at the time of such loss, damage or injury to the extent of any actual recovery by the injured party under such insurance. Landlord and Tenant shall each use their best efforts to have their respective insurance policies contain a provision permitting the foregoing waiver of subrogation, including the payment of reasonable increased premiums.

ARTICLE IX PROPERTY CASUALTY

9.01. Partial Destruction. In the event that, through no fault of Tenant, the Property shall be partially damaged by fire or other casualty at any time during the Term, and Landlord in its sole discretion deems the Property salvageable, Landlord shall use reasonable efforts to have the Property promptly repaired or to have its insurance company repair same, and a proportionate abatement of rent shall be allowed to Tenant for the time occupied in such repairs, except if Tenant can use and occupy the Leased Premises without substantial inconvenience then there shall be no abatement of rent. If said repairs are delayed because of the failure of Tenant to adjust his own insurance, then no reduction shall be made beyond a reasonable time allowed for such adjustment.

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- 9.02. Total Destruction. In the event the Property is totally or substantially destroyed by fire or other casualty, then this Lease may be terminated by Landlord at its sole discretion, in which event, the Lease shall thereupon terminate without further liability of Landlord or Tenant with respect to the unexpired Term. Landlord and Tenant release each other from any liability for loss, damage or injury caused by such fire or other casualty for which insurance (permitting waiver of liability and waiver of insurer's right of subrogation) is carried by either Landlord or Tenant to the extent of any recovery by them under such policy.
- 9.03. Damage to Tenant's Property. In no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, furnishings, improvements or equipment. If Landlord elects to repair or rebuild the Leased Premises as herein provided, Tenant shall repair or replace its merchandise, trade fixtures, furnishings, improvements and equipment in a manner and to a condition at lease equal to that prior to its damage or destruction.
- 9.04. Eminent Domain. If the whole or any part of the Leased Premises is taken by public authority under the power of eminent domain then, Landlord may at its sole discretion, either immediately terminate this Lease, or at Landlord's sole cost, relocate the Tenant to another location of equivalent size within the Property for the balance of the Term. If Landlord decides not to relocate Tenant, but rather to immediately terminate this Lease, then the term of this Lease shall cease as of the day possession is actually delivered to, or that portion taken by, such public authority and the Rental Fee and additional rent shall be paid up to that day with a proportionate damages awarded for such condemnation shall remain the sole property of the Landlord. Any condemnation of any portion of Leased premises or the Property shall neither result in a termination of this Lease by Tenant nor a right of Tenant to cancel same, unless such condemnation substantially and materially impairs Tenant's effective use of the Leased Premises.

ARTICLE X DEFAULT

- 10.01. Default. Default under this Agreement shall be defined as, and Tenant shall be deemed to be in Default hereunder upon the occurrence of any one of the following events ("Default"):
- (a) Rental Payment. Tenant fails to pay in full and when due all or any portion of a Monthly Installment of the Rental Fee, or the Security Deposit due hereunder, or
 - (b) Other Payments. Tenant fails to pay in full and when due any other monies or charges due hereunder, including, without limitation, Tenant's Proportionate Share of CAM Charges, real or personal property taxes, or utilities, Service Charges, Returned Check Charges, insurance premiums, and all other costs and charges payable by Tenant hereunder, or
 - (c) Performance. Tenant breaches or fails to fully and promptly observe or perform any term, condition, or time parameter of the Lease, or the rules and regulations promulgated hereunder, regardless of whether such failure or breach relates to a material provision of this Lease; or
 - (d) Abandonment or Unlawful Holdover. Tenant abandons, surrenders, vacates, or unlawfully holds over the Leased Premises prior to or after the expiration of the Term, as the case may be; or
 - (e) Insolvency. Tenant admits in writing its inability to pay its debts generally as they become due, makes a general assignment for the benefit of its creditors, applies for or consents to the appointment of a receiver, trustee or liquidator, or becomes insolvent or commits an act of insolvency, files a voluntary petition in bankruptcy or admits any material allegation in any pleading or petition filed against it in any bankruptcy or insolvency

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proceeding, or sells or permits the sale of its interest in the Premises under attachment, execution or similar legal process, or takes any action for the purpose of effectuating any of the foregoing; or

- (f) Lien. Any mechanic's or construction lien or assessment attaches to or is claimed against the Leased Premises or the Property on account of work performed or materials delivered thereto at the request of instruction of Tenant.

10.02. Rights and Remedies. In the event of a Default, Landlord may, at its sole option and exclusive discretion, take or exercise any of the following rights and remedies, concurrently, consecutively, alternatively and as often as the occasion may arise:

- (a) Termination and Self-Help. Terminate this Lease and, immediately following Tenant's prior written notice of a Default (which Default remains uncured for a ten (10) day period), to the full extent available under applicable law, take self-help repossession and control of the Leased Premises peacefully, but without further demand, court order or other process of law and, utilizing such force as may be reasonable and necessary, physically re-enter and resume possession of the Leased Premises and put out, expel, vacate and otherwise peacefully remove all persons and property therefrom, securing the Leased Premises (including the changing of locks) for Landlord's sole and exclusive possession and use.
- (b) Re-Let. Re-let the Leased Premises to any person or entity, and at any rental fee or rate, and for any term that Landlord deems appropriate.
- (c) Acceleration. Accelerate the full payment of the Rental Fee, and any and all other monies due hereunder.
- (d) Service Suspension. Terminate, cancel, stop, cutoff, and otherwise suspend any services, utilities or items otherwise required to be provided or are provided to Tenant hereunder.
- (e) Court. Commence eviction proceedings and/or file suit for all or any portion of the unpaid Rental Fee, or other monies due and owing hereunder including actual attorney's fees, court costs and litigation expenses, or for any damages caused by Tenant.
- (f) Performance. Perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance by Landlord shall be payable by Tenant to Landlord upon demand.
- (g) Apply Security Deposit. Landlord may, but without obligation, use, apply or retain all or any portion of the Security Deposit toward the curing of such Default and any damages, actual, consequential, incidental or otherwise including, without limitation, reasonable attorney's fees, court costs, travel expenses, and actual expenses of litigation incurred by Landlord as a result of such Default. In the event the Security Deposit is insufficient to cure or fails to fully remedy any Default or repair any damages caused by Tenant, Tenant shall remain fully liable to the extent of any such deficiency regardless of whether Landlord applies or uses the Security Deposit. In no event shall Landlord's application of the Security Deposit be deemed or construed as a waiver of Default, nor shall such application limit or prevent Landlord from enforcing any other right or remedy provided herein.

10.03. Attorneys Fees. In the event of any Default by Tenant, Tenant shall reimburse Landlord for any and all actual attorney's fees, court costs and litigation expenses incurred as a result of such Default, regardless of whether court process is commenced against Tenant by Landlord.

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10.04. Notice. Upon the occurrence of any event of Default, Landlord may exercise any of the rights and remedies provided herein without any prior notice to Tenant, except as may be required by law.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.01. Assignment. Landlord may assign, negotiate or transfer all or any portion of its rights, obligations or interest in, to, or under this Lease in whole or in part, at any time without notice to or consent of Tenant.

11.02. Relationship. Nothing stated or implied herein is intended to nor shall it be deemed to create any partnership or joint venture between Landlord and Tenant. The relationship between Landlord and Tenant does not extend beyond the scope of this Lease.

11.03. Waiver of Action. No action or omission by Landlord, including but not limited to, any extension, modification, amendment, forbearance, delay, indulgence, or concession with regard hereto, with or without notice to Tenant, is intended as, nor shall it constitute or be deemed a waiver, discharge or release of Tenant, or of any obligation of Tenant or right of Landlord established hereby, nor shall such action or omission constitute an approval of or acquiescence in any breach hereof or Default hereunder.

11.04. Accord and Satisfaction. No restrictive endorsement or statement on any check or draft, or letter accompanying any check or draft, for payment of rent or any other amount owed to Landlord shall cause or evidence any accord or satisfaction by Landlord to accept an amount less than is then due and owing.

11.05. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Michigan. In the event of any dispute between the parties hereto, the exclusive jurisdiction and venue for the resolution and settlement thereof shall be Alpena County, Michigan, U.S.A.

11.06. Conformity. Any provision of this Lease which is in conflict with the laws of the State of Michigan as of the date hereof, is hereby amended to conform to and comply with such state law to the maximum and fullest extent permitted thereunder (herein referred to as "Conformity"). In the event a court is unable to comply with the Conformity agreed to herein, then, in the alternative, if any term, obligation, right, or condition, hereof is held invalid, or unenforceable, the remaining provisions hereof shall: (a) remain in full force; (b) in no way be altered, affected, impaired, invalidated, or otherwise changed thereby; and (c) be interpreted, and applied as though such offensive provision(s) was not in the first instance contained herein.

11.07. Notices. All notices required hereby or given pursuant hereto, if any, shall be deemed effective and binding if given in writing by certified or registered mail, return receipt requested, (regardless of whether the return receipt is received by sender), or if sent by any of the next-day delivery carriers, or their equivalent, or if given in person, or if sent by facsimile transmission, to the addresses and/or numbers provided for herein and shall be deemed effective upon the earlier of the actual date of its receipt or on the third business day after the same in postmarked or dated for dispatch.

11.08. Captions. Article and paragraph titles, headings and/or captions contained herein have been inserted solely as a means of reference and convenience. Such captions shall not affect the

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interpretation or construction of this Lease and shall not define, limit, or otherwise describe the scope of this Lease or the intent of any provision thereof.

11.09. Gender. Whenever required by the context or use in the Lease, the singular word shall include the plural word and the masculine gender shall include the feminine and/or neuter genders, and vice versa.

11.10. Entire Lease. This Lease, and all accompanying exhibits, attachments, rules and/or regulations, if any, constitute the entire and integrated agreement between landlord and Tenant and supersedes and cancels any prior or contemporaneous understandings or agreements, whether written or oral, by and between Landlord and Tenant relative to the subject matter hereof.

11.11. Binding Effect. All rights and obligations contained herein shall be binding upon and inure to the benefit of landlord and Tenant, and their respective successors, and permitted assigns, if any.

11.12. Receipt. Landlord and Tenant hereby acknowledge: (a) that they and their legal counsel have read, fully understand and agree to all of the above; (b) and accept a copy of this Lease and all Exhibits referenced herein, appropriately completed, and (c) that they have executed and delivered the original of this Lease as of the date first set forth hereinabove.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement, in triplicate, on the day and year first above-written.

WITNESSED BY:

"TENANT"
Alpena County

By: _____

Dated: _____

WITNESSED BY:

"LANDLORD"
Alpena Harborside, LLC

By: _____

Jeff J. Konczak
Its: Member and Manager

Dated: _____

INITIALS:

TENANT'S ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ }

This ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared _____, who executed the foregoing instrument as Tenant, and that they did sign said instrument as their voluntary act and deed.

Notary Public

_____ County. My Commission Expires: _____

LANDLORD'S ACKNOWLEDGMENT

STATE OF MICHIGAN }
COUNTY OF ALPENA }

The ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared _____, who executed the foregoing instrument as Landlord, and that they did sign said instrument of their voluntary act and deed.

Notary Public

_____ County. My Commission Expires: _____

THIS SPACE INTENTIONALLY LEFT BLANK

INITIALS:

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