

MEMORANDUM

July 1, 2020

TO: Mayor John P. Kahl and Members of the City Council

FROM: Scott A. Brunton and Kathleen M. Carter, City Attorney's Office

SUBJECT: Resolution Approving Lease Amendment for Storage Area in Eastport Marina Building

DISCUSSION:

Omega 9, LLC currently operates the cantina/restaurant in the Eastport Marina building. Last year, in an effort to assist the expansion of the Omega 9's operations, the City entered into a lease agreement with Omega 9 for Omega 9's use of an area close to the cantina location that is located in the City's condominium space in the Eastport Marina building. Under the Lease Agreement with Omega 9, the leased area is used for a kitchen for food preparation for the cantina/restaurant operations.

At this time, Omega 9 seeks to use additional nearby space in the City's condominium space as a storage room for their cantina/restaurant operations. The City seeks to facilitate Omega 9's continued operation of their cantina/restaurant, while also encouraging patronage of Eastport Marina facilities. Thus, the City has negotiated a First Amendment to the Lease Agreement with Omega 9 that will now include this additional storage room space for use by Omega 9. This storage room area will be leased to Omega 9 under similar economic terms as currently established in the Lease Agreement, while also allowing Omega 9 to expand this storage room area into adjacent space in the City's condominium space. Omega 9 will be responsible for all costs associated with the expansion of the storage room and related fit out of the storage room. This First Amendment also makes updates to the provisions of the Lease Agreement regarding use of the hallway space that connects the cantina/restaurant area to the kitchen area and the new storage room area.

RECOMMENDATION: Approval of this Resolution.

RESOLUTION NO. 2021-025

East Peoria, Illinois

_____ , 2020

RESOLUTION BY COMMISSIONER _____

**RESOLUTION AUTHORIZING FIRST AMENDMENT TO
LEASE AGREEMENT WITH OMEGA 9, LLC**

WHEREAS, the City has previously entered into a Lease Agreement with Omega 9, LLC for a portion of the City's condominium unit located at the Eastport Marina complex, for use by Omega 9, LLC as a kitchen in association with its restaurant operations; and

WHEREAS, Omega 9, LLC desires additional space for storage purposes in association with its restaurant operations; and

WHEREAS, the City desires to provide additional space to Omega 9, LLC in order to facilitate continued operation of its restaurant and to encourage patronage of Eastport Marina; and

WHEREAS, City Officials have negotiated a First Amendment to Lease Agreement, as set forth in Exhibit A, attached hereto and incorporated herein by reference, which provides for additional leased area for storage space for Omega 9, LLC; and

WHEREAS, the City hereby finds that it is in the best interest of the City to enter into this First Amendment to Lease Agreement with Omega 9, LLC;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. The First Amendment to Lease Agreement with Omega 9, LLC is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the First Amendment to Lease Agreement, attached hereto as Exhibit A, together with such changes therein as the Mayor in his discretion deems appropriate; provided, however, that the City shall have no obligation under the First Amendment to Lease Agreement

until such time as an executed original of the First Amendment to Lease Agreement has been delivered to Omega 9, LLC.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

[First Amendment to Lease Agreement (Omega 9 LLC)]

FIRST AMENDMENT TO LEASE AGREEMENT

This **FIRST AMENDMENT TO LEASE AGREEMENT** (“Amendment”) is made effective this _____ day of _____, 2020, by and between the City of East Peoria, an Illinois municipal corporation (hereinafter referred to as “Landlord”) and Omega 9, LLC, an Illinois limited liability company (hereinafter called “Tenant”).

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated June 1, 2019 (the “Lease”) for the leasing of approximately 180 square feet of space known as “the laundry room area” and being part of the Landlord’s condominium unit located at 701 Mariners Way, East Peoria, Illinois (the “Property”); and

WHEREAS, Tenant desires additional storage space to serve the leased premises and Landlord desires to provide such additional storage space to Tenant in order to facilitate continued operations of Tenant’s restaurant and encourage patronage of the East Port Marina complex; and

WHEREAS, the parties now desire to amend the terms of the Lease under the terms set forth herein;

NOW THEREFORE, for the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Leased Premises. Paragraph 1 of the Lease is hereby deleted in its entirety and replaced with the following:

1. Leased Premises

In consideration of the mutual covenants and agreements herein contained, LANDLORD hereby leases to TENANT a portion of the condominium unit owned by LANDLORD and located at 701 Mariners Way, East Peoria, Illinois, and more specifically depicted in gray on the attached Exhibit A (the “Premises”), with all appurtenances and rights thereto belonging, including the right of ingress to and egress from the Premises, to have and to hold for the period upon the terms and conditions as herein stated.

The Leased Premises shall also include non-exclusive use of the “Hallway” that connects Unit 1-C, the Storage Room, and Unit 1-A, as identified on the attached Exhibit B.

2. Initial Term Rent. The first sentence of Paragraph 3 of the Lease is hereby amended to provide as follows: “The annual rental for the 12-month initial term of this Lease shall be One Thousand Eight Hundred Dollars (\$1,800.00).

3. Option to Renew Lease. Paragraph 4 of the Lease is hereby deleted in its entirety and replaced with the following:

4. Option to Renew Lease

TENANT shall, provided the Lease is in full effect and TENANT is not in default under any of the terms and conditions of the Lease at the time of notification, have the option to extend the term of this Lease for three (3) additional periods of twelve (12) months (each such 12-month period referred to herein as an "Extended Term") each to commence immediately upon the expiration of the initial term, and each subsequent term thereafter, on the same terms and conditions set forth in the Lease. If TENANT elects to exercise this option to renew, TENANT shall provide LANDLORD with written notice of its option to renew said Lease, thirty (30) days prior to the expiration of the term of the Lease. If TENANT fails to provide such notice, TENANT shall have no further or additional right to extend or renew the term of the Lease and said Lease shall terminate at the end of the annual term.

The annual rent for each Extended Term shall be Three Thousand Six Hundred Dollars (\$3,600.00) payable in one (1) lump sum on the first day of each Extended Term. Notwithstanding the preceding sentence, Rent for the first Extended Term commencing on June 1, 2020 shall be payable as follows:

One Thousand Eight Hundred Dollars (\$1,800.00) shall be payable in one (1) lump sum on the first day of the Extended Term.

One Thousand Eight Hundred Dollars (\$1,800.00) shall be payable in one (1) lump sum upon execution of this Amendment.

3. Tenant's Work. A new paragraph 28 is added as follows:

28. Tenant's Work.

Tenant will be permitted by Landlord to enter the Property and Premises for the purpose of performing Tenant's Work as more particularly described on the attached Exhibit C, provided (i) Tenant shall have obtained Landlord's written approval of Tenant's plans and specifications, and (ii) Tenant shall have deposited with Landlord certificates of insurance as required in Section 9 of the Lease. Tenant shall, at its expense, remove from the Premises and from the Property all trash which may accumulate in connection with Tenant's activities and, should Tenant fail to do so, Landlord may, in addition to any other right or remedy of Landlord, remove such trash following written notice to Tenant, at Tenant's expense, and the reasonable expenses so incurred by Landlord shall be due and payable by Tenant as Additional Rent, upon demand.

28.1 Approval of Tenant's Plans and Specifications.

Tenant shall submit to Landlord plans and specifications for Tenant's Work and a list of proposed contractors and subcontractors to perform such work, and

Landlord shall have thirty (30) days to approve or reject such plans and specifications and any contractors or subcontractors on such list. If Landlord rejects such plans and specifications or any particular contractors or subcontractors on such lists, Landlord shall specify the reasons for such rejection. Thereafter, Tenant shall not commence such alterations, additions or improvements, or employ such rejected contractors or subcontractors, unless and until Tenant shall have modified such plans and specifications to respond to Landlord's reasons for rejecting the plans and specifications, and shall have submitted such revised plans and specifications to Landlord and received Landlord's approval thereof, or selected alternate contractors or subcontractors who are acceptable to Landlord for such work.

28.2 Construction.

With respect to any alterations which may be permitted by Landlord, Tenant shall promptly pay all costs, expenses and charges therefor, shall perform such work in accordance with all applicable laws and the plans and specifications approved by Landlord, shall obtain all necessary permits, shall employ only contractors and subcontractors approved by Landlord, and shall perform such work in a good and workmanlike manner. All finishes to any alterations permitted by Landlord shall be equal to or better than the existing finishes on the Property. Tenant shall promptly repair any damage to the Premises or the Property caused by any such alterations, additions or improvements.

28.3 Mechanic's Liens.

In the event any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to be performed or furnished, to Tenant, Tenant shall within twenty (20) days of filing, cause the same to be discharged of record or bonded. If Tenant shall fail to cause such lien to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may discharge the same by paying the amount claimed to be due or may cause the same to be bonded, and the amount so paid by Landlord, including reasonable attorney fees incurred by Landlord in either defending against such lien or procuring the discharge or bonding of such lien, shall be due and payable by Tenant to Landlord, as Additional Rent, upon demand.

28.4 Indemnity.

Tenant shall fully protect, indemnify, save, and hold harmless Landlord and Landlord's agents, officers, and employees from and against any mechanic's or other liens, claims, demands, losses, damages, expenses or costs (including, without limitation, reasonable attorney's fees) or liability of whatever nature arising directly or indirectly out of any action or omission of Tenant or Tenant's contractors, licensees, agents or employees in connection with or related to the making of such alterations, additions or improvements.

28.5 Tenant's Improvements and Fixtures.

All improvements to the Premises made or performed by Tenant shall be the property of Tenant throughout the Term. Upon expiration of the Term or earlier termination of this Lease, all improvements to the Premises, not including any Trade Fixtures, equipment or other removable personal property, shall be Landlord's property and shall be surrendered to Landlord.

All furniture, fixtures and equipment, inventory, personal property and apparatus owned by Tenant and installed in the Premises other than HVAC or other building systems ("Trade Fixtures") shall remain the property of Tenant and shall be removable at any time, including upon the expiration of the Term; and provided further that Tenant shall repair any damage to the Premises caused by the removal of said fixtures.

4. Indemnification. A new paragraph 29 is hereby added as follows:

- a. Indemnification of Landlord. Tenant shall protect, indemnify, save and keep harmless Landlord and Landlord's agents, servants, officials, officers, and employees against and from all damages, suits, liability, claims, loss, cost, or expense (including court costs and reasonable attorneys' fees) arising out of or from any of the following:
 - i. Any accident or other occurrence in the Premises;
 - ii. Tenant's (or Tenant's agents, employees, or invitees) occupancy or use of the Premises, including but not limited to the Hallway; Tenant's construction in, on or about the Premises; or any act or omission of Tenant, Tenant's employees, agents, invitees, assignees or contractors;
 - iii. Any violation by Tenant (or Tenant's agents, employees, or invitees) of any law or ordinance in, on, at or in any way related to the Premises; or
 - iv. Any damage, liens or expenses arising as a result of Tenant's default in any of the terms of this Lease.
- b. Indemnification of Tenant. Landlord shall protect, indemnify, save and keep harmless Tenant and Tenant's agents, servants and employees against and from all damages, suits, liability, claims, loss, cost, or expense (including court costs and reasonable attorneys' fees) arising out of or from any of the following:
 - i. Any accident or other occurrence on areas of the Property under the control of the Landlord and arising in connection with the business of Landlord;

- ii. Any violation by Landlord (or Landlord's agents, employees, invitees or subtenants) of any law or ordinance in, on, at or in any way related to the Property; or
- iii. Any damage, liens or expenses arising as a result of Landlord's default in any of the terms of this Lease.

3. Insurance. Paragraph 9 of the Lease is hereby amended to provide that, in addition, to the current insurance coverage required, Tenant shall require any contractor of Tenant performing work on the Premises to take out and keep in force, at no expense to Landlord, commercial general liability insurance for damage to person or property in amounts no less than Five Hundred Thousand Dollars (\$500,000.00). Evidence of insurance coverage shall be delivered to Landlord upon request.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, as of the day and year first above written.

LANDLORD:

City of East Peoria
401 W. Washington Street
East Peoria, Illinois 61611

By: _____
John P. Kahl, Mayor

TENANT:

Omega 9, LLC
701 Mariners Way
East Peoria, Illinois 61611

By: _____
Jason E. Payne, Its Manager

Exhibit B
Condominium Plat

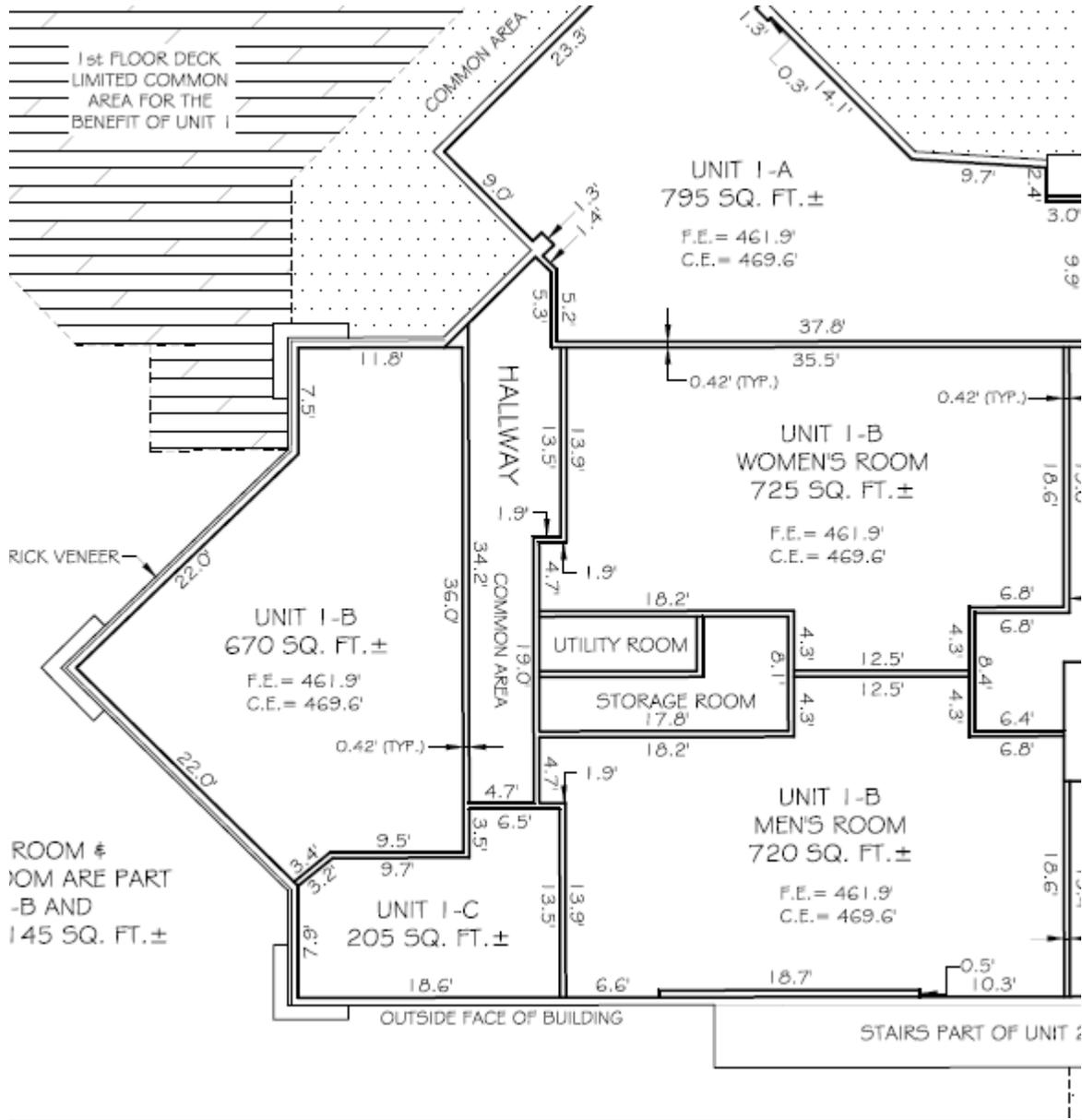


Exhibit C

Tenant's Work

Tenant shall convert the two (2) shower stalls designated "S5" and "S6" into additional storage space for the "Storage Room" as depicted on the attached Exhibit C-1.

- The additional storage space created by such conversion shall be accessible only from the "Storage Room" and shall be walled off from the remainder of the Men's Room.
- Tenant shall cause for all plumbing to be appropriately capped and/or re-routed, as may be necessary, so as to ensure the remainder of the plumbing in the Men's Room remains in proper, working order, as a result of Tenant's Work.
- Tenant shall wall off the two shower stalls and complete the conversion with equal or better finishings to those currently in existence on the Property.

