

COMMERCIAL LEASE

This COMMERCIAL LEASE (“Lease”) is dated _____, 2022 (the Commencement Date”) between Childers Banquet & Catering Center, Inc., an Illinois corporation, (“Lessee”) and the City of Peoria, an Illinois municipal corporation (“Lessor”).

RECITALS

WHEREAS, Lessee desires to lease part of the building on the property commonly known as the Gateway Building located at 200 NE Water Street, Peoria, Illinois 61602 (“Property”);

WHEREAS, the Lessee wishes to utilize part of the Property for the purposes of extending its banquet and catering business;

WHEREAS, Lessor desires to lease part of the Property to Lessee subject to the conditions set forth in this Lease;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: THE PROPERTY AND ITS USE

1.1 **General Use.** Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, subject to and in accordance with the terms and the provisions of this Lease, the following areas of the Property subject to the conditions set forth below.

1.2 **Third Floor.** The third floor of the Property is for the use of Lessee subject to the following block out dates/ time frames listed in the Addendum. The Lessor and the Peoria Park District (“PPD”) will need to use the third floor of the Property from time to time. During the term of this Lease and any extension thereof, as outlined in Article 2 of this Lease, there will be additional dates/ time frames, not listed in the Addendum, that the Lessor and the PPD will need access and use of the third floor of the Property. The Lessee agrees to cooperate in good faith with Lessor and the PPD to block off future dates/ time frames, not listed in the Addendum, that Lessor and the PPD will require for their operations. The Lessor and the PPD agree to provide written notice of any future dates, not listed in the Addendum, that it will need access and use of the third floor as soon as Lessor or the PPD become aware of these dates, but in no event less than 365 days prior to any additional block out date. If catering is to be provided at an event on any of the block out dates, the Lessee shall have the right of first refusal to provide the catering services for all such events.

1.3 **Second Floor.** The second floor of the Property will be available for Lessee to use; however, Lessor and the PPD will also always have access to this space. As stated in Section 1.2, the Lessor or the PPD may require exclusive access and use of the second-floor common space from time to time. Remaining 2022 dates that the PPD requires exclusive use of the second floor are listed in the addendum. In no circumstances, can Lessee permanently store items on the second floor.

- 1.4 **First Floor.** The first floor of the Property is for the exclusive use of the PPD.
- 1.5 **Common Areas.** Any common areas like the mechanical room, elevator room, and/or equipment room is to remain under the control of the Lessor. Lessee will not have access to these common areas.
- 1.6 **Parking Lot.** The surface parking lot adjacent to the Property is available for public use. Spaces cannot be designated to Lessee. Lessee may not block off spaces for exclusive use.
- 1.7 **No Build Area.** The no build area, highlighted in Exhibit 1, is available for use by Lessee; however, the public must have access to this space. In no circumstances, can the Lessee block off parts of the no build area.
- 1.8 **Communication.** The Lessor, Lessee, and the PPD are to maintain open lines of communication to ensure that each party has use of the Property as needed. This section is inclusive of the parking lot and no build area.

ARTICLE 2: TERM, RENEWAL, REVISITATION & TERMINATION

- 2.1 **Term.** The term of this Lease shall commence on the date hereof (the "Commencement Date") and extend for a period of five (5) years from and after the Commencement Date (the "Term").
- 2.2 **Renewal.** Provided Lessee is not in default of Lessee's obligations under this Lease beyond any applicable notice and cure period (both at the time of the applicable option exercise and at the time of commencement of the applicable renewal period), Lessee will have options to renew the Term of this Lease for another two (2) five (5) year periods by providing written notice to Lessor at least one hundred and twenty (120) days prior to the expiration of the current Term or any Renewal.
- 2.3 **Revisitation of Lease.** Lessor and Lessee will revisit the terms of this Lease if the Property is chosen as a location for the Peoria- Chicago Passenger Rail Project. Factors that will be considered will be the location of the rail to the Gateway building, when construction will commence, the effect on the Lessee's use, and the frequency of rail use. The Lessee will expend a substantial amount for the renovations to the third-floor banquet room. The Lessee intends to amortize that amount over the initial Lease term and the two renewal terms. Within 90 days of the commencement of the Lease term, the Lessee will notify the Lessor in writing of the amount which the Lessee will expend for the renovations. Said amount will need written approval from the Lessor prior to any renovations commencing. In the event that this Lease is terminated prior to the end of the second renewal term due to the Peoria-Chicago Passenger Rail project, the Lessor will rebate to the Lessee the unamortized portion, less any interest and fees agreed to by Lessee, of the Lessee's renovation expenses.
- 2.4 **Lessor Termination.** Lessor shall have the right to terminate the Lease upon the material default by Lessee of any of Lessee's obligations under the Lease. Lessor shall give Lessee written notice of any alleged default. Lessee shall have ten (10) business days to cure any default. In the event Lessee fails to cure the default, Lessor may immediately terminate this Lease without any further notice or demand. In the event of termination pursuant to this

Section 2.4, Lessor shall have no obligation to return any portion of rent due through the date of termination.

ARTICLE 3: RENT

3.1 **Rent.** Lessee shall pay eight percent (8%) of monthly gross sales with a guaranteed minimum monthly payment of two thousand five hundred dollars (\$2,500.00) ("Rent") on the first of each month during the Term. Rent will be due to the City's Accounts Receivable Department via postmarked mail or walk in. Rent will include utilities which will be paid for by Lessor. Lessor reserves the right to demand examination of Lessee's books/ accounting software to account for any month of sales. Lessee will comply with any demand for examination of books/ accounting software within 24 hours.

3.2 **Rent Commencement.** Rent will begin one hundred and twenty (120) days after the Commencement Date. In the event the Commencement Date is not the first of the month, Rent payments will begin on the first of the month closest to the 120 days grace period.

3.2 **Rent Upon Renewal.** If Lessee elects to re-new after the initial Term of this Lease then Rent will continue to be due on the first of each month during the Renewal. The Rent amount will continue to be eight percent (8%) of monthly gross sales with a guaranteed minimum monthly payment of two thousand five hundred dollars (\$2,500.00) unless another amount is negotiated between the parties and reduced to writing.

ARTICLE 4: RENOVATIONS, REPAIRS AND MAINTENANCE

4.1 **Responsibility of Lessee- Renovations.** Lessee shall renovate the third-floor banquet space at its own expense. Renovations will be a neutral design and theme agreed to by Lessor. Additionally, fixtures such as curtains, curtain rods, and lighting will need to be approved by Lessor. Such renovations will not commence unless Lessor has given Lessee written approval.

4.2 **Responsibility of Lessee- Repairs.** Lessee will be responsible for damage caused by any patrons during any event it hosts, or for damage caused by any agent or employee of the Lessee, while the Lease is in effect. Lessor will consistently note any damages, and if required, make a demand for repair in writing upon Lessee thereafter. Assessments and demands for repairs will be made at the sole discretion of Lessor. After such demand for repairs is made by Lessor, Lessee shall make the repairs in good workmanship within seven (7) days. Extensions for repairs may be granted by Lessor with written approval.

4.3 **Responsibility of Lessee- Maintenance.** Lessee shall, at its own expense and risk, perform routine maintenance of the third floor of the Property, including the vestibule/ restrooms, and any public space it uses in the No Build Area. Such maintenance will be a thorough cleaning of the areas within 24 hours after each event that Lessee hosts. Such costs of cleaning will be the responsibility of the Lessee.

4.4 **Responsibility of Lessor- Renovations.** Lessor shall renovate and update the third-floor vestibule, third- floor restrooms, including any necessary plumbing work, and the audio-visual system in the third- floor banquet space at its own expense. Renovations will be at the

sole discretion of Lessor and will commence immediately after this Lease is executed by the parties.

4.5 **Responsibility of Lessor- Repairs.** Lessor will be responsible for damage caused by any patrons during any event it hosts, or for damage caused by any agent or employee of the Lessor, while the Lease is in effect. Lessor will consistently note any damages after any event it hosts and make repairs immediately thereafter.

4.6 **Responsibility of Lessor- Maintenance.** During the term of this Lease. The Lessor shall perform normal maintenance and repairs to the roof, exterior walls, and the plumbing, electrical and HVAC systems on the Property. Lessor acknowledges and agrees that Lessee shall not be obligated to undertake any extraordinary maintenance (i.e. replacement of the roof, replacement of HVAC systems servicing the property, structural repairs, or extraordinary electrical or plumbing maintenance and/ or repairs) with respect to the premises absent a written agreement between the parties regarding allocation of the cost of any such maintenance between the parties. Lessor will provide 24/7 emergency services for any maintenance that is required as listed in this section.

4.7 **Maintenance- Cleaning.** Lessor utilizes a cleaning service for the Property. This cleaning service will not extend to the third floor unless 1) Lessor or the PPD utilize the third floor or 2) Lessee does not meet the conditions listed in Section 4.3 of this Lease. If the Lessor or the PPD utilize the third floor it will provide a thorough cleaning of the third floor at its own expense within 24 hours after the event. If Lessee does not meet the conditions listed in Section 4.3 of this Lease, Lessor has the option to order its cleaning service to provide a thorough cleaning of the third floor. In this scenario, costs of cleaning will be the responsibility of the Lessee. Assessment of when cleaning is required will be at the sole discretion of Lessor's cleaning service, and costs of cleaning will be billed to Lessee. Such amount(s) will be due within 30 days of such cleaning bill being issues. Payment can be made in the same form as Lessee makes Rent payments as defined in this Lease, Section 3.1.

4.8 **Contribution to Lessee Renovations.** Lessor will contribute a lump sum of twenty-five thousand (\$25,000.00) towards the Lessee's renovation costs as listed in Section 4.1 of this Lease. This lump sum will be issued to Lessee thirty (30) days after Lessor has given Lessee written approval of renovations. This lump sum amount will reduce any amounts owed by Lessor if Section 2.3 of this Lease is triggered.

ARTICLE 5: ALTERATIONS AND ADDITIONS

5.1 **Consent of Lessor Required.** Lessee shall make no alterations or additions to the Property without first obtaining the written consent of Lessor and Lessor's written approval of the plans and specifications for the alterations and additions, such consent and approval to be given or withheld in Lessor's sole and absolute discretion. Any alterations, modifications, additions, or deletions to such site plan, however, shall be further subject to the submission, consent and approval requirements as set forth in the first sentence of this Section 5.1 in the same manner as any new alterations or additions to the Property.

5.2 **Construction of Alterations and Additions.** If Lessee receives Lessor's consent and approval set forth in Section 5.1 above, Lessee shall (a) pay promptly, as due, the cost and the expense of any such alterations or additions to the Property, so that the Property shall, at all times, be free and clear of liens for labor, materials and supplies; (b) procure all necessary permits prior to undertaking such alterations and additions; (c) perform such alterations and additions, or to cause them to be performed, in a good and workmanlike manner, in accordance with plans and specifications expressly approved, in writing, by Lessor and in compliance with all applicable governmental laws, statutes, and regulations, including applicable fire and building codes; (d) not encroach upon any adjoining properties, rights of way, alleys or streets by making such alterations or improvements, nor at any time in using the Property; and (e) indemnify, defend and hold Lessor, its members and managers harmless from and against any and all injury or death, all loss, all claims and all damage to any person or to property (including reasonable attorneys' fees and costs) occasioned by or arising from such alterations and additions.

5.3 **Ownership and Removal.** Once alterations and additions to the Property have been made, they shall not be removed by Lessee without Lessor's written consent, and shall become part of the Property and the sole property of Lessor provided; however, that Lessor shall have the option, upon expiration of this Lease, to require Lessee to remove any or all of such alterations or additions at Lessee's expense and Lessee shall repair any damage caused by such removal, or, upon the written consent of Lessor, reimburse Lessor for the cost of such repair.

ARTICLE 6: FIXTURES

6.1 **Fixtures.** Any fixtures that Lessee would like to replace, such as lighting and curtain rods, require prior approval from the Lessor. For the purpose of this section, curtains will be considered a fixture.

6.2 **Removal of Fixtures.** On Lessee's request, Lessor will remove any items that are currently in the third-floor banquet space. Audio visual equipment must remain intact. Control boards for the audio-visual equipment may be replaced by Lessee. Once fixtures are added to the Property, they shall not be removed by Lessee without Lessor's written consent, and shall become part of the Property and the sole property of Lessor provided; however, that Lessor shall have the option, upon expiration of this Lease, to require Lessee to remove any or all of such fixtures at Lessee's expense and Lessee shall repair any damage caused by such removal and paint, or, upon the written consent of Lessor, reimburse Lessor for the cost of such repair and painting.

ARTICLE 7: SIGNAGE AND TERMINOLOGY

7.1 **Signage.** Any signs that Lessee requires to identify its business will need prior approval from the Lessor. In no circumstance will signage be allowed to be affixed to the Property.

7.2 **Terminology.** During the term of this Lease and any extensions thereof, the Lessee may use "The Gateway" in Lessee's signage and promotional materials, whether written, verbal or through audio. The Lessee will need written approval by Lessor prior to using "The Gateway" in any of its signage and promotion materials, whether written, verbal or through

audio. "The Gateway" will only be used conditionally by Lessee during the Term of this Lease or any extensions pursuant to Article 2.2 of this Lease.

ARTICLE 8: INDEMNIFICATION

8.1 **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its elected officials, employees and agents harmless from and against: (i) all claims, liabilities, suits, damages, costs and expenses arising from Lessee's use of the Property, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Property and (ii) any and all costs or expenses incurred by Lessor as a result of Lessee's failure to perform any of its obligations hereunder, including reasonable attorneys' fees and costs.

8.2 **Insurance.** Lessor will insure the Property. However, Lessee shall further provide written evidence of such insurance necessary to operate its business satisfactory to Lessor in such amounts as are satisfactory to Lessor, and Lessor shall be identified as an additional insured with endorsement under such policy or policies. Evidence of such insurance coverage shall be provided on the Commencement Date, on the first day of any renewal period, on the date such insurance first becomes effective during this Lease, and at such other time or times as Lessor periodically requests.

8.3 **Lessor Indemnification.** Lessor shall indemnify, defend and hold Lessee, its managers, members, employees and agents harmless from and against: (i) all claims, liabilities, suits, damages, costs and expenses arising from any activity, work or things done, permitted or suffered by Lessor in or about the Property.

ARTICLE 9: SURRENDER

9.1 **Expiration of Term; Holding Over.** At the expiration or termination of this Lease, Lessee shall surrender immediate possession of the Property in as good condition as when delivered to Lessee, reasonable wear and tear and permitted alterations and additions excepted. Any holding over by Lessee shall not operate, except by written agreement, to extend or renew this Lease or to imply or create a new Lease, but in such case Lessor's rights shall be limited to either the immediate termination of Lessee's occupancy or the treatment of Lessee's occupancy as a month to month tenancy upon the same terms and conditions as set forth herein (other than the Term or renewal term provisions), any custom or law to the contrary notwithstanding.

ARTICLE 10: PROPERTY TAXES

10.1 **Property Taxes.** As of the date of this Lease, the Lessor has tax exempt status on the Property. Once Lessor leases part of the Property to Lessee it may lose tax exempt status. However, for the first five-year term of the Lease the Lessee shall not be responsible for any portion of any property taxes which are levied against the property. Upon any extension of the Lease beyond the initial five-year term, the Lessee shall be responsible for the portion of property taxes attributable to the Leased Premises as provided for herein.

10.2 **Portion of Property Taxes Owed by Lessee.** For the purpose Article 10, Lessor will look at the total square footage in the Property, approximately 5,799 square feet, and account for the square footage of the Property that Lessee is utilizing, 4,450 square feet, equaling the third-floor banquet space of the Property. When Lessor receives the Property tax bill it will take the total amount due and calculate the amount proportionally due by Lessee given the 4,450 square feet that Lessor is officially leasing. Since property taxes are billed one year in arrears by the Peoria County Treasurer, Lessor will bill Lessee the Property taxes for the previous year once they become due, as it corresponds with the Term. The last year of property taxes during the Term, or if there is any renewal under the Term will be based on the prior year of taxes.

10.3 **Payment of Property Taxes.** All bills for Property taxes sent by Lessor to Lessee will be paid by Lessee within 30 days of receipt by Lessee.

ARTICLE 11: COMPLIANCE WITH LAWS

11.1 **Compliance with Laws.** Each party hereto respectively shall promptly comply, or cause prompt compliance with all laws, ordinances, orders, rules and regulations of all municipal, county, state, federal or other governmental authorities properly applicable to the Property as it relates to such party's own actions and usage of the Property.

ARTICLE 12: GENERAL PROVISIONS

12.1 **Title to Articles and Sections.** Titles to Articles and Sections herein are for informational purposes only.

12.2 **Incorporation by Reference; Exhibits.** The paragraphs under the heading "RECITALS:" and any schedule or exhibit referred to in this Lease are hereby made a part of this Lease.

12.3 **Binding Effect.** The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

12.4 **Partial Invalidity.** The invalidity of any particular term or provisions of this Lease shall not affect the validity of the remaining terms and provisions hereof.

12.5 **Time of the Essence.** Time for performance of the obligations of the parties is of the essence in this Lease.

12.6 **Amendments.** No alterations to or modifications of the terms or the provisions of this Lease shall be effective unless such alteration or such modification is reduced to writing and is then properly executed by the parties hereto.

12.7 **Complete Agreement.** This Lease supersedes any prior contract or arrangement between the parties, whether written or oral, hereto and represents the complete agreement of the parties hereto.

12.8 **Notices.** All notices provided by this Lease shall be given in writing (i) either by actual delivery of the notice to the party thereunto entitled, or (ii) by mailing of the notice in the United States mail, first-class postage prepaid, to the address of the party entitled thereto, registered, or certified mail, return receipt requested, or (iii) via the email address listed below. The notice shall be deemed to be received on the day it is hand delivered, mailed, or sent via email. All notices, demands or other communications to any of the other parties to this Lease shall be addressed as follows:

To Lessee:
Childers Banquet & Catering Center, Inc.
Attn. Ryan Childers
5805 N. Humboldt Ave.
Peoria, IL 61614
Email: rchilders@childerseatery.com

With Copy To:
James F. Kane
Johnson, Bunce & Noble. P.C.
7800 N. Sommer St., Suite 425
Peoria, IL 61615
Email: jkane@peorialawyers.com

To Lessor:
City of Peoria
c/o Assistant City Manager Kimberly Richardson
419 Fulton Street, Suite 207
Peoria, IL 61602
krichardson@peoriagov.org

With Copy To:
Corporation Counsel
419 Fulton Street
Peoria, IL 61602
Email: phayes@peoriagov.org

To Peoria Park District- Events:
c/o Nick Conrad
1125 W. Lake
Peoria, IL 61614
Email: nconrad@peoriaparks.org

With Copy To:

Peoria Park District- Events
c/o Jake Rockhold
1125 W. Lake
Peoria, IL 61614
Email: jrockhold@peoriaparks.org

The name, address, and/ or email of any party hereto may be changed by notice to the other party duly served in accordance with the provisions hereof.

12.9 **Waiver.** Any waiver by a party hereto of a breach of any term or condition of this Lease must be in writing to be effective. Such written waiver shall not be considered as a waiver of any subsequent breach of the same or any other term or condition hereof

12.10 **No Other Legal Relationship Created.** Nothing contained in this Lease shall be deemed or construed as creating a relationship of principal and agent, or of partnership or of joint venture between the parties hereto.

12.11 **Lessor Certification.** Lessor does hereby agree at any time, and from time to time, upon not less than ten (10) days prior written request in writing by Lessee, to execute, to acknowledge and to deliver to Lessee a statement, in writing, certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications that the same are in full force and effect as modified and stating the modification) , there is no default by Lessee hereunder (or if there are any defaults that have not been cured to Lessor's satisfaction. stating the nature of such uncured defaults), and any other factual data or information relating to this Lease, or the terms hereof, which Lessee may reasonably request.

12.12 **Rights and Remedies Cumulative.** The rights and remedies provided by this Lease are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

12.13 **Disputes.** If any dispute should arise in relation to this Lease the Lessor and Lessee shall first negotiate amongst themselves in "good faith." Afterwards, if the dispute is not resolved then either the Lessor or Lessee can terminate this Lease pursuant to a 14-day written notice.

12.14 **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois. Any suit by either party will be filed in Peoria County, Illinois.

12.15 **Execution in Multiple Counter-Parts.** This Agreement may be executed in multiple counter- parts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

[signature page follows]

EXECUTED as of the day and year first above written.

For Lessee:
Childers Banquet & Catering Center, Inc.,
an Illinois corporation

By: _____
Ryan E. Childers
Its President

For Lessor:

Patrick Urich
City Manager

Exhibit 1



***No Build Area is highlighted in yellow.

Addendum to Lease
Block Out Dates for Lessor/ Peoria Park District Exclusive Use

Lessor Dates/ Time Frames

As provided in Section 1.2

Peoria Park District Dates/ Time Frames

Remaining 2022 Dates:

- September 15th-19th for Oktoberfest (2nd floor only)
- September 22nd-26th for the Fine Art Fair (2nd floor only)

2023 Dates:

- July 4th for Midwest Communications Inc. (radio group that hosts the 4th of July Red, White, and Boom fireworks)
- July 14th- 16th for Pride Fest (2nd and 3rd floor)
- August 3rd- 6th for Soul Fest (2nd floor only)
- August 24th-28th for Irish Fest (2nd and 3rd floor)
- September 14th-18th for Oktoberfest (2nd floor only)
- September 21st-25th for the Fine Arts Fair (2nd floor only)

2024 Dates and Beyond:

- July 4th for Midwest Communications Inc. (radio group that hosts the 4th of July Red, White, and Boom fireworks)
- Soul Fest usually falls on the 1st weekend in August, but has also been on the 2nd weekend at times
- Irish Fest annually falls on the last full weekend in August
- Oktoberfest typically falls on the 3rd weekend in September when there are 4 weekends in the month, and will jump to the 4th full weekend when there are 5 weekends in the month
- Fine Art Fair annually held on the last full weekend in September

Notes:

Fixed festival dates and any other block out dates for 2024 and beyond will be provided to Lessor and Lessee as soon as they are available, but in no event less than 365 days prior to any such dates.

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- Throughout the year, use of the 2nd floor as a green room is needed for the bands. Fixed dates are difficult to pinpoint, but will be provided to Lessor and Lessee as soon as they are available.