

WHEN RECORDED RETURN TO:

Andrew Fangman  
City Planner  
City of Muscatine  
215 Sycamore Street  
Muscatine, Iowa 52761

Preparer Information: Andrew Fangman, City Planner, City of Muscatine, 215 Sycamore Street, Muscatine, IA 52761, 563.262.4141

### Lease of City Right-of-Way

The City of Muscatine, Iowa, an Iowa municipal corporation, (hereinafter referred to as "Lessor") hereby lease to Pearl View Condominiums, LLC (hereinafter referred to as "Lessee") the following described premises located in the City of Muscatine, Iowa:

#### Legal Description of Leased Property

1. Term. The term of this lease shall be for Twenty (20) years, commencing on the \_\_\_\_\_th day of \_\_\_\_\_, 2017, and terminating on the \_\_\_\_\_th day of \_\_\_\_\_, 2037, unless sooner terminated by the Lessor or Lessee as hereinafter provided. Subsequent to 2037, this lease will renew annually unless either party terminates the lease upon sixty (60) days prior written notice.

2. Rent.

2.1 Lessee agrees to pay as rent for said premise the sum as set forth in Section 2.2, for each and every year during the life of this lease, which shall be payable yearly in advance on the 1<sup>st</sup> day of August.

2.2 The rent for the first year shall be \$264.00, the rent for each subsequent year shall be increased by 2.5% of the prior year's rent payment.

3. Premises; Inspections; As Is:

It is the responsibility of the Lessee, at the Lessee's sole expense, to satisfy itself, prior to the execution of this Agreement, as to the title and condition of the Premises. Accordingly, the taking of possession of the Premises by the Lessee shall be conclusive evidence that the Premises were in good and satisfactory condition when possession was taken by Lessee.

4. Notices: All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served by certified mail, return receipt requested, to Lessor, City of Muscatine at 215 Sycamore Street, Muscatine, Iowa 52761 and to Lessee, \_\_\_\_\_ at \_\_\_\_\_, or to such other address as Lessor or Lessee may by writing to the other so designate. Notice to Lessee may also be served by personal delivery

5. Use by Lessee.

5.1. The Lessee shall use the Premises only for the following purpose: as a stairway or stoop for the adjoining building. The Lessee shall not use or permit the Premises or any part of the Premises to be used for any unauthorized or unlawful purpose, or for any purpose other than as set forth above.

5.2 Written permission from the City of Muscatine shall be obtained prior to making any permanent improvement that is not part of the Site Plan that will be approved in a manner that is in accordance with City Code.

6. Premises Improvements Upon Termination: Lessee may, at its own expense and only upon written approval by Lessor, make alterations and improvements to the Premises as necessary for the conduct of its business. Lessee specifically agrees that any and all improvements, except, equipment and trade fixtures installed, located upon the said premises shall become the property of the Lessor upon termination of this lease.

7. Public Utilities

7.1 The installation of public utilities on the Premises without compensation to the Lessee is authorized.

7.2. The Lessee at all times shall permit any utility or its agents to enter into and upon the premises for the purpose of installing, maintaining, or repairing any public utility infrastructure that has been installed within the Premises.

8. Lessors Right Of Entry: The Lessee at all times shall permit Lessor or its agents to enter into and upon the premises and buildings for the purpose of inspecting the same.

9. Approvals. Nothing in this Agreement shall be construed to exempt the Lessee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding any permits or approvals necessary for the anticipated use of the premises by Lessee, including but not limited to building permits, zoning or conditional use permits as may be legally required. By executing this Agreement, Lessor does not waive any of its regulatory authority over activities occurring on or improvements to the premises.

11. Maintenance.

11.1. Lessee, at its sole cost and expense, shall maintain, repair, and replace all improvements made by the lessee on the Premises.

11.2. Lessee, at its sole cost and expense shall at all times keep all portions of the Lessor's Property in good order, condition, and repair and in a clean, sanitary, and safe condition and in accordance with any and all applicable laws.

11.3. Lessee shall not cause waste, damage, or not cause injury to the Premises.

11.4. Lessee is solely responsible for snow removal on the Premises.

12. Indemnification. Lessee, with respect to its use of the Premises, agrees to indemnify, protect, defend, and hold harmless Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any act or omission of Lessee, its agents, servants or employees.

14. Default; Remedies: The occurrence of any one or more of the following events shall constitute a default on the part of the Lessee: (1) the Lessee fails to pay when due any rental or any other sum of money payable hereunder on the date due; (2) the conduct of any business or performance of any acts on the Premises not specifically authorized in the Agreement; (3) the Lessee abandons, deserts or vacates the Premises; (4) the Lessee breaches or fails to comply with any other term, provision, covenant or condition of this Agreement; or (5) the Lessee breaches or fails to comply with any other term, provision, covenant or condition of any other agreement, contract or obligation with or to Lessor. Any or all of the foregoing shall hereinafter be referred to as "Events of Default".

Upon the occurrence of any of the above Events of Default, the Lessor shall give written notice of such default to Lessee at the address set forth in this agreement. The effective date of notice shall be the date that the notice is placed in the U.S. Mail or posted on the premises by Lessor. If the default is for failure to pay rent or any other sum of money when due, then the Lessee shall have three (3) days after the effective date of notice to cure. If the default is for any other Event of Default then the Lessee shall have fifteen (15) days after the effective date of notice to cure, except that Lessee shall not be allowed an opportunity to cure a re-occurring Event of Default of the same type which has been previously noticed by the Lessor and cured by the Lessee.

If the Lessee fails to cure the default within the time allowed, Lessor shall thereafter have the option to terminate this lease without compensating the lessee or exercise any remedy or right permitted by law or in equity. The Lessee shall fully reimburse and compensate the Lessor upon demand for any costs and expenses incurred in connection with any cure, correction or repair undertaken by Lessor, which sums shall be deemed to be additional rent hereunder.

Notwithstanding the occurrence of any Event of Default, the Lessee shall remain liable to the Lessor for all payments payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless the Lessor elects to cancel this Agreement, the Lessee shall remain liable for and promptly pay any and all payments accruing hereunder until such time as this Agreement has been duly canceled. No retaking of possession of the Premises by the Lessor shall be construed as an election on its part to terminate this Agreement, unless a written notice of such intention be given to the Lessee. No pursuit of any remedy by Lessor shall constitute a forfeiture or waiver of any payments or other moneys due to the Lessor hereunder, or of any damages accruing to the Lessor by reason of the violations of any of the terms, provisions, and

covenants herein contained. Lessor's acceptance of payments or other moneys following any event of default hereunder shall not be construed as the Lessor's waiver of such event of default unless the event of default is the delinquency in the payment of the amount accepted. No forbearance by the Lessor of action upon any violation or breach of any of the terms, provision and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by the Lessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy.

15. Termination of lease.

This lease may be terminated prior to the \_\_\_\_th day of \_\_\_\_\_, 2037, in any of the following situations:

15.1. An Event of Default, as set forth in this agreement, on the part of the Lessee.

15.2. By the Lessor, upon sixty (60) days prior written notice to the Lessee, without penalty or cost except for reimbursement to the Lessee by the Lessor for improvements made to the Premises, if all or a portion of the Premises is required for the purpose of any necessary improvements to any public infrastructure.

15.3 By the Lessor upon thirty (30) days prior written notice to the Lessee, without penalty or cost, if for a period of at least ninety (90) days there are no condominiums operating on the adjoining property.

15.4. By the Lessee, upon sixty (60) days prior written notice to the Lessor.

15.6 Upon termination of the lease, any private utilities constructed on premises as permitted under Section 5.3 of this agreement, an awning extending onto the premises as permitted under Section 5.4 of this agreement, and/or a balcony extending onto the premises as permitted under Section 5.3 of this agreement, shall be permitted to remain on the premises so long as they remain in good working order, do not endanger public, health, safety or welfare, and do not interfere with necessary improvements to any public infrastructure.

16. Recording Costs. The Lessee hereby agrees to pay the recording costs to record this easement with the Muscatine County Recorder.

17. Covenants with the Land. All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Lessor, Lessee and their respective assigns and successors in title.

18. Captions and Governing Law. The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto affixed our hands this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

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Diana L. Broderson, Mayor

ATTEST:

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Gregg Mandsager, City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DIANA L. BRODERSON and GREGG MANDSAGER, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_\_\_ day of \_\_\_\_\_, 2016, and the said DIANA L. BRODERSON and GREGG MANDSAGER acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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Notary Public in and for the State of Iowa

LEGAL NAME OF HOTEL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF IOWA, MUSCATINE COUNTY, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of LEGAL NAME OF HOTEL, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of Pearl View Condominiums, LLC, by authority of its Board of Directors, and that \_\_\_\_\_, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of Pearl View Condominiums, LLC, by it and by him/her voluntarily executed.

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Notary Public in and for the State of Iowa