

DATE: May 23, 2018

TO: Honorable Mayor Jerry Smith
City Council

FROM: Patty Hoppenstedt, Interim City Manager
Jo Ellen Charlton, Community Development Director
Jason Michnick, Economic Development Planner
Christine Wang, Community Development Intern

SUBJECT: Authorizing a Land Lease Agreement with Hillside Restaurant, Inc., d/b/a Hillside Restaurant, for a Portion of the Property Located on the West Side of North Second Street, and Authorizing a Land Lease Agreement with Universal Restaurant Group, d/b/a O’Leary’s Irish Pub & Grill, for a Portion of Property Located on the West Side of South Third Street.

I. Summary

Early in the initial Downtown Revitalization planning process, the public identified the need for improved outdoor dining facilities. City staff, along with Hitchcock Design, worked with Eduardo’s, the Hillside, and O’Leary’s in developing site plans, cost estimates and lease agreements in an effort to bring these café spaces to fruition. In 2009, Council approved three City property leases as requested by the Downtown restaurateurs to implement the patio construction.

After eight years in operation, the previous leases have now expired for the second time and new ones must be ratified. Of the three previously approved leases, two are ready to be ratified at this time. Both leases are essentially the same and share the same lease rate and terms.

II. Background

Upgraded outdoor dining was noted as a “Top 10” need as part of the Opportunity Analysis/Public Workshop Discussions, which took place early in the Downtown Planning process in 2007. As a result, the owners of Eduardo’s, the Hillside, and O’Leary’s expressed interest in investing in outdoor cafes to enhance their patrons’ dining experience. City staff and Hitchcock Design worked extensively with each business owner to create unique patio spaces at each location that would reflect the individuality of each business; no two are the same. Leases with all three restaurateurs were approved in 2009. After five years in operation, the leases expired and new ones were approved for all three restaurants in September of 2014.



As required by TIF statute, public notice of the City's intent to lease the property to the Hillside and O'Leary's was published in the May 19, 2018, Daily Chronicle.

Both cafes will continue to be located on the public sidewalk bordering each restaurant. The property is proposed to be leased from the City for a period of three years at cost of \$0.90 per square foot annually. Future lease option periods are proposed based on mutual agreement between the restaurateurs and the City. In addition, the business owners are responsible for maintaining the patio enclosures, which are permanently affixed to the sidewalk, as well as applicable annual property taxes.

III. Community Groups/Interested Parties Contacted

Resolutions regarding both land lease agreements will be presented to the Council for discussion at the May 29, 2018, Regular meeting where additional public comment will be accepted.

IV. Legal Impact

As required by TIF statute, notice of intent to lease each of the patio spaces was published in the Daily Chronicle. The notice contained requests for proposals to lease the patio spaces, which must be used for an outdoor café in conjunction with an adjacent restaurant business. The City did not receive any additional requests from the public. The form of lease proposed has been updated and the City has followed all regulations applicable to the leasing process.

V. Financial Impact

The lease rate proposed is \$0.90 per square foot, which equates to approximately \$1,845 in annual revenues. While the lease rate will not generate a significant amount of income, staff believes that inherent benefits the patios provide to the overall downtown streetscape and atmosphere greatly outweigh any revenues received. In addition, the restaurateurs are responsible for all real estate taxes and patio maintenance.

VI. Options

Council has the following options:

1. Approve the resolutions as presented.
2. Approve the resolutions with amended terms.
3. Deny the resolutions and not allow for the outdoor seating.

VII. Recommendation

It is recommended that the land lease agreements for outdoor cafes at the Hillside and O'Leary's be approved by Council.



RESOLUTION 2018-

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO ENTER INTO A LAND LEASE AGREEMENT WITH HILLSIDE RESTAURANT, INC., D/B/A HILLSIDE RESTAURANT, FOR A PORTION OF PROPERTY LOCATED ON THE WEST SIDE OF NORTH SECOND STREET.

WHEREAS, Chapter 65, Section 11-76-1 of the Illinois Compiled Statutes (65 ILCS 5/11-76-1) provides a municipality, which owns real property, authority to lease the real property for any term not exceeding 99 years; and

WHEREAS, the City of DeKalb owns various parcels of land and right of way with restricted use due to the City's ownership of the property; and

WHEREAS, many parcels of said land and right of way may be used for purposes that do not cause interference with the City's ownership; and

WHEREAS, it is in the best interests of the City of DeKalb to allow for land it owns to be used for an outdoor café patio, which will enhance the operation of a local business, for which the City has published a request for proposals for the lease of said land, to which Hillside Restaurant, Inc., d/b/a Hillside Restaurant, was the only respondent; and

WHEREAS, Hillside Restaurant, Inc., d/b/a Hillside Restaurant, has submitted a proposal for the lease of a parcel of City-owned right-of-way for an outdoor café patio;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: That the Recitals set forth above are incorporated as though fully set forth herein.

Section 2: That pursuant to Chapter 65, Section 11-76-1, the City is authorized to enter into a three (3) year land lease agreement expiring December 31, 2021, with Hillside Restaurant, Inc., d/b/a Hillside Restaurant, for approximately 460 square feet of property located on the west side of South Third Street, a copy of the written lease is attached hereto and made a part hereof as Exhibit "A".

Section 3: That Hillside Restaurant, Inc., d/b/a Hillside Restaurant, will pay rents to the City of DeKalb to lease this real property for an outdoor café patio.

Section 4: That the Mayor of the City of DeKalb be authorized and directed to execute the Land Lease Agreement with Hillside Restaurant, Inc., d/b/a Hillside Restaurant, subject to such revisions as may be necessary with the recommendation of the City Manager and City Attorney.

Section 5: That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

Section 6: That each section, paragraph, sentence, clause and provision of this ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 7: Upon its passage and approval according to law, this Ordinance shall be in full force and effect.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the ____ day of _____, 2018 and approved by me as Mayor on the same day.

ATTEST:

SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor

-----Space above for recording information-----

**LAND LEASE AGREEMENT
Between
CITY of DEKALB**

**And
Hillside Restaurant, Inc. d/b/a/ Hillside
Restaurant**

This instrument was prepared by the City of DeKalb. After recording return to:

City of DeKalb
Legal Department
200 S. 4th Street
DeKalb, IL 60115

THIS LAND LEASE AGREEMENT ("Lease") is entered into as of this 28th day of May 2018, by and between CITY OF DEKALB, an Illinois municipal corporation ("CITY"), and Hillside Restaurant, Inc. d/b/a/ Hillside Restaurant ("LESSEE"), and is as follows:

Recitals:

WHEREAS, LESSEE desires to lease the land described/shown on Exhibit "A" attached hereto and made a part hereof in DeKalb, Illinois; and

WHEREAS, LESSEE desires to operate an outdoor food and alcohol service area on the Land at its sole expense, in conjunction with its business located at 121 North Second Street, DeKalb, Illinois, and

WHEREAS, CITY is willing to enter into such a Lease with LESSEE on the terms and conditions contained herein.

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

1. **Demise.** CITY hereby Leases to LESSEE, and LESSEE hereby accepts, the Land, which is approximately 460 square feet, and further described/shown in Exhibit "A" which is attached hereto, during the Term (as hereinafter defined) on the terms and conditions contained herein.
2. **Term.**
 - a. **Base Term.** The term of this Lease shall be from the date of execution hereof, until December 31, 2021, unless terminated prior to that time in accordance with the terms of this Lease ("the Base Term").
 - b. **Option Periods.** Additional option periods shall be based upon the mutual agreement of CITY and LESSEE
3. **Rent.** LESSEE shall pay the sum of \$.90 cents per square foot, per year, for use of the land (for a total of \$414.00 per year). Said rent shall be payable on or before March 1 of each year, and shall be required to be paid *prior to commencing any use of the outdoor patio area*. Lessee shall also be required to maintain comprehensive general liability insurance and dram shop insurance as required under the City's Liquor Code, and shall be obligated to keep a copy of the then-current certificate of insurance on file with the City at all times that this lease is in effect.

In the event of a failure to pay rent when due hereunder and the continuation of such failure for five (5) calendar days after written notice thereof from the CITY,

LESSEE shall pay a late charge to CITY together with such payment of rent in an amount equal to ten percent (10.00%) of the amount of the rent payment.

4. **Improvements.** CITY and LESSEE agree and acknowledge that no new permanent improvements shall be constructed upon the Land, unless expressly approved, in writing, by the City Manager following review and approval of detailed plans for such improvements. During those periods that LESSEE utilizes the Land, LESSEE shall place on the Land, at its sole cost and expense, items such as tables, chairs, planters and other temporary improvements subject to the approval of the CITY. The CITY shall have the right to approve the number, quality, design and layout of said items prior to LESSEE placing same on the Land, which said approval shall not be unreasonably withheld (hereinafter referred to as "LESSEE Improvements"). LESSEE shall ensure that all improvements, whether permanent or temporary, and whether pre-existing or new, comply with all applicable requirements including but not limited to ADA or other accessibility guidelines or regulations, and shall take all actions and incur all expenses necessary to ensure that the leased premises so complies.

Patrons of LESSEE's business shall only be permitted to access the outdoor seating area through LESSEE's building, and shall not be otherwise permitted to directly access or egress from the outdoor seating area (unless permitted pursuant to a special event agreement between LESSEE and the CITY. LESSEE shall implement reasonable measures to ensure that access to the leased premises is prohibited to minors. No service of any food or beverages, alcoholic or not, shall be permitted outside the Land or the fenced in portion thereof. Within the fenced-in area, LESSEE shall be permitted to utilize portable tables and chairs, and other similar temporary improvements.

LESSEE shall not be allowed to have any LESSEE Improvements which are not permanently affixed to the Land (hereinafter referred to as "LESSEE Temporary Improvements") on the Land from November 1st through April 15th.

5. **Use.** LESSEE shall use and occupy the Land and the Improvements solely for outdoor seating area related to the restaurant business of the LESSEE. No other use shall be allowed. Any outdoor entertainment, outdoor music, or outdoor sale or consumption of alcohol shall only be as permitted under applicable City Codes.

LESSEE cannot occupy or use the Land for the above-stated uses or any additional uses until the following conditions have been met: LESSEE has submitted and obtained CITY approval of the proposed plans for its use of the Land which have been reviewed and approved, in writing, by the City Manager; the rent and any applicable taxes have been paid in full; and the LESSEE has provided to the CITY proof of current insurance coverage in the limits set forth below and showing the City as an additional insured.

Prior to using the Land as set forth above, LESSEE shall procure and maintain all licenses and permits legally necessary for the operation of LESSEE's business, including the outdoor seating area, and send a copy of each said license and permit to CITY within fourteen (14) calendar days of obtaining them.

LESSEE shall be allowed to serve alcoholic beverages on the Land to its patrons and customers who are at least twenty-one (21) years of age, provided that LESSEE has complied with all requirements set forth in Chapter 38 of the CITY's Municipal Code to do so; and LESSEE's patrons and customers who are at least twenty-one (21) years of age may possess and consume such alcoholic beverages on the Land, and such activity shall not be a violation of Chapter 38 of the CITY's Municipal Code.

Any requirement of approval or decision by the CITY under this Agreement, including but not limited to hours of LESSEE's use of the Land and approval of the proposed layout of LESSEE's operations on the Land, shall be at the discretion of the City Manager or designee. Notwithstanding the foregoing, any requirement of approval or decision required under another CITY regulation or ordinance shall be exercised by the party identified in such other regulation or ordinance (e.g. decisions relating to the sale or consumption of alcohol shall be made by the Liquor Commissioner or City Council, as appropriate).

6. **Ownership.** The ground constituting the Land shall remain in the ownership of the CITY at all times.

During the Base Term of this Lease and any extension thereto, the CITY Improvements shall be the property of the CITY, and any LESSEE Improvements which have been permanently affixed to the Land shall become the property of the CITY upon installation (hereinafter referred to as "LESSEE Permanent Improvements").

Upon the expiration of the Base Term of this Lease or any extension thereto or termination of this Lease, ownership of all of the CITY Improvements and LESSEE Permanent Improvements shall remain the property of the CITY and LESSEE shall have no ownership of, or any other right, title or interest in or to, either the Land, the CITY Improvements or the LESSEE Permanent Improvements.

All LESSEE temporary improvements to the Land shall remain the property of LESSEE. In the event that LESSEE shall fail to remove the LESSEE Temporary Improvements prior to the expiration of the Term of this Lease, or as it may have been extended, such LESSEE Temporary Improvements shall then become the property of the CITY.

7. **Maintenance and Repairs.** LESSEE shall, at its expense, keep, clean, maintain, repair and replace, as reasonably determined by CITY, the entire Land and all of

the Improvements in good, clean, sightly and safe condition during the Base Term of this Lease, and any extensions thereto. At the conclusion of its operations on the Land on a daily basis, LESSEE shall return the Land to a broom-clean condition and remove any food, broken glass, trash or other refuse.

If LESSEE does not perform any of the foregoing maintenance or repairs, and such failure continues for five (5) calendar days after written notice thereof is given by CITY to LESSEE, CITY shall have the right, but not the obligation, to terminate this Agreement, unless such maintenance or repairs cannot be completed within such five (5) calendar day period of time, if LESSEE has commenced such maintenance or repair within such five (5) calendar day period of time and proceeds diligently to complete it as soon as practicable, in which case such five (5) calendar day period may be extended to a reasonable time not to exceed ninety (90) calendar days as reasonably determined by CITY.

CITY (or other governmental agency as may be appropriate) shall be responsible for the repair and maintenance of the public utilities portion of the Land, which shall include storm sewers, water mains and appurtenances, and sanitary sewers. The CITY may repair damage caused directly by CITY, CITY's contractors or their respective agents and employees, at the CITY'S reasonable discretion. LESSEE shall not be entitled to any compensation, reimbursement or damages if any such repairs interfere with LESSEE's rights or privileges granted hereunder. CITY shall have no responsibility or liability for any maintenance, repair or replacement of any part of the Land and the Improvements, except for said public utility mains and appurtenances.

CITY, or its agents, contractors, or designees, shall have the right to access the Land at any time without LESSEE's consent for the purpose of repairing, replacing, or maintaining street lights or traffic boxes and any and all appurtenances thereto, trees, or any other utility situated on the Land.

8. **Taxes.** LESSEE shall pay, when due, all Taxes (as hereinafter defined) during the Base Term of this Lease and any extensions of this Lease. The term "Taxes" as used herein shall mean all real estate taxes and assessments, whether they be general or special, sewer rents, rates and charges, transit taxes, taxes based upon Leases or the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by CITY's income or profits, except as provided herein), levied or assessed upon or with respect to any part of the Land or the Improvements.

Should the State of Illinois, or any political subdivision thereof, or any other governmental authority having jurisdiction over any part of the Land or the Improvements: (a) impose a tax, assessment, charge or fee in place or partly in place of any Taxes or contemplated increase therein, or by way of substitution for

any of the foregoing described Taxes, or (b) impose an income or franchise tax (other than an income or franchise tax applicable to businesses generally) or a tax on rents, which income or franchise tax or tax on rents is in substitution for or as a supplement to a tax levied against any part of the Land and the Improvements, all such taxes, assessments, charges or fees shall be deemed to constitute Taxes hereunder.

LESSEE shall provide CITY with proof of payment of any and all Taxes upon written demand of CITY.

9. Sublease and Assignment.

a. CITY Consent Requirements.

LESSEE shall not be permitted, without the prior written consent of CITY in each instance, to (i) assign or transfer, (ii) allow to exist or occur any transfer of or lien upon this Lease or LESSEE's interest herein or (iii) permit the use or occupancy of the Land and the Improvements or any part thereof for any purpose not expressly permitted, or by anyone other than expressly permitted, herein. LESSEE shall not be permitted to mortgage, pledge or encumber this Lease or any interest under it.

b. Lease Assumption. Sublessee Attornment. If LESSEE shall assign this Lease, the assignee shall expressly assume all of the obligations of LESSEE hereunder in a written instrument provided by CITY and delivered to CITY not later than ten (10) calendar days prior to the effective date of the assignment. If LESSEE shall lease any part of the Improvements or sublease any part of the Land, LESSEE shall obtain and furnish to CITY, not later than ten (10) calendar days prior to the effective date of such lease or sublease, as the case may be, and in form reasonably satisfactory to CITY, the written agreement of such LESSEE or sublessee, as the case may be, to the effect that the LESSEE or sublessee, as the case may be, shall attorn to CITY, at CITY's option and written request.

10. Default. LESSEE shall be in default under this Lease ("Default") under the following circumstances:

- a.** Failure by LESSEE to pay any rent when due, if such failure continues for five (5) calendar days after written notice to LESSEE of such failure; or
- b.** LESSEE fails to fulfill any other obligation hereunder and such failure continues for five (5) calendar days after written notice thereof by CITY to LESSEE;
- c.** LESSEE is in default of any financial obligation or debt due to the City or LESSEE violates the hours of operation for its use of the Land;

- d. LESSEE's liquor license is revoked, terminated or suspended by the CITY;
or,
- e. LESSEE engages in any other conduct that violates CITY ordinances.
- f. In the event of a Default, CITY shall have the right to pursue any and all legal and equitable remedies against LESSEE available under applicable law without any additional notice to LESSEE, except for termination of this Lease.

11. **Termination.** CITY may terminate this Lease if LESSEE is in Default and has failed to cure such Default as provided for in Section 10 above.

Upon such termination of this Lease, the Base Term shall be deemed expired and the CITY shall retain ownership of, and all right, title and interest in and to, the Land, free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to the Land, or any LESSEE temporary improvements left upon the Land following termination.

In the event of such termination of this Lease, CITY shall remain entitled to pursue any and all legal and equitable remedies against LESSEE available under applicable law.

LESSEE may terminate this agreement on not less than five days written notice to CITY.

12. **Surrender of Land and Improvements.** Upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall surrender possession of the Land, to CITY and deliver said Improvements to CITY, and shall, subject to the following subparagraphs, return the Land and said Improvements and all to CITY in as good a condition as when LESSEE originally took possession.

On or before the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall remove from and shall be responsible for the removal from the Land any and all of LESSEE's Temporary Improvements. LESSEE shall incur all costs associated with this removal. Such removal and restoration shall be performed prior to the expiration of the Base Term or any extensions of this Lease. In the event that LESSEE shall fail to remove the LESSEE Temporary Improvements prior to the expiration of the Term of this Lease, or as it may have been extended, such LESSEE Temporary Improvements shall become the property of the CITY.

Without limitation of any other obligations of LESSEE, which shall survive the expiration, or termination of this Lease, all obligations of LESSEE under this paragraph 12 shall survive the expiration or earlier termination of this Lease.

- 13. Holding Over.** If LESSEE retains possession of the Land and the Improvements or any part thereof after the termination of the Lease by lapse of time or otherwise or after the earlier termination of LESSEE's right of possession, at the option of CITY, which option shall be exercisable by giving written notice to LESSEE within thirty (30) days after the date of such termination, the Base Term of this Lease shall be automatically renewed for one (1) year and this Lease shall remain in full force and effect, except that LESSEE shall pay to CITY as Rent during such automatic renewal term an amount equal to two hundred percent (200%) of the annual rent then in effect for the Land.

In the event that CITY does not exercise such option, LESSEE shall be deemed to be a tenant at sufferance, and LESSEE shall pay to CITY 1/12th of two hundred percent (200%) of the annual rent then in effect for each portion of any month during which LESSEE shall retain possession of the Land and the Improvements or any portion thereof after such termination.

In addition to and without limiting any other rights and remedies which CITY may have on account of such holding over by LESSEE, LESSEE shall pay to CITY all direct and consequential damages suffered by CITY on account of such holding over by LESSEE. The provisions of this Section 13 shall not be deemed to limit or constitute a waiver of the right of CITY to evict LESSEE as provided herein or at law.

- 14. Waiver and Indemnity.**

General Waiver. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, CITY, or any of its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys or employees, shall not be liable, and LESSEE hereby waives, releases, and covenants not to sue them from any liability, for any injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property, sustained by LESSEE or by other persons arising out of or relating to the Land or the Improvements becoming out of repair, or due to the happening of any accident or event in or about any part of the Land or the Improvements, or due to any act or neglect of any person.

Special Waivers. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, and also notwithstanding that CITY may or does establish security controls or regulations from time to time, LESSEE further agrees that all personal property in or upon the Land or the Improvements shall be at the risk of LESSEE only, and

that CITY, or any of its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys or employees, shall not be liable, and LESSEE hereby waives and releases them from any liability, for any injury or damage thereto or theft, robbery, pilferage, loss or loss of the use thereof.

LESSEE agrees to have its insurers waive any rights of subrogation that any such insurer may have against the CITY.

LESSEE acknowledges and agrees that the terms and conditions of this Lease are fair and reasonable, that this Lease represents an arm's length transaction between CITY and LESSEE, that CITY has not favored LESSEE over other tenants nor discriminated against LESSEE with respect to other tenants and that LESSEE has been represented by competent legal counsel in connection with this Lease. LESSEE hereby waives and forever releases and discharges CITY from and against any and all of its claims, actions, liabilities, damages, losses and expenses arising or accruing prior to the date hereof with respect to this Lease.

- 15. Indemnity.** In addition to and without limiting or being limited by any other indemnity in this Lease, but rather in confirmation and furtherance thereof, LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, and its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys and employees, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses including court costs and reasonable attorneys' fees and expenses, in connection with injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property not owned by CITY occurring in or about the Land or the Improvements arising from LESSEE's occupancy of the Land and the Improvements, or the conduct of its business or from any activity, work, or thing done, permitted or suffered by LESSEE in or about the Land and the Improvements, or from any breach or default on the part of LESSEE in the performance of any covenant or agreement on the part of LESSEE to be performed pursuant to the terms of this Lease, or due to any other act or omission of LESSEE, or any of its employees, agents, licensees, invitees, guests or contractors.
- 16. Damage and Destruction.** In the event that the Land or the Improvements are damaged or destroyed by accident, fire or other casualty, this Lease shall be deemed terminated as of the date of such damage or destruction.

Upon such termination of this Lease, the Base Term shall be deemed expired and ownership of the Land shall remain with the CITY free and clear of all security interests, mortgages, liens and encumbrances whereby CITY shall have ownership of, and all right, title and interest in and to, the Land free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to the Land.

17. **Alterations.** LESSEE shall not make any alterations to the Land without obtaining any required permits and obtaining the express, written permission of the City Manager (separate from any permits), and any such request for any alteration or modification shall be reviewed in the sole and absolute discretion of the CITY. LESSEE shall give CITY written notice of its intention to perform such Alterations at least five (5) business days prior to the commencement of such alterations. Such notice shall include a reasonably detailed description of the proposed Alterations.

If CITY consents to LESSEE Alterations, it may impose such reasonable conditions with respect thereto as CITY deems appropriate including, without limitation, requiring LESSEE to furnish to CITY for its approval prior to commencement of any work or entry by LESSEE's contractors into the Land and the Improvements, security for the payment of all costs to be incurred in connection with any such LESSEE Alterations, insurance against liabilities which may arise out of the LESSEE Alterations and plans and specifications and permits necessary for the LESSEE Alterations.

Upon completion of any LESSEE Alterations, LESSEE shall deliver to CITY, if payment is made directly to contractors, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services and materials sufficient to waive all rights to liens under the Illinois Mechanic's Lien law arising from the work done.

LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, or any of its officers, Mayor, aldermen, agents, consultants, contractors or employees, harmless from and against any and all losses, damages, liabilities, claims, liens, costs and expenses including, without limitation, court costs and reasonable attorneys' fees and expenses, arising in connection with any LESSEE Alterations.

All LESSEE Alterations done by LESSEE or its contractors shall be done in a first-class, skilful manner using only good grades of materials and shall comply with all insurance requirements of CITY and all applicable governmental laws, ordinances, codes, rules and regulations. Within thirty (30) days after substantial completion of any LESSEE Alterations by or on behalf of LESSEE, LESSEE shall furnish to CITY "as built" drawings of such work.

Any work performed on the premises shall be deemed to be Public Works for the purposes of the Illinois Prevailing Wage Act, and the LESSEE shall pay prevailing wages and maintain certified payroll records in accordance with the Prevailing Wage Act; LESSEE shall indemnify, defend and hold harmless the CITY from any claims arising out of or in relation to the Act.

18. **Environmental Provisions.** Hazardous Substances. LESSEE shall not cause or permit any Hazardous Substance (hereinafter defined) to be used, stored, generated or disposed of on or in the Land or the Improvements.

"Hazardous Substance(s)" means any substance that is toxic, ignitable, reactive or corrosive or that is regulated by any federal, state or local governmental agency, law, rule or ordinance, and includes without limitation any and all material or substances defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to any federal, state or local governmental agency, law, rule or ordinance, asbestos and asbestos containing materials, PCB's (polychlorinated biphenyls), petroleum and petroleum products, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants and substances which are or may be toxic to humans, animals, plants or the environment.

19. **Miscellaneous.**

- a. **Eminent Domain.** Notwithstanding any other provisions of this Lease, LESSEE acknowledges that CITY shall have the power to take the interest of LESSEE under this Lease by eminent domain or condemnation proceedings.
- b. **Nondiscrimination.** LESSEE agrees that it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title VI of the Civil Rights Act of 1964, Illinois Law and Chapter 49 of the City of DeKalb Municipal Code. CITY reserves the right to take such action as the United States Government may direct to enforce this covenant.
- c. **Affirmative Action.** LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefit of any program or activity covered by this subpart.
- d. **Lights; Signs.** LESSEE shall not post, install, erect or operate any lighting, sign, placard or poster on any part of the Land and the Improvements without the express written consent of CITY and in accordance with this Lease. Such lighting shall not be confusing, blinding, or inhibiting to traffic on surrounding streets, as determined by IDOT or the CITY in their sole discretion, and shall comply with locally-adopted building codes. If after installing such lighting, either IDOT or CITY determines that such lights are confusing, blinding, or inhibiting to traffic, then LESSEE shall take such

actions as are necessary to correct such problem, including redesigning, replacing or removing of such lighting, at LESSEE's sole cost.

- e. **Grant of Easement and Rights to Public.** LESSEE further grants unto CITY, its successors, and assigns, for the benefit of the general public at large, an easement and a continuing right of way for the free and unobstructed passage of underground utilities, and underground or above-ground appurtenances on the Land, by whomsoever owned or operated, in and through, under and across the Land and the Improvements.
- f. **Binding on Successors.** This Lease shall be binding on and inure to the benefit of the lawful assigns, successors, heirs, legatees and personal representatives of the respective parties.
- g. **Severability.** It is the intention of both of the parties hereto that the provisions of this Lease shall be severable in respect to a declaration of invalidity of any provisions hereof. If any provision hereof is declared invalid, then this Lease shall be construed by the parties to provide for the intent of such provision in a form, which shall be valid.
- h. **Waiver of Terms.** The waiver by the CITY of any breach of the terms, covenants or conditions herein shall not be deemed a waiver of any subsequent breach.
- i. **Survival.** Without limitation on any other obligations of LESSEE or CITY, which shall survive the expiration or termination of this Lease, the parties' respective obligations to indemnify, defend and hold harmless the other party and others pursuant to any provisions of this Lease shall survive the expiration or termination of this Lease.
- j. **Cumulative Remedies; Illinois Law.** The rights and remedies of CITY under this Lease are cumulative and none shall exclude any other rights or remedies allowed by law or equity. This Lease is declared to be an Illinois contract, and all of its terms shall be construed according to the internal laws of the State of Illinois.
- k. **Notices.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the fifth (5th) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (c) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the party to be notified as follows:

If to CITY:
City Manager
DeKalb Municipal Building
200 South Fourth Street
DeKalb, IL 60115

If to LESSEE:
Mary Wilson
Hillside
121 North Second Street
DeKalb, IL 60115

with a copy to the City Attorney and to LESSEE's lender, if the name and address of such lender have been previously furnished to CITY in writing in the manner required hereunder; or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection, refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

- I. **Venue.** The venue of any action brought on this Lease shall be in DeKalb County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

LESSOR:

CITY OF DEKALB

Jerry Smith, Mayor

ATTEST:

Date

Susanna Herrmann, City Clerk

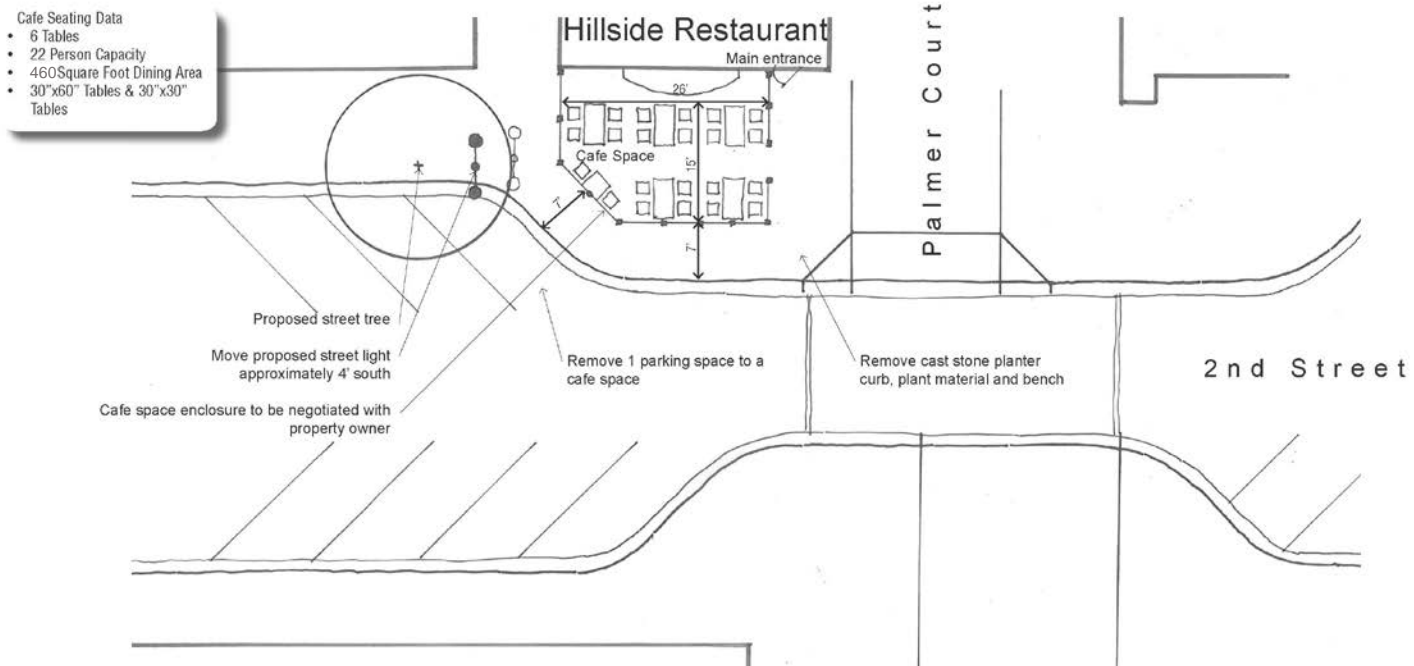
LESSEE:

BY: _____

Date

Exhibit "A" to Land Lease Agreement
DESCRIPTION OF LAND
121 North Second Street

A 15 foot wide parcel located within North Second Street right of way lying east and adjacent to the south 33 feet of Lot 65 in Block 1 of County Clerk's Subdivision in the City of DeKalb, DeKalb County, Illinois.



RESOLUTION 2018-

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO ENTER INTO A LAND LEASE AGREEMENT WITH UNIVERSAL RESTAURANT GROUP, INC., D/B/A O'LEARY'S IRISH PUB & GRILL, FOR A PORTION OF PROPERTY LOCATED ON THE WEST SIDE OF SOUTH THIRD STREET.

WHEREAS, Chapter 65, Section 11-76-1 of the Illinois Compiled Statutes (65 ILCS 5/11-76-1) provides a municipality, which owns real property, authority to lease the real property for any term not exceeding 99 years; and

WHEREAS, the City of DeKalb owns various parcels of land and right of way with restricted use due to the City's ownership of the property; and

WHEREAS, many parcels of said land and right of way may be used for purposes that do not cause interference with the City's ownership; and

WHEREAS, it is in the best interests of the City of DeKalb to allow for land it owns to be used for an outdoor café patio, which will enhance the operation of a local business, for which the City has published a request for proposals for the lease of said land, to which Universal Restaurant Group, Inc., d/b/a O'Leary's Irish Pub & Grill, was the only respondent; and

WHEREAS, Universal Restaurant Group d/b/a O'Leary's Irish Pub & Grill, has submitted a proposal for the lease of a parcel of City-owned right-of-way for an outdoor café patio;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: That the Recitals set forth above are incorporated as though fully set forth herein.

Section 2: That pursuant to Chapter 65, Section 11-76-1, the City is authorized to enter into a three (3) year land lease agreement expiring December 31, 2021, with Universal Restaurant Group, Inc., d/b/a O'Leary's Irish Pub & Grill, for approximately 710 square feet of property located on the west side of South Third Street, a copy of the written lease is attached hereto and made a part hereof as Exhibit "A".

Section 3: That Universal Restaurant Group, Inc., d/b/a O'Leary's Irish Pub & Grill, will pay rents to the City of DeKalb to lease this real property for an outdoor café patio.

Section 4: That the Mayor of the City of DeKalb be authorized and directed to execute the Land Lease Agreement with Universal Restaurant Group, Inc., d/b/a O'Leary's Irish Pub & Grill, subject to such revisions as may be necessary with the recommendation of the City Manager and City Attorney.

Section 5: That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

Section 6: That each section, paragraph, sentence, clause and provision of this ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 7: Upon its passage and approval according to law, this Ordinance shall be in full force and effect.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the ____ day of _____, 2018 and approved by me as Mayor on the same day.

ATTEST:

SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor

-----Space above for recording information-----

**LAND LEASE AGREEMENT
Between
CITY of DEKALB**

**And
Universal Restaurant Group, Inc. d/b/a O'Leary's
Irish Pub & Grill**

This instrument was prepared by the City of DeKalb. After recording return to:

City of DeKalb
Legal Department
200 S. 4th Street
DeKalb, IL 60115

THIS LAND LEASE AGREEMENT ("Lease") is entered into as of this 28th day of May 2018, by and between CITY OF DEKALB, an Illinois municipal corporation ("CITY"), and Universal Restaurant Group, Inc. d/b/a O'Leary's Irish Pub & Grill ("LESSEE"), and is as follows:

Recitals:

WHEREAS, LESSEE desires to lease the land described/shown on Exhibit "A" attached hereto and made a part hereof in DeKalb, Illinois; and

WHEREAS, LESSEE desires to operate an outdoor food and alcohol service area on the Land at its sole expense, in conjunction with its business located at 260 East Lincoln Highway, DeKalb, Illinois, and

WHEREAS, CITY is willing to enter into such a Lease with LESSEE on the terms and conditions contained herein.

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

1. **Demise.** CITY hereby Leases to LESSEE, and LESSEE hereby accepts, the Land, which is approximately 710 square feet, and further described/shown in Exhibit "A" which is attached hereto, during the Term (as hereinafter defined) on the terms and conditions contained herein.
2. **Term.**
 - a. **Base Term.** The term of this Lease shall be from the date of execution hereof, until December 31, 2017, unless terminated prior to that time in accordance with the terms of this Lease ("the Base Term").
 - b. **Option Periods.** Additional option periods shall be based upon the mutual agreement of CITY and LESSEE
3. **Rent.** LESSEE shall pay the sum of \$.90 cents per square foot, per year, for use of the land (for a total of \$639.00 per year). Said rent shall be payable on or before March 1 of each year, and shall be required to be paid *prior to commencing any use of the outdoor patio area*. Lessee shall also be required to maintain comprehensive general liability insurance and dram shop insurance as required under the City's Liquor Code, and shall be obligated to keep a copy of the then-current certificate of insurance on file with the City at all times that this lease is in effect.

In the event of a failure to pay rent when due hereunder and the continuation of such failure for five (5) calendar days after written notice thereof from the CITY, LESSEE shall pay a late charge to CITY together with such payment of rent in an amount equal to ten percent (10.00%) of the amount of the rent payment.

4. **Improvements.** CITY and LESSEE agree and acknowledge that no new permanent improvements shall be constructed upon the Land, unless expressly approved, in writing, by the City Manager following review and approval of detailed plans for such improvements. During those periods that LESSEE utilizes the Land, LESSEE shall place on the Land, at its sole cost and expense, items such as tables, chairs, planters and other temporary improvements subject to the approval of the CITY. The CITY shall have the right to approve the number, quality, design and layout of said items prior to LESSEE placing same on the Land, which said approval shall not be unreasonably withheld (hereinafter referred to as "LESSEE Improvements"). LESSEE shall ensure that all improvements, whether permanent or temporary, and whether pre-existing or new, comply with all applicable requirements including but not limited to ADA or other accessibility guidelines or regulations, and shall take all actions and incur all expenses necessary to ensure that the leased premises so complies.

Patrons of LESSEE's business shall only be permitted to access the outdoor seating area through LESSEE's building, and shall not be otherwise permitted to directly access or egress from the outdoor seating area (unless permitted pursuant to a special event agreement between LESSEE and the CITY. LESSEE shall implement reasonable measures to ensure that access to the leased premises is prohibited to minors. No service of any food or beverages, alcoholic or not, shall be permitted outside the Land or the fenced in portion thereof. Within the fenced-in area, LESSEE shall be permitted to utilize portable tables and chairs, and other similar temporary improvements.

LESSEE shall not be allowed to have any LESSEE Improvements which are not permanently affixed to the Land (hereinafter referred to as "LESSEE Temporary Improvements") on the Land from November 1st through April 15th.

5. **Use.** LESSEE shall use and occupy the Land and the Improvements solely for outdoor seating area related to the restaurant business of the LESSEE. No other use shall be allowed. Any outdoor entertainment, outdoor music, or outdoor sale or consumption of alcohol shall only be as permitted under applicable City Codes.

LESSEE cannot occupy or use the Land for the above-stated uses or any additional uses until the following conditions have been met: LESSEE has submitted and obtained CITY approval of the proposed plans for its use of the Land which have been reviewed and approved, in writing, by the City Manager; the rent and any applicable taxes have been paid in full; and the LESSEE has provided to

the CITY proof of current insurance coverage in the limits set forth below and showing the City as an additional insured.

Prior to using the Land as set forth above, LESSEE shall procure and maintain all licenses and permits legally necessary for the operation of LESSEE's business, including the outdoor seating area, and send a copy of each said license and permit to CITY within fourteen (14) calendar days of obtaining them.

LESSEE shall be allowed to serve alcoholic beverages on the Land to its patrons and customers who are at least twenty-one (21) years of age, provided that LESSEE has complied with all requirements set forth in Chapter 38 of the CITY's Municipal Code to do so; and LESSEE's patrons and customers who are at least twenty-one (21) years of age may possess and consume such alcoholic beverages on the Land, and such activity shall not be a violation of Chapter 38 of the CITY's Municipal Code.

Any requirement of approval or decision by the CITY under this Agreement, including but not limited to hours of LESSEE's use of the Land and approval of the proposed layout of LESSEE's operations on the Land, shall be at the discretion of the City Manager or designee. Notwithstanding the foregoing, any requirement of approval or decision required under another CITY regulation or ordinance shall be exercised by the party identified in such other regulation or ordinance (e.g. decisions relating to the sale or consumption of alcohol shall be made by the Liquor Commissioner or City Council, as appropriate).

6. **Ownership.** The ground constituting the Land shall remain in the ownership of the CITY at all times.

During the Base Term of this Lease and any extension thereto, the CITY Improvements shall be the property of the CITY, and any LESSEE Improvements which have been permanently affixed to the Land shall become the property of the CITY upon installation (hereinafter referred to as "LESSEE Permanent Improvements").

Upon the expiration of the Base Term of this Lease or any extension thereto or termination of this Lease, ownership of all of the CITY Improvements and LESSEE Permanent Improvements shall remain the property of the CITY and LESSEE shall have no ownership of, or any other right, title or interest in or to, either the Land, the CITY Improvements or the LESSEE Permanent Improvements.

All LESSEE temporary improvements to the Land shall remain the property of LESSEE. In the event that LESSEE shall fail to remove the LESSEE Temporary Improvements prior to the expiration of the Term of this Lease, or as it may have been extended, such LESSEE Temporary Improvements shall then become the property of the CITY.

7. **Maintenance and Repairs.** LESSEE shall, at its expense, keep, clean, maintain, repair and replace, as reasonably determined by CITY, the entire Land and all of the Improvements in good, clean, sightly and safe condition during the Base Term of this Lease, and any extensions thereto. At the conclusion of its operations on the Land on a daily basis, LESSEE shall return the Land to a broom-clean condition and remove any food, broken glass, trash or other refuse.

If LESSEE does not perform any of the foregoing maintenance or repairs, and such failure continues for five (5) calendar days after written notice thereof is given by CITY to LESSEE, CITY shall have the right, but not the obligation, to terminate this Agreement, unless such maintenance or repairs cannot be completed within such five (5) calendar day period of time, if LESSEE has commenced such maintenance or repair within such five (5) calendar day period of time and proceeds diligently to complete it as soon as practicable, in which case such five (5) calendar day period may be extended to a reasonable time not to exceed ninety (90) calendar days as reasonably determined by CITY.

CITY (or other governmental agency as may be appropriate) shall be responsible for the repair and maintenance of the public utilities portion of the Land, which shall include storm sewers, water mains and appurtenances, and sanitary sewers. The CITY may repair damage caused directly by CITY, CITY's contractors or their respective agents and employees, at the CITY'S reasonable discretion. LESSEE shall not be entitled to any compensation, reimbursement or damages if any such repairs interfere with LESSEE's rights or privileges granted hereunder. CITY shall have no responsibility or liability for any maintenance, repair or replacement of any part of the Land and the Improvements, except for said public utility mains and appurtenances.

CITY, or its agents, contractors, or designees, shall have the right to access the Land at any time without LESSEE's consent for the purpose of repairing, replacing, or maintaining street lights or traffic boxes and any and all appurtenances thereto, trees, or any other utility situated on the Land.].

8. **Taxes.** LESSEE shall pay, when due, all Taxes (as hereinafter defined) during the Base Term of this Lease and any extensions of this Lease. The term "Taxes" as used herein shall mean all real estate taxes and assessments, whether they be general or special, sewer rents, rates and charges, transit taxes, taxes based upon Leases or the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by CITY's income or profits, except as provided herein), levied or assessed upon or with respect to any part of the Land or the Improvements.

Should the State of Illinois, or any political subdivision thereof, or any other governmental authority having jurisdiction over any part of the Land or the Improvements: (a) impose a tax, assessment, charge or fee in place or partly in place of any Taxes or contemplated increase therein, or by way of substitution for any of the foregoing described Taxes, or (b) impose an income or franchise tax (other than an income or franchise tax applicable to businesses generally) or a tax on rents, which income or franchise tax or tax on rents is in substitution for or as a supplement to a tax levied against any part of the Land and the Improvements, all such taxes, assessments, charges or fees shall be deemed to constitute Taxes hereunder.

LESSEE shall provide CITY with proof of payment of any and all Taxes upon written demand of CITY.

9. Sublease and Assignment.

a. CITY Consent Requirements.

LESSEE shall not be permitted, without the prior written consent of CITY in each instance, to (i) assign or transfer, (ii) allow to exist or occur any transfer of or lien upon this Lease or LESSEE's interest herein or (iii) permit the use or occupancy of the Land and the Improvements or any part thereof for any purpose not expressly permitted, or by anyone other than expressly permitted, herein. LESSEE shall not be permitted to mortgage, pledge or encumber this Lease or any interest under it.

b. Lease Assumption. Sublessee Attornment. If LESSEE shall assign this Lease, the assignee shall expressly assume all of the obligations of LESSEE hereunder in a written instrument provided by CITY and delivered to CITY not later than ten (10) calendar days prior to the effective date of the assignment. If LESSEE shall lease any part of the Improvements or sublease any part of the Land, LESSEE shall obtain and furnish to CITY, not later than ten (10) calendar days prior to the effective date of such lease or sublease, as the case may be, and in form reasonably satisfactory to CITY, the written agreement of such LESSEE or sublessee, as the case may be, to the effect that the LESSEE or sublessee, as the case may be, shall attorn to CITY, at CITY's option and written request.

10. Default. LESSEE shall be in default under this Lease ("Default") under the following circumstances:

a. Failure by LESSEE to pay any rent when due, if such failure continues for five (5) calendar days after written notice to LESSEE of such failure; or

- b. LESSEE fails to fulfill any other obligation hereunder and such failure continues for five (5) calendar days after written notice thereof by CITY to LESSEE;
- c. LESSEE is in default of any financial obligation or debt due to the City or LESSEE violates the hours of operation for its use of the Land;
- d. LESSEE's liquor license is revoked, terminated or suspended by the CITY;
or,
- e. LESSEE engages in any other conduct that violates CITY ordinances.
- f. In the event of a Default, CITY shall have the right to pursue any and all legal and equitable remedies against LESSEE available under applicable law without any additional notice to LESSEE, except for termination of this Lease.

11. **Termination.** CITY may terminate this Lease if LESSEE is in Default and has failed to cure such Default as provided for in Section 10 above.

Upon such termination of this Lease, the Base Term shall be deemed expired and the CITY shall retain ownership of, and all right, title and interest in and to, the Land, free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to the Land, or any LESSEE temporary improvements left upon the Land following termination.

In the event of such termination of this Lease, CITY shall remain entitled to pursue any and all legal and equitable remedies against LESSEE available under applicable law.

LESSEE may terminate this agreement on not less than five days written notice to CITY.

12. **Surrender of Land and Improvements.** Upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall surrender possession of the Land, to CITY and deliver said Improvements to CITY, and shall, subject to the following subparagraphs, return the Land and said Improvements and all to CITY in as good a condition as when LESSEE originally took possession.

On or before the termination of this Lease by lapse of time or otherwise or upon the earlier termination of LESSEE's right of possession, LESSEE shall remove from and shall be responsible for the removal from the Land any and all of LESSEE's Temporary Improvements. LESSEE shall incur all costs associated with

this removal. Such removal and restoration shall be performed prior to the expiration of the Base Term or any extensions of this Lease. In the event that LESSEE shall fail to remove the LESSEE Temporary Improvements prior to the expiration of the Term of this Lease, or as it may have been extended, such LESSEE Temporary Improvements shall become the property of the CITY.

Without limitation of any other obligations of LESSEE, which shall survive the expiration, or termination of this Lease, all obligations of LESSEE under this paragraph 12 shall survive the expiration or earlier termination of this Lease.

- 13. Holding Over.** If LESSEE retains possession of the Land and the Improvements or any part thereof after the termination of the Lease by lapse of time or otherwise or after the earlier termination of LESSEE's right of possession, at the option of CITY, which option shall be exercisable by giving written notice to LESSEE within thirty (30) days after the date of such termination, the Base Term of this Lease shall be automatically renewed for one (1) year and this Lease shall remain in full force and effect, except that LESSEE shall pay to CITY as Rent during such automatic renewal term an amount equal to two hundred percent (200%) of the annual rent then in effect for the Land.

In the event that CITY does not exercise such option, LESSEE shall be deemed to be a tenant at sufferance, and LESSEE shall pay to CITY 1/12th of two hundred percent (200%) of the annual rent then in effect for each portion of any month during which LESSEE shall retain possession of the Land and the Improvements or any portion thereof after such termination.

In addition to and without limiting any other rights and remedies which CITY may have on account of such holding over by LESSEE, LESSEE shall pay to CITY all direct and consequential damages suffered by CITY on account of such holding over by LESSEE. The provisions of this Section 13 shall not be deemed to limit or constitute a waiver of the right of CITY to evict LESSEE as provided herein or at law.

- 14. Waiver and Indemnity.**

General Waiver. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, CITY, or any of its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys or employees, shall not be liable, and LESSEE hereby waives, releases, and covenants not to sue them from any liability, for any injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property, sustained by LESSEE or by other persons arising out of or relating to the Land or the Improvements becoming out of repair, or due to the happening of any accident or event in or about any part of the Land or the Improvements, or due to any act or neglect of any person.

Special Waivers. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, to the extent not prohibited by law, and also notwithstanding that CITY may or does establish security controls or regulations from time to time, LESSEE further agrees that all personal property in or upon the Land or the Improvements shall be at the risk of LESSEE only, and that CITY, or any of its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys or employees, shall not be liable, and LESSEE hereby waives and releases them from any liability, for any injury or damage thereto or theft, robbery, pilferage, loss or loss of the use thereof.

LESSEE agrees to have its insurers waive any rights of subrogation that any such insurer may have against the CITY.

LESSEE acknowledges and agrees that the terms and conditions of this Lease are fair and reasonable, that this Lease represents an arm's length transaction between CITY and LESSEE, that CITY has not favored LESSEE over other tenants nor discriminated against LESSEE with respect to other tenants and that LESSEE has been represented by competent legal counsel in connection with this Lease. LESSEE hereby waives and forever releases and discharges CITY from and against any and all of its claims, actions, liabilities, damages, losses and expenses arising or accruing prior to the date hereof with respect to this Lease.

15. **Indemnity.** In addition to and without limiting or being limited by any other indemnity in this Lease, but rather in confirmation and furtherance thereof, LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, and its officers, attorneys, Mayor, aldermen, agents, consultants, contractors, attorneys and employees, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses including court costs and reasonable attorneys' fees and expenses, in connection with injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property not owned by CITY occurring in or about the Land or the Improvements arising from LESSEE's occupancy of the Land and the Improvements, or the conduct of its business or from any activity, work, or thing done, permitted or suffered by LESSEE in or about the Land and the Improvements, or from any breach or default on the part of LESSEE in the performance of any covenant or agreement on the part of LESSEE to be performed pursuant to the terms of this Lease, or due to any other act or omission of LESSEE, or any of its employees, agents, licensees, invitees, guests or contractors.
16. **Damage and Destruction.** In the event that the Land or the Improvements are damaged or destroyed by accident, fire or other casualty, this Lease shall be deemed terminated as of the date of such damage or destruction.

Upon such termination of this Lease, the Base Term shall be deemed expired and ownership of the Land shall remain with the CITY free and clear of all security interests, mortgages, liens and encumbrances whereby CITY shall have ownership of, and all right, title and interest in and to, the Land free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to the Land.

17. **Alterations.** LESSEE shall not make any alterations to the Land without obtaining any required permits and obtaining the express, written permission of the City Manager (separate from any permits), and any such request for any alteration or modification shall be reviewed in the sole and absolute discretion of the CITY. LESSEE shall give CITY written notice of its intention to perform such Alterations at least five (5) business days prior to the commencement of such alterations. Such notice shall include a reasonably detailed description of the proposed Alterations.

If CITY consents to LESSEE Alterations, it may impose such reasonable conditions with respect thereto as CITY deems appropriate including, without limitation, requiring LESSEE to furnish to CITY for its approval prior to commencement of any work or entry by LESSEE's contractors into the Land and the Improvements, security for the payment of all costs to be incurred in connection with any such LESSEE Alterations, insurance against liabilities which may arise out of the LESSEE Alterations and plans and specifications and permits necessary for the LESSEE Alterations.

Upon completion of any LESSEE Alterations, LESSEE shall deliver to CITY, if payment is made directly to contractors, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services and materials sufficient to waive all rights to liens under the Illinois Mechanic's Lien law arising from the work done.

LESSEE agrees to indemnify, defend by counsel reasonably acceptable to CITY and hold CITY, or any of its officers, Mayor, aldermen, agents, consultants, contractors or employees, harmless from and against any and all losses, damages, liabilities, claims, liens, costs and expenses including, without limitation, court costs and reasonable attorneys' fees and expenses, arising in connection with any LESSEE Alterations.

All LESSEE Alterations done by LESSEE or its contractors shall be done in a first-class, skilful manner using only good grades of materials and shall comply with all insurance requirements of CITY and all applicable governmental laws, ordinances, codes, rules and regulations. Within thirty (30) days after substantial completion of any LESSEE Alterations by or on behalf of LESSEE, LESSEE shall furnish to CITY "as built" drawings of such work.

Any work performed on the premises shall be deemed to be Public Works for the purposes of the Illinois Prevailing Wage Act, and the LESSEE shall pay prevailing wages and maintain certified payroll records in accordance with the Prevailing Wage Act; LESSEE shall indemnify, defend and hold harmless the CITY from any claims arising out of or in relation to the Act.

- 18. Environmental Provisions.** Hazardous Substances. LESSEE shall not cause or permit any Hazardous Substance (hereinafter defined) to be used, stored, generated or disposed of on or in the Land or the Improvements.

"Hazardous Substance(s)" means any substance that is toxic, ignitable, reactive or corrosive or that is regulated by any federal, state or local governmental agency, law, rule or ordinance, and includes without limitation any and all material or substances defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to any federal, state or local governmental agency, law, rule or ordinance, asbestos and asbestos containing materials, PCB's (polychlorinated biphenyls), petroleum and petroleum products, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants and substances which are or may be toxic to humans, animals, plants or the environment.

- 19. Miscellaneous.**

- a. **Eminent Domain.** Notwithstanding any other provisions of this Lease, LESSEE acknowledges that CITY shall have the power to take the interest of LESSEE under this Lease by eminent domain or condemnation proceedings.
- b. **Nondiscrimination.** LESSEE agrees that it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title VI of the Civil Rights Act of 1964, Illinois Law and Chapter 49 of the City of DeKalb Municipal Code. CITY reserves the right to take such action as the United States Government may direct to enforce this covenant.
- c. **Affirmative Action.** LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefit of any program or activity covered by this subpart.
- d. **Lights; Signs.** LESSEE shall not post, install, erect or operate any lighting, sign, placard or poster on any part of the Land and the Improvements without the express written consent of CITY and in accordance with this

Lease. Such lighting shall not be confusing, blinding, or inhibiting to traffic on surrounding streets, as determined by IDOT or the CITY in their sole discretion, and shall comply with locally-adopted building codes. If after installing such lighting, either IDOT or CITY determines that such lights are confusing, blinding, or inhibiting to traffic, then LESSEE shall take such actions as are necessary to correct such problem, including redesigning, replacing or removing of such lighting, at LESSEE's sole cost.

- e. **Grant of Easement and Rights to Public.** LESSEE further grants unto CITY, its successors, and assigns, for the benefit of the general public at large, an easement and a continuing right of way for the free and unobstructed passage of underground utilities, and underground or above-ground appurtenances on the Land, by whomsoever owned or operated, in and through, under and across the Land and the Improvements.
- f. **Binding on Successors.** This Lease shall be binding on and inure to the benefit of the lawful assigns, successors, heirs, legatees and personal representatives of the respective parties.
- g. **Severability.** It is the intention of both of the parties hereto that the provisions of this Lease shall be severable in respect to a declaration of invalidity of any provisions hereof. If any provision hereof is declared invalid, then this Lease shall be construed by the parties to provide for the intent of such provision in a form, which shall be valid.
- h. **Waiver of Terms.** The waiver by the CITY of any breach of the terms, covenants or conditions herein shall not be deemed a waiver of any subsequent breach.
- i. **Survival.** Without limitation on any other obligations of LESSEE or CITY, which shall survive the expiration or termination of this Lease, the parties' respective obligations to indemnify, defend and hold harmless the other party and others pursuant to any provisions of this Lease shall survive the expiration or termination of this Lease.
- j. **Cumulative Remedies; Illinois Law.** The rights and remedies of CITY under this Lease are cumulative and none shall exclude any other rights or remedies allowed by law or equity. This Lease is declared to be an Illinois contract, and all of its terms shall be construed according to the internal laws of the State of Illinois.
- k. **Notices.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the

fifth (5th) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (c) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the party to be notified as follows:

If to CITY:
City Manager
DeKalb Municipal Building
200 South Fourth Street
DeKalb, IL 60115

If to LESSEE:
Mel Witmer
O'Leary's
260 East Lincoln Highway
DeKalb, IL 60115

with a copy to the City Attorney and to LESSEE's lender, if the name and address of such lender have been previously furnished to CITY in writing in the manner required hereunder; or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection, refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

- I. **Venue.** The venue of any action brought on this Lease shall be in DeKalb County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

LESSOR:

CITY OF DEKALB

Jerry Smith, Mayor

ATTEST:

Date

Susanna Herrmann, City Clerk

LESSEE:

BY: _____

Date

Exhibit "A" to Land Lease Agreement
DESCRIPTION OF LAND
260 East Lincoln Highway

Parcel 1:

An 8 foot wide parcel located within South Third Street right of way lying east and adjacent to the north 70 feet of Lot 51 in Block 11 of County Clerk's Subdivision in the City of DeKalb, DeKalb County, Illinois.

Parcel 2:

A 5 foot wide parcel within South Third Street right of way lying east and adjacent to the above described Parcel 1, extending 30 feet south of the south right of way line of Route 38 except the north 10 feet, in the City of DeKalb, DeKalb County, Illinois.

