

PARKS AND RECREATION COMMITTEE MINUTES 10/27/03

STATE OF DELAWARE

DEPARTMENT OF ADMINISTRATIVE SERVICES

LEASE FOR REAL PROPERTY

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between THE DEPARTMENT OF ADMINISTRATIVE SERVICES OF THE STATE OF DELAWARE, hereinafter referred to as Lessor, and THE CITY OF DOVER, hereinafter referred to as Lessee.

WITNESSETH, that for and in consideration of the rents hereinafter reserved and the covenants to be kept and performed by and on the part of the Lessee, Lessor has rented and leased and by these presents does rent and lease unto said Lessee, its successors and assigns:

ALL THOSE CERTAIN PREMISES located at 122 William Penn Street, Dover, DE, the same being known as the Haslet Armory and comprising approximately 36,866 square feet; excepting, that Lessor shall retain one office for use by the Adjutant General of the Delaware National Guard, that being identified as room # \_\_\_\_\_.

TERM: Said Lease shall exist for a term of one (1) year, which shall commence on \_\_\_\_\_, 2003 and shall terminate on \_\_\_\_\_, 2004. Lessor retains the right to terminate this lease upon sixty (60) days notice at any time during this initial term, or any renewals or extensions thereafter.

(1) HOLDING OVER

Upon the expiration of the initial term of the lease, Lessee may continue to occupy the premises as a month-to-month tenant, subject to all laws of the State of Delaware applicable to such tenancy. The rent to be paid Lessor by Lessee during such continued occupancy shall be the same as the rent paid by Lessee as of the date of expiration.

(2) RENT

All monies payable by Lessee to Lessor under this Lease shall be deemed to be rent and shall be payable and recoverable as rent in the manner herein provided. Rent shall be paid to Lessor in advance, on the first day of each lease year, during the entire term of this Lease, without

deduction or set-off, except as otherwise provided herein, at the address of Lessor as set forth, or to such other person or entity or to such other address as Lessor may designate in writing. The rent to be paid for the above-described Premises is \$1.00 per year. In addition to the annual rent, Lessee shall reimburse Lessor for Lessor's excess utility expense as provided in Paragraph 4 hereinafter.

(3) DEFAULT AND RIGHT OF RECOVERY

If Lessee violates any covenant or if the rent is in arrears in whole or in part for thirty (30) or more days and Lessee fails to comply or commence compliance with said covenant within fifteen (15) days after being sent written notice of any such violation, Lessor may terminate this Lease. Lessor shall be entitled to the full benefit of all provisions of the State of Delaware respecting the speedy recovery of lends and tenements. Lessee further agrees that, notwithstanding such termination, Lessor shall be entitled to immediately declare due and payable all rent for the balance of the term of this Lease as if by the provisions of this Lease the same were payable in advance. This clause is not intended as a limitation against other remedies available at law or equity.

(4) SERVICES

It is hereby agreed by and between parties to assume sole cost and expense for performance of building services hereto as follows:

A. Utilities

- Electricity Lessor
- Gas/Heating Oil Lessor
- Water and Sewer Lessor

Lessor's total utility expense shall be limited to \$14,000 per year. Lessee shall reimburse Lessor for any utility expense in excess of this amount each calendar year. Lessor shall provide Lessee statements of total utility expenses at least every ninety days.

- Telephone Lessee

B. Janitorial and Custodial Service Lessee

- |    |   |        |
|----|---|--------|
| C. | Repair and maintenance of heating, air conditioning,<br>plumbing, electrical and lighting systems     | Lessor |
| D. | Exterior, structural, grounds, parking area repair<br>and maintenance, including ice and snow removal | Lessor |
| E. | Ordinary repair and maintenance to the interior   | Lessee |
| F. | Ordinary repair and maintenance to the exterior   | Lessor |
| G. | Taxes and Insurance   | N/A    |

(5) MAINTENANCE BY LESSOR

Lessor shall repair, replace and maintain the external and structural parts of the building which do not comprise a part of the Premises, janitor and equipment closets, and shafts within the Premises designated by Lessor for use by it in connection with the operation and maintenance of the building. Lessor shall perform such repairs, replacements and maintenance with reasonable dispatch, in a good and workmanlike manner.

(6) LESSOR'S RIGHT OF ENTRY

Lessor, its agents or employees shall have the right to enter the Premises at reasonable hours to make inspections, alterations, or repairs to the building or the Premises. In event of emergency Lessor, its agents or employees shall have the right of entry at any time and may perform any acts related to safety, protection, preservation or improvement of the building or the Premises. Except for repair of casualty damage, Lessee shall not be entitled to any abatement or reduction of rent because of work performed within the building or the Premises by Lessor.

(7) QUIET ENJOYMENT

Lessor agrees that, subject to terms, covenants and conditions of this Lease, Lessee may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

(8) ASSIGNMENT; SUBLET

Lessee shall not assign or mortgage this Lease, or sublet all or any portion of the Premises without

Lessor's prior written consent. No assignment, mortgaging or subletting, if consented to by Lessor, shall relieve Lessee of its liability under this Lease. Consent by Lessor shall not operate as a waiver of the necessity for consent to any subsequent assignment, mortgaging or subletting and the terms of such consent shall be binding upon the assignee, mortgagee or subtenant. Any transfer of this Lease by merger, consolidation or liquidation or any change in ownership shall constitute an assignment, whether the result of a single or series of transactions.

(9) ZONING

Lessor warrants that the leased Premises are in compliance with all applicable zoning ordinances, restrictions, and easements of record, ordinances or governmental laws and regulations of any kind or nature whatsoever. If the leased Premises are not in compliance with the above, and such compliance deprives Lessee of a substantial part of the benefit of its bargain, Lessee shall notify Lessor, in writing, of its intention to vacate the Premises and to terminate this Lease. Such notice shall be given no later than thirty (30) days prior to termination.

(10) SURRENDER AT EXPIRATION

Upon expiration or other termination of this Lease, Lessee shall immediately surrender possession of the Premises to Lessor in substantially the condition in which Lessee is required to maintain the Premises except for reasonable wear and tear and damage by fire or casualty. All keys which Lessee has been furnished for any locks within the building and the Premises shall be delivered to Lessor. Upon surrender, all right, title and interest of Lessee in the Premises shall cease. All property remaining in the Premises following surrender shall be considered to have been abandoned by Lessee and Lessor may dispose of it in any manner Lessor wishes.

(11) ALTERATIONS

Lessee shall not make any structural alterations to the Premises without Lessor's prior written consent. The Lessor may not unreasonably withhold consent. Lessee shall not be required to obtain Lessor's consent with regard to alterations necessary for the installation of telephone or teletype equipment, ordinary business machines, shelving, or demountable office partitions

furnished by Lessee. Nothing contained herein, however, shall preclude the Lessor from stipulating in writing where such machines or apparatus shall be installed due to considerations of weightload, noise vibrations or other engineering difficulties. The water and wash closet and plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids, or other substances shall be deposited therein. All trade fixtures and apparatus installed on the Premises shall remain the property of the Lessee and at the option of Lessee shall be removable before the expiration of the term herein provided, or any extension hereof; provided that Lessee shall restore the premises to the condition in which they were before the installation of such trade fixtures and apparatus, reasonable wear and tear excepted.

(12) INSURANCE; DAMAGE OR DESTRUCTION

Lessee shall comply with all laws, rules, orders, directions and requirements and recommendations of the local board of fire under-writers and the fire insurance rating organizations having jurisdiction over the area in which the Premises are situated, or other bodies or agencies now or hereafter exercising similar functions in the area in which the Premises are situated, in any way pertaining to the Premises or the use and occupancy thereof.

It is hereby understood that Lessor is self-insured as to property insurance as an agency of the State of Delaware and is sovereignly immune from liability claims. Lessee covenants and agrees to maintain liability insurance and insurance covering the Premises and contents against loss from damage or fire and the perils specified in the standard extended coverage endorsement; and Lessee hereby expressly releases and discharges Lessor, its agents, visitors, servants or employees in case of damage or destruction by fire or such perils; it being the intention of the parties that Lessee shall look only to its insurance carrier for payment of such loss.

If the leased Premises shall be rendered unusable in whole or in part by fire, the elements, unavoidable accident, or other casualty, then the Term thereby created shall end on the date of such fire or casualty, and the Tenant shall pay the rent apportioned to the time of such fire or

casualty and shall surrender possession of the demised premises. If, however, the demised premises, in the judgement of the Lessor, can be repaired with reasonable promptness so as to be in as good condition as it was at the beginning of the Term, the Lease and the Term herein created shall not be affected except that the rent shall be apportioned or suspended while such repairs are being made. If, however, the said premises is slightly damaged by fire or other casualty and is not thereby rendered unfit for occupancy, then the same shall be repaired by Lessor with reasonable promptness, and no abatement of apportionment of the rent shall be made.

(13) DAMAGE CAUSED BY LESSEE

In event of damage to the Premises or the building by fire or other causes resulting from fault or negligence of Lessee, its agents, employees or invitees, such damage shall be promptly reported to Lessor and shall be repaired by and at the expense of Lessee under direction and supervision of Lessor.

If, within thirty (30) days following occurrence, Lessee fails to repair or replace any damage to the Premises or building caused by negligence of Lessee, its agents, employees or invitees Lessor may, at its option, cause all required maintenance, repairs or replacements to be made. Upon written notice of Lessor, Lessee shall promptly pay Lessor all costs incurred.

(14) CONDEMNATION

If the whole or any part of the demised Premises shall be taken under the power of condemnation or eminent domain, then this Lease shall terminate as to the part so taken on the day when Lessee is required to yield possession thereof. Lessor shall make such repairs and alterations as may be necessary in order to restore the portion not taken to useful condition. Such repairs shall be completed within one hundred and twenty (120) days of the date Lessee is required to yield possession. Pending the restoration by Lessor of the Premises, the rent due hereunder shall be reduced proportionately as to the part of the Premises rendered untenable due to the restoration. If the amount of the demised Premises so taken is such as to substantially impair the

usefulness of said Premises for the purpose for which the same are hereby leased, then Lessor shall have the option to terminate this Lease (by written notice to Lessee) as of the date when Lessee is required to yield possession. The compensation awarded for such taking, both as the Lessor's reversionary interest and Lessee's interest under this Lease, shall belong to and be the property of Lessor; provided, however, that Lessor shall not be entitled to any portion of the award made to Lessee for loss of business and for the cost of removal of its stock and fixtures.

(15) SIGNAGE

Lessee shall have the right to place or maintain any sign, billboard, placard, awning, lettering, decoration, advertising matter of any kind whether permanent or temporary, on the exterior of the Premises only with the written consent of the Lessor. Lessee shall have the right to place or maintain any sign, placard, lettering, decoration, advertising matter of any kind, whether permanent or temporary on the glass, or in the window or door of the Premises, without the consent of the Lessor, unless Lessor has an established standard with which all occupants of the Premises must comply. Lessee's right to place or maintain such signs, placards, lettering, decoration, or advertising matter shall be limited by applicable ordinances.

(16) NOTICES

Any and all notices required by the provisions of this agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO LESSOR                    Secretary, Department of Administrative Services  
410 Federal Street  
Dover, DE 19901

TO LESSEE                    Mayor and Council, City of Dover  
P. O. Box 475  
Dover, DE 19903-0475

Notification of any change in address shall be made pursuant to the above provisions.

(17) PARKING

Lessee shall have the no rights to use of on-site parking other than as may be expressly permitted by Lessor.

(18) WAIVER

Except as provided in paragraph 14 thereof, no mention in this Lease of any specific right or remedy shall preclude either party from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity; and the failure of either party to insist in any one or more instances upon a strict performance of any covenant of the other party under this lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect unless the contrary is expressly waived in writing.

(19) MORTGAGE BY LANDLORD

Lessor shall have the right to transfer, assign, mortgage or convey in whole or in part the Premises and any and all of its rights under this Lease, and nothing herein shall be construed as a restriction upon Lessor's so doing.

(20) SUBORDINATION

This Lease is subject and subordinated to all present and future mortgages, deeds of trust and other encumbrances affecting the Premises. After written request from Lessor, Lessee agrees to execute, at no expense to Lessor, any instrument which may be deemed necessary or desirable by Lessor to further effect the subordination of this Lease to any mortgage, deed of trust or encumbrance.

(21) ATTORNMENT

If the interest of Lessor is transferred to any person or entity by reason of foreclosure or other proceedings for enforcement of any mortgage, deed of trust or security interest or by delivery of a deed in lieu of foreclosure or other proceedings, Lessee shall immediately and automatically attorn

to such person or entity. In event of such transfer, this Lease and Lessee's rights hereunder shall continue undisturbed so long as Lessee is not in default of this Lease.

(22) ENVIRONMENTALLY HAZARDOUS MATERIALS AND ACTIVITIES

Lessee agrees to refrain from and prohibit the use or possession on the Premises, and on the ground of which it is a part, of any environmentally hazardous materials and activities.

(23) CONSENT NOT UNREASONABLY WITHHELD

Unless otherwise specifically provided, whenever consent or approval of Lessor or Lessee is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed.

(24) SUCCESSORS

All covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns.

(25) RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall create any relationship between the Lessor and Lessee other than that of Lessor and Lessee, and it is acknowledged and agreed that Lessor does not in any way or for any purpose become a partner of Lessee in the conduct of Lessee's business, or a joint venturer or a member of a joint or common enterprise with Lessee.

(26) ENTIRE AGREEMENT; CAPTIONS

Lessee acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as may be expressly set forth in this Lease and it is agreed by Lessor and Lessee that no amendment or modification of this Lease shall be valid or binding unless in writing executed by Lessor and Lessee. The paragraph headings contained in this Lease are for convenience only and shall in no way enlarge or limit the scope or meaning of the provisions of this Lease.

(27) SEVERABILITY

Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which is invalid or unenforceable, shall not be affected.

(28) GENDER

Words of any gender used in this Lease shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals, on the day and year first above written.

STATE OF DELAWARE

WITNESS \_\_\_\_\_

LESSOR \_\_\_\_\_  
Gloria Wernicki Homer, Secretary  
Department of Administrative Services

CITY OF DOVER

WITNESS \_\_\_\_\_

LESSEE \_\_\_\_\_  
By:  
Title: