

SECOND AMENDMENT to the LEASE AGREEMENT  
Between Morton Martin I LLC, Dumke and Associates, LLC and the City of Menasha  
DATED March 17, 2008  
AMENDED December 21, 2010

THIS SECOND AMENDMENT TO THE LEASE AGREEMENT, executed in Menasha, Wisconsin on this \_\_\_ day of October, 2011, is made effective between Morton Martin I LLC, OLH, LLC and the City of Menasha and is made with reference to the Lease Agreement dated March 17, 2008 and First Amendment to the Lease Agreement dated December 21, 2010.

1. Assignment of Lease. Dumke and Associates, LLC assigns its rights, title and interest under the LEASE AGREEMENT and any amendments thereto to OLH, LLC.
2. Add to paragraph 2. **Term: (d) 2012 Renewal Term**. This Lease Agreement shall recommence on January 1, 2012 and end December 31, 2013.
3. Extend the First Amendment to the Lease Agreement dated December 21, 2010, Rental rate of \$4.00 per square foot for 2 more years.
4. Add an option for the City of Menasha to purchase the leased premises after 1 year (between January 1, 2013 – December 31, 2013) either by land contract or by outright purchase with 120 advance notice given to Landlord. The City of Menasha has the option to purchase this condo unit consisting of 2,770 square feet for \$246,000.00.
5. All other terms and conditions set forth in the initial agreement dated March 17, 2008 and First Amendment to the Lease Agreement, unless inconsistent with the above changes shall remain the same.
6. Landlord reserves the right to serve a 120 day written notice to the City of Menasha to vacate property at any time during this lease extension.

IN WITNESS WHEREOF, the undersigned have executed the Amendment as of the date first written above:

\_\_\_\_\_  
Morton Martin I, LLC  
( )

\_\_\_\_\_  
Donald Merkes, Mayor  
City of Menasha

\_\_\_\_\_  
Dumke and Associates, LLC  
( )

OLH, LLC assumes Dumke and Associates, LLC rights, title and interest under the LEASE AGREEMENT and any amendments thereto.

\_\_\_\_\_  
OLH, LLC  
( )

FIRST AMENDMENT to the LEASE AGREEMENT  
Between Morton Martin I LLC, Dumke and Associates, LLC and the City of Menasha  
DATED March 17, 2008

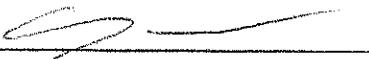
THIS FIRST AMENDMENT TO THE LEASE AGREEMENT, executed in Menasha, Wisconsin on this 21<sup>st</sup> ~~December~~ day of ~~November~~, 2010, is made effective between Morton Martin I LLC, Dumke and Associates, LLC and the City of Menasha and is made with reference to the Lease Agreement dated March 17, 2008.

1. Add to paragraph 2. Term: (c) 2011 Renewal Term. This Lease Agreement shall recommence on January 1, 2011 and end December 31, 2011.
2. Delete from paragraph 3. Rental: "\$7.90" and in its place add "\$4.00."
3. All other terms and conditions set forth in the initial agreement dated March 17, 2008 unless inconsistent with the above changes shall remain the same.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above:

  
\_\_\_\_\_  
Morton Martin I LLC

  
\_\_\_\_\_  
Donald Merkes, Mayor  
City of Menasha

  
\_\_\_\_\_  
Dumke and Associates, LLC

316 RACINE  
STREET

## LEASE AGREEMENT

This is a lease entered into on March 17, 2008 between Morton Martin I LLC and Dumke and Associates, LLC a Wisconsin limited liability company, hereinafter referred to as "Landlord", and City of Menasha, a Wisconsin municipality hereinafter referred to as "Tenant".

The Landlord, in consideration of the covenants and agreements of the Tenant, hereby leases to the Tenant, and the Tenant does hereby rent from the Landlord, the premises described below, for the period, at the rental and upon the terms and conditions set forth in this instrument.

### 1. DESCRIPTION

The leased premises shall consist of approximately 2770 square feet located in the Center Section of the multi-tenant office building located at 316 Racine Street in Menasha, Wisconsin (the "Leased Premises"). In addition, tenant shall have shared access sidewalks, parking lots, entryways and lawn areas.

### 2. TERM

- (a) **Original Term.** The term of this Lease Agreement shall commence on March 17, 2008 and end two years thereafter. Tenant to provide a written 120 day notice prior to vacating the building and ending the lease.
- (b) **Renewal Term.** Provided that Tenant is not in default under this Lease at the time Tenant exercises its option to renew, Tenant shall have the right to renew the term of this Lease for one, additional two-year term. The renewal terms shall commence on the first day following the end of the original term of the Lease and shall end two years thereafter. The renewal term shall be on the same terms and conditions as set forth in this Lease. Tenant shall exercise its right to renew the term of the Lease by giving Landlord written notice of its intention to renew. Such notice shall be given to Landlord at

least 120 days prior to the end of the term of the Lease, time being of the essence.

### **3. RENTAL**

- (a) For the first two year term of the lease, Tenant shall pay rental in an amount equal to \$7.90 per square foot leased by Tenant within the Leased Premise per year. Rents for the second two year term of the lease of the Office Building shall be increased by three (3) percent per year of the previous two year term rental rate. Rental shall be payable in advance on the first day of each month. The amount of the monthly payments shall be one-twelfth of the annual rental for the demised premises. No security deposit shall be required for this lease.
  
- (b) In addition to the rental provided for above, Tenant shall pay a proportionate share of the real property taxes and assessments against the real property upon which the Leased Premises are located as provided in §6 of this lease, a proportionate share of the fire and casualty insurance premiums for the insurance covering the Office Building as provided in §8 of this lease.

### **4. USE AND OCCUPANCY**

Tenant shall use and occupy the leased premises in a careful, safe and proper manner, and will not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and will comply with all lawful requirements of all valid laws, ordinances, rules and regulations of all governmental authorities pertaining to the use and occupancy of the leased premises.

**5. IMPROVEMENTS PRIOR TO OCCUPANCY**

- (a) At its cost, Tenant shall be responsible for all improvement to the Leased Premises. Tenant shall have the right to enter the leased premises prior to the lease commencement date for the sole purpose of commencing the completion of said improvements to be completed by the Tenant; such entry shall be arranged with the Landlord to provide Tenant the maximum time possible to complete Tenant's build-out. This permitted early entry by Tenant shall be without cost, but Landlord reserves the right to require that Tenant verify that Tenant or Tenant's contractors or both have adequate liability insurance.

Landlord shall have the right to review all construction plans and drawings. Landlord shall have three business days after the receipt of such construction plans or drawings in which to object to any of the contents thereof. Such objection shall be in writing addressed to the Tenant.

**6. TAXES, ASSESSMENTS AND OTHER CHARGES**

- (a) Tenant shall be responsible for and shall pay a portion or all real property taxes and assessments against the Leased Premises ("Taxes"). The share of Taxes that Tenant shall be obligated to pay shall be the proportionate share of Taxes equal to the percentage of square footage leased by Tenant to the total of all lease able square footage in the entire Office Building. Tenant shall pay its share of the taxes when and as the Taxes are assessed.
- (b) At Tenant's request, Landlord shall provide Tenant with a copy of all billings reflecting the Taxes and a copy of all

calculations made by Landlord concerning Tenant's share of the Taxes. Tenant shall also pay to the appropriate governmental agencies all personal property taxes, assessments, impositions or other claims or charges which may arise as a consequence of the tenant's property maintained upon the Leased Premises.

## 7. **INSURANCE**

- (a) **Insurance by Landlord.** Landlord shall maintain, during the term of the lease a comprehensive general public liability insurance covering the building and grounds (excluding property owned by tenant) with a combined single limit of \$1,000,000.00 for injury or death of person and loss of or damage to property. The name on all policies of insurance maintained by Landlord shall be the Landlord, and if required, any mortgagee or creditors of Landlord. Cost of all insurance maintained by Landlord shall be borne by Tenant.
- (b) **Insurance by Tenant.** Tenant shall maintain during the term of this lease and at Tenant's cost, the following insurance:
- (i) comprehensive general public liability insurance in which the Tenant shall be named the insured and Landlord named as additional insured, combined single limit of liability, for bodily injury or death occurring on, in, or about the leased premises in the amount of \$1,000,000.00 with respect to bodily injury or death; and
  - (ii) Insurance upon all property and leasehold improvements situated in the Premises by the Tenant, or for which the Tenant is legally liable, and on fixtures and improvements installed in the Leased Premises by or on behalf of the Tenant.
- (c) **Waiver.** Each party hereby waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectable insurance policies

to the extent of any recovery collectible under such insurance, subject to the limitation that this waiver shall apply only when permitted by applicable insurance policies.

**8. FIRE INSURANCE, LOSS AND DAMAGE**

- (a) Landlord shall, during the entire term hereof, procure and keep in full force and effect, fire, vandalism, and other hazards insurance covering the basic building structure and common areas of leased premises in an amount equal to 100% of its full replacement value as determined by appraisals by reputable insurers, made from time to time.
- (b) Tenant shall reimburse Landlord for its proportionate share of the premium for such policy of insurance. Tenant's share of the insurance premium shall be equal to the percentage of square footage leased by Tenant to the total of all leaseable square footage in the entire Office Building. At Tenant's request, Landlord shall provide Tenant with a copy of all premium statements and a copy of all calculations made by Landlord concerning Tenant's share of the insurance premiums. Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss or damage to Tenant's leasehold improvements nor to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to Tenant's leasehold improvements, persons or property whatsoever resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow or leaks from any part of the leased premises or from the pipes, appliances, or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause whatsoever. Landlord shall not be liable for any damage caused by other tenants or persons in the leased premises, occupants of adjacent property or caused by

operators in construction of any private, public or quasi-public work. All property of Tenant and others kept or stored on the leased premises shall be so kept stored at the sole risk of Tenant only and Tenant shall defend, indemnify and hold Landlord harmless from any and all claims arising out of damage to same and to the demised premises, including subrogation claims by Tenant's insurance carrier, unless such damage shall be caused by the willful act or gross negligence of Landlord.

**9. UTILITIES**

Tenant shall pay as and when due all charges made against the premises for heat, air conditioning, electricity, water and sewage to the Leased Premises.

**10. MAINTENANCE OF PREMISES**

- (a) During the term of this Lease, Landlord shall maintain in good condition the Office Building, common areas and the Leased Premises, including but not limited to the interior and exterior of the Office Building occupied by Tenant, maintenance of the roof to the Office Building, all windows, doors and openings, all electrical, heating, plumbing, air conditioning and other systems installed within the building, paved parking area, shrubbery, planting, flood lights, and all other accessories, appurtenances and related equipment. In addition, Landlord shall keep the building and all common areas in a clean, safe and healthy condition according to the ordinances and directions of the proper public authority. Landlord further agrees to keep the parking lot and any sidewalks and entry ways adjoining the premises at all times free and clear of ice, snow and other obstructions and hazards.

Tenant shall be responsible for and shall pay a portion of all maintenance and repair costs relating to the Leased Premises. Maintenance and Repair Costs shall include all reasonable

costs of operating and maintaining the Common Area and shall include, all costs and expenses of lighting, cleaning, painting, removing snow, ice and debris, lawn cutting, fertilizing, utilities used in the operation of the Common, lawn sprinkling

The share of the Maintenance and Repair Costs that Tenant shall be obligated to pay shall be the proportionate share of Maintenance and Repair Costs equal to the percentage of square footage leased by Tenant to the total of all leaseable square footage in the entire Office Building. For purposes of such calculation, common areas within the Office Building shall be excluded from leaseable square footage within the Office Building. Tenant shall pay its share of the Maintenance and Repair Costs when and as the Maintenance and Repair Costs are incurred.

Landlord will provide a cap on increases in controllable Maintenance and Repair Costs not to exceed 5% of the prior year's expense. Controllable Maintenance and Repair Costs would be those, which are reasonably controllable by Landlord, and would specifically exclude real estate taxes, insurance, snow removal and utilities.

Replacement of major mechanical and structural components when it becomes necessary such as the HVAC system (including compressor) and the roof shall not be part of maintenance and repair costs and will be the financial responsibility of the Landlord.

- b. Tenant shall keep the Leased Premises in a safe, clean and healthy condition according to the ordinances and directions of the proper public authorities. Tenant shall be responsible for

designating and procuring cleaning and janitorial services and shall be responsible for the payment of all cleaning and janitorial costs with respect to the premises demised to Tenant hereunder.

## **11. ALTERATIONS**

During the term of this Lease, Tenant may not make alterations, additions and improvements to the Leased Premises without the prior written consent of Landlord, whose consent shall not be unreasonably withheld. All such alterations or additions shall be performed at the expense of Tenant, in workmanlike manner, and Tenant covenants and agrees not to create, or suffer others to create, any lien or obligation against the premises or Landlord by reason of the alterations or additions so authorized, and further, to hold Landlord harmless of and from any and all claims and demands of third persons including Landlord's Attorneys fees in any manner relating to or arising out of such work including the initial improvements to the demised premises as contemplated in §4 of this lease; provided, however, that Tenant shall have the right to dispute in good faith any obligation or lien arising as a consequence of such alterations, additions and improvements and Tenant promptly satisfies the same in the event that it is determined that Tenant is in fact obligated to pay on such lien or obligation. All alterations or additions so made by Tenant shall become part of the realty, and as a consequence of which Tenant, upon expiration of the demised term or cancellation thereof, shall not have the right to remove the same. If Tenant installs any electrical equipment which overloads the electrical facilities, it shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction, but no such changes shall be made by the Tenant until

it first submits to the Landlord plans and specifications for the proposed work and obtains the Landlord's written approval to perform same.

## **12. DESTRUCTION OF PREMISES**

In the event of a partial destruction of the Leased Premises during the term from any cause, Landlord shall provide Tenant with notice of its intention to repair the demised premises within five days of the date of the parties' destruction and the time period within which the repairs shall take. In such event, Landlord shall forthwith repair the same, provided the repairs can be made within sixty (60) days under the laws and regulations of applicable governmental authorities. Any partial destruction shall neither annul nor void this Lease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Landlord may, at Landlord's option, make repairs within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately abated as previously set forth in this section. In the event that Landlord does not elect to make repairs that cannot be made in the specified time, or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, this Lease may be terminated at the option of either party. In the event of any partial destruction that Landlord is obligated to repair or may elect to repair under the terms of this paragraph, Landlord shall proceed to complete such repairs as quickly as

may be practical under the circumstances, and Tenant waives any right to make repairs at the expense of Landlord. Should the Leased Premises be destroyed to the extent of more than fifty (50%) percent of the replacement cost thereof, this Lease shall be terminated at the option of either party.

In the event that repairs are made and the lease shall continue, Landlord shall apprise the Tenant on a periodic bases of the status of the reconstruction of the leased premises. Tenant and Landlord shall cooperate in the process of completing the repairs to the premises.

### **13. LIENS**

Neither party shall do any act to cause any lien to be filed against the Leased Premises, or any part thereof. If any such lien attaches to the premises and is not discharged or released within sixty (60) days from the date of attachment, the other party may, at its option, pay to the lien claimant the amount of such lien and shall immediately thereafter notify the other party of such payment, in which event the amount shall be immediately due and payable by Landlord to Tenant or by Tenant to Landlord, as appropriate, and shall bear interest at the rate of twelve (12%) percent per annum, provided, however, that if the party in the first instance responsible for payment of the indebtedness desires to contest said indebtedness or said lien, such party shall furnish to the other party to this Lease a bond written by a surety company licensed to do business in the State of Wisconsin or other security satisfactory to the other party to this Lease for an amount equal to the amount of the lien for the protection of the said other party against all loss or expense on account of such asserted lien during the period of the contest.

Nothing contained in this lease shall prohibit either party from contesting in good faith any lien. However, in the event that a final, non-appeal able order, decree or finding is made that a lien is in fact

appropriate, such lien shall be promptly satisfied by the party responsible for its creation.

#### **14. SIGNS**

Tenant shall have the right at its own expense to install a sign or signs upon the exterior of the leased premises. The design, construction and location of such signs shall be subject to the prior, written approval of Landlord, whose approval shall not be withheld unreasonably. Tenant shall bear all costs and expenses of the manufacturer, installation and maintenance of such signs. Tenant has the right to approve final plans for the sign. The cost to add tenant to marquee-type sign will be at the tenant's expense.

#### **15. SURRENDER OF PREMISES**

Tenant will deliver up and surrender possession of the Leased Premises including any and all leasehold improvements to the Leased Premises to Landlord upon the expiration of this Lease, and any renewal or extension hereof, or upon its termination in any way, in a good and substantial state of repair, reasonable wear and tear and damage by fire or other insured casualty, or from other causes beyond Tenant's control, excepted.

#### **16. INDEMNIFICATION**

The Landlord and Tenant each agree to indemnify and hold each other harmless from and against all claims, damages, costs and expenses, including reasonable attorneys fees, in any manner arising out of or in connection with the conduct of their respective businesses in the building and premises, their respective breaches or default in the performance of any covenant or agreement contained in this lease (excepting damages to

the other party arising from the failure to perform any covenant or agreement contained in this lease), or their negligence or the negligence of their agents, employees, concessionaires, licenses, customers or invitees.

#### **17. PARKING**

At no additional cost to Tenant, Tenant shall be provided with parking spaces in the parking lots located upon the site of the Leased Premises, including those parking spaces located closest to the entrance to the building occupied by Tenant. Notwithstanding the foregoing, Landlord shall have the right to designate the parking spaces that Tenant shall have the right to utilize.

Landlord and Tenant both acknowledge that parking is a critical part of the lease terms. Landlord further agrees that to the extent that there is available general parking because of the existence of unrented and unoccupied building space, Tenant shall be permitted to use this available parking without additional cost. Tenant understands that as the spaces become designated because of Landlord leasing the unoccupied portions of the Office Building that Tenant will give up the right to use the parking spaces allocated to a new tenant.

#### **18. WARRANTY OF TITLE BY LANDLORD**

Landlord hereby warrants, represents and covenants to the Tenant that, at the time of the execution by Landlord of this Lease and until this Lease or other instrument giving constructive notice of this Lease is recorded:

- (a) Landlord is the sole owner in fee simple absolute of the Leased Premises.
- (b) Landlord will defend the title of the leased premises and will indemnify Tenant against any damage or expense which Tenant may suffer by reason of any lien, encumbrance, restriction or defect in the title or description herein of the premises; and

- (c) Landlord has full right and power to execute this agreement and to lease the Leased Premises for the term provided in this Lease.

## **19. QUIET ENJOYMENT**

Landlord hereby covenants and agrees with Tenant that if Tenant shall perform all of the covenants and agreements herein agreed to be performed on its part, Tenant shall, at all times during the term hereof or any renewal term, have the peaceable and quiet enjoyment and possession of the leased premises without any manner of let or hindrance from Landlord or any person or persons lawfully claiming said premises. Tenant's right under this section shall continue regardless of whether the demised premises are conveyed by Landlord to a new property owner or title to the leased premises are transferred pursuant to a foreclosure, insolvency or bankruptcy proceeding.

## **20. LATE PAYMENTS**

Any late or unpaid payment of any sort due from Tenant under this Lease shall bear interest of twelve (12%) per annum provided Landlord serves Less ten (10) days' notice to cure any late payment. Interest shall commence ten (10) days from Landlord's Notice. This interest shall be in addition to the \$25.00 late payment processing fee set forth in §3 above. Tenant shall not be considered late as to any payment for a period of ten (10) days following the due date of such payment.

## **21. APPROPRIATION**

If all of the leased premises shall be appropriated or condemned by any public or quasi-public authority in the exercise of its right of condemnation or eminent domain, this Lease shall terminate as of the time when possession shall be required by such public or quasi-public authority.

Notwithstanding the termination of this Lease, both Landlord and Tenant shall have the right to prosecute their claim for an award from such authority.

## **22. SUBORDINATION AND NON-DISTURBANCE**

The Lease shall be subject and subordinate to the lien of any mortgage which the Landlord has placed or may place upon the premises and to all terms, conditions and provisions thereof, to all advances made, and to any renewal, extensions, modifications or replacement thereof.

## **23. ACCESS TO PREMISES BY LANDLORD**

Landlord shall have access to the leased premises at all reasonable hours and upon reasonable notice during the original term of this Lease and any renewal terms for the purpose of examining the same; provided, however, that Landlord shall not interfere in any way with the business operation of Tenant. In the event that, in exercising its rights under this section, Landlord gains access to confidential and proprietary information of Tenant, Landlord shall execute a confidentiality agreement containing reasonable terms upon request by Tenant.

## **24. ASSIGNMENT AND SUBLETTING BY TENANT**

Tenant shall have the right to assign this Lease or let or sublet the whole or any part of the leased premises provided that Landlord provides its prior written approval of such sublease or, assignment, whose consent shall not be withheld unreasonably.

## **25. ASSIGNMENT BY LANDLORD**

Landlord shall have the right to transfer, assign and convey in whole or in part, any and all of the rights of Landlord in and to the leased premises and under this Agreement.

## **26. NON-WAIVER**

The failure of Landlord or Tenant to insist on a strict performance of any of the terms and conditions by reason of the violation of any of the covenants in this Lease to be performed by the Tenant or Landlord shall not be construed as a waiver of the rights of the Landlord or Tenant to exercise any such rights as to any subsequent breach or default in any such covenants, or as a waiver of any of the rights given to the Landlord or Tenant by reason of the violation of any of the other covenants of this Lease.

## **27. HOLDING OVER**

In the event Tenant remains in possession of the leased premises after the expiration of this Lease and without the execution of a new lease, Tenant shall be deemed to be occupying the leased premises as a tenant from month to month at a rental equal to the monthly rental provided for herein as if this lease had been renewed and otherwise subject to all the conditions provisions and obligations of this lease insofar as they are applicable to month to month tenancy.

## **28. OFFSET RIGHTS**

If the Landlord breaches any of its representations under this Lease or otherwise fails to perform any of its obligations under the Lease and notice has been given to the Landlord of such default and the Landlord has failed to remedy the same within a reasonable period of time, then the Tenant may, in addition to any other remedies available under the Lease, cure such default. In the event that the Tenant cures such default, then the Tenant shall be entitled to offset the cost of curing the Landlord's default against the rents owing until such time that the Tenant is fully reimbursed for the cured costs.

## **29. CONSTRUCTION OF LEASE**

Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. Wherever used herein, the words "Landlord" and "Tenant" shall be deemed to include the heirs, personal representatives, successors, sublessees and assigns of said parties, unless the context excludes such construction.

### **30. INVALIDITY OF PROVISIONS**

In the event that any material provision of this lease is held invalid or unenforceable, both parties shall bear the right to terminate this lease by giving the other party written notice of its intention to terminate. However, such written notice shall be given within 10 days of the date that it is known by the party acting to terminate the lease that a material provision is determined to be invalid or unenforceable. A portion or provision of this agreement that is not material shall to any extent be held invalid or unenforceable, or if a material provision or portion thereof is held invalid or unenforceable and neither party exercises its right to terminate this lease, the remainder of this agreement or the application of such portion or provision in circumstances other than those as to which it is held invalid and unenforceable shall not be affected thereby, and each portion and provision of this agreement shall continue to be valid and enforceable to the fullest extent permitted by law.

### **31. SERVICE OF NOTICE**

Notices hereunder shall be in writing signed by the party serving the same and shall be sent by Registered or Certified U.S. Mail, Return Receipt Requested, postage prepaid, and

(a) if intended for Landlord, shall be addressed to:

Dumke Management  
Attention: Denise Markee  
222 Ohio Street

Oshkosh, WI 54902

(b) if intended for Tenant, shall be addressed to:

City of Menasha  
Jeffrey S. Brandt  
City Attorney  
140 Main St.  
Menasha, WI 54952

or to such other address as either party may have furnished to the other from time to time as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time said notice is deposited in the U.S. Mail, unless otherwise provided herein.

### **32. SURVIVAL OF LEASE COVENANTS**

The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors or assigns, and shall run with the land.

### **33. HEADINGS**

It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

### **34. RIGHT OF FIRST REFUSAL**

In the event that Landlord receives an offer to purchase the Retail Building, which the Landlord in good faith desires to accept, Landlord shall first offer to sell to Tenant the office building upon the same terms and conditions as were proposed by the third party presenting the offer to purchase. Tenant shall exercise its right of first refusal within thirty (30) days of the date in which it receives notice from Landlord of the offer to purchase, time being of the essence. In the event that Tenant elects to purchase the Retail Building, the closing of the sale of the premises shall take place within sixty (60) days after the Tenant has given the Landlord notice of its intention to purchase said real property. In the event that Tenant does not exercise its right of first refusal or fails to do so in a timely fashion, Landlord shall be entitled to complete the sale of the Retail Building upon the terms and conditions of the offer to purchase that was submitted to the Tenant or upon other terms provided that such terms are no more favorable from Tenant's standpoint as those set forth in the offer to purchase. The Tenant's right of first refusal shall be reinstated in the event that the Landlord fails to close the sale of the Retail Building within six months after the date of the offer to purchase.

### **35. ENTIRE AGREEMENT**

This lease contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. No representation or warranties, express or implied, are made or agreed to be made by any party hereto, except those

specifically provided herein. All prior negotiations, statements, representations, warranties and agreements, if any, pertaining to any or all of the details of this lease are hereby superseded and terminated by this lease, which constitutes the entire agreement of the parties.

**36. MISCELLANEOUS**

- (a) Binding Agreement. This agreement shall be binding upon and inure to the benefit of the respective parties, their successors and assigns, heirs, and personal representatives, except as otherwise expressly provided herein.
- (b) Waiver, Change or Modification. This agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- (c) Applicable Law. The parties agree that this agreement shall be construed pursuant to and in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, Tenant and Landlord have executed this instrument as of the date first set forth above:

Landlord: Dumke and Associates LLC

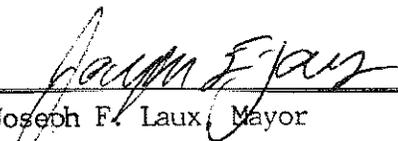
By:  \_\_\_\_\_

Andrew J. Dumke, Managing Member

Morton Martin I LLC

By:   
\_\_\_\_\_  
Thomas F. Martin, Managing Member

Tenant: City of Menasha

By:   
\_\_\_\_\_  
Joseph F. Laux, Mayor