

COMMERCIAL REAL ESTATE LEASE

This **Commercial Real Estate Lease** (this “**Lease**”) is made by and between **College Investments**, a New Mexico general partnership, whose address is 1402 St. Tropez Lane, Arlington, Texas 76013, (as “**Lessor**”) and the **City of Roswell**, whose address is 425 North Richardson Avenue, Roswell, New Mexico 88201 (the “**Lessee**”). Lessor and Lessee are collectively referred to as the “**Parties.**”

RECITALS

1. Lessor owns property located at and generally known as 414 East College Avenue, Roswell, New Mexico 88201. This property is referred to herein as the “**Property**” or the “**Leased Premises.**” The Property is currently leased by Lessee under the terms of a Commercial Real Estate Lease dated June 9, 2023, effective January 1, 2023, which lease expires December 31, 2024.
2. The Parties desire to enter into a new Lease Agreement to allow Lessee to continue to occupy, rent and utilize the Property on the terms and provisions set forth in this Lease.
3. Lessor desires to lease the Property to Lessee and Lessee desires to lease the Property from Lessor on the terms and provisions set forth in this Lease.
4. Lessee is and will continue to be the sole tenant with respect to the Property and shall have exclusive use and enjoyment thereof.
5. Lessee is desirous of entering into a new lease with Lessor and Lessor is desirous of continuing to lease the Property to Lessee.
6. This Lease shall be the controlling agreement between the Parties with respect to the Leased Premises and the terms and provisions of the prior leases shall have no continuing force and effect except and unless such terms are provided in this Lease.

LEASE AND AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements expressed herein, the payment of rental as provided herein and other valuable consideration, the receipt of which is hereby acknowledged, the Parties do hereby mutually agree as follows:

A. Leased Premises: The land and building subject to this Lease is the Property identified in Paragraph 1 above, including the structure located thereon and any parking adjacent to or surrounding the structure on land owned by Lessor. It is Lessor’s intent to lease to Lessee all of Lessor’s right, title, and interest in and to the real estate identified above, subject to the terms and provisions of this Lease. The Lessee is taking the Leased Premises in its current condition, with all faults, and due to the agreement to limit the term of this Lease for one year with an option to extend or purchase, Lessee will clean and make the alterations necessary to utilize the Leased Premises for Lessee’s intended purposes.

B. Term: The term of this Lease is for one (1) year commencing January 1, 2025, and ending at midnight on December 31, 2025, and shall automatically renew for a second year, ending at midnight on December 31, 2026, if funding is provided by the Roswell Governing Body in the City of Roswell FY26 budget. Lessee shall provide notice to Lessor whether such funding is provided or is not provided in the budget within fourteen (14) days of final budget approval, but no later than November 1, 2025.

C. Purpose and Authorized Use: The Leased Premises is to be used by Lessee solely in the conduct of its business related to the City’s Parks and Recreation Department and Code Enforcement, as well as for the maintenance and storage of City vehicles and equipment. Lessee shall not use the Leased Premises for any other purpose without the express prior written permission from Lessor. The Leased Premises shall not be used for any illegal or immoral purpose or for the storage, use and disposal of hazardous substances and materials.

D. Rent: Lessee shall pay to Lessor monthly rental in the amount of \$5000.00 in advance, on the first day of each month for the remainder of the term of this Lease. In the event Lessee does not remit to Lessor the monthly rental timely, for any rental payment received after the 15th day of the month, Lessee shall pay to Lessor an additional \$150.00 late payment fee. If Lessee does not pay to Lessor its monthly rental payment, then beginning the first day of the following month in which the rent was due, the unpaid rent shall accrue interest at the rate of 10% per annum, compounded quarterly, until such rent, late payment fee, and interest is fully paid by Lessee to Lessor. Should Lessee not vacate the premises at

the end of the term, or extended term, then it shall pay \$6000.00 per month for each month or portion thereof that Lessee holds over.

E. Maintenance and Repairs: Lessor agrees to perform all exterior repairs, including maintenance of the roof. Lessee shall make all other repairs, replacements and renewals. All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that originally existing in the Leased Premises. Lessee shall use all reasonable precautions to prevent waste, damage, or injury to the Leased Premises. In the event Lessee desires to remodel or alter any of the Leased Premises, Lessee shall notify Lessor of its intended remodeling or alteration project and shall provide Lessor with any architectural drawings or schematics that would alter the floor plan, configuration, or structure of the Leased Premises. The structure of the Leased Premises shall not be altered or compromised by Lessee without the express prior written consent of Lessor. Lessee may, at its cost, upgrade the electrical, plumbing, security, lighting, and other systems that it needs or desires to make the Leased Premises suitable for Lessee's intended use. The Parties recognize that the Property is currently being repaired due to the flood damage the Property sustained in the 2024 flood in Roswell. The Parties will continue to cooperate with one another to allow the contractors to complete the repair and maintenance work on the building. Due to the flooding event, Lessee will work with neighboring property owners to cooperate and allow drainage infrastructure to be installed to help the flow of water onto or from the adjacent property so long as it does not compromise the integrity of or cause flooding to the building on the Property.

F. Taxes: Lessor shall timely pay all taxes, assessments or other governmental charges imposed on the Leased Premises during the term of this Lease, but Lessee shall reimburse Lessor for taxes for the Leased Premises for the 2025 and 2026 calendar years upon Lessor's receipt of the annual tax bill usually in the month of October. If this Lease is extended, Lessee shall likewise reimburse Lessor for property taxes for subsequent years in a similar manner.

G. Damage Deposit: A damage deposit is not required of Lessee at this time. Should it appear to Lessor that Lessee is not maintaining the property and keeping it a reasonable condition, at least as good as the condition of the property on the effective date, then Lessor may request a damage deposit up to \$7500.00 to reasonably cover costs that Lessor may incur to bring the Leased Premises back to its original condition and Lessee shall have three months after receipt of Lessor's request for a deposit in which to make the deposit to Lessor. In any event, Lessee shall be responsible for any damage to the Leased Premises caused by Lessee, its employees, contractors, customers, and invitees, even if a damage deposit is requested.

H. Utilities: Lessee shall pay its own utilities, including telecommunications, water, sewer, garbage, electricity, gas, cable, internet service and any janitorial or cleaning costs. The Parties will cooperate with one another to get the utilities changed over to Lessee at the commencement of this Lease and at the end of this Lease to revert them back to Lessor.

I. Insurance: Lessee shall obtain and maintain for the benefit of Lessee, insurance, in a minimum amount of \$2,000,000 against liability for bodily injury to its employees, guests, vendors, contractors, the public and trespassers and furnish evidence of the same to Lessor. Such policy shall be at Lessee's expense. Lessor shall maintain insurance on the Leased Premises for the structure of the buildings located thereon. It shall be Lessee's sole obligation to insure any items of personal property placed in the buildings and for any business interruption that may result from an act that causes structural damage to the Leased Premises, or any of them, and renders it unsuitable for Lessee's occupancy. Lessor assumes no liability whatsoever in this respect for personal property or interruption of its business conducted on the Leased Premises.

J. Indemnity: To the extent allowed by New Mexico law, Lessee shall indemnify Lessor against all expenses, liabilities, claims and damages of every kind, including reasonable attorney's fees, by or on behalf of any person or entity arising out of either:

- (1) a failure by Lessee to perform any of the terms or conditions of this Lease;
- (2) any injury or damage happening on, about or near the Leased Premises;
- (3) failure to comply with any laws of any governmental authority; or
- (4) any mechanic's lien or security interest filed against the Leased Premises or equipment, materials or alterations of the building or improvements thereon as a result of Lessee's activities and occupancy.

K. Default or Breach: Each of the following events shall constitute a default or breach of this Lease by Lessee:

(1) Lessee, or any successor assignee of Lessee, while in possession of the Leased Premises shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of such act by answer or otherwise, or shall make an assignment for the benefit of creditors;

(2) if insolvency proceedings under any bankruptcy law or insolvency act shall be instituted against Lessee, or if a receiver or trustee shall be appointed to take possession of all or substantially all of the property of Lessee, and such proceedings shall not be dismissed, or the receivership or trusteeship vacated within fifteen (15) days after the institution or appointment;

(3) if Lessee shall fail to pay Lessor any rent when the same is due and it is agreed that no written notice or time to cure is required in the event of default or delay in rental payments;

(4) if Lessee shall fail to perform or comply with any of the conditions or terms of this Lease and if the non-performance shall continue for a period of ten (10) days after notice thereof by Lessor to Lessee; or

(5) if Lessee shall vacate or abandon the Leased Premises.

L. Remedy Upon Default: In the event of any default by Lessee of any of the terms and conditions of this Lease, Lessee shall have ten (10) days after notice to the cure the default (except as to rental payments where no notice is required). If the default is not timely cured, then Lessor may pursue any remedies as provided at law, including, the right to eject Lessee from the Leased Premises, retain the personal property, equipment and other property located on the Leased Premises, to offset any monies due and owing to Lessor under the terms of this Lease, to bring suit for any damages arising out of Lessee's default, including recovery of rental for the remainder of the term of this Lease, and to take possession of the property and attempt to lease it to third parties. Repeated delays in making any payments required by this Lease or any repeated defaults shall constitute an uncured breach for which no additional curing time is allowed. Upon notice to Lessee of repeated delays or defaults, this Lease shall automatically terminate, and Lessor may additionally sue for damages arising therefrom including the recovery of the remaining rentals that become due under this Lease.

M. Destruction of Leased Premises: In the event of a partial destruction of the Leased Premises during the term of this Lease, Lessor may repair the same provided the repairs can be made within sixty (60) days and further provided that the Lessor so desires to make such repairs. If such repairs are made, the rent shall abate during the period of the repairs. In the event that Lessor fails to make such repairs during the sixty (60) day period, Lessee may terminate this Lease as to that portion of the Leased Premises affected by the partial destruction. No rent abatement shall be allowed other than as provided in this paragraph. In the event of a total destruction of the Leased Premises, this Lease shall automatically terminate.

N. Quiet Enjoyment: Lessor warrants that Lessee shall be granted peaceful and quiet enjoyment of the Leased Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Lessee by this Lease.

O. Liability of Lessor: Lessee shall have exclusive control and possession of the Leased Premises, and Lessor shall not be liable for any injury or damages to any property or to any person on or about the Leased Premises, nor for any injury or damage to any property of Lessee. The provisions herein permitting Lessor to enter and inspect the Leased Premises are made to ensure that Lessee is in compliance with the terms and conditions hereof, and to make repairs that Lessee has failed to make, although Lessor shall be under no obligation to either inspect or make repairs. Lessor may also enter for purposes of attending to the repairs for which it is responsible under the terms of this Lease. Lessor shall not be liable to Lessee for any entry on the Leased Premises for inspection purposes.

P. Notices: All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, to the party to be notified at the address set forth herein or at such other address as the either party may from time to time designate in writing, by hand delivery with proof of receipt, or by overnight delivery service or by electronic means if receipt is acknowledged. Every notice shall be deemed to have been given at the time it shall be deposited in the United States Mail, or with an overnight delivery service, or is confirmed to have been received manually or electronically by the addressee.

The addresses of the parties for purposes of notice are as follows:

Lessor: College Investments
1402 St. Tropez Lane
Arlington, Texas 76013

with a copy to:
Gregory J. Nibert
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88201
400 N. Pennsylvania, Suite 640
gnibert@hinklelawfirm.com

Lessee: City of Roswell
425 North Richardson Avenue
Roswell, New Mexico 88201
Attention: Mr. Chad Cole, City Manager

Q. Condemnation: In the event the Leased Premises is subject to condemnation that would materially interfere with Lessee's continued use, that portion of the Leased Premises, or the specific property, being condemned shall be automatically removed from the terms and provisions of this Lease and the rent due hereunder by Lessee shall be adjusted accordingly. If such an action does materially interfere with Lessee's continued use, this Lease shall terminate.

R. Surrender of Possession: Lessee shall, on the last day of the term, or on an earlier date if there is a termination and forfeiture of this Lease, peaceably and quietly surrender and deliver the Leased Premises to Lessor free of sub-tenancies, liens and encumbrances, including all buildings, structures, additions and improvements constructed or placed thereon by Lessee, except moveable trade fixtures, all in good condition and repair. Any trade fixtures or personal property not used in connection with the operation of the Leased Premise and belonging to Lessee, if not removed at the termination or default, and if Lessor shall so elect, shall be deemed abandoned and become property of Lessor without any payment or offset therefore. Lessor may remove such fixtures or property from the Leased Premises and store them at the risk and expense of Lessee if Lessor does not elect to own the same. Lessee shall repair and restore all damage to the Leased Premises caused by the removal of equipment, trade fixtures, and personal property. If there is any money due and payable to Lessor at the time of the surrender of possession, then Lessor may take possession of any and all trade fixtures, equipment, vehicles and personal property and sell the same for purposes of offsetting any monies due and owing by Lessee to Lessor. Lessee shall return to Lessor all keys, fobs and any codes for access to the building and security devices.

S. Waivers: Lessor's conduct or failure to insist on strict performance of any of the terms and conditions of this Lease shall be deemed a waiver of the rights and remedies Lessor may have regarding that specific instance only and shall not be deemed a waiver of any subsequent breach or default of any of the terms and conditions of this Lease.

T. Assignment and Sub-Lease: Neither Lessee, nor its successors or assigns, shall assign, mortgage, pledge, sell or encumber this Lease or sublet the Leased Premises in whole or in part, or permit the Leased Premises to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior written consent of Lessor in each and every instance. If this Lease is assigned or transferred, or if any part of the Leased Premises is sublet or occupied by anybody other than Lessee, Lessor may, after default by Lessee, collect rent from the assignee, transferee, subtenant or occupant and apply the net amount collected to the rent provided in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement or condition hereof, or the acceptance of the assignee, transferee, subtenant or occupant as lessee. Lessee shall continue to be liable hereunder in accordance with the terms and conditions of this Lease and shall not be released from the performance of the terms and conditions hereof. The consent by Lessor by an assignment, mortgage, pledge or transfer shall not be construed to relieve Lessee from obtaining the express written consent of Lessor to any future transfer of interest.

U. No Renewal Option or Right of First Refusal: There is no right by Lessee to extend this Lease unilaterally nor is there a right of first refusal to purchase the Property. These terms appeared in prior leases between the Parties, but at this time the Parties simply desire to lease the Property for the two-year term. Nothing herein prevents Lessee from making an offer to purchase or to inquire of Lessor a desire to extend or enter into a new lease on the Property beyond December 31, 2026.

V. **Purchase:** There is no option to purchase, but unless Lessor has already entered into an agreement with a third party to sell the Property, Lessee will entertain any offers to purchase that Lessee desires to submit at any time during the pendency of this Lease. In that event, the Parties agree to negotiate in good faith.

W. **Successors and Assigns:** This Lease and the terms and conditions hereof shall apply to and are binding upon the heirs, legal representatives, successors and assigns of both Lessor and Lessee. For purposes of this Lease, Lessee may deal with Gregory J. Nibert for all purposes hereunder exactly as though it were dealing directly with Lessor, except all payments shall continue to be made directly to Lessor at its address stated above.

X. **Time of the Essence:** Time is of the essence with respect to all provisions of this Lease.

Y. **Multiple Counterparts:** This Lease may be executed in multiple counterparts or with multiple signature pages and reassembled into one or more original counterparts, each of which shall be deemed an original for all purposes.

Z. **Memorandum of Lease:** A Memorandum of this Lease may be recorded in the Chaves County records. The Memorandum of Lease shall be substantially in the form of the Memorandum of Lease attached hereto as Exhibit A.

Executed this _____ day of December, 2024, effective January 1, 2025.

Lessor:
College Investments

Lessee:
City of Roswell

Paulette Williamson, General Partner

By: _____
Chad Cole, City Manager

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

The forgoing instrument was acknowledged on this __ day of December, 2024, by Paulette Williamson, General Partner of College Investments, a New Mexico general partnership, on behalf of the partnership.

Notary Public

My Commission Expires:

My Commission Number:

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

The forgoing instrument was acknowledged on this __ day of January, 2025, by Chad Cole, City Manager of the City of Roswell, on behalf of the City.

Notary Public

My Commission Expires:

MEMORANDUM OF LEASE

Effective January 1, 2025, College Investments, as Lessor, and the City of Roswell, as Lessee, entered into a Commercial Real Estate Lease agreement covering the following described property for a term of two (2) years:

414 East College Avenue, Roswell, New Mexico 88201

This Memorandum of Lease gives notice that the property is subject to the terms and conditions of a Commercial Real Estate Lease, the original of which may be inspected at the offices of the Lessor's Attorneys: Hinkle Shanor, LLP at 400 North Pennsylvania, Suite 640, Roswell, New Mexico 88201 or Lessee at its address set forth below. The County Assessor should NOT change its records as the Lessor will continue to pay the property tax on the property subject to the Lease.

Lessor:
College Investments

Lessee:
City of Roswell

Paulette Williamson, General Partner
1402 St. Tropez Lane
Arlington, Texas 76013

By: _____
Chad Cole, City Manager
425 North Richardson Avenue
Roswell, New Mexico 88201

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

The forgoing instrument was acknowledged on this ____ day of December, 2024, by Paulette Williamson, General Partner of College Investments, a New Mexico general partnership, on behalf of the partnership.

My Commission Expires:

Notary Public

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

The forgoing instrument was acknowledged on this __ day of January, 2025, by Chad Cole, City Manager of the City of Roswell, on behalf of the City.

My Commission Expires:

Notary Public