

# SUBLEASE

DATED: June \_\_, 2017

**PARTIES:** Battle Creek Area Chamber of Commerce, a Michigan non-profit organization, whose address is 34 Jackson St W, Suite 3A, Battle Creek, MI 49017 (“Sublessor”) and  
City of Battle Creek, whose address is 10 N. Division Street, Battle Creek, MI 49014 (“Sublessee”).

**BACKGROUND:** By a lease dated April 1, 2016, The Battle Creek Community Foundation, a Michigan non-profit corporation, “Owner,” leased a portion of certain space located at Riverwalk Centre, 34 W Jackson Street, Battle Creek, Michigan, to Sublessor for a term of three years commencing on April 1, 2016 and ending March 31, 2019, a copy of which has been provided by Sublessor to Sublessee. (“Master Lease”)

**PREMISES LEASED:** The property and improvements are located on the second floor of the Building located at 34 Jackson St W, Battle Creek, MI 49017 and depicted in Exhibit A attached hereto (Property). Sublessee shall also be entitled to use the lounge area and conference room located in the rear of the second floor on dates and times as may be agreed upon between the parties. Sublessor and their guests and invitees shall be entitled to access the rear conference room by way of the entrance and hallway located on the “Property.”

**EXISTING PREMISES PERSONAL PROPERTY** 4 desks, 4 conference room chairs and coffee table, 2 hutches and 2 aluminum horizontal file cabinets, 4 desk chairs, small Conference table and 3 chairs.

**ORIGINAL TERM:** The original term of this Lease is one (1) year, beginning on July 1, 2017 and ending at midnight on June 30, 2018 and renewable as provided in paragraph 11.

**BASIC RENT:** The basic rent for the original term of this Lease is \$21,600.00 per year payable in monthly installments of \$1,800.00, payable in advance on the 1st day of each month. If any monthly installment payment of rent is not paid within 10 days after the date it first becomes due, then in addition to the monthly installment payment of rent there will become immediately due and payable from Sublessee a late charge equal to 5% of the monthly installment payment. The rent for any renewal term will be determined under paragraph 12.

ALL SUMS PAID OR REQUIRED TO BE PAID UNDER THIS LEASE ARE DEEMED TO BE RENT.

IN CONSIDERATION of the rents, covenants, and conditions of this Lease, Sublessor hereby leases to Sublessee the above-described Property for the basic term, at the basic rent, and upon the following terms and conditions:

1. **CONDITION AND MAINTENANCE OF PROPERTY:** SublesseeSublessee acknowledges Sublessee has inspected the Property and accepts it as is and with all faults. During the term of this Lease and any renewals, Sublessee will maintain, at Sublessee's sole expense, the Property in good condition and repair. Sublessee shall, at Sublessee's sole cost, maintain the Property in a neat and clean condition, free of debris and rubbish. Sublessee shall, at its sole cost, hire a cleaning contractor, selected by Sublessee and reasonably acceptable to Sublessor (or Sublessee may elect to hire the cleaning contractor hired by Sublessor) (Sublessee's cleaning contractor being herein referred to as the Cleaning Contractor), to undertake cleaning of the Property, and to remove all rubbish and refuse from the Property. Sublessee acknowledges that, for the proper and efficient operation of the Building, Sublessor reserves the right to designate a single cleaning contractor for the entire Building so long as the service provided is priced competitively. In the event Sublessor shall be required to provide any cleaning services, or refuse removal services by reason of the Sublessee's failure to do so, or in the event of any misuse or neglect of the Property or the Building on the part of Sublessee, or its agents, employees, contractors, licensees or visitors, Sublessee shall pay to Sublessor, as Additional Rent, upon demand, Sublessor's charges for such cleaning work and/or refuse removal services, provided by Sublessor, or its agents or contractors, which is \$300.00 per month.

2. **UTILITIES:** During the term of this Lease and any renewals, Sublessee will promptly pay all telephone services provided to the Property during the period Sublessee remains or has the right to remain in possession of the Property.

3. **INSURANCE:** Sublessee will procure and keep in force, at Sublessee's sole expense, policies of insurance with companies, providing coverages, and in such amounts as are satisfactory to Sublessor insuring Sublessor and Sublessee, as their interests may appear, against public liability, personal injury, and extended coverage casualty. Unless Sublessor otherwise requires, Sublessee will provide proof of insurance to Sublessor of the following limits:

3.1. Liability insurance: not less than \$1,000,000.00 per person, \$1,000,000.00 per occurrence, and \$1,000,000.00 for property damage.

3.2. Casualty insurance: not less than 100% of replacement cost.

Sublessee further agrees to defend, save, and hold Sublessor harmless from any and all liability arising out of Sublessee's use of the Property, including reimbursement to Sublessor for any attorney's fees incurred in defending, settling, or responding to any such claim.

4. **ADDITIONAL RENT:** If Sublessee fails to maintain the Property as paragraph 1 requires, pay any utility charges as paragraph 2 requires, or maintain insurance as paragraph 3 requires, Sublessor may, but has no obligation to, advance funds to pay such costs or fulfill such

obligations. Sublessee will immediately reimburse Sublessor for any such amounts Sublessor expends and any amount so expended will bear interest at the lower of 11% per annum or the highest permissible legal rate of interest.

5. **USE OF PROPERTY:** Sublessee may use the Property only for the following purposes: office use. Sublessee will use the Property in a careful, safe, and proper manner. Sublessee will not conduct, nor permit to be conducted, on the Property any business or any act which is contrary to or in violation of state, federal, or local law or ordinance or which would void insurance coverage. Sublessee will not permit the use or storage of hazardous or toxic substances on the Property unless Sublessee properly and promptly disposes of all such substances at a location off the Property and in accordance with all applicable governmental regulations. All hazardous or toxic substances will at all times remain Sublessee's property.

6. **EQUIPMENT, FURNISHINGS AND TRADE FIXTURES:** With the exception of the Existing Premises Personal Property, which Sublessor owns, all other equipment, furnishings, and trade fixtures placed on the Property which can be removed without damage to the Property are and will remain Sublessee's property. Any personal property which cannot be removed without damage to the Property will become part of the Property and become Sublessor's property. At the end of the Lease term, Sublessee will remove all of Sublessee's property and trade fixtures from the Property. Sublessee will leave the Property in a broom clean condition and will repair all damages or blemishes to the floors, walls, ceiling, and any other area of the Property arising from Sublessee's use of the Property, installation of any trade fixtures, or removal of any trade fixtures. Notwithstanding the preceding, if Sublessee is in breach of any of Sublessee's obligations to Sublessor, Sublessor has a lien on Sublessee's property to secure such obligation and Sublessor may elect to deny Sublessee the right to remove some or all of Sublessee's property or trade fixtures until Sublessee's obligation to Sublessor has been satisfied.

7. **SIGNS:** Any sign Sublessee places on the Property must comply with all ordinances and statutes and Sublessee will maintain such signs. All such signs are subject to Sublessor's approval.

8. **ENTRY BY SUBLESSOR FOR INSPECTION:** Sublessor has full access to the Property at all reasonable times for the purpose of inspecting the condition of the Property.

9. **ASSIGNMENT AND SUBLETTING:** Sublessee may not assign this Lease or any rights under this Lease or sublet any portion of the Property without Sublessor's prior written consent.

10. **DEFAULT:**

10.1. Each of the following events constitutes an event of default:

10.1.1. If Sublessee becomes insolvent in that Sublessee cannot or is not paying Sublessee's obligations as they become due;

10.1.2. If Sublessee's interest under this Lease is assigned by operation of law;

10.1.3. If Sublessee vacates the Property or ceases business operations from the Property for more than 10 consecutive days;

10.1.4. If Sublessee fails to deliver to Sublessor proof of Sublessee's insurance maintained pursuant to paragraph 3 within 10 days of Sublessor's demand for proof of such insurance;

10.1.5. If Sublessee breaches any of Sublessee's obligations under this Lease, including, but not limited to, maintenance of the Property pursuant to paragraph 1 or assignment of Sublessee's interest in violation of paragraph 9;

10.1.6. If Sublessee fails to pay any installment of rent or additional rent within 7 days of Sublessor's demand for same.

10.2. With the exception of the events of default described in subparagraphs 10.1.2 and 10.1.3, if any event of default continues for fifteen (15) days after Sublessor's notice of default or Sublessee fails in good faith to begin the correction of a breach of any other covenant or condition of this Lease to be performed by Sublessee within ten (10) days after notice to Sublessee of the nature of such breach, Sublessor may elect to terminate this Lease upon 5 days notice to Sublessee. As to the events of default described in subparagraphs 10.1.2 and 10.1.3, Sublessor may elect to terminate this Lease immediately upon the expiration of the time periods provided in those subparagraphs. Notwithstanding such termination Sublessee will be liable to Sublessor for damages for breach of Sublessee's obligations under this Lease as follows:

10.2.1. Sublessor may elect to recover from Sublessee Sublessor's actual damages sustained as a result of Sublessee's breach, including, but not limited to, Sublessor's lost rent after crediting any rent received for the Property from any other Sublessee during the remaining term of this Lease, Sublessor's expenses incurred in re-renting the Property, and any costs Sublessor incurs in making the Property ready for re-renting.

11. **RENEWAL OF LEASE:** This Lease will automatically renew for additional one-year terms unless either party gives written notice of intent to terminate the Lease not less than sixty (60) days before the end of a lease term.

12. **ADJUSTMENT TO RENT FOR RENEWAL TERM:** Rent during each additional lease term will be an amount equivalent to the rent due for the first 12 months of the prior lease term plus an amount equal to seventy-five percent (75%) of the percentage increase of the Consumer Price Index (CPI) for the month immediately preceding the beginning of the additional lease term over the CPI for the month immediately preceding the beginning of the prior term, but in no event will the rent be less than the rent for the 12 months immediately preceding the additional lease term. The CPI to be used for making these determinations is the CPI for All Items For Urban Consumers in the Detroit-Ann Arbor, Michigan area determined by the U.S. Department of Labor, Bureau of Labor Statistics, now set forth in its official publication based on all items for the period 1982-84 equaling 100. If the CPI for the month immediately preceding the additional lease term is not yet available, then, the CPI for the next preceding month for which the CPI is available will be used.

13. **AUTHORIZATION UNDER MASTER LEASE:** Sublessor expressly warrants and guarantees it has authority under the Master Lease to enter into this Sublease Agreement with Sublessee. Sublessor warrants that it shall comply with all terms of the Master Lease and to promptly pay all rent and other charges due Owner.

14. **NOTICE:** Any notice required or permitted to be given under this Lease is properly given if delivered personally to the party or if delivered by certified mail, postage fully prepaid, return receipt requested, addressed to the party at the party's last-known address. The effective date of any notice will be the date the notice is delivered personally or the day after the notice is mailed by certified mail.

15. **DAMAGE BY FIRE:** If the Property is damaged or destroyed by fire or other catastrophe, one of the following will occur:

15.1. If damage or destruction occurred through no fault of Sublessee, Sublessee's agents, employees, or owners and if Sublessor does not begin to repair or rebuild the Property within 180 days of the occurrence, Sublessee may elect to terminate this Lease, pay all rent accrued as of the date of the occurrence, and neither party will have any further obligation to the other.

15.2. If the insurance proceeds payable as a result of the occurrence are sufficient to pay the cost of repairing or rebuilding the Property, Sublessor will, within a reasonable time after receipt of such proceeds, begin repairing or rebuilding the Property and will proceed with reasonable diligence to restore the Property. If Sublessor so begins restoring the Property, this Lease will not terminate, but the rent will abate in full if the Property is wholly untenable and in part if the Property is partially untenable from the date of such occurrence to the completion of the restoration.

15.3. If the insurance proceeds payable as a result of the occurrence are not sufficient to pay the cost of repairing or rebuilding the Property, Sublessor may elect to terminate this Lease without any further liability to Sublessee or to repair or rebuild the Property. If Sublessor elects to terminate this Lease, Sublessee will promptly pay all rent accrued as of the date of the occurrence, and neither party will have any further obligation to the other. If Sublessor elects to repair or rebuild the Property, subparagraph 15.2 will govern the parties' rights and obligations during the period of restoration.

16. **WAIVER OF SUBROGATION:** Sublessor releases Sublessee and Sublessee's officers, directors, shareholders, partners, and employees, from liability for loss or damage to the Property and any property or improvements of which the Property is a part that is covered by valid and collectible fire insurance with an extended coverage endorsement. Sublessee releases Sublessor, Sublessor's officers, directors, shareholders, partners, and employees, from liability for loss or damage to any of Sublessee's property located on or about the Property that is covered by valid and collectible fire insurance with an extended coverage endorsement. This release applies only with respect to loss or damage actually recovered from an insurance company. This release is effective even if the loss or damage was caused by the fault or negligence of a party or any person for whom a party may be responsible. This release will not apply to loss or damage to either party's property unless the loss or damage occurs when the party's applicable insurance

policy contains a clause or endorsement to the effect that the release will not adversely affect or impair the policy or prejudice the right of the insured to recover under the policy. Each party will endeavor to obtain casualty insurance policies permitting the waiver of the right of subrogation.

17. **CONDEMNATION:** If the entire Property, or such portion of the Property as to render the use by Sublessee unprofitable or impractical, is taken or appropriated by virtue of eminent domain or similar proceedings, or be condemned for public or quasi-public use, Sublessee may elect to terminate this Lease. All rent and charges will be permanently abated from the date of taking. Except as provided above, in the event of a partial taking, this Lease will not terminate, but Sublessee will be entitled to an abatement of rent in a just and equitable amount. If the parties cannot agree on the amount of abatement, the amount will be determined by arbitration. All compensation for any taking of the Property or any portion thereof will belong to and be the property of Sublessor. Sublessee hereby assigns to Sublessor all rights with respect thereto; provided, however, nothing contained herein will prevent Sublessee from seeking in a separate action reimbursement from the condemning authority (if permitted by law) for moving expenses, expenses for removal of Sublessee's property, or loss of Sublessee's business good will, but if and only if such action does not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Sublessor.

18. **ALTERATIONS:** Sublessee may make such alterations, additions, or improvements to the Property as Sublessee deems necessary for Sublessee's purposes only with Sublessor's prior written consent. If Sublessor is required by the municipality or by court or other governmental authority to repair, alter, remove, reconstruct or improve any part of the Property, then Sublessor will complete such work at Sublessor's expense and Sublessee hereby waives any claim for damage because of such work.

19. **SUBORDINATION:** Sublessee agrees this Lease is and will remain subject and subordinate to all present and future mortgages affecting the Property and Sublessee will promptly execute and deliver to Sublessor such certificate in writing as Sublessor may request showing the subordination of this Lease to such mortgage or mortgager and in default of Sublessee so doing, Sublessor will have the authority to execute such certificate on behalf of Sublessee.

20. **LICENSES:** Sublessee hereby represents that Sublessee has and will maintain any and all licenses which may be required for Sublessee's business.

21. **RULES AND REGULATIONS:** Sublessee agrees to comply with all rules and regulations now in effect and promulgated by Sublessor in the future. Sublessor reserves the right to make all further and reasonable rules and regulations as in Sublessor's judgment may be necessary or desirable for the safety, care, appearance and cleanliness of the Property and for the preservation of good order and prestige.

22. **SUBLESSOR'S LIEN ON SUBLESSEE'S PROPERTY:** Sublessee hereby grants to Sublessor and Sublessor has a lien on all of Sublessee's property at any time during the term of this Lease used or situated on the Property to secure the payment of rent due under this Lease

and Sublessee's performance of all of Sublessee's obligations under this Lease. Sublessee's property includes, but is not limited to, any of the following located on the Property at any time during the Lease term: all of Sublessee's equipment, furnishings, office equipment, machinery, inventory, trade fixtures, signs, accounts receivable produced from Sublessee's business on the Property and all products, proceeds, and additions thereto (Collateral). If Sublessee defaults in any of Sublessee's obligations under this Lease, Sublessor has the right to take possession of and sell or retain all or any portion of the Collateral and apply the proceeds in reduction of Sublessee's obligations under this Lease. In addition to the above, Sublessor has all of the rights and remedies available to a secured party under the Uniform Commercial Code as adopted by the State of Michigan. Upon Sublessor's demand, Sublessee will promptly execute and deliver to Sublessor one or more financing statements acceptable to Sublessor evidencing Sublessor's secured interest. If Sublessee refuses to sign such a financing statement immediately upon Sublessor's written demand, Sublessee hereby appoints Sublessor Sublessee's authorized representative for purposes of signing a financing statement on Sublessee's behalf. If Sublessee fails, within 10 days after Sublessor's demand, to execute and deliver to Sublessor such financing statement or statements, Sublessee hereby appoints Sublessor as Sublessee's attorney in fact for the purpose of executing such financing statement or statements on Sublessee's behalf.

23. **NONWAIVER:** Failure of Sublessor to insist on the strict performance of any term or condition of this Lease will not constitute a waiver of Sublessor's right to later enforce such term or condition.

24. **HOLDING OVER:** It is expressly agreed and understood between the parties that if Sublessee holds over beyond a lease term without an express written renewal, then the tenancy becomes a month-to-month tenancy and the holding over will not constitute a renewal of this Lease.

25. **QUIET ENJOYMENT:** Sublessor agrees that upon Sublessee's prompt payment of the rents and compliance with all provisions of this Lease, Sublessee may peacefully and quietly have, hold and enjoy the Property during the basic term and all additional lease terms.

26. **ATTORNEYS FEES:** If either party commences any legal action to enforce this Lease or to obtain any relief for breach of this Lease, then in addition to any other relief available, the prevailing party in such action will be entitled to an award of actual reasonable attorneys fees incurred.

27. **MISCELLANEOUS PROVISIONS:**

27.1. This Lease and all attachments constitute the entire agreement between the parties and may be amended only by a written document executed by all the parties.

27.2. This Lease is governed by the laws of Michigan.

27.3. This Lease is binding on the parties, their heirs, representatives, assigns and successors.

27.4. If any term, condition or covenant of this Lease is, to any extent, invalid or unenforceable, the remaining provisions will not be affected and will continue to be valid and enforceable.

27.5. The captions, sections numbers and article numbers are for convenience only and in no way describe, limit or construe the provisions of this Lease.

27.6. The provisions of this Lease will be presumed to have been mutually drafted and negotiated by the parties. No presumption will apply against either party in interpreting this Lease in the event of any ambiguity.

27.7 Non-discrimination: Sublessor covenants and agrees that with respect to the use and access to the Leased Premises that are the subject of this Lease, it shall not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of these obligations as set out in Chapter 214 of Battle Creek ordinances shall be considered a material breach of this contract.

**SUBLESSORSUBLESSOR:**

By: \_\_\_\_\_  
Kara Beer  
Its: President

**SUBLESSEESUBLESSEE:**

By: \_\_\_\_\_  
Rebecca L. Fleury  
Its: City Manager