

**SITE LEASE AGREEMENT**

**THIS SITE LEASE AGREEMENT** (the "Lease") is made effective as of this \_\_\_\_\_ day of September, 2019 (the "Commencement Date"), by and between Hawley Cooperative Elevator Company, a Minnesota cooperative, of 316 5<sup>th</sup> Street, Hawley, MN 56549, hereinafter referred to as "Landlord", and \_\_\_\_\_, of \_\_\_\_\_, hereinafter referred to as "Tenant".

**WITNESSETH:**

**WHEREAS**, Landlord is the owner of the real property described on Schedule 1.2(a) (the "Leased Property"), which is the same property described in that certain Purchase Agreement bearing the same date by and between Landlord and Tenant, attached hereto as Schedule 1.2(b) (the "Purchase Agreement"); and

**WHEREAS**, pending closing under the Purchase Agreement, Landlord desires to lease to Tenant, and Tenant desires to rent from Landlord, said Leased Property described in Schedule 1.2(a).

**NOW THEREFORE**, the parties to this Lease agree as follows:

1. **THE LEASED PROPERTY.** In consideration of the obligation of Tenant to pay rent herein provided, and in consideration of the other terms, provisions and covenants hereof, Landlord demises and leases to Tenant, and Tenant hereby takes from Landlord the Leased Property described in Schedule 1.2(a) hereof.

2. **THE TERM OF THE LEASE.** Landlord leases to Tenant and Tenant takes from Landlord the Leased Property for a term commencing on the effective date of this Lease and terminating upon the earlier of: (i) forty-five (45) days, or (ii) the closing of the Purchase Agreement contemplated therein.

3. **TAXES, ASSESSMENTS.** All general real estate taxes and installments of special assessments coming due and assessed against the Leased Property shall be paid in accordance with the Purchase Agreement between Landlord and Tenant, as shown in Schedule 1.2(b).

4. **RENT.** Tenant agrees to pay to Landlord as rent for the premises the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in wired funds, or by cashier's check, due and payable upon execution of this Lease.

In the event that the sale of the Leased Property to Tenant does not close within forty-five days from the Commencement Date, Tenant agrees to pay to Landlord as rent for the premises the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in wired funds, or by cashier's check, due and payable upon the forty-sixth day following the Commencement Date, and upon the forty-sixth day following the expiration for any successive forty-five (45) day terms until the closing of the sale to

Tenant is consummated. Rent for any successive forty-five (45) day term after the initial term shall be prorated to the date of closing. All earnest money paid by Tenant to Landlord under the Purchase Agreement attached hereto as Exhibit 1.2(b) shall be treated as Tenant's security deposit under this Lease Agreement.

5. **USE OF THE LEASED PROPERTY.** Tenant covenants and agrees that it will not knowingly permit any part of the premises to be used for unlawful, immoral, or hazardous purposes, nor operate or conduct its business in a manner constituting a nuisance of any kind, but shall use the premises solely for the purposes stated herein, and activities necessary to accomplish those purposes. Tenant further covenants and agrees that there shall be no other use of the Leased Property without first securing the written consent of the Landlord.

The obligations of the Tenant to perform under this lease shall be conditioned on the Tenant obtaining the necessary permits and licenses, if required, and the proper utilities, which are necessary to allow the Tenant to conduct such activities upon the Leased Property.

Tenant acknowledges and agrees that any and all commodities remaining on Leased Property and improvements thereto, shall remain the property of Landlord, and Landlord reserves the right to enter upon the Leased Property for purposes of marketing, moving, relocating, and selling such commodities.

6. **ALTERATIONS AND IMPROVEMENTS.** Tenant, at Tenant's expense, shall have the right following Landlord's written consent, to make improvements to all or any part of the Leased Property from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner utilizing good quality materials properly initiated and constructed by licensed contractors, evidenced by proper Hawley, Minnesota city contractor permit and meeting Hawley, Minnesota city building codes and regulations.

Tenant shall have the right to place and install moveable personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by the Tenant thereafter, shall remain Tenant's property free and clear of any claim by the Landlord during the term of this Lease. Tenant shall have the right to remove the same at any time during the term of this Lease and must repair any damage caused by the removal of such personal property.

7. **COVENANT AGAINST WASTE.** Throughout the term of this Lease, Tenant shall take good care of the Leased Property and keep it free from waste. Tenant shall keep the Leased Property in as good condition as at the Commencement Date.

8. **SIGNS.** Tenant shall have the right, during the existence of this Lease, to attach fixtures and structures or signs in or upon the Leased Property, in compliance with all applicable zoning ordinances. Said fixtures and structures or signs so placed in or upon or attached to said Leased Property shall be and shall remain the property of the Tenant, and shall be removed or otherwise disposed of by Tenant within thirty (30) days after the effective date of the termination of this Lease. Tenant shall be responsible for

promptly repairing any damage caused by the removal. Landlord and Tenant understand and agree that such removal will not be required in the event Landlord and Tenant proceed to closing under the terms of the Purchase Agreement between the parties.

9. **UTILITIES AND MAINTENANCE.** Tenant shall pay all utilities used by Tenant on the Leased Property, if any. Snow removal, lawncare, and general maintenance of the Leased Property, as such maintenance obligations may arise during the term of this Lease, shall be the sole responsibility of Tenant. Tenant covenants and agrees to maintain the Leased Property in the condition which Tenant took possession, and shall return the Leased Premises to its original condition upon expiration of this lease at its sole cost and expense, in the event the sale of the Leased Property to Tenant is not consummated. The parties agree to conduct a walkthrough and physical inspection of the Leased Property prior to the Commencement Date, and will compile a Tenant Checklist of all items in need of maintenance and/or repair, that may exist at the start of the Commencement Date. Said maintenance and repair needs that exist prior to the Commencement Date, as disclosed on the Tenant Checklist, shall be cured at the sole discretion and responsibility of Landlord, and in the event Landlord elects to cure said repair and/or maintenance obligations, the cost of said curation shall not be assessed to Tenant in any way.

10. **ASSIGNMENT, SUBLEASE.** Tenant may not assign or sublease any interest in the Leased Premises without the prior written consent of Landlord. Any attempted assignment or sublease without Landlord approval shall be null and void. Any assignment or sublease consented to by the Landlord will not release Tenant of its obligations under this Lease.

11. **CASUALTY** In the event that a substantial portion of the Leased Property should be damaged or destroyed by fire or other casualty, Tenant shall give written notice thereof to Landlord within fifteen (15) days of such event. Tenant shall then have the option to either (i) continue the Lease after making the necessary repairs to the Leased Property or (ii) terminate this Lease.

12. **INSURANCE AND INDEMNIFICATION.**

(a) **Liability Insurance.** Tenant shall carry general public liability insurance covering its activities on or about the Leased Property, and its business conducted on the Leased Property, which shall be in an amount of not less than \$5 Million for property damage; \$5 Million for bodily injury for any person; and \$5 Million for bodily injury per any occurrence. Landlord shall be named as an additional insured on this insurance policy. Tenant shall provide Landlord with copies of its certificates of insurance. Said certificates shall provide that coverage will not be cancelled without 30 days prior written notice by insurer to Landlord.

(b) **Property Insurance.** Tenant shall be responsible for all risk insurance on the Leased Property in an amount acceptable to the Tenant.

(c) Indemnification. Tenant agrees to indemnify, save and hold harmless the Landlord from any and all claims of any nature, including all cost, expenses and attorney's fees, which may in any manner, result from or arise out of Tenant's use under this agreement, except for claims from or arising out of the Landlord's negligence. Tenant also agrees to indemnify, save and hold harmless Landlord for all costs, expenses and attorney's fees incurred in establishing and litigating the indemnification coverage provided herein.

13. CONDEMNATION CLAUSE. If the Leased Property is taken or ingress and egress is prevented for any public or quasi-public use under any law, ordinance, or regulation, or by right of eminent domain or by private purchase in lieu thereof, Tenant, at its option, may terminate this Lease.

14. THE COVENANT OF QUIET ENJOYMENT. So long as Tenant duly pays the rent required by this Lease and performs all of the covenants and provisions hereof, Landlord covenants that Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Property for the term aforesaid, except as otherwise provided in this Lease.

Landlord shall have the right to enter the Leased Property at any reasonable hour to make inspections, or to provide necessary services, provided Landlord should not thereby unreasonably interfere with Tenant's business on the Leased Property. As provided by law, Landlord shall also have the right to enter the Leased Property for any fire, rescue or any other emergency that would require entry, at any time, without Lessee's consent.

15. EVENTS OF DEFAULT BY THE TENANT. The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay any installment of rent when due and owing, and such failure shall continue for a period of five (5) days after Landlord sends a written notice of nonpayment to Tenant.
- (b) Tenant shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rent and such failure shall continue for a period of ten (10) days after Landlord sends Tenant written notice of such failure.
- (c) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- (d) Tenant shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant hereunder.

- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant.
- (f) Tenant attempting to sublease or assign this Lease without obtaining written consent of Landlord in advance.

16. **RE-ENTRY**. Upon occurrence of any such events of default by Tenant, Landlord shall have the choice to re-enter, take possession, and re-let the Leased Property for the benefit of Tenant, terminate the Lease, or exercise any rights available to Landlord at law or in equity.

17. **REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.**

(a) **Representations and Warranties**. The representations and warranties of the Landlord and Tenant contained in the Purchase Agreement are incorporated herein by reference as if fully set forth in this Lease.

(b) **Indemnification by Landlord**. Landlord hereby agrees to indemnify and hold Tenant harmless against and in respect of any and all losses, suits, obligations, fines, damages, judgments, injuries, administrative orders, consent agreements and orders, penalties, actions, causes of action, notices of potential responsibility or requests for response from government agencies, response costs, charges, costs, and expenses, including without limitation reasonable attorneys' fees and reasonable consultants' fees, and including costs and expenses (including reasonable attorney's fees, including attorney's fees incurred in enforcing the Landlord's obligation under this Paragraph 17), claims, including but not limited to claims arising out of the release or threat of release of hazardous substances, loss of life, injury to persons, property, or business, environmental contamination or damages to natural resources or to water supplies, whether based on tort, contract, implied or express warranty, statute, regulations, common law, or otherwise, which arises out of or is related to the presence on, remediation of, or the actual, alleged or threatened release to or from any of the Leased Property of any hazardous substances or which resulted from occurrences during Landlord's possession of the Leased Property.

(c) **Indemnification by Tenant**. Tenant hereby agrees to indemnify and hold Landlord harmless against and in respect of any and all losses, suits, obligations, fines, damages, judgments, injuries, administrative orders, consent agreements and orders, penalties, actions, causes of action, notices of potential responsibility or requests for response from government agencies, response costs, charges, costs, and expenses, including without limitation reasonable attorneys' fees and reasonable consultants' fees, and including costs and expenses (including reasonable attorney's fees, including attorney's fees incurred in enforcing the Tenant's obligation under this Paragraph 17), claims, including but not limited to claims arising out of the release or threat of release of hazardous substances, loss of life, injury to persons, property, or business, environmental contamination or damages to natural resources or to water supplies, whether based on tort, contract, implied or express warranty, statute, regulations, common law, or otherwise, which arises out of or is related to the presence on, remediation of, or the

actual, alleged or threatened release to or from any of the Leased Property of any hazardous substances or which resulted from occurrences during Tenant's possession of the Leased Property.

18. **SURVIVAL OF WARRANTIES AND INDEMNIFICATION.** Both Landlord's and Tenant's warranties and indemnification obligations will survive the termination of this Lease.

19. **INDEMNIFICATION OF STEFFES GROUP, INC.** Tenant agrees to indemnify and hold harmless Steffes Group, Inc., their past and present agents, officers, directors, employees, servants, attorneys, insurers, affiliates, representatives, predecessors, successors, assigns, and all of them, from any and all manner of claims, litigation, actions, proceedings, causes of action, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, assessments, judgments, damages (including without limitation all claims for monetary loss and/or equitable relief), deficiencies, penalties, fines, losses, costs or expenses, including attorney's fees, known or unknown, suspected or unsuspected, fixed or contingent, that may arise from the sale of the Leased Property through auction services provided by Steffes Group, Inc.

20. **NOTICES.** All notices from either party must be mailed certified or registered mail, return receipt requested, to the address set forth in the notice section of the Purchase Agreement, or to such other address as the party shall specify from time to time by written notice.

21. **ASSIGNMENT, MORTGAGE OR SUBLEASE.** Tenant shall not assign, mortgage, pledge, or encumber this Lease or sublet the Leased Property in whole or in part, or permit the Leased Property to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior consent in writing by Landlord in each instance.

22. **MECHANICS LIENS/CONSTRUCTION LIENS.** Neither the Tenant or anyone claiming through the Tenant shall have the right to file mechanics liens, construction liens, or any other kind of lien on the Leased Property and this Lease constitutes notice that such liens are invalid whether this Lease is filed or not. Tenant also agrees to pay for all costs including reasonable attorney's fees that Landlord would have to pay to clear all liens filed on the premises due to Lessee negligence.

23. **NOTICE.** Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return requested, addressed as follows:

If to Landlord to:

Hawley Cooperative Elevator Company  
ATTN: Greg Nelson  
P.O. Box 9  
Hawley, MN 56549

If to Tenant to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Landlord and Tenant shall each have the right from time to time to change the place of notice that is to be given under this paragraph by written notice thereof to the other party.

24. **SURVIVAL OF REPRESENTATIONS, WARRANTIES, AGREEMENTS AND CLAIMS.** All representations, warranties and agreements made in connection with this Lease will survive the termination of the Lease. The parties will therefore be able to pursue claims related to those representations, warranties, and agreements after the termination of this Lease, unless those claims are barred by the applicable statutes of limitation. Similarly, any claims that the parties have against each other that arise out of actions or omissions that take place while this Lease is in effect will survive the termination of this Lease. This means that the parties may pursue those claims even after the termination of this Lease, unless they are barred by the applicable statutes of limitation.

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

26. **BINDING EFFECT.** The terms, provisions, covenants, and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, upon their assigns, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

27. **NO WAIVER.** No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be constructed as a waiver of a subsequent breach of the same covenant, term or condition.

28. **ENTIRE AGREEMENT.** This Lease, the Purchase Agreement, the exhibits to them, and the other documents required in connection with the Lease and Purchase Agreement, set out the entire agreement between the parties regarding the Leased Property, and the other matters set out in this Lease and said other documents. The parties agree that there are no other oral or written understandings or agreements between them regarding these matters.

29. **INTERPRETATION.** This Lease will be interpreted in a fair and neutral manner, without favoring one party over the other. No provision of this Lease will be interpreted for or against any party because that party or its legal representative drafted the provision.

30. **CONSENT.** Neither Landlord nor Tenant shall unreasonably withhold or delay its consent with respect to any matter for which each respective party's consent is required or desirable under this lease.

31. **TENANT ACCEPTANCE.** Tenant understands the Leased Property is accepted "as is" and Tenant has inspected and accepts the Leased Property in its present condition, as noted any defects on Tenant's Checklist as provided above.

32. **HEADINGS.** The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

33. **AMENDMENT, MODIFICATION, OR WAIVER.** No amendment, modification, or waiver of any provision of this Lease will be effective unless it is made in writing, unless it is signed by the parties to be bound by it, and unless it clearly specifies the extent and nature of the amendment, modification, or waiver.

34. **SEVERABILITY.** If any provision of this Lease is held to be invalid or unenforceable under any applicable law, that holding will not affect the validity or enforceability of the rest of the Lease. Also, any provisions of this Lease held to be invalid or unenforceable will not be completely invalidated, but will instead be considered amended to the extent necessary to remove the cause of the invalidity and unenforceability.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year above written.

LANDLORD:

TENANT:

HAWLEY COOPERATIVE ELEVATOR  
COMPANY

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

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

**SCHEDULE 1.2(a)**

1. See attached legal description and list of site improvements.

**SCHEDULE 1.2(b)**

1. See attached Purchase Agreement dated \_\_\_\_\_.