

**RESOLUTION NO. 1279**

**A RESOLUTION OF THE CANBY CITY COUNCIL APPROVING A LEASE AND SALE AGREEMENT WITH T5 EQUITIES LLC FOR THE FORMER LIBRARY BUILDING LOCATED AT 292 N HOLLY STREET.**

**WHEREAS**, the City of Canby owns the vacant 10,961 square foot former library building and wants it back on the tax rolls, attracting new businesses, shoppers and visitors downtown; and

**WHEREAS**, on December 6, 2017, the Canby City Council held a public hearing and declared this real property, described as 292 N. Holly, Tax Map 3S-1E-33CA, Tax Lot Number 7800, no longer needed for public use and authorized the transfer of the City's fee simple interest in the real property; and

**WHEREAS**, City Council wishes to enter into a contract with the development firm T-5 Equities to lease, retrofit and ultimately purchase the building from the City within four years for \$1,050,000; and

**WHEREAS**, the developer commits to investing at least \$500,000 in extensive renovations to the interior and exterior of the building to create creative office space and retail/restaurant space.

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the City of Canby, as follows:

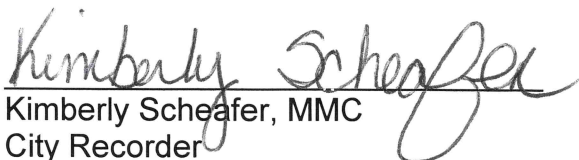
1. The City approves the lease and sale agreement with T5 Equities, attached hereto as Exhibit "A", and authorizes the City Administrator to sign it on behalf of the City and take any and all actions necessary to facilitate the transfer from the city to this private developer.

This resolution will take effect on January 3, 2018.

ADOPTED this 3<sup>rd</sup> day of January 2018 by the Canby City Council.

  
\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

**CITY OF CANBY, OREGON  
AND  
T5 EQUITIES LLC**

**COMMERCIAL LEASE**

This Lease is made and entered into on January 3, 2018 (the "Commencement Date"), by and between the City of Canby, an Oregon Municipal Corporation ("Landlord"), and T5 Equities LLC, an Oregon Limited Liability Company ("Tenant").

This Lease is made pursuant to ORS 271.310, which authorizes units of local government to enter into lease agreements for real property not needed for public use, or when the public interest may be furthered by entering into such a lease agreement.

**RECITALS**

A. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the real property and improvements described and depicted in the attached Exhibit A, consisting of an approximately 10,961 square foot commercial building (the "Building") and 0.26 acre lot (the "Lot") located at 292 North Holly Street, Canby, Oregon (collectively, the "Premises"), together with any and all rights, privileges, easements, access privileges, and appurtenances necessary to design, construct and sublease approximately eight (8) to ten (10) office spaces with shared common areas and additional retail units along the Building's street frontages restaurants, pubs and other compatible retail business endeavors.

B. Tenant intends to undertake improvements to the Premises and related site improvements as generally depicted on the conceptual site plan attached hereto as Exhibit B (collectively, the "Tenant Improvements"). The Tenant Improvements and any future alterations, additions, replacements, or modifications to the Premises during the Initial Term (defined in Section 2.1) or any subsequent Extended Term (defined in Section 2.2) of this Lease are collectively referred to in this Lease as the "Improvements."

C. The Parties enter into this Lease under assurances that Tenant commits to invest no less than \$500,000.00 of its own in funds in the development of the Project during the Initial Term, including costs related to design, planning, permitting, demolition, contractors, materials and marketing.

D. The Parties enter into this Lease with assurances that Tenant has the right to purchase the Premises at any time during the term of this Lease, including both the twenty-four (24) month Initial Term and either applicable twelve (12) month Extended Term, unless this Lease is first terminated by either Party. The Parties agree and acknowledge that Tenant has reasonably relied upon such assurances.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

## ARTICLE 1

### Premises

**Premises Lease.** Landlord does hereby lease to Tenant, and Tenant does hereby take and lease from Landlord, the Premises for the term and on the rents, conditions, and provisions herein.

## ARTICLE 2

### Lease Term

#### 2.1 Commencement Date and Initial Term.

**2.1.1 Commencement Date.** The Commencement Date shall be the date this Lease is signed by both Parties.

**2.1.2. Initial Term.** The initial term of this Lease (the "Initial Term") shall begin twenty four (24) hours after the Commencement Date. The Initial Term shall end twenty four (24) months after the Commencement Date.

#### 2.2 Extended Terms.

**2.2.1. Automatic Extension of Initial Term into the First Extended Term.** This Lease shall automatically renew at the end of the twenty-four month Initial Term for an additional term of one (1) year on the terms and conditions as provided herein (the "First Extended Term"), unless Tenant provides written notice to Landlord of its intent not to renew at least six (6) months prior to the expiration of the Initial Term.

**2.2.2. Automatic Extension of First Extended Term into Second Extended Term.** This Lease shall automatically renew at the end of the First Initial Term for a second additional term of one (1) year on the terms and conditions as provided herein (the "Second Extended Term"), unless Tenant provides written notice to Landlord of its intent not to renew at least six (6) months prior to the expiration of the First Extended Period.

**2.3 Early Termination.** Notwithstanding anything in this Lease to the contrary, Tenant has the right to terminate this Lease within the time periods and for the reasons set forth below:

**2.3.1 Inspection and Approval Period.** From the Commencement Date through the ninetieth (90th) day after the Commencement Date (the "Inspection and Approval Period"), Tenant, at its sole cost and expense, may: (i) obtain surveys, economic and physical feasibility studies, environmental assessments and any other appraisals, inspections, tests, studies, surveys or assurances to show to the satisfaction of Tenant that the Premises is usable by Tenant for the purpose of constructing and operating the Tenant Improvements, including but not limited to whether the Tenant Improvements can be constructed and operated at a cost and expense acceptable to Tenant; and (ii) obtain the valid and irrevocable grant of all necessary plan

approvals, building permits, licenses, variances, and other approvals necessary for Tenant to construct and operate the Tenant Improvements (collectively, the "Approvals"). Landlord agrees to fully cooperate with Tenant's efforts to submit for and to obtain the Approvals. If Tenant is not satisfied with any of the items or matters set forth under clause (i) above, Tenant may terminate this Lease during the Inspection and Approval Period by providing written notice to Landlord. If requested by Landlord, Tenant shall provide Landlord with all surveys, studies, analyses, reports, studies and all other documents generated pursuant to clause (i), above.

**2.3.2 Title Review Period.** From the Commencement Date through the thirtieth (30th) day after the Commencement Date (the "Title Review Period"), Tenant, at its sole cost and expense, may obtain (i) a preliminary title report covering the Premises and copies of all special exceptions referenced therein (collectively, the "Title Report") from a title insurance company selected by Tenant (the "Title Company") and (ii) a survey of the Premises (the "Survey"), if desired by Tenant, and shall notify Landlord in writing of any objectionable matters or defects appearing in the Title Report or on the Survey which adversely affects the use of the Premises for the Project (individually and collectively, the "Objectionable Matters"). Tenant shall share a copy of the Title Report and Survey with Landlord. If one or more of the Objectionable Matters cannot or will not be cured by Landlord within twenty (20) days of such notice, then Tenant has the right to terminate this Lease during the Title Review Period by providing written notice thereof to Landlord.

**2.3.3 Leasehold Title Insurance Policy.** Within twenty (20) days after expiration or waiver of the Title Review Period or the Inspection and Approval Period, whichever is later (the "Title Insurance Policy Period"), Landlord shall cause the Title Company to issue to Tenant, at Tenant's cost and expense, a leasehold owner's policy of title insurance pursuant to the Title Report with an insured amount determined by Tenant, containing no exceptions other than the standard preprinted exceptions and any other exceptions agreed to and accepted by Tenant ("Non-objectionable Matters"), and with those endorsements determined by Tenant (the "Title Policy"). If the Title Company does not issue the Title Policy to Tenant by the expiration of the Title Insurance Policy Period through no fault of Tenant, Tenant has the right to: (a) waive the requirement for a Title Policy; (b) seek title insurance from another title insurance company; or to (c) terminate this Lease by providing written notice to Landlord.

**2.4 Mutual Agreement to Terminate for Public Interest.** This Lease may be terminated by the mutual written consent of both Parties for any reason deemed in the public interest. Upon reaching such mutual written consent, Tenant shall provide fourteen (14) days' written notice to Landlord of Tenant's intent to vacate the Premises.

## ARTICLE 3

### Rent

**3.1 Rent During Initial Period.** The annual rent during the Initial Term shall be One and no/100 Dollars (\$1.00).

**3.1.1 Payment of Rent During Initial Term.** Rent is due and payable in one lump sum for the Initial Term, the receipt of which is hereby acknowledged.

**3.2 Rent During Extended Terms.** Unless this Lease is not extended beyond the twenty-four (24) month Initial Term as provided above, annual rent for both the First Extended Term and the Second Extended Term, as applicable, shall increase to \$131,760.00 per year.

**3.2.1 Payment of Rent During Extended Terms.** Rent during both the First Extended Term and Second Extended Term, as applicable, is payable in advance in monthly payments of \$10,980.00, commencing on the first day of the First Extended Term and before the first day of each month thereafter throughout the remainder of this Lease, without notice or demand and without abatement, deduction or setoff except as otherwise provided in this Lease. Rent and all other amounts payable to Landlord under the terms of this Lease must be delivered to Landlord at the following address: City of Canby, PO Box 930, Canby, Oregon 97013, or at another place that Landlord may designate by notice to Tenant, in lawful money of the United States.

## ARTICLE 4

### Use and Compliance with Legal Requirements

**4.1 Permitted Use.** Tenant will use and, once constructed and completed, shall occupy the Premises during the Construction Period, Initial Term and any Extended Terms, as applicable, in compliance with all applicable local, state and federal laws.

**4.2 No Waste.** Tenant will not cause or permit any waste, damage, disfigurement, or injury to the Premises or the Improvements, but Tenant will have the right to demolish and remove any and all the Improvements on the Premises pursuant to and in accordance with the terms of Article 5, below.

## ARTICLE 5

### Improvements

**5.1 Tenant Commitment to Invest in Improvements.** Tenant agrees to invest no less than \$500,000.00 of its own in funds in the development of the Tenant Improvements during the Initial Term, including costs related to design, planning, permitting, demolition, contractors, materials and marketing. All such investments in the Premises shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld. Landlord will notify Tenant of any disapproval within fifteen (15) days of receiving any submission for approval. Landlord's failure to disapprove any proposed investment within this fifteen (15) day period will constitute approval of the proposed investment. Tenant shall develop the building into storefront retail spaces and professional/creative office spaces, which will be built to the high-end quality and finish level of other Tenant projects. Landlord agrees to provide assistance to Tenant in marketing the office space and retail spaces by: listing the property on Landlord's "Available Properties" website; partnering with Tenant to host a Grand Opening ceremony; providing market and promotional materials that share the benefits of relocation to Canby; providing assistance to Tenant in Canby Main Street promotional activities; and consulting with and assisting Tenant in Tenant's pursuit of redevelopment, rehabilitation and/or adaptive re-use grant funds from organizations and agencies outside of the City of Canby.

**5.2. Records Retention.** Tenant shall retain and provide to Landlord invoices, receipts and other such documentation sufficient to support the level of financial investment in the Premises claimed by Tenant as provided in this Article 5. The cost of regular upkeep, maintenance and management of the Premises shall not be attributable to Tenant's \$500,000.00 commitment to invest in the Improvements.

**5.3 Landlord Access to Improvements Records.** Tenant shall establish and maintain a reasonable accounting system that enables Landlord to readily identify Tenant assets, expenses, investment in the Premises and use of funds. Landlord and its authorized representatives shall, upon fourteen (14) days prior written notice to Tenant and twice per calendar year, have the right to examine and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Lease kept by or under the control of Tenant, including, but not limited to those kept by Tenant's employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Landlord shall maintain the confidentiality of and shall not disclose any such information Tenant is required to provide under in this section except to the extent required by law.

**5.4 Length of Improvements Records Retention.** Tenant shall, at all times during the term of this Lease and for a period of ten (10) years after the expiration or earlier termination of this Lease, maintain such records, together with such supporting or underlying documents and materials. Tenant shall at any time requested by Landlord, whether during or after the expiration or earlier termination of this Lease, and at Tenant's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Landlord. Such records shall be made available to Landlord during the entirety of this period at normal business hours at Tenant's principal place of business and subject to a fourteen (14) day written notice.

**5.5 Records Access.** Tenant shall ensure that Landlord has the same access rights with Tenant's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between Tenant and any subcontractors by Tenant to the extent that those subcontracts or agreements relate to fulfillment of any of Tenant's obligations under the terms of this Lease.

**5.6 Construction, Modification, and Demolition of Improvements.** Tenant has the right, at any time during the Initial Term and any Extended Terms, as applicable, at its sole cost and expense (including all building permit fees, system development charges and any and all other associated construction costs), and after consulting with Landlord and receiving Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to construct, modify, demolish and rebuild Improvements on the Premises, and as follows:

(a) If Tenant desires to demolish any portion of the Building, Tenant shall obtain

Landlord's written pre-approval for such demolition, which shall not be unreasonably withheld. Tenant shall replace the demolished portion thereof with improvements having a value at least as great as the portion demolished, and shall provide written documentation establishing, satisfactory to Landlord in Landlord's sole discretion, the equivalent or increased value of the new improvements; and

(b) Upon completion of any improvements for which the services of an architect or engineer were used, Tenant will provide Landlord with as-built plans for the completed work.

For any approval required by Landlord under this section, Landlord will notify Tenant of any disapproval within fifteen (15) days of receiving any submission for approval. Landlord's failure to disapprove any submission hereunder within this fifteen (15) day period will constitute approval of the proposed investment.

**5.7 Title to Improvements.** Title to all Improvements constructed by Tenant will be and will remain in Landlord during the Initial Term and any applicable Extended Terms of this Lease. Such Improvements may be demolished, changed, altered, or removed by Tenant as provided in Section 5.5 above. As further provided in Section 21, upon Tenant's purchase of the Premises, title and all ownership of the Improvements shall pass to, vest in, and belong to Tenant without further action on the part of either party and without any additional cost or charge to Landlord.

**5.8 Construction of Improvements.** Tenant agrees to notify Landlord in writing of Tenant's intention to commence construction of an Improvement at least thirty (30) days before commencement of any such work. Landlord agrees to cooperate with Tenant in all respects in connection with Tenant's construction of any Improvements.

## ARTICLE 6

### Taxes and Utilities

**6.1 Payment of Taxes.** Tenant shall be solely responsible for payment of any applicable local property taxes during the term of this Lease. If Tenant exercises its right to purchase the Premises under Article 21 of this Lease, below, no deed or bill of sale shall be executed by Landlord until all applicable local property taxes and related charges are fully paid by Tenant.

**6.2 Utilities and Services.** Tenant will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Tenant on the Premises as they become due, from and after the Commencement Date.

## ARTICLE 7

### Insurance

**7.1 Property Insurance.** Tenant, at its sole cost and expense, will keep the Premises

and all Improvements insured against loss or damage by property insurance written on the standard Insurance Services Office (ISO) "special-form" policy, or its nearest equivalent in use at the time. Tenant will obtain endorsements to its special-form policy to maintain the following types of coverage to the extent required by Landlord and available at commercially reasonable rates: (a) flood and (b) earthquake. The property insurance must cover the full replacement value of the Improvements, less a deductible not to exceed \$2,500.00.

**7.2 Liability Insurance.** Tenant, at its sole cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss of at least \$2 million combined single-limit coverage for personal injury and property damage. The insurance policy must be primary to any insurance available to Landlord, and must name Landlord as an additional insured. Tenant's insurance carriers must be reputable insurance companies reasonably acceptable to Landlord, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as Tenant will provide Landlord with certificates of insurance concurrently with the execution of this Lease and upon request.

## ARTICLE 8

### Release and Indemnification

**8.1 Release.** Tenant is and will be in exclusive control of the Premises and the Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise. Tenant hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Notwithstanding the immediately preceding, Landlord acknowledges that it remains responsible for liability to the extent that the liability arises from Landlord's own gross negligence or willful misconduct.

**8.2 Indemnification.** Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees) that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Initial Term and any applicable Extended Terms:

(a) Any work, act or omission done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;



(b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

(c) Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

(d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements.

## ARTICLE 9

### Repairs and Maintenance

**9.1 Tenant Obligation.** Tenant, at its sole expense, must maintain, repair and replace the Premises and the Improvements as and when needed so as to keep them in a clean and attractive condition, and in good condition and repair, throughout the Initial Term and all applicable Extended Terms. Tenant's obligations extend to both structural and nonstructural items and to all maintenance, repair, landscaping and replacement work.

**9.2 Landlord Obligation.** Landlord is not required to furnish to Tenant, the Premises, or the Improvements: any facilities, utilities, or services. Landlord is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements.

**9.3 Limited Assignment of Rights.** Landlord assigns to Tenant, any rights that Landlord may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Tenant as a result of the damage.

## ARTICLE 10

### Signage

Tenant is permitted to install signage on the Premises and the Improvements as long as Tenant complies with all applicable legal requirements.

## ARTICLE 11

### Damage and Destruction

If any Improvements on the Premises are damaged or destroyed by fire or other casualty during the Initial Term or any applicable Extended Term of this Lease, Tenant must (a) promptly restore the damaged Improvements to a comparable condition existing before the casualty, leaving the Premises in a clean, attractive, and safe condition.

## **ARTICLE 12**

### **Assignment and Subletting**

Tenant must not sell, assign, or transfer this Lease or any interest therein (each a "Transfer") without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord's consent to a Transfer will in no event release Tenant, any assignee, or any guarantor from their respective liabilities or obligations under this Lease. Notwithstanding the foregoing, Landlord acknowledges that Tenant is leasing the Premises for the purposes of subleasing and Landlord consents to the same; provided, however, that Tenant shall not allow any sublease which is in violation of the Lease or any applicable law or ordinance. Upon written request by Landlord, Tenant will promptly deliver to Landlord complete copies of any and all subleases. Any such subleases shall be consistent with the terms of this Lease, and contain a provision subjecting the subtenant(s) to the terms of this Lease. Landlord shall maintain the confidentiality of and shall not disclose any of the information of any sub leases except to the extent required by law.

## **ARTICLE 13**

### **Landlord Mortgages and Subordination**

Landlord may not sell, transfer, assign, or encumber its interest in the Premises or the Improvements without the prior written consent of Tenant, which consent shall not be unreasonably withheld. Tenant's consent will in no event release Landlord or any guarantor or successor in interest from their respective liabilities or obligations under this Lease. Upon written request by Tenant, Landlord will promptly deliver to Tenant complete copies of any and all encumbrance documents.

## **ARTICLE 14**

### **Default**

The occurrence of any one or more of the following constitutes an event of default under this Lease:

- (a) Failure by Tenant to obtain and maintain any insurance, or provide evidence of insurance, as required by the terms of this Lease, and such failure continues and is not remedied within ten (10) days after written notice of such default thereof is given to Tenant;
- (b) Failure by Tenant, whether by action or inaction, to comply with any material term or condition or fulfill any material obligation under this Lease, and such failure continues and is not remedied within thirty (30) days after written notice thereof is given to Tenant; provided, however, that if the failure is of such a nature that Landlord concludes it cannot be cured within said 30-day period, then this provision is satisfied if Tenant begins the cure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to completion.

## ARTICLE 15

### Remedies

**15.1 Remedies.** Upon the occurrence of default and after the notice process provided in Article 14 above, Landlord may remedy the default and demand reimbursement from Tenant.

**15.2 Landlord's Self-Help Right.** If Tenant at any time (a) fails to make any payment required under this Lease, or (b) fails to perform any other obligation on its part to be made or performed under this Lease, then after the applicable written notice to Tenant and after Tenant's opportunity to cure period as further described in Section 14 (b), (or without such notice and opportunity to cure in the event of an emergency) Landlord may, but is under no obligation to, (i) pay payment required of Tenant under the terms of this Lease, (ii) perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, or iii) terminate this Lease and sue Tenant for any damages incurred by Landlord. In the event Landlord terminates this Lease, Landlord shall have the right to notify and require all subtenants in the Premises to pay Landlord under any Leases. All payments so made by Landlord in connection with the performance of any such act will constitute additional rent payable by Tenant under this Lease and must be paid to Landlord on demand.

**15.3 No Waiver.** No failure by the parties to insist on the strict performance of any of the terms of this Lease or to exercise any right or remedy, and no acceptance of full or partial Rent during any such breach constitutes a waiver.

## ARTICLE 16

### Sale by Landlord and Limitation of Landlord's Liability

If, after obtaining the required Tenant consent under Article 13, above, the Landlord under this Lease, or any successor owner of the Premises, sells, transfers, assigns, or conveys the same to another governmental entity or other party, the new owner shall assume the obligations of Landlord under this Lease, and all liabilities and obligations on the part of the original Landlord or the successor owner under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new owner. Tenant agrees to attorn to the new owner.

## ARTICLE 17

### Holdover and Surrender

**17.1 Condition of Premises and Improvements.** Upon the expiration or earlier termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises and the Improvements in good condition and repair and broom clean (reasonable wear and tear excepted), free and clear of all occupancies. Tenant's obligations under this Article will be subject to the provisions of Article 11 relating to damage or destruction.

**17.2 Tenant's Property.** Before the expiration or earlier termination of this Lease, Tenant will remove all furnishings, furniture, and trade fixtures that remain Tenant's property (the "Tenant's Property").

**17.3 Holding Over.** Any holding over after the expiration of the Initial Term and any applicable Extended Term contemplated by this Lease with the written consent of Landlord will be construed to be a tenancy from month-to-month, at one hundred and five percent (105%) of the Rent payable for the month immediately preceding the expiration of the final Extended Term and will otherwise be on the terms and conditions of this Lease. If Landlord consents to Tenant holding over, either Party may thereafter terminate the tenancy at any time on thirty (30) days' advance written notice to the other Party.

## **ARTICLE 18**

### **Condition of Premises and Maintenance Obligations**

Tenant acknowledges that it will have the opportunity to examine the physical condition of the Premises and terminate this Lease under Section 2.3 if Tenant is not satisfied with the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in its "as-is" condition, with all faults, subject to such inspection and acceptance. Tenant further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord outside of the terms of this Lease. Tenant agrees to assume all maintenance obligations for the Premises, both interior and exterior, including but not limited to all upkeep and maintenance requirements for the Building and Improvements.

## **ARTICLE 19**

### **Quiet Enjoyment**

Tenant will have quiet enjoyment of the Premises during the Initial Term and any applicable Extended Term without hindrance or disturbance by any person claiming by, through, or under Landlord, subject, however, to the "Non-Objectionable Matters" pursuant to Section 2.3.3 of this Agreement, above.

## **ARTICLE 20**

### **Notices**

Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by e-mail or fax with electronic confirmation of fax receipt, and addressed as follows:

If to Landlord: City of Canby  
PO Box 930  
Canby, OR 97013  
Attn: Richard ~~N~~ Robinson, City Administrator  
Phone: 503-255-4021  
Fax: 503-266-7961  
Email: [robinsonr@canbyoregon.gov](mailto:robinsonr@canbyoregon.gov)

With copy to: Joseph Lindsay, City Attorney  
Phone: 503-266-0754  
Fax: 503-266-7961  
Email: [lindsayj@canbyoregon.gov](mailto:lindsayj@canbyoregon.gov)

If to Tenant: TS EQUITIES ATTN: SHAUNA CARTER  
PO BOX 903  
CANBY, OR 97013

Attn: Robb Crocker, Partner Chris Edmiston, Partner  
Fax:  
Phone:  
Email: [Robbcrocker@gmail.com](mailto:Robbcrocker@gmail.com) [t5equities@gmail.com](mailto:t5equities@gmail.com)

With a copy to: Kuzmich & Associates  
402 E. Southern Ave.  
Tempe, AZ 85282  
Attn: James A. Kuzmich, Esq.  
Fax: 480-725-0087

## ARTICLE 21

### Tenant Right to Purchase Premises

**21.1 Tenant Sole Right to Purchase Premises.** Tenant has the right, but not the obligation, to purchase the Premises from Landlord at any time during the Initial Term or any applicable Extended Term. The right to purchase the Premises shall extend only to Tenant during the Initial Term and any applicable Extended Terms. Landlord shall not offer to sell the Premises to any non-party to this Lease without Tenant's prior express written consent, and any such offers made by Landlord to a non-party to this Lease without Tenant's express written consent shall be void.

**21.2 Tenant Purchase Option for Premises.** In the event that Tenant exercises its right to purchase the Premises from Landlord, the mutually agreed-upon fair market value purchase price shall be \$1,050,000.00 (the "Purchase Price"). Tenant and Landlord shall close the on the sale of the Premises no later than six (6) months following Tenant's exercise of its option to purchase.

**21.3 Closing of Sale.** Landlord shall pay for the costs of the title insurance premium for the title insurance policy and each party shall pay one-half of any escrow fees. Tenant shall pay the fees for recording the Deed.

**21.4 Termination of the Lease.** On the closing date, this Lease shall automatically terminate and be of no further force or effect.

**21.5 Landlord Reimbursement for Specific Pre-Approved Repairs and Expenses.** Landlord agrees to reimburse Tenant for the following repairs and expenses, if identified and deemed necessary by Tenant during the Inspection and Approval Period:

(a) Expenses related to any hazardous material abatement or removal, including asbestos and lead-based paints, discovered during the Inspection and Approval Period;

(b) Expenses related to needed roof or foundation repairs discovered during the Inspection and Approval Period;

(c) Any additional System Development Charges arising from construction of the Project;

(d) Expenses related to the construction of any seismic upgrades required by Clackamas County.

Reimbursement by Landlord shall be limited to repairs and expenses identified in this Section 21.5, and in no case shall Landlord's total reimbursement to Tenant exceed \$30,000.00. No repairs or expenses shall be eligible for reimbursement without Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. In requesting Landlord pre-approval, Tenant shall submit documentation acceptable to Landlord, in Landlord's sole discretion, establishing the reimbursement eligibility and estimated cost of the repair or expense. Landlord shall reimburse Tenant for pre-approved repairs within thirty (30) days of receiving acceptable documentation, in Landlord's sole discretion, of the final cost of the previously approved repair(s).

**21.6 Statutory Disclosure.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS

AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

## ARTICLE 22

### Miscellaneous

**22.1 Survival.** All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**22.2 Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

**22.3 Force Majeure.** If either Party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any legal requirement (and not attributable to an act or omission of the Party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the Party's control, whether or not the cause is specifically mentioned in this Lease, the Party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

**22.4 Entire Agreement; Counterparts.** This Lease contains the entire agreement between the Parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by both Parties. Tenant and Landlord mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

**22.5 Applicable Law.** This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon.

**22.6 Binding Effect; Authority** The covenants and agreements contained in this Lease are binding on and inure to the benefit of Landlord, Tenant, and their respective successors and assigns. Each Party warrants that the below signatory is authorized to enter into this agreement and bind that Party.

**22.7 Recordation of Lease.** Tenant may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both Parties, be recorded in the public records of Clackamas County, Oregon. In such case Tenant shall pay the recording costs.

**22.8 Time Is of the Essence.** Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

**22.9 Relationship of Parties.** Nothing contained in this Lease is to be deemed or construed, either by the Parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant.

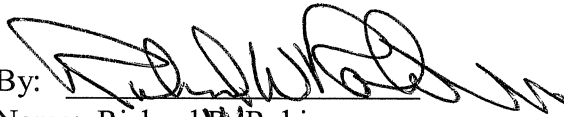
**22.10 Relationship of Parties and Application of Laws.** At all times under this Agreement, the Parties are acting as individual entities and are not establishing a business partnership. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, employee, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship. Employees or contractors providing services to each respective Party shall remain employees or contractors of the Party who retained such employee or contractor services. Each Party is wholly and individually responsible for its own employees and contractors. Each Party agrees to pay all wages and benefits (including but not limited to any required insurance and workers compensation), payroll tax, and to apply all laws, regulations, and policies relating to employment obligations. Each Party agrees to abide by all applicable local, state, and federal law.



IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

LANDLORD:

City of Canby

By: 

Name: Richard W. Robinson

Title: City Administrator

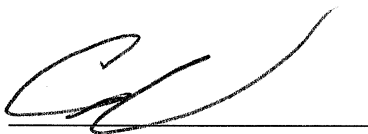
TENANT:

T5 Equities LLC

By: 

Name: Robb Crocker

Title: Partner

By: 

Name: Chris Edmiston

Title: Partner

**EXHIBIT A**

**Property**

**Location:** 292 North Holly Street, Canby, Oregon 97013

**Assessor's Parcel:** 3S-1E-33CA, Tax Lot 7800, Clackamas County, Oregon

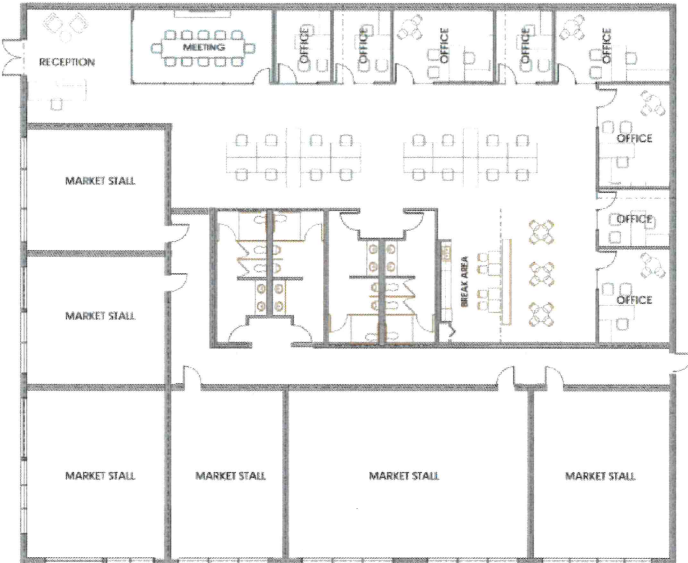
**Area in Site(s):** 11,500 SF



## EXHIBIT B

### Tenant Improvements

T5 will invest at least \$500,000 over 24 months in Tenant Improvements to implement the plan and rendering below:



**Street frontage improvements:** The goal is to redesign space for small retail/restaurant spaces, with roll-up doors and lots of natural light. The retail stalls are flexibly sized for small restaurants, pubs or any other type of entrepreneurial endeavor. Exterior Investments to accomplish this renovation could include:

- Remove existing west and north facing windows and replacement them with roll up doors and larger windows
- Install gooseneck or other attractive exterior lighting
- Install awnings along the north and west sides of the building
- Repaint at least the northern wall
- Update the cornice above the west entrance

**Interior market stall investments** to create up to 6 market stalls for small retail/restaurant spaces. Renovations are likely to include:

- Add permanent interior or movable walls to delineate spaces
- Install new doors for each stall
- Enhance lighting and power outlets for each space depending on tenant needs.

**Office space:** The goal is to design and develop eight to ten small office spaces, along with fun, comfortable common areas, for creatives and professionals. The offices would be more like a modified “co-working” space. High-end space, shared with other like-minded entrepreneurs, consultants and business owners.

- Install a reception area with desk and seating area and new entrance on 3<sup>rd</sup> Avenue.
- Construct interior office and meeting room walls and doors to delineate space
- Add enhanced lighting and new power outlets for each space depending on tenant needs.
- Install a break room area with kitchen amenities
- Provide high speed internet access for business tenants

**General building interior improvements:**

- Remove existing carpet and linoleum, and if feasible, refinish and buff concrete floors
- Realign the southern restroom entrance and other improvements
- Paint walls
- Install enhanced lighting for new spaces
- Upgrade roof or mechanical systems, as needed.
- Security systems realignment or upgrade

T5 Equities LLC  
PO Box 1336  
Wilsonville, OR 97070

March 23, 2018

Rick Robinson & Renate Mengelberg  
City of Canby  
222 NE 2nd Ave.  
Canby, OR 97013

Dear Rick & Renate:

We are writing to inform you that T5 Equities LLC is electing to terminate the lease purchase agreement of 292 N. Holly St. with the City of Canby.

We are still optimistic about the long term future of the Downtown Core, but have come to see that the amount of available space, lower than expected lease rate comps, and higher than expected construction costs make this project not economically feasible at this time.

Sincerely,

Chris Edmiston & Robb Crocker, Members  
T5 Equities LLC