

# **TOWN COUNCIL ACTION REPORT**

October 29, 2015

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## ***A Resolution Approving an Amendment to the Lease Agreement for 203 S. Linden Street to Extend the Lease Term Beyond January 2, 2017***

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**PREPARED BY:** Brian Day, Corporation Counsel

**REVIEWED BY:** Mark R. Peterson, City Manager

**BUDGET IMPACT:** None

**STAFF  
RECOMMENDATION:** Approval

**ATTACHMENTS:** Proposed Resolution; Proposed Lease Amendment; Original Lease

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### **BACKGROUND**

The Town owns the property located at 203 S. Linden Street. In 2010, the Town leased that property to Richard and Noreen Smith, who operate the retail establishment, WildCountry, out of that location. The term of that lease expires on January 2, 2017.

The Smiths want to continue the operation of WildCountry beyond that 2017 date.

### **DISCUSSION/ANALYSIS**

The proposed lease amendment does the following:

- After the current term expires on January 2, 2017, the lease will automatically renew for successive 12-month terms unless, by the prior December 1, either the Town or the Smiths opt not to renew;
- Allows the Town to terminate the lease at any time with 90 days' written notice;
- Allows the Smiths to terminate the lease at any time with 30 days' written notice;
- Makes technical corrections to the notice provisions in the lease.

The proposed amendment maintains an existing tenant while giving the Town the flexibility to terminate the lease if future needs for the property arise. For these reasons, the Town Staff recommends approval.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AN AMENDMENT TO THE LEASE AGREEMENT FOR 203 S. LINDEN STREET TO EXTEND THE LEASE TERM BEYOND JANUARY 2, 2017

WHEREAS, the Town of Normal is a home rule unit of local government with authority to legislate in matters concerning its local government and affairs; and

WHEREAS, the Town owns property in located at 203 S. Linden Street, Normal, Illinois; and

WHEREAS, on September 7, 2010, the Town entered into a lease agreement with Richard L. Smith and Noreen Smith that allowed them to use the property to operate WildCountry, a retail business; and

WHEREAS, the term of that lease began on January 2, 2012 and ends on January 2, 2017; and

WHEREAS, the Town and the tenants desire to extend the term of that lease; and

WHEREAS, it is in the best interests of the health, safety and welfare of the citizens of Normal to extend the term of the lease for 203 S. Linden Street.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SECTION ONE: That the President is authorized to execute, for and on behalf of the Town of Normal, an amendment to the Lease Agreement dated September 7, 2010 between the Town of Normal and Richard L. Smith and Noreen Smith. A copy of the Amendment to the Lease Agreement is attached to and incorporated in this resolution as Exhibit A.

SECTION TWO: That the Town Clerk is authorized and directed to attest to the signature of the President on the Amendment to the Lease Agreement and to retain a fully-executed original in her office for public inspection.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED:

\_\_\_\_\_  
President of the Board of Trustees of the  
Town of Normal, Illinois

ATTEST:

\_\_\_\_\_  
Town Clerk  
(seal)

**Amendment to  
Lease Agreement  
(203 S. Linden St.)**

This amendment is dated November 5, 2015 and is between the TOWN OF NORMAL ("Lessor") and RICHARD L. SMITH and NOREEN SMITH (collectively, "Lessee").

The Town owns the property located at 203 S. Linden Street, Normal, Illinois ("Premises")

The parties entered into a Lease Agreement on September 7, 2010 for the lease of the Premises ("2010 Lease").

The lease term was for five years, beginning January 2, 2012 and ending January 2, 2017.

The parties intend to amend the 2010 Lease to extend the term of the lease beyond January 2, 2017.

The Parties, therefore, agree as follows:

**1. Amendment to Section 2.** Section 2 of the 2010 Lease is amended by being replaced with the following:

**Section 2. Term.**

- (a) The term of this Agreement commences on January 2, 2012 and continues until January 2, 2017. The term of this Agreement will extend automatically for successive 12-month terms unless either party gives written notice that it does not want the term renewed. Notice must be given on or before December 1 for the non-renewal of the term beginning on the following January 2.
- (b) Notwithstanding any provision of subsection (a), the Lessor may terminate this Lease by giving the Lessee at least 90 day's written notice of the termination, and the Lessee may terminate this Lease by giving the Lessor at least 30 day's written notice of the termination.

**2. Amendment to Section 22.** Section 22 of the 2010 Lease is amended by changing the address of the Town Clerk as follows:

Town Clerk  
11 Uptown Circle  
P.O. Box 589  
Normal, IL 61761-0589.

The parties are signing this agreement on the date stated in the introductory clause.

TOWN OF NORMAL

LESSEE

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Richard L. Smith

Attest: \_\_\_\_\_  
Its City Clerk

By: \_\_\_\_\_  
Noreen Smith

## LEASE AGREEMENT

This Agreement, made as of the 7<sup>th</sup> day of September, 2010 by and between the Town of Normal, Illinois an Illinois municipal corporation having an office at 100 E. Phoenix Ave., Normal, Illinois 61761 (hereinafter referred to as "Lessor") and Richard L. Smith and Noreen Smith of Normal, Illinois (hereinafter referred to as the "Lessee");

### WITNESSETH:

**WHEREAS**, Lessor designated the commercial facility operated by the Lessee located at 203 South Linden in Normal, Illinois (the "Existing Facility") as part of a program for the renovation of the downtown area of Normal, Illinois; and

**WHEREAS**, Lessor acquired 203 South Linden from Lessee pursuant to an Agreement for Warranty Deed dated the 7<sup>th</sup> day of September, 2010; and

**WHEREAS**, pursuant to said Agreement for Deed Lessor agreed to lease 203 South Linden to lease for a period of time not to exceed five (5) years commencing January 2, 2012; and

**WHEREAS**, as part of the Agreement for Deed, the parties agreed to the terms of this Lease Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto mutually agree as follows:

**Section 1. Right to Operate Property.** Subject to the terms and conditions specified herein, Lessor hereby leases to Lessee the Property described in Exhibit A.

**Section 2. Term.** The term of this Agreement shall commence on January 2, 2012 and continue until January 2, 2017, unless extended or sooner terminated or canceled as set forth herein. Provided, however, that Lessee may terminate this Lease by giving Lessor at least thirty (30) days prior written notice.

**Section 3 Rent.** The property is being leased rent free for the term of this Lease as part of the consideration for the sale of the property by Lessee to Lessor.

**Section 4. Utility Services.** Lessee shall pay all charges for any and all utilities to the Property including but not limited to water, sewer, gas, electric, and voice and data services.

**Section 5. Right of Entry.** Lessor, its employees and agents shall have the right to enter upon the Property upon reasonable notice to Lessee, except no notice is required in the case of emergency, at any time for any purpose. Lessor shall comply with any of Lessee's applicable security procedures and policies, and shall keep confidential any information obtained or viewed upon any such entry on the Property.

**Section 6. Insurance.**

- (a) To protect the parties hereto from losses, Lessee agrees at all times to carry at its sole cost and expense:
  - (i) Workers' compensation insurance for Lessee's employees in accordance with the requirements of the State of Illinois
  - (ii) General Comprehensive Liability insurance, including products liability, covering all operations in limits of not less than \$2,000,000 for each person and \$5,000,000 for each occurrence for personal injury or death, and \$1,000,000 for each occurrence for property damage in or about the Property and also including contractual liability insurance;
  - (iii) Fire insurance with extended coverage covering the Property, the fixtures and inventory herein for the full replacement value thereof, on which the Lessor shall be named as an additional insured. Said provision is subject to paragraph 4 of the Contract for Warranty Deed between the parties;
- (b) All policies of insurance referred to in subsection (a) above shall be issued in the name of Lessee showing Lessor as loss payee, and shall be issued by companies having an AM Best rating of A VI or better, and in form reasonably satisfactory to Lessor. Each policy shall provide that it may not be canceled for non payment except upon ten (10) days' prior written notice to Lessor, and cannot be cancelled for any other reason without 90 days notice to Lessee and Lessor. Certificates of such insurance shall be delivered to Lessor by Lessee five (5) days prior to the Commencement Date, and ten (10) days prior to the expiration date of any policy. At the request of Lessor, Lessee shall make the originals of all such policies available to Lessor for inspection. If Lessee shall fail at any time to effect or maintain any of such insurance, Lessor, at its option, may do so, and the cost thereof shall be paid by Lessee in accordance with Section 15 hereof. Lessee shall not carry on any activity, other than that permitted by this Agreement, which will increase the premium on any policy of insurance carried or to be carried by Lessor, and, in the event of any such increase, Lessee shall pay the amount by which such premiums may be increased by such activity, in accordance with Section 15 hereof. All insurance shall contain a waiver of subrogation in favor of Lessor.

**Section 7. Real Estate Taxes.** Lessee shall be responsible for and pay any and all real estate taxes assessed against the Property during the term of this Lease. In the event Lessee fails to pay said taxes when due, Lessor may pay the same and Lessee shall promptly reimburse Lessor all costs incurred by Lessor to satisfy said tax claims. Additionally, Lessee shall pay Lessor a monthly amount equal to 1/12<sup>th</sup> of the previous year's tax bill. Such payment to commence upon request by Lessor and continue through the term of this Lease.

**Section 8. Subsequent Improvements and Fixtures.** Lessee shall not at any time subsequent to the Commencement Date make any material alterations, improvements, or physical changes in the Property without the prior written consent of Lessor, not to be reasonably withheld. Prior to the commencement of any improvements to the Property, Lessee shall deliver to Lessor plans and specifications describing in reasonable detail Lessee's plan (the "Plans").

Lessor shall approve or reject the Plans in writing within thirty (30) days of their receipt. The cost of the improvements, furniture, fixtures, and equipment indicated on the approved plans shall be borne by the Lessee. No chattel mortgage, conditional sales agreement, security agreements, financing statements, or other encumbrance shall be imposed or filed, and no hypothecation or assignment shall be made by Lessee in connection therewith. All improvements shall be constructed in compliance with the approved Plans and all laws, regulations, statutes, codes, ordinances, and other governmental requirements. During construction, Lessee shall obtain and maintain such insurance as Lessor shall reasonably request.

**Section 9. Maintenance.** Lessee shall at all times during the term of this Agreement, at its own cost and expense, maintain the property and all improvements thereon in good operating condition and in a clean, neat condition and appearance, reasonable wear and tear excepted, and shall make all necessary repairs thereto unless the damage requiring repair was caused by the negligence or willful misconduct of Lessor or its employees. If Lessee shall fail to do so, Lessor may serve a written demand upon Lessee to make said repairs or to correct or remove any defective condition within the number of days which Lessor, in its reasonable judgment, deems reasonable from the date of such demand as set forth therein, and, if Lessee shall fail to do so within such period of time, or provide substitute or comparable item to replace any such item, Lessor may, at its option, remedy such condition and charge the cost thereof to Lessee's account, which amount shall be paid by Lessee within 30 days of demand by Lessor.

**Section 10. Condition of Property at Termination; Disposition of Improvements.**

- (a) At the expiration or termination of this Agreement, Lessee shall remove all its trade fixtures, furnishings, and equipment from the Property at its own cost and expense and deliver the Property to Lessor "broom clean" and in good order and condition, reasonable wear and tear.
- (b) Any fixtures or any other property furnished by Lessor (which shall be without cost to Lessee) shall remain the property of Lessor and shall be returned to Lessor at the expiration or termination of this Agreement in their then-existing condition. In addition, any fixtures or other property whether or not furnished by Lessor, which cannot be removed without damage to the property of Lessor, shall become Lessor's property at the expiration or termination of this Agreement, unless Lessee elects to remove them and repair any damage to Lessor's property caused by such removal.

**Section 11. Conduct Policy.**

- (a) Lessee shall not allow the Property, or any part thereof, to become vacant or to be used for any purpose other than as provided herein, or permit the Property to be used in whole or in part by any other firm, person, or corporation. Neither party shall interfere in any manner with ingress or egress of the other's customers in any part of the Property (except for limited and reasonable restrictions for construction safety purposes during any time of construction. All signs or advertisements exhibited by Lessee on the Property must comply with all municipal requirements, must be approved by Lessor.

**Section 12. Indemnification of Lessor.** Lessee shall reimburse, indemnify, and hold Lessor harmless from all expenses, losses, liabilities, damages, costs, claims, and demands arising out of this Agreement, or as a result of any breach or default by Lessee under this Agreement, or

arising out of or related to Lessee's business operation on the Property, including, but not limited to, any injury or death to any person, or damage to any property, claims for infringement of patent, copyrights, trademarks, violations of laws or governmental regulations, or any right of others, together with reasonable counsel fees and other related expenses, unless such expenses, losses, liabilities, damages, costs, claims and demands arise out of the willful conduct or intentional actions of Lessor. If requested by Lessor, Lessee shall defend any action brought against Lessor arising out of the activities of Lessee, its employees, or agents and any persons employed by Lessee, and Lessee shall employ legal counsel, at its own expense, to conduct such defense. Lessor may, but shall not be required to, engage its own counsel in connection therewith. In the event Lessor shall employ counsel of its own choosing in connection with any such defense, payment of reasonable attorney's fees to said counsel shall be reimbursed by Lessee to Lessor. The liabilities of Lessee provided in this paragraph shall continue after and shall survive this Agreement. In addition to other remedies to which Lessor may be entitled, Lessor shall have the right to charge Lessee for all sums and costs paid and incurred by Lessor hereunder; provided, however, that Lessor's rights as provided in this sentence shall be subject to first giving written notice to Lessee to correct said breaches and defaults and reasonably opportunity for Lessee to correct said breaches and defaults; and judgment. The failure or inability of Lessee to obtain or maintain the contractual liability insurance required under Section 6 shall not limit or affect Lessee's obligation hereunder.

**Section 13. No Liability of Lessor.** Lessor shall not be liable for any loss or damage to Lessee or interference with or suspension of Lessee's business operations due to causes beyond the reasonable control of Lessor and shall not be liable or responsible in any way for any debts contracted by Lessee.

**Section 14. Casualty.** In the event of fire, flood or other casualty, in whole or in part, the Property becomes unsuitable for use or becomes totally destroyed by fire, flood or other casualty, then this Lease shall, at the option of either party, be terminated.

**Section 15. Liens.** Lessee shall not directly or indirectly by action or omission cause any lien to be placed upon the Property. Any such lien shall be paid or discharged by Lessee within ten (10) days after notice thereof.

**Section 16. Bankruptcy, etc.** In the event that a petition in bankruptcy (including a petition for arrangement under the Bankruptcy Law) is filed by or against Lessee or any guarantor of Lessee's obligations under this Agreement, or if Lessee or any such guarantor shall become insolvent within the meaning of any state or federal insolvency laws or shall make an assignment for the benefit of creditors, or if a receiver for all or any part of Lessee's business or the business of any such guarantor shall be appointed by any state or federal court, and the petition for the appointment of such receiver shall not be vacated within thirty (30) days of such appointment, or if any property or assets of Lessee or any such guarantor shall be attached or become subject to a lien or encumbrance which shall not be vacated within thirty (30) days thereafter, then, and in any such event, this Agreement shall be deemed to have been breached by Lessee, and Lessor shall have the option of terminating this Agreement in accordance with the provisions of Section 21 hereof.

**Section 17. Termination on Default.** In addition to any other rights and remedies of Lessor specifically set forth herein, in the event that (a) any material representation made by Lessee to Lessor in connection with this Agreement shall prove to have been false or misleading, in any material way, when made; or (b) Lessee shall violate any of the terms or conditions herein contained and shall not remedy such violation within a period of five (5) days from the receipt of



notice from Lessor as to such violation (unless another time limit is provided) or, in the case of nonmonetary defaults which are curable within thirty (30) days, shall not have (i) notified Lessor of its intent to so cure and commenced to cure within five (5) days of the aforesaid notice and (ii) cured such default within said thirty (30) days, then Lessor shall have the right either to cure Lessee's default, if possible, and charge the cost and expense thereof to Lessee's account, or, at Lessor's election, to terminate and end the privileges granted under this Agreement. Upon any such termination, Lessor may immediately and summarily without resort to any court proceeding remove Lessee or any other person from the Property. Lessee shall reimburse Lessor for reasonable attorneys' fees and other related costs as a result of Lessee's breach or violation as herein provided. In the event that Lessee fails to make any payments within five days of the date when due hereunder, then from and after five days from the date such amount is due and owing (and whether or not notice of the failure of such payment has been given), interest shall accrue on the amount so due at a rate equal to ten (10%) percent per annum.

**Section 18. Remedies.** The remedies specified in this Agreement are cumulative and are not intended to limit or exclude either party's right to seek and obtain any available remedy at law or in equity, including injunctive relief in case of any threatened breach by the other of any provision of this Agreement. Lessee waives the right to trial by jury in any action brought by Lessor against Lessee.

**Section 19. Assignment, Sublicense, and Transfer.** Lessee shall not, without the prior written consent of Lessor, which Lessor in its sole discretion may withhold, either sell, assign, mortgage, or transfer, by operation of law or otherwise, this Agreement, or

- (a) Sublicense all or any of the space allotted to Lessee, or any part thereof, or
- (b) Permit any of the foregoing to occur, or permit the said space to be occupied by anyone other than Lessee and Lessee's employees or employees of Lessor's parent, affiliates or subsidiaries.

In the event Lessor so consents, Lessee shall continue to remain liable for all of Lessee's obligations hereunder until the end of the term hereof.

Any assignment or transfer of this Lease to Wild Country, Inc. an Illinois Corporation, or Midwest Diving, Inc. shall be allowed and consent shall be deemed given by Lessor.

**Section 20. Waiver.** Failure of Lessor to charge any item to Lessee's account at the correct time shall not operate as a waiver of the right to charge such item, nor of Lessee's obligation therefore, nor shall Lessor's receipt of any payment from Lessee operate as a waiver of any rights of Lessor to enforce any other payment previously due or which may hereafter become due, or of any rights of Lessor to terminate this Agreement or to exercise any right which may otherwise be available to Lessor. No waiver by Lessor or Lessee of any breach of any provision of this Agreement shall operate as a waiver of any other prior or subsequent breach thereof, or of the provision itself, or of any other provision.

**Section 21. Amendments.** This Agreement cannot be altered, modified, or discharged except by an agreement in writing signed by the party against whom enforcement of the alteration, modification, or discharge is sought.

**Section 22. Notices.** All notices and demands made pursuant to this agreement shall be mailed or delivered to Lessor at the following address:

Town Clerk  
100 East Phoenix Ave.  
P.O. Box 589  
Normal, Illinois 61761

(with a copy to the Director of Downtown Development)

and to Lessee at the following address:

203 South Linden  
Normal, IL 61761

Notices and demands must be in writing and may be given by registered or certified mail or in person, subject to receipt therefore. Either party may notify the other in writing of a change of address to which all notices and demands shall thereafter be directed, provided that such new address shall be in the State of Illinois.

**Section 23. Legal Effect of Agreement.** It is expressly understood and agreed that Lessee is an independent contractor and that Lessor and Lessee shall not be construed to be partners or joint venturers, nor shall the relationship of the parties be construed as a principal-agent, or employer-employee relationship for any purpose whatsoever,

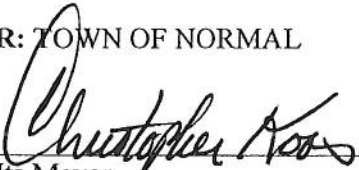
**Section 24. Jurisdiction.** The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

**Section 25. Captions or Headings.** The section captions or headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not in any way be held to explain, modify, amplify, or add to the interpretation, construction, or meaning of the provisions of this Agreement.

**Section 26. Successor and Assigns.** The terms of this Agreement shall be binding upon Lessor and its successors and assigns, and upon Lessee and its successors, heirs, executors, and administrators, as the case may be, and if Lessor has consented in writing to an assignment of this Agreement by Lessee, the terms of this Agreement shall be binding upon such assignee of Lessee.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the undersigned.

LESSOR: TOWN OF NORMAL

By:   
Its Mayor

Attest:   
Its City Clerk

LESSEE:

By:   
Print Name: Richard L. Smith

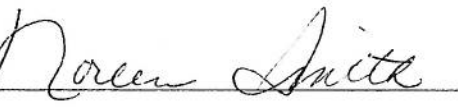
By:   
Print Name: Noreen Smith

Exhibit A

Parcel 14-28-438-007

203 South Linden

Lot 1 and the North 30 feet of Lot 2 in Block 13 in the Original Town of Normal, in McLean County, Illinois, and beginning at the Northeast corner of Lot 1 in Block 13 of the Original Town of Normal, Illinois, thence North 10 feet along the northerly extension of the East line of said Block 13, thence Southwest 40 feet parallel to the Northwest line of said Block 13, thence South 10 feet parallel to said East line of the Northwest line of said Block 13, thence Northeast 40 feet along the Northwest line of said Block 13 to the point of beginning, in McLean County, Illinois.