

TOWN COUNCIL ACTION REPORT

August 1, 2013

Resolution Authorizing the Execution of a License Agreement with Dan Brady for Property at 102 West North Street in Uptown

PREPARED BY: Mark R. Peterson, City Manager

REVIEWED BY: Steven D. Mahrt, Corporation Counsel

BUDGET IMPACT: The license agreement will generate a small amount of revenue (\$4,800 per year) associated with the lease of this property.

STAFF RECOMMENDATION: Approval

ATTACHMENTS: Proposed Resolution, Proposed License Agreement

BACKGROUND

The property at 102 West North Street was purchased by the Town in 2003 as part of the Uptown Renewal Project. The building, along with the adjacent 104 West North Street, is slated to be razed at some point in the future to accommodate a new mixed use multi-story building that we have been referring to as Two Uptown Circle. Given the fact that those buildings are not expected to be removed for three to five years, we have leased out the 102 West North Street building to an ISU student based art gallery called TranSpace for the past four years. TranSpace is a not for profit art gallery that is run by students and faculty of the ISU College of Fine Arts.

The Town has also rented apartments in the upper stories of 102 West North Street through First Site apartment rental company. TranSpace notified the Town earlier this year of their plans to vacate the building. They currently occupy the building rent free and simply cover the cost of utilities. About that same time, the staff was approached by Representative Dan Brady who has leased the adjacent first floor office space at 104 West North Street for his District Legislative Office. Mr. Brady indicated an interest in leasing the first floor of the 102 West North Street building for a campaign office. He indicated that he would be storing campaign material in that space and would also use it on occasion as a location for interns and volunteers to work on campaign related activities.

Based upon feedback from Council, staff responded to Mr. Brady indicating that it was the Town's desire to use at least the front portion of that building to accommodate a small start up retail business. Mr. Brady indicated that he would be willing to lease the back portion of the building only if that was possible.

DISCUSSION/ANALYSIS

Staff reviewed with Mr. Brady the possibility of occupying approximately 900 square feet of the rear 60% of the building for his campaign office. As part of the arrangement, the Town would install a wall separating the two spaces, along with a basic restroom facility on the back half of the building which would be required if there are any employees or volunteers using the space on behalf of Representative

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Brady. Included in the space that Mr. Brady would occupy, approximately half of that space consists of a rear unfinished and unheated storage garage that would be useful for storing campaign signs and other campaign material but would not really be suitable for use by campaign workers.

As the council is aware, Mr. Brady has been allowed to lease the 104 West North Street building for his legislative office at an annual lease payment of \$1.00 per year. The Town did the same for former Congresswoman Debbie Halvorson and former State Senator Shane Cultra when they were in office. This concession is an effort to not only assist members of our legislative delegation in securing good quality office space that is very accessible to the general public, but it also is considered a benefit to Normal and to Uptown to have these high profile legislators headquartered in the Central Business District of the community.

The proposed campaign office is a different matter however. Mr. Brady understands that he would have to pay a market based rental for the space and is willing to do so. However, establishing a market rate for a semi-finished rear section of one of the older and less functional buildings in the Uptown area, with no direct street access, is difficult given a lack of comparables.

Representative Brady and the City Manager reached agreement on an annual rent of \$4,800 for the space. As part of the lease agreement, the Town will pay for utilities (minimal cost), taxes and insurance. It will be the Town staff's intent to seek a start-up retail user to occupy the front portion of the building with direct access onto North Street. It would be our plan to use this commercial space as a sort of "retail incubator" to allow small start-up retail businesses to become established in Uptown. Once that occurs, they would be expected to find a more permanent location in the Uptown area, thus making the space in the 102 West North building available for another start-up retail business.

RESOLUTION NO. 4904

A RESOLUTION AUTHORIZING EXECUTION OF A LICENSE AGREEMENT
WITH DAN BRADY

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 at 102 West North Street, Normal, Illinois; and

WHEREAS, Dan Brady desires to operate a political office on a portion of the property at 102 West North Street in the Town of Normal; and

WHEREAS, it is in the best interests of the health, safety and welfare of the citizens of Normal to authorize execution of said License Agreement.

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

SECTION ONE: That the President be and he is hereby authorized to execute for and on behalf of the Town of Normal, Illinois, a License Agreement with Dan Brady to operate a political office at 102 West North Street, Normal, Illinois. A copy of said License Agreement, marked Exhibit A, attached hereto and incorporated herein by reference.

SECTION TWO: That the Town Clerk be and she is hereby authorized and directed to attest the signature of the President on said document and retain a fully executed original of said License Agreement in her office for public inspection.


ADOPTED this 5th day of August, 2013.

APPROVED:



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

ATTEST:



Town Clerk

(seal)

LICENSE AGREEMENT WITH DAN BRADY

This Agreement, made as of the 5th day of August, 2013, by and between the Town of Normal, Illinois an Illinois municipal corporation having an office at 11 Uptown Circle, Normal, Illinois 61761 (hereinafter referred to as "Licensor") and Dan Brady (hereinafter referred to as the "Licensee");

WITNESSETH:

WHEREAS, Licensor owns the property described in Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Licensee desires to temporarily operate a political office on a portion of the Property.

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

Section 1. Right to Operate an Office. Subject to the terms and conditions specified herein, Licensor hereby grants to Licensee the right to operate an office.

Section 2. Term. The term of this Agreement shall commence on September 1, 2013, (the "Commencement Date") and continue until terminated by Licensor. Licensor shall have the right to terminate this license at any time, upon providing thirty (30) days notice to Licensee.

Section 3 License Fees. Licensee shall pay to Licensor for the privileges granted hereunder (in addition to any other payments required to be made under this Agreement) a monthly licensee fee of Four Hundred Dollars (\$4800.00 per annual) payable in advance on the 1st of each month.

Section 4. Utilities.

- (a) Licensor shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and any and all other utilities used at the licensed space throughout the term of this License Agreement, including any connection fees.

Section 5. Right of Entry. Licensor, its employees and agents shall have the right to enter upon the Property at any time for any purpose. Licensor shall endeavor to give Licensee 24-hour notice of each entry.

Section 6. Insurance.

- (a) Licensee agrees at all times to carry at its sole cost and expense. Such insurance coverage as Licensor may reasonably request from time to time
- (b) All policies of insurance referred to in subsection (a) above shall be issued in the name of Licensee and Licensor, as their interests may appear, and shall be issued by companies and in form reasonably satisfactory to Licensor. Each policy shall

provide that it may not be canceled or materially changed except upon ten (10) days' prior written notice to Licensor. Certificates of such insurance shall be delivered to Licensor by Licensee five (5) days prior to the Commencement Date, and ten (10) days prior to the expiration date of any policy. At the request of Licensor, Licensee shall make the originals of all such policies available to Licensor for inspection. If Licensee shall fail at any time to effect or maintain any of such insurance, Licensor, at its option, may do so, and the cost thereof shall be paid by Licensee in accordance with Section 20 hereof. Licensee 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 Licensor, and, in the event of any such increase, Licensee shall pay the amount by which such premiums may be increased by such activity, in accordance with Section 20 hereof. All insurance shall contain a waiver of subrogation in favor of Licensor, if obtainable, and Licensor's fire insurance policy with respect to the Property shall contain a waiver of subrogation in favor of Licensee, if obtainable.

Section 7. Initial Improvements and Fixtures. Licensor agrees to make initial improvements to the Property described in Exhibit B. Licensee shall at all times present the Property and utilize all fixtures, furniture, and equipment in an attractive manner consistent with the image of a professional office use.

Section 8. Subsequent Improvements and Fixtures. Licensee shall not at any time subsequent to the Commencement Date make any alterations, improvements, or physical changes in the Property without the prior written consent of Licensor. Prior to the commencement of any improvements to the Property, Licensee shall deliver to Licensor plans and specifications describing in reasonable detail Licensee's new fixture plan and overall design (the "Plans"). Licensor shall approve or reject the Plans in writing within thirty (30) days of their receipt and, if rejected, Licensee shall make the changes requested by Licensor. The cost of the improvements, furniture, fixtures, and equipment indicated on the approved plans shall be borne by the Licensee. All such furniture, fixtures, and equipment shall be paid for in cash, and 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 Licensee 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, Licensee shall obtain and maintain such insurance as Licensor shall request. All construction must be completed within sixty (60) days after the Plans are approved.

Section 9. Maintenance by Licensee. Licensee shall at all times during the term of this Agreement, at its own cost and expense, maintain the furniture, floor coverings, other furnishings, fixtures, and equipment on the Property, and in any other space granted to Licensee hereunder in good operating condition and in a clean, neat condition and appearance and shall make all necessary repairs thereto unless the damage requiring repair was caused by the willful misconduct of Licensor or its employees. If Licensee shall fail to do so, Licensor may serve a written demand upon Licensee to make said repairs or to correct or remove any defective condition within the number of days which Licensor, in its sole judgment, deems reasonable from the date of such demand as set forth therein, and, if Licensee shall fail to do so within such period of time, Licensor may, at its option, remedy such condition and charge the cost thereof to Licensee's account, which amount shall be paid by Licensee in accordance with Section 20 below.

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

- (a) At the expiration or termination of this Agreement, Licensee shall remove all its trade fixtures, furnishings, and equipment from the Property at its own cost and expense and deliver the Property to Licensor "broom clean" and in good order and condition, reasonable wear and tear excepted.
- (b) Any fixtures or any other property furnished by Licensor without cost to Licensee shall remain the property of Licensor and shall be returned to Licensor at the expiration or termination of this Agreement in the same condition as they were at the beginning of the term, reasonable wear and tear excepted. In addition, any fixtures or other property, whether or not furnished by Licensor, which cannot be removed without damage to the property of Licensor, shall become Licensor's property at the expiration or termination of this Agreement.

Section 11. Real Estate Taxes. Licensor shall be responsible for any and all real estate taxes assessed on the Property from commencement of this License until termination of occupancy by Licensee and any person claiming a right of occupancy for Licensee. Licensor shall pay said taxes directly to McLean County Collector or make payment to the Town of Normal at least thirty (30) days prior to the due date of any taxes due and owing on the Property.

Section 12. Reserved.

Section 13. Indemnification of Licensor. Licensee shall reimburse, indemnify, and hold Licensor harmless from all expenses, losses, liabilities, damages, costs, claims, taxes and demands arising out of this Agreement, or as a result of any breach or default by Licensee under this Agreement, or arising out of or related to Licensee's business operations in 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. If requested by Licensor, Licensee shall defend any action brought against Licensor arising out of the activities of Licensee, its employees, or agents and any persons employed in the Sales Office, and Licensee shall employ legal counsel, at its own expense, to conduct such defense. Licensor may, but shall not be required to, engage its own counsel in connection therewith. In the event Licensor shall employ counsel of its own choosing in connection with any such defense, payment to said counsel shall be reimbursed by Licensee to Licensor. In addition, Licensee shall indemnify and hold Licensor harmless from any claims of damages arising out of any loss or injury to Licensee's property wherever located, regardless of whether such loss or injury was caused by negligence of Licensor, its employees, or any persons for whom it is legally responsible. The liabilities of Licensee provided in this paragraph shall continue after and shall survive this Agreement. In addition to other remedies to which Licensor may be entitled, Licensor shall have the right to charge Licensee for all sums and costs paid and incurred by Licensor hereunder; provided, however, that Licensor's rights as provided in this sentence shall be subject to first giving written notice to Licensee to correct said breaches and defaults; and provided further that the rights and obligations as provided in this sentence shall be exercised and performed subject to Licensor's sole discretion and judgment. The failure or inability of Licensee to obtain or maintain the contractual liability insurance required under Section 7 shall not limit or affect Licensee's obligation hereunder.

Section 14. No Liability of Licensor. Licensor shall not be liable to Licensee for any shortage, loss, theft, damage, disappearance, or injury of or to any of the merchandise, supplies,

equipment, or other property of any nature of Licensee, whether such loss or damage or injury may occur by reason of the negligence of Licensor, its servants, agents, or employees or contractors or by reason of any other cause. Licensor shall not be liable for any loss or damage to Licensee or interference with or suspension of Licensee's business operations due to causes beyond the reasonable control of Licensor and shall not be liable or responsible in any way for any debts contracted by Licensee.

Section 15. Casualty. In the event that on account of fire, flood or other casualty, in whole or in part and the property becomes unsuitable for use, or should become totally destroyed by fire, flood or other casualty, this License shall be terminated and Licensee shall vacate the Property.

Section 16. Liens. Licensee shall not directly or indirectly by action or omission cause any lien to be placed upon the Property or any personal property located in the Property. Any such lien shall be paid or discharged by Licensee within ten (10) days after notice thereof.

Section 17. Termination. Licensor may terminate this license for cause upon 24 hours notice.

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. Licensee waives the right to trial by jury in any action brought by Licensor against Licensee.

Section 19. Assignment, Sublicense, and Transfer. Licensee shall not, without the prior written consent of Licensor, which Licensor 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 Licensee, 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 Licensee and Licensee's employees.

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

Section 20. Waiver. Failure of Licensor to charge any item to Licensee's account at the correct time shall not operate as a waiver of the right to charge such item, nor of Licensee's obligation therefore, nor shall Licensor's receipt of any payment from Licensee operate as a waiver of any rights of Licensor to enforce any other payment previously due or which may hereafter become due, or of any rights of Licensor to terminate this Agreement or to exercise any right which may otherwise be available to Licensor. No waiver by Licensor or Licensee 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 Licensor at the following address:

Town Clerk (with a copy to the Director of Downtown Development)
11 Uptown Circle
P.O. Box 589
Normal, Illinois 61761

and to Licensee at the following address:

Friends of Dan Brady
P. O. Box 769
Bloomington, IL 61702

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 Licensee is an independent contractor and that Licensor and Licensee shall not be construed to be partners or joint venturers, nor shall the relationship of the parties be construed as a landlord-tenant, landlord-subtenant, 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 Licensor and its successors and assigns, and upon Licensee and its successors, heirs, executors, and administrators, as the case may be, and if Licensor has consented in writing to an assignment of this Agreement by Licensee, the terms of this Agreement shall be binding upon such assignee of Licensee.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed by the undersigned.

LICENSOR: TOWN OF NORMAL

By: Christopher Koos
Its Mayor

Attest: Wendell J. Buggs
Its City Clerk

LICENSEE: DAN BRADY

By: Daniel F. Brady
Print Name: DANIEL F. BRADY

Title: State Rep.

Exhibit A

FIRST FLOOR ONLY

Parcel 14-28-430-014 and 14-28-430-015

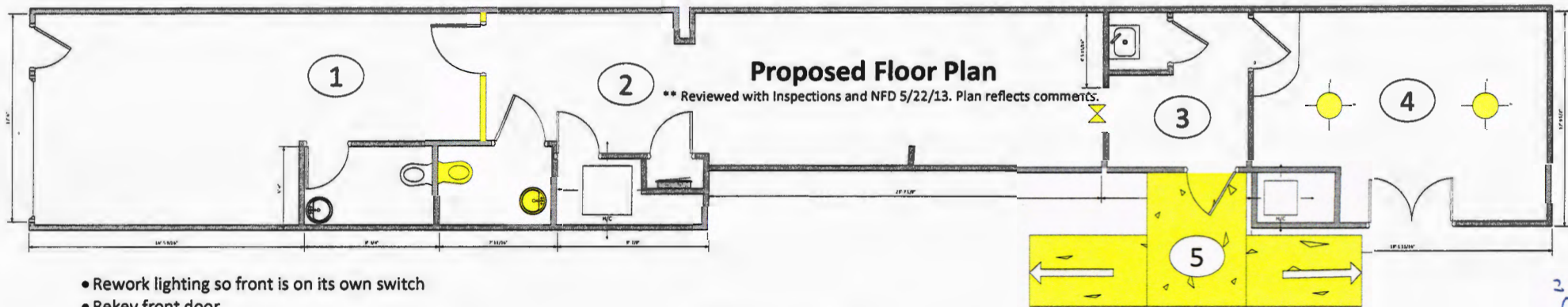
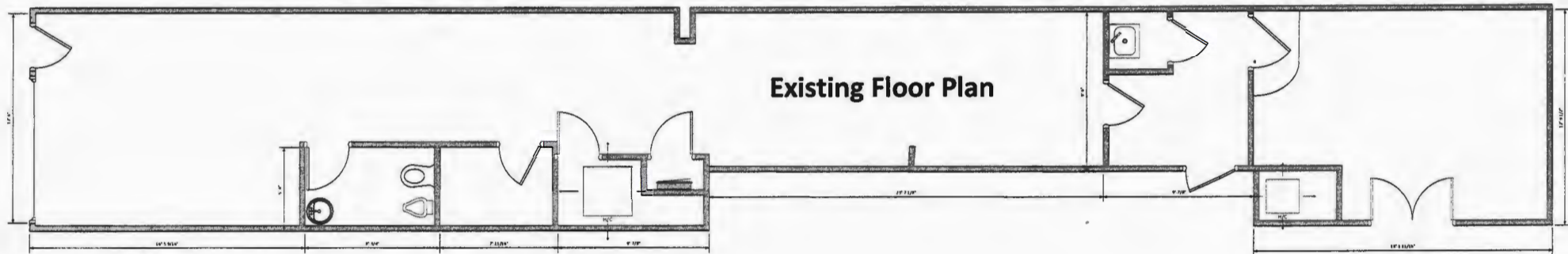
102 West North Street

All of Lot 1 and that part of Lot 8 described as follows: Commencing at the Northeast corner of said Lot 1, thence West along the North line of said Lot 1, 11.67 feet, thence North to a point on the North line of Lot 8, 8.77 feet West of the Northeast corner of Lot 8; thence East along the North line of Lot 8 to the Northeast corner of Lot 8; thence South along the East line of Lot 8 to the place of beginning, all in Sills Subdivision of Block 2 in the Original Town of Normal, and of Block 44 in the First Addition to the Town of Normal, in McLean County, Illinois.

All of Lot 2 and a part of Lot 8 described as follows: Commencing at the Northwest corner of said Lot 2, thence North to the North line of said Lot 8, thence East to a Point 8.77 feet West of the Northeast corner of said Lot 8, thence South to a point 11.67 feet West of the Southeast corner of said Lot 8, thence West to the point of beginning, all in Sill's Subdivision of Block 2 in the Original Town of Normal and of Block 44 in the First Addition to the Town of Normal, in McLean County, Illinois.

Licensee is licensed to use only the rear one-third of the first floor of the building; approximately 800 square feet.

102 W. North St. Preliminary Plan



- Rework lighting so front is on its own switch
- Rekey front door
- Remove window signage
- Confirm HVAC duct supply is adequate
- Construct wall and closet / Rework ceiling as needed
- Remove Urinal in restroom
- Update flooring in restroom
- Repair ceiling and walls as needed in restroom
- Add data and power as needed

- Replace flooring
- Repair ceilings and walls as needed
- Remove door and frame to main area

- Install basic lighting

- Install landing and ramp at entrance
- Install railing at edge of ramp

- Rework ceilings as needed to accept new wall
- Rework lighting so divided areas have their own switches
- Reverse swing of restroom door
- Replace floor in Area 2 restroom
- Repair ceiling and walls as needed in restroom
- Install toilet and sink in Area 2 restroom
- Install grab bars and required accessories
- Add EMG Lighting/Exit above pass through at to Area 3
- Add data and power as needed

Exhibit "B"