



CITY OF PATASKALA

RESOLUTION 2021-028

Passed June 21, 2021

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A USE AGREEMENT WITH CENTRAL OHIO TECHNICAL COLLEGE (COTC)

WHEREAS, historically the City of Pataskala has entered into a number of agreements by which the City and Central Ohio Technical College (COTC) agreed upon terms for COTC to use excess office space in the City Administration Building; and

WHEREAS, COTC would like to use rooms 2c, 2cc, and 2e consisting of approximately 1,772 total useable square feet and the first floor training room consisting of approximately 731 total useable square feet, together with the nonexclusive right to use all Common Areas, subject to the rights of other users in the Building for a period of three (3) years and five (5) months commencing on August 1, 2021 and ending on December 31, 2024; and

WHEREAS, the City has such space available and is willing to allow COTC to use the space in return for reasonable compensation from COTC; and

WHEREAS, COTC and the City of Pataskala are willing to enter into a formal Use Agreement providing for other terms and conditions related to COTC's use of the space as are typical in such transactions.

NOW, THEREFORE, BE IT RESOLVED BY COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF ITS MEMBERS PRESENT CONCURRING THAT:

Section 1. Council for the City of Pataskala hereby authorizes and directs the City Administrator to execute a use agreement, in substantially the same form and content as the Use Agreement 2021 attached hereto as Exhibit A and incorporated herein by reference, with Central Ohio Technical College.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the City of Pataskala

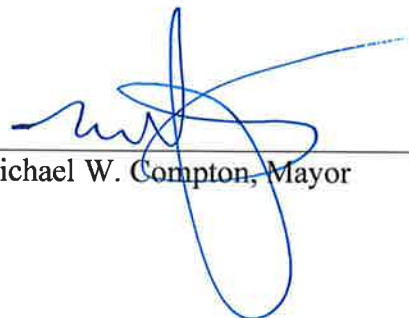
which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

Section 3: This Resolution shall take effect at the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:

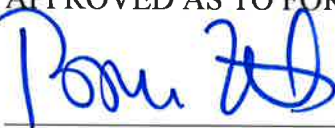


Kathy M. Hoskinson, Clerk



Michael W. Compton, Mayor

APPROVED AS TO FORM:



Brian M. Zets, Law Director

USE AGREEMENT 2021

This Use Agreement made and entered into at Pataskala, Ohio, this ____ day of _____ 2021, by and between the City of Pataskala, a municipal corporation, hereinafter referred to as "City", and **Central Ohio Technical College ("COTC")**, hereinafter referred to as "COTC". In consideration of the Periodic Use Compensation, covenants, conditions, agreements and stipulations as contained hereinafter, the parties mutually agree as follows:

ARTICLE I -- TERM AND GRANT

1.01. Description. City hereby provides for the use of COTC, and COTC hereby accepts for its use from City, the Premises (as hereinafter defined), in a certain Building (as hereinafter defined), located in the City of Pataskala, County of Licking, and State of Ohio.

(A) **Building:** the term "Building" shall mean a certain approximately 18,214 gross square foot structure, including appurtenances and fixtures attached thereto, located at 621 West Broad Street, and the "Common Areas" as hereinafter defined.

(B) **Premises:** the term "Premises", shall mean that portion of the Building used by COTC, namely rooms 2c, 2cc, and 2e consisting of approximately 1,772 total useable square feet and the first floor training room consisting of approximately 731 total useable square feet, together with the nonexclusive right to use all Common Areas, subject to the rights of other users in the Building. A floor plan of the Premises is attached hereto as **Exhibit A** and incorporated herein by reference.

(C) **Common Areas:** "Common Areas" shall include, but not be limited to, entrances, halls, steps, stairwells, elevators, restrooms, sidewalks, landscaping, exits, and other areas as may be designated from time to time by City and utilized by COTC and other users in the Building and their respective employees, agents, customers and invitees. COTC agrees that COTC's consent shall not be required for any additions, reductions or modifications of the Common Areas. COTC acknowledges that City shall have the right to make reasonable rules and regulations governing the location and use of all Common Areas and COTC shall be governed thereby.

1.02. Term. The term of this Use Agreement shall be for a period of **three (3) years and five (5) months** commencing on **August 1, 2021** and ending on **December 31, 2024**. Prior to entering into possession of the Premises, COTC shall complete and furnish to City a Commencement Date Agreement in the form of **Exhibit B** attached hereto which shall acknowledge the actual Commencement Date and Expiration Date of this Use Agreement, provided that failure of COTC to sign the Commencement Date Agreement shall not affect the actual Commencement Date and Expiration Date of this Use Agreement. This agreement supersedes all existing use agreements between the City and COTC.

1.03 Renewal Options. Provided COTC is not then in default under the terms of this Use Agreement, COTC shall have two (2) consecutive options to renew this Use Agreement for terms of one (1) year each, provided that if the first option is not timely and properly exercised, the second option shall expire. In order to exercise the renewal options, COTC must give written notice to City of such exercise not more than twelve (12) months, nor less than three (3) months, prior to the expiration of the then current

term. During each renewal term, all terms and conditions of this Use Agreement shall continue to apply except that Periodic Use Compensation and refurbishment improvement allowance shall be negotiated in good faith by City and COTC. In such negotiations, City and COTC shall strive to arrive at the Periodic Use Compensation and refurbishment improvement allowance which are fair market as of the commencement date of such renewal term. For all purposes of this Use Agreement, a renewal term which is timely and properly exercised shall be a part of the Use Agreement term.

ARTICLE II -- CONSIDERATION

2.01. Base Periodic Use Compensation. COTC shall pay, as Base Periodic Use Compensation during the term of this Use Agreement, the sums set forth on **Exhibit C** attached hereto and forming part hereof which shall be payable in consecutive monthly installments in advance, on the first day of each and every calendar month during the Use Agreement term. All Periodic Use Compensation payments shall be made payable to and mailed or delivered to the following, unless City otherwise designates:

City of Pataskala
621 W. Broad Street
Pataskala, Ohio 43062

2.02. Periodic Use Compensation Adjustments in Renewal Term. COTC shall pay City the Base Periodic Use Compensation rate set forth in Section 2.01, above, for the term of the initial Use Agreement set forth in Section 1.02, above. In addition to the Base Periodic Use Compensation set forth in Section 2.01, above, COTC shall pay City, as additional Periodic Use Compensation in each such calendar year of any renewal term, an amount equal to COTC's proportionate share of the increase, if any, in Utility Expenses (as hereinafter defined) over the "Base Utility Expenses." "Base Utility Expenses" shall mean the Utility Expenses for the calendar year in which the Use Agreement term commences, provided that the increase in any year of the renewal term may not exceed five percent (5%) per year. COTC's proportionate share of the increase in Utility Expenses shall be equal to the useable square feet in the Premises (defined under section 1.01(B)), divided by the useable square feet in the Building, which is 13.74%. For purposes of calculating the Base Utility Expenses for the Premises, the Utility Expenses for the calendar year in which the Use Agreement term commences will be determined on a monthly basis and each month's Utility Expenses for the Building shall be divided by the number of useable square feet in the Building which are occupied as of the last day of each month to arrive at the Utility Expenses per occupied useable square foot per month and the total of the Utility Expenses per occupied useable square foot per month for all calendar months in such calendar year shall be totaled to arrive at the Utility Expenses per occupied useable square foot for such year and such amount shall be multiplied by the useable square feet in the Premises to determine the Base Utility Expenses for the Premises.

The amount of COTC's proportionate share of the increase, if any, in Utility Expenses for a particular calendar year in any renewal term over the Base Expenses may be estimated annually by City and written notice of such estimate shall be given to COTC at least ten (10) days prior to such amount beginning to be payable by COTC. COTC shall pay each month thereafter with monthly Periodic Use Compensation installments, in equal shares,

the amount of COTC's proportionate share of the increase in Utility Expenses for such calendar year or the balance thereof. If the Building is only partially occupied during any calendar year, City shall estimate the Utility Expenses for the calendar year as if the Building were at least ninety percent (90%) occupied.

Within ninety (90) days after the end of a calendar year, or as soon thereafter as same is available, City shall furnish to COTC a statement showing in reasonable detail the actual amount of the Utility Expenses for the preceding calendar year, the actual amount that COTC ought to have paid as its proportionate share, and the amount that COTC paid for that calendar year based upon City's estimate. Within thirty (30) days after the furnishing of the aforementioned statement, COTC shall pay to City, or City shall pay or credit to COTC, as the case may be, the difference between the aggregate amount that COTC paid for such calendar year, if any, and the actual amount that COTC ought to have paid; provided, however, that COTC's Periodic Use Compensation shall never be less than the Base Periodic Use Compensation set forth in Section 2.01, above, as the same may have been subsequently increased by the operation of the provisions of this Section 2.02. During a fifteen (15) day period after receipt of City's statement as to the actual amount of the Utility Expenses, COTC shall have the right to inspect the books and other pertinent records of City, during normal business hours, after reasonable notice, for the purposes of verifying City's determination of COTC's proportionate share of Utility Expenses. COTC may object to City's determination by giving City written notice thereof stating its objections no later than five (5) days after the expiration of said fifteen (15) day period. If the parties cannot agree, any such dispute shall be resolved by an independent certified public accountant selected by City and the fees and expenses of said accountant shall be borne by the party most adversely affected. By first pursuing resolution of a Utility Expenses dispute from a certified public accountant, COTC does not waive its right to pursue any other avenue of resolution that may be available at law or in equity. If COTC shall not dispute City's determination of the actual amount of Utility Expense for a given calendar year within twenty (20) days after City has furnished COTC with City's determination of the actual Utility Expenses, COTC shall be deemed to have approved such determination.

If the Use Agreement term ends prior to the end of a calendar year, City may re-estimate the amount of the Utility Expenses for the calendar year based upon the most current information available to City. If City's re-estimate shows that COTC will have underpaid or overpaid its proportionate share of the Utility Expenses, prorated through the end of the calendar year, COTC shall pay to City such additional amount (if the estimate shows an underpayment) or City shall pay to COTC any amounts owed (if such re-estimate shows an overpayment) prior to the end of the Use Agreement term. Such determination shall be final, subject to COTC's right to object to City's determination as provided in the preceding paragraph and any rights available to COTC at law or in equity.

2.03. Utility Expenses. "Utility Expenses" shall mean all of City's expenses with respect to the Building for electricity, natural gas, water and sewer, storm water and any other service provided which is generally considered a utility service for the benefit of users of the Building in general. "Utility Expenses" specifically excludes cable television, telephone, computer and data transmission expenses.

2.04. Operating Expenses. City shall be responsible for all fixed and operating expenses, with no expense reimbursement by COTC, except increases, if any in Utility Expenses as described in Section 2.02, expenses for extraordinary uses and services as provided in Section 4.01, and expenses for other matters as specifically provided in this Use Agreement.

2.05. Late Charges. If any payment of Base Periodic Use Compensation, additional Periodic Use Compensation or other sums owed by COTC to City under this Use Agreement are not paid within five (5) business days of their due date, a late charge of five percent (5%) of the amount due shall be charged and added to the amount owed. For the purposes hereof, checks received by City from COTC within the five (5) business day period which are dishonored for lack of sufficient funds or for any reason whatsoever shall not constitute payment. Any such payment not made within thirty (30) days after the due date shall bear interest at eighteen percent (18%) per annum from such date until paid.

2.06 No Abatement of Periodic Use Compensation. Except as otherwise specifically provided in Section 6.01 of this Use Agreement, there shall be no abatement or reduction of any Periodic Use Compensation due under this Use Agreement for any cause whatsoever and this Use Agreement shall not terminate and COTC shall not be entitled to terminate or surrender or abandon the Premises for any reason whatsoever.

ARTICLE III -- COTC'S COVENANTS

3.01. Usage. The Premises shall be used by COTC only for general office use and for no other purpose. COTC shall not use, occupy, suffer or permit the Premises or any part thereof to be used or occupied for any purposes contrary to law or to any rules or regulations of any governmental or public authority (including, without limitation, zoning, land use and environmental laws, rules and regulations). COTC shall not undertake any activities which increase the cost of hazard insurance, nor permit unreasonable noise or offensive odors to emit from the Premises, suffer waste or injury, nor sell, assign, mortgage or transfer this Use Agreement or allow or permit any lien upon COTC's interest herein by operation of law, without the prior written consent of City. COTC will not place any load upon any floor of the Premises other than reasonable office equipment and furniture.

3.02. Alterations. COTC may, at COTC's sole cost and expense, from time to time during the term of this Use Agreement, upon obtaining City's prior written consent, which consent may be subject to such terms and conditions as City deems necessary to maintain the integrity of the structure of the Building and the equipment and systems servicing the Building, or the appearance, marketability, or leasability of the Building and/or Premises, make such alterations, additions and improvements to the Premises (including, without limitation, painting, decorating and erecting partitions, which involve anything other than movable personal property) as COTC may reasonably deem necessary or desirable to adapt the Premises, or any part thereof, for their permitted use. COTC agrees to submit plans and specifications to City for said alterations and improvements for City's prior written approval. Unless City chooses to make such alterations and improvements or to contract for such work on behalf of COTC, COTC may arrange and contract for such alterations or improvements provided the City has approved the complete plans and specifications, which approval shall not

be unreasonably withheld or delayed provided there will be no interference with, or overburdening of, the electric, plumbing, HVAC, mechanical and utility systems servicing the Building, and with respect to all such alterations, additions and improvements for which City's approval is required hereunder, COTC shall only contract with contractors, subcontractors and material suppliers who are reasonably acceptable to City and COTC may be required by the City to have the construction of the alterations, additions and improvements inspected and observed by an architect or engineer who will certify to the City the compliance of such alterations, additions and improvements with the approved plans and specifications and the applicable codes.

If COTC or COTC's contractors make such alterations, additions and improvements, COTC shall reimburse City for City's reasonable costs involved in overseeing and inspecting such work and coordinating such work. Prior to commencement of such work by COTC or its contractors, COTC shall provide to City certificates of Workers Compensation Insurance, builders risk insurance and reasonable evidence of financial security to ensure completion of the work and a municipal building permit if required. Immediately following completion of the work COTC shall provide to City a municipal certificate of occupancy, completion or compliance for the completed work. COTC shall not use any contractor or subcontractor whose presence at the Building would be likely to disturb the continuing services of any other contractor or subcontractor or otherwise disturb the daily operations of the Building and the enjoyment thereof by other users in the Building. All work by COTC and its contractors to make alterations, additions and improvements shall be done at such times and under such conditions as reasonably imposed by City to prevent or minimize disturbance of any annoyance to other users and occupants of the Building and all improvements, additions and alterations shall be constructed in a good and workmanlike manner with first-class materials. All improvements, additions and alterations shall comply with all insurance requirements and with all applicable laws, regulations and rules of governmental agencies having jurisdiction. COTC shall be liable for all damages caused by its negligent acts or omissions which may arise out of or be connected in any way with alterations, additions and improvements of the Premises made pursuant to this Section 3.02. All such alterations, additions or improvements shall, at the option of City, remain and become the property of City at the end of the Use Agreement term, or City may require that all such alterations, additions and improvements be removed at COTC's expense at the end of the Use Agreement term and the Premises restored to its condition prior to such work or improvements. If COTC fails to remove such improvements, additions and alterations or fails to restore the Premises as provided above, City may do so and COTC shall reimburse City for all of the costs thereof, as Additional Periodic Use Compensation, promptly upon billing by City.

3.03. Maintenance and Repairs. Except as same may be the obligation of City under this Use Agreement, COTC shall keep the Premises in good, neat and clean condition, free of accumulations of rubbish and shall not permit any waste or nuisance to occur or continue in the Premises. There shall be no allowance to COTC or reduction of Periodic Use Compensation, and no liability on the part of City by reason of inconvenience, annoyance, or injury to business arising from the making of any repairs, alterations, additions, substitutions or improvements in or to any portion of the Building, the Premises, the Common Areas, or in and to the fixtures, appurtenances and equipment thereof by City, provided that in each case such repairs, alterations, additions, substitutions or improvements are done within a reasonable time period. This provision shall not be construed as to require City to do the work at over-time rates. If COTC

requests that such work be done in such a manner, COTC will pay the excess of the overtime cost over ordinary rates. City shall endeavor to do any work done by it in such a manner as not to interfere unreasonably with or unreasonably impair COTC's use of the Premises, and subject to the condition on City's entry as hereinafter set forth in Section 3.10 below.

3.04. Mechanics Liens. At its own expense, COTC shall cause to be discharged, within thirty (30) days after COTC receives notice of the filing thereof, any mechanics lien filed against the Premises or the Building for work claimed to have been done or materials claimed to have been furnished to COTC.

3.05. Signs. COTC shall not permit or suffer any signs, graphics, advertisements or notices to be displayed, inscribed upon or affixed on any part of the outside or inside of the Premises or the Building, except with City's prior written approval as to size, color and style. Notwithstanding the foregoing: (i) City, at City's expense, shall provide directory signage in the lobby and (ii) City will provide, upon COTC's request, signage adjacent to COTC's entrance doors that complies with Building standards as to style, color and size.

3.06. Relocation. City shall have the right to relocate COTC, from time to time, to another part of the Building in which the Premises are located in accordance with the following:

(A) The new Premises shall be substantially the same in size, dimensions, configuration, decor and nature as are the Premises described in this Use Agreement and shall be placed in that condition by City at its cost.

(B) The physical relocation of COTC shall be accomplished by City at its cost.

(C) City shall give COTC at least thirty (30) days written notice of City's intention to relocate COTC to a specified location in the Building. After receipt of such notice, COTC shall have thirty (30) days to notify City in writing if it objects to such relocation and of COTC's intent to terminate this Use Agreement without penalty and vacate the Premises by a date set forth in such notice which is not more than six (6) months after the date of such notice. City shall have thirty (30) days after receipt of such notice from COTC to rescind its notice to relocate COTC by written notice to COTC.

(D) The relocation of COTC shall take place on a weekend and shall be completely accomplished before the Monday following the weekend in which the relocation takes place. If the relocation has not been completed in that time, Base Periodic Use Compensation shall fully abate from the time the relocation commences to the time it is completed.

(E) All reasonable costs incurred by COTC as a result of the relocation, including, without limitation, costs incurred in changing addresses on stationery, business cards, directories, advertising and other reasonable items, shall be paid by City.

(F) If the relocated Premises are smaller than the Premises as it existed before the relocation, Annual Base Periodic Use Compensation and COTC's proportionate share of Operating Expenses shall be reduced accordingly.

(G) The parties hereto shall immediately execute an Amendment to this Use Agreement evidencing COTC's relocation and the reduction of Periodic Use Compensation, if any.

3.07. Liability and Insurance. Subject to immunity and other legal and equitable defenses available to municipal corporations, each party agrees to be responsible for any personal injury or property damage caused by the negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer any such responsibility from one to the other. COTC agrees to carry at its own expense through the term of this Use Agreement, commercial general liability insurance, written on an occurrence basis, covering the Premises, and COTC's use thereof, with the minimum of One Million (\$1,000,000) Dollars on account of bodily injury to or death of one person, and Two Million (\$2,000,000) Dollars on account of bodily injury to or death of more than one person as a result of any one accident or disaster, and One Million (\$1,000,000) Dollars property damage insurance unless City or City's mortgagee require higher limits. COTC shall provide City with copies or evidence of such insurance coverage prior to the Commencement Date of the Use Agreement and thereafter, prior to the termination of any such policy. Such insurance policy shall name COTC, City, City's managing agent for the Building and, if requested by City, any of City's mortgagees or any other person or entity reasonably requested by City, as insured, and contain an endorsement stating that the insurer agrees to notify City not less than thirty (30) days in advance of modification, expiration, or cancellation thereof. All such policies shall be written by insurance companies licensed to do business in Ohio which are reasonably acceptable to City and any of City's mortgagees.

3.08. Waiver of Subrogation. COTC and City each hereby releases the other and the other's employees, agents, customers and invitees from any and all liability for any loss, damage or injury to person or property occurring in, on, about or to the Premises, personal property within the Premises and/or the Building, or to the Building by reason of fire or other casualty which is covered under a valid and collectible standard fire and extended coverage policy or ISO special form coverage policy, regardless of cause, including the negligence of the City or COTC and their respective employees, agents, customers and invitees. Because the provisions of this Section 3.08 are intended to preclude title assignment of any claim mentioned herein by way of subrogation or otherwise to an insurance company or any other person, COTC and City each shall give to each insurance company which has issued to it one or more policies of insurance notice of the terms of the releases contained in this Section 3.08 and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this Section 3.08.

3.09. Personal Property. COTC agrees that all personal property of whatever kind that may be at any time in the Premises or the Building shall be at COTC's sole risk or at the risk of those claiming through COTC, and that City shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of City.

3.10. Inspection. COTC hereby permits City or City's agents to inspect or examine the Premises at any reasonable time, after reasonable notice, except in the case of emergency, to maintain a passkey, to make such repairs or improvements to the Premises or the Building as City may deem desirable or necessary for the safety, improvement or preservation of the Premises or the Building, and to permit City or City's agents to exhibit the Premises to prospective purchasers and during the last six (6) months of the term of this Use Agreement or any renewal thereof, to prospective users.

3.11. Rules and Regulations. COTC shall comply with the Rules and Regulations attached hereto as Exhibit D, as well as all reasonable changes therein and additions thereto that may from time to time be made by City for the operation and protection of the Building and the protection and welfare of City's users and invitees. Changes and additions to the Rules and Regulations shall become effective and part of this Use Agreement upon delivery of a copy thereof to COTC. Such rules and regulations shall create no third-party rights in COTC, and City may exempt some users of the Building from some or all of the rules and regulations as City deems reasonably appropriate.

ARTICLE IV -- CITY'S COVENANTS

4.01. Utilities. City shall furnish to COTC all electric, heat, air conditioning, water, elevator services, lavatory and toilets necessary for normal use of the Premises pursuant to this Use Agreement, during normal building hours described below. Electricity, HVAC, water, at least one working elevator, except during maintenance and repair, lavatory and toilets shall be provided on a Periodic Use Compensation inclusion basis 24 hours a day, 7 days a week, 365 days per year. The normal hours for the Building are 7:30 A.M. to 4:00 P.M., Mondays through Fridays. The Building is officially closed on Saturday, Sundays and holidays; provided, however, COTC and its employees and visitors shall have access to the Premises 24 hours per day, 7 days per week, 365 days per year, subject to City's normal security procedures and subject to any extra costs other than electricity, HVAC, water, at least one working elevator, except during maintenance and repair, lavatory and toilets resulting from such extraordinary use. Except as provided in the second sentence of this Section 4.01, to the extent that COTC requires any special services or utilities not normally furnished when the Building is closed, COTC shall make arrangements for the same with City's property manager and City shall make reasonable efforts to provide such services and may charge COTC at the standard rates for such services charged to users of the Building, as the same may be amended from time to time by City to reflect, in City's reasonable discretion, any changes in City's overall costs of providing such services. Such standard rates shall be maintained by City's property manager's office. COTC shall pay for all of its telephone, cable, and data transmission services.

City acknowledges that the Premises will be utilized for office purposes and that associated with such use COTC may have certain office equipment such as photocopying machines, automatic and/or computer typewriters and other such office equipment normally associated with office usage. COTC acknowledges that, to the extent that it has a greater number of items of equipment or equipment which utilizes an excessive amount of electricity or which adversely affects the heating or air conditioning systems of the Building, COTC may be paying less than its fair share of the electrical and HVAC costs and upkeep for the Building. City, therefore, reserves the right to periodically review

COTC's equipment to determine whether or not COTC's equipment, in City's reasonable good faith judgment, uses an excessive amount of electricity or which adversely affects the air conditioning or heating systems of the Building. In any such case, City may require COTC to pay an additional amount for such excess usage. COTC agrees to inform City of and to obtain City's prior consent (which consent shall not be unreasonably withheld or delayed) before installing any equipment which may use an excessive amount of electricity or which adversely affects the air conditioning or heating systems of the Building. City does not warrant that any of the services above mentioned will be free from interruptions caused by war, insurrections, civil commotion, riots, acts of God, or the enemy, or governmental action, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability of City to obtain fuel or supplies, disease, epidemic, pandemic, or any other cause or causes beyond the reasonable control of City. Any such interruption of service shall never be deemed an eviction or disturbance of the COTC's use and possession of the Premises or any part thereof, or render City liable to COTC for damages, or relieve COTC from the performance of COTC's obligations under this Use Agreement. City's obligation to furnish light, heat, air conditioning and power shall be conditioned upon the availability of adequate energy sources. City shall have the right to reduce light, heat, air conditioning, and power within the Premises and the Common Areas as required by any mandatory or voluntary fuel or energy saving or allocation statute, regulation, order or program.

4.02. Janitorial Service. City shall furnish janitorial services in and about the Premises, Saturdays, Sundays and holidays excepted, as set forth in Exhibit E attached hereto. COTC shall not provide any janitorial service without City's written consent. If City's consent is given, janitorial service shall be subject to City's supervision, but at COTC's sole cost and responsibility. COTC shall not provide janitorial service in the Premises except through a janitor, contractor or employee satisfactory to City.

4.03. Maintenance and Repair. Except as otherwise provided in Article VI of this Use Agreement, City shall keep, repair and maintain the Building (including Common Areas) in good and useable condition during the entire term of this Use Agreement and all renewal terms. Should any portion of the Building or the Premises be damaged through the negligent use by COTC, COTC's officers, agents, employees, invitees or customers, then City will properly repair the same at COTC's expense, the amount of which expense shall be immediately due and payable from COTC as additional Periodic Use Compensation.

4.04 City's Insurance. City shall maintain commercial general liability insurance with respect to the Common Areas of the Building at least equal to the commercial general liability insurance coverage required to be maintained by COTC pursuant to Section 3.07 of this Use Agreement.

ARTICLE V – DEFAULT

5.01. Conditions of Default. If COTC fails to pay any installment of Base Periodic Use Compensation, Additional Periodic Use Compensation or any other amount to City hereunder within ten (10) days after it becomes payable hereunder without demand, or if COTC fails to maintain in full force and effect any insurance required hereunder, or if

COTC fails to observe and perform any other provision, covenant, or condition of this Use Agreement required to be performed by COTC within thirty (30) days after City shall have given notice to COTC of COTC's failure to perform the same, or if COTC abandons the Premises, or if COTC makes an assignment for the benefit of creditors, or enters into a composition arrangement with its creditors, or if the interest of COTC in this Use Agreement is attached, levied upon, or seized by legal or equitable process, or if a voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act shall be filed by or against COTC, or if a Court of competent jurisdiction or other governmental agency appoints a trustee, receiver, or liquidator of COTC, or if this Use Agreement is assigned and/or terminated by operation of law, then in any such event, COTC, at City's option, shall be in default of and in breach of this Use Agreement.

5.02. Remedies. If City elects, pursuant to Section 5.01, above, to declare a breach of this Use Agreement, then City shall have the rights set forth below, as well as any other rights which City may have at law or in equity.

In the event of any breach of this Use Agreement by COTC (and regardless of whether or not COTC has abandoned the Premises), this Use Agreement shall not terminate unless City, at City's option, elects at any time when COTC is in breach of this Use Agreement to terminate this Use Agreement. At City's option, City may terminate COTC's possession of the Premises without terminating this Use Agreement. For so long as this Use Agreement so continues in effect, City may enforce all of City's rights and remedies under this Use Agreement, including the right to recover all Periodic Use Compensation as it becomes due hereunder. For the purposes of this paragraph, the following shall not constitute a termination of COTC's right to possession: (i) City's acts of maintenance or preservation or efforts to enter a Use Agreement with another user for the use of the Premises, or (ii), the appointment of a receiver upon initiative of City to protect City's interest under this Use Agreement. In the event COTC is in breach, City shall make a good faith effort to enter a Use Agreement with another user for the use of the Premises and mitigate any damages.

In the event of termination of this Use Agreement or a termination of COTC's right to possession as the result of COTC's breach of this Use Agreement, City shall:

(A) Have the right to remove any and all persons and property from the Premises, with or without legal process, and pursuant to such rights and remedies as the laws of the State of Ohio shall then provide or permit, but City shall not be obligated to effect such removal. Said property may, at City's option, be stored or otherwise dealt with as such laws may then provide or permit, including but not limited to the right of City to store the same, or any part thereof, in a warehouse, in the Premises or elsewhere at the expense and risk of and for the account of COTC.

(B) Have the right to recover from COTC damages which shall include but not be limited to (a) all accrued and past due Periodic Use Compensation; (b) the value of the amount, if any, by which the unpaid Periodic Use Compensation (including but not limited to additional Periodic Use Compensation payable by COTC hereunder) for the balance of the term after the termination of this Use Agreement or the termination of COTC's right to possession exceeds the fair periodic use compensation value of the Premises at such time; and (c) such expenses as City may incur for legal expenses, including but not limited to reasonable attorneys' fees and court

costs, for its efforts to enter a Use Agreement with another user for the use of the Premises (including but not limited to advertising), for brokerage, for putting the Premises in good order, condition and repair, for preparing the same for entry of a Use Agreement with another user, and for keeping the Premises in good order, condition and repair (before and after City has prepared the same for entry of a Use Agreement with another user), and all costs (including but not limited to reasonable attorney's and receivers' fees) incurred in connection with the appointment of and performance by any receiver.

(C) Have the right to enter a Use Agreement with another user for the use of the Premises or any part thereof on such terms and conditions as City may reasonably determine. Such entry of a Use Agreement with another user shall not be considered as a surrender or acceptance back of the Premises or a termination of the Use Agreement and City may recover from COTC any deficiency between the amount received, if any, from such re-letting and the amount of Periodic Use Compensation and/or additional Periodic Use Compensation payable under this Use Agreement, together with any other amounts due to City hereunder. If the amount of Periodic Use Compensation received from such entry of a Use Agreement with another user exceeds the amounts then due from COTC pursuant to this Use Agreement, City may retain such amount to be used to cover future deficiencies and shall not be required to refund any such amount to COTC at any time. In the event of a breach or threatened breach by COTC of any of the terms, covenants, conditions, provisions or agreements of this Use Agreement, City shall additionally have the right of injunction. Mention in this Use Agreement of any particular remedy shall not preclude City from any other remedy, at law or in equity.

If COTC shall default in the performance of any obligation on COTC's part to be performed under this Use Agreement for more than ten (10) days after notice thereof from City to COTC, and City does not elect to terminate this Use Agreement or COTC's right to possession, City may, but shall have no obligation to, immediately, or at any time thereafter, perform the obligations of COTC. If City at any time is compelled to pay or elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of the failure of COTC to comply with any term, covenant, condition, provision or agreement hereof, or, if City is compelled to incur or elects to incur any expense (including reasonable attorney's fees in instituting, procuring or defending any action or proceeding, whether or not such an action or proceeding proceeds to judgment) by reason of any default of COTC hereunder, the sum or sums so paid by City, together with interest at the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, and/or attendant costs and damages, shall be deemed to be Additional Periodic Use Compensation hereunder and shall be due from COTC to City promptly after billing. Any provision of this Use Agreement to the contrary notwithstanding, should either party commence an action against the other to enforce any obligation contained herein, the prevailing party shall be entitled to recover from the other reasonable attorney's fees, legal costs and necessary disbursements.

ARTICLE VI -- CASUALTY OR OTHER DESTRUCTION OF PREMISES

6.01. Damage and Destruction. If either the Building or the Premises should be substantially destroyed or damaged (which, as used herein, means destruction or material damage to at least 50% of the Building or the Premises) by fire or other casualty, then either party hereto may, at its option, terminate this Use Agreement by giving written notice thereof to the other party

within thirty (30) days after the date of such casualty. In such event, Periodic Use Compensation shall be apportioned to and shall cease as of the date of such casualty. If neither party exercises this option, then the Premises shall be reconstructed and restored, at City's expense, to substantially the same condition as they were prior to the casualty; provided, however, that City's obligation hereunder shall be limited to the reconstruction of such of the COTC interior improvements as were originally required to be provided by City in accordance with this Use Agreement and further provided that, if COTC has made any additional improvements pursuant to Section 3.02 of this Use Agreement, COTC shall reimburse City for the cost of reconstructing the same on terms satisfactory to City in its sole discretion. In the event of such reconstruction, Periodic Use Compensation shall be abated for any period between the date of the casualty and substantial completion of the reconstruction repairs by City during which the Premises are unusable (or abated on a pro rata basis if only a portion of the Premises is unusable) and this Use Agreement shall continue in full force and effect for the balance of the term hereof.

If the Building and the Premises should be less than substantially destroyed or damaged by fire or other casualty that does not result in a termination of the Use Agreement as provided for above, then such damaged part of the Premises shall be reconstructed and restored at City's expense, to substantially the same condition as they were prior to the casualty; provided, however, that City's obligation hereunder shall be limited to the reconstruction of such of the COTC interior improvements as were originally required to be provided by City in accordance with this Use Agreement, and further provided that, if COTC has made any additional improvements pursuant to Section 3.02 of this Use Agreement, COTC shall reimburse City for the cost of reconstructing the same on terms satisfactory to City in its sole discretion. Periodic Use Compensation shall be abated to the extent the Premises are unusable (or abated on a pro rata basis if only a portion of the Premises is unusable) from the date of the casualty until substantial completion of the reconstruction repairs by City; and this Use Agreement shall continue in full force and effect for the balance of the term hereof. City shall use reasonable diligence in completing such reconstruction repairs.

Notwithstanding anything else to the contrary contained in this Section 6.01, except for COTC's reimbursement for the cost of reconstructing those improvements made by COTC pursuant to Section 3.02 of this Use Agreement, City shall have no obligation to pay for restoration of the Premises more than the net amount of the insurance proceeds payable for the benefit of City by reason of such damage or destruction after deduction of City's cost of obtaining such proceeds and any amount any lender to City requires to be applied to such loan, provided that if because such proceeds plus any amount City voluntarily contributes are insufficient to restore the Premises substantially to the condition they were in prior to such casualty, subject to the limitations with regard to COTC's additional improvements as set forth above, COTC shall have the right to terminate this Use Agreement by written notice to City which is delivered within thirty (30) days after COTC first becomes aware that such insufficiency exists.

ARTICLE VII – SUB-USES OR ASSIGNMENT

7.01. Sub-Use Agreement or Assignment. COTC covenants and agrees that neither this Use Agreement nor the term hereby granted will be assigned, mortgaged, pledged or otherwise transferred (whether voluntarily or by operation of law, or otherwise), nor shall any part of the Premises be subjected to sub-use without the prior written consent of City,

which consent will not be unreasonably withheld, but which consent, if given, may be subject to such terms and conditions as City considers reasonably necessary in order to protect its interest in the Premises and the Building, including but not limited to the following: That in the case of an assignment such assignee shall execute and acknowledge and deliver to City an agreement in a form and substance satisfactory to City whereby such assignee shall assume and agree to perform and to be personally bound by all the covenants, agreements, terms, and conditions of this Use Agreement on the part of COTC to be performed and whereby such assignee shall expressly agree that the provisions of this Section 7.01 notwithstanding, such assignment and transfer, shall continue to be binding upon it with respect to future assignments and transfers; and that (i) in the case of a sub-use agreement of the entire Premises that City shall receive from COTC one-half of the excess which such sub-user shall pay COTC under the sub-use agreement, on a square footage basis, over that amount which COTC is then currently obligated to pay City as annual Periodic Use Compensation pursuant to Section 2.01 above, on a square footage basis, and (ii) in the case of an assignment, one-half of all consideration paid for the assignment. In either event, COTC shall continue to be liable to City under this Use Agreement for the terms and conditions to be complied with by COTC.

If this Use Agreement is assigned, or if the Premises or any part thereof is subjected to sub-use or occupied by anyone other than COTC, City may, after default by COTC, collect Periodic Use Compensation from the assignee, sub-user, or occupant, and apply the net amount collected to the Periodic Use Compensation herein reserved but no such assignment, sub-use, occupancy, or collection shall be deemed a waiver by City of any of COTC's covenants contained in this Use Agreement or a release of COTC from the performance by COTC of the covenants on the part of COTC contained in this Use Agreement.

In no event shall COTC or its employees or agents (i) advertise the availability of an assignment of Use Agreement or sub-use of space in public media at less than current Building periodic use compensation rates or (ii) enter into an assignment or sub-use agreement with (x) any other user in the Building or (y) any prospective user with whom City or its management agent is then negotiating.

City shall have the right to sell, transfer, or assign its interest hereunder, or any part thereof, without the prior consent of COTC. Upon such sale, transfer, or assignment, COTC shall attorn to such purchaser, transferee or assignee, without need for further documentation of such attornment and, if the transfer is of all of City's interest under this Use Agreement, City shall be released of all obligations hereunder accruing after such transfer. The foregoing shall apply to each successor and assign of the named City herein.

7.02. City's Option to Terminate. Notwithstanding anything contained in Section 7.01 above to the contrary, if at any time or from time to time during the term of this Use Agreement, COTC desires to assign this Use Agreement or subject all of the Premises to a sub-use agreement, COTC shall first notify City in writing of the proposed terms and conditions of the assignment or sub-use. Upon receipt of such notice or upon City becoming aware of an assignment or sub-use, if no such notice is given before it occurs, City shall have the option to terminate this Use Agreement for the Premises. Such option shall be exercisable by City in writing for a period of thirty (30) days after receipt of

COTC's notice of intent to assign or subject the Premises to a sub-use agreement or at any time after an assignment or sub-use without such prior notice.

If City elects to terminate this Use Agreement with respect to the Premises, this Use Agreement shall terminate with respect to the Premises on the date set forth in such notice from City which is not more than thirty (30) days following City's notice of the exercise of City's option. The parties shall thereafter enter into an Amendment to this Use Agreement evidencing such termination, but failure to enter into such Amendment shall not affect the preceding.

If City fails to exercise such option, and COTC fails to complete the assignment or Sub-Use Agreement with the third party set forth in COTC's notice to City within sixty (60) days thereafter in accordance with the terms of COTC's notice to City, COTC shall again comply with all the conditions of this Article VII as if the notice and option hereinabove referred to had not been given and received.

ARTICLE VIII -- EMINENT DOMAIN

8.01. Eminent Domain. In the event the Building or the Premises (or any part of the Premises) shall be taken by condemnation or the threat thereof for public purposes, this Use Agreement shall terminate as of the date possession is to be delivered to the condemning authority and all damages awarded for such taking or condemnation shall belong to and be the property of City, whether such damages shall be awarded as compensation for diminution in the value to COTC's interest under this Use Agreement or to the fee of the Building or the Premises, or any of the land on which the Building is situated; however, COTC shall be entitled to any portion of the award made for removal and reinstallation of COTC's fixtures, or for the cost of COTC's immovable fixtures, if any.

In the event that a portion of the Building shall be taken by condemnation or the threat thereof, but the Premises is not taken and COTC shall be able to continue to utilize the Premises, this Use Agreement shall not terminate and shall continue upon its original terms and conditions. However, COTC, may, at its option, terminate the Use Agreement due to partial condemnation of the building, so long as COTC gives City notice of such termination within thirty (30) days after condemnation. In the event that COTC gives such notice and terminates the Use Agreement, COTC shall have thirty (30) days to vacate the premises during which time the Use Agreement shall remain in full force and effect and COTC shall continue to pay all Periodic Use Compensation due and amounts payable.

In the event the Premises or any part thereof is taken by condemnation for the duration of an emergency or other temporary condition, then, notwithstanding anything hereinabove provided, this Use Agreement shall continue in full force and effect without any abatement of Periodic Use Compensation, but the amounts payable by the condemning authority with respect to any period of time prior to the expiration or sooner termination of this Use Agreement shall be paid to City and the condemning authority shall be considered a sub-user of COTC. City shall apply the amount received from the condemning authority to Periodic Use Compensation due under this Use Agreement, net of costs to City for the collection thereof, and COTC shall pay to City any deficiency between the

amount thus paid by the condemning authority and the amounts of Periodic Use Compensation due hereunder, or City shall credit to future Periodic Use Compensation due from COTC any excess of the amount of the award over the amount of the Periodic Use Compensation due hereunder.

ARTICLE IX -- GENERAL PROVISIONS

9.01. Notice. Any notices or demands required or permitted by law or any provision of this Use Agreement shall be in writing, and shall be completed by mailing such notice to the other party, or any agent designated by it to receive such notices by certified or registered mail return receipt requested, postage prepaid, at the addresses listed below or at such other or additional address or addresses as either party may hereafter designate in writing:

CITY: City of Pataskala
621 West Broad Street
Suite 2B
Pataskala, Ohio 43062
Attention: Timothy Hickin, City Administrator

With a copy to: Isaac Wiles
Attn: Brian M. Zets
2 Miranova Place, Ste. 700
Columbus, Ohio 43215

COTC: Central Ohio Technical College
621 West Broad Street
Pataskala, Ohio 43062
Attention: Dr. John M. Berry, President

9.02. Additional Parties Bound by Provisions. Any person, corporation, partnership, joint venture or other entity, purchasing or procuring by any means whatsoever any interest in this Use Agreement, shall be bound and limited to the provisions contained herein; provided, however, that no assignment by, from, through or under COTC in violation of the provisions contained herein, shall vest in such assigns or other parties any right, title or interest whatsoever. For the purposes of interpreting this paragraph, City's mortgagee shall not be considered a party to this Use Agreement until such time as the mortgagee becomes the owner of the mortgaged Premises and stands in the position of City under this Use Agreement.

9.03. Word Genders and Numbers. Whenever words are used herein in any gender, they shall be construed as though they were used in the gender appropriate to the context and the circumstances, and whichever words are used herein in the singular or plural form, they shall be construed as though they were used in the form appropriate to the context and circumstances.

9.04. Topic Headings. Headings and captions in this Use Agreement are inserted for convenience and reference only, and in no way define, limit or describe the scope or

intent of this Use Agreement, nor constitute any part of this Use Agreement, and are not to be considered in the construction of this Use Agreement.

9.05. Governing Law. This Use Agreement shall be subject to and governed by the laws of the State of Ohio, irrespective of the fact that one or more of the parties may be or become a resident of a different state.

9.06. Counterparts. Several copies of this Use Agreement may be executed by all of the parties. All executed copies constitute one and the same Use Agreement, binding on all parties.

9.07. Entire Agreement. This Use Agreement contains the entire understanding between and among the parties and supersedes any prior understanding or agreements between and among them respecting the subject matter. No changes, alterations, modifications, additions or qualifications to the terms of this Use Agreement shall be made or be binding unless made in writing and signed by each of the parties.

9.08. Recording. If either of the parties hereto desires to record this Use Agreement, City and COTC agree to execute a Memorandum of this Use Agreement, which Memorandum of Use Agreement may then be recorded in the office of the County Recorder of Licking County, Ohio, at the cost of the party requesting such recording. If a Memorandum of this Use Agreement is recorded, COTC and City agree that upon expiration or earlier termination of this Use Agreement, a notice of expiration or termination of this Use Agreement shall be executed by City and COTC for recording purposes. If City prepares such a notice and COTC refuses to sign such notice or if City cannot find COTC after reasonable efforts to do so, City is appointed attorney in fact for COTC to sign such notice on behalf of COTC.

9.09. Holding Over After Term. If, with City's consent, COTC holds possession of the Premises after the term of this Use Agreement, COTC shall become a user of the Premises from month to month upon the terms herein specified, but at a Base Periodic Use Compensation rate equivalent to one hundred fifty percent (150%) of the then prevailing annual Base Periodic Use Compensation (on a square footage basis) paid by COTC at the expiration of the term of this Use Agreement pursuant to all the provisions hereof, payable in advance on or before the first day of each month, and COTC shall continue in possession until such tenancy shall be terminated by City or until COTC shall have given to City thirty (30) days' written notice in advance of its intention to terminate such tenancy. Anything herein to the contrary notwithstanding, any holding over by COTC without City's prior written consent shall constitute a default hereunder and shall be subject to all of the remedies provided for in Section 5.02 above, and City's right to damages for such illegal occupancy shall survive.

9.10. Laches and Waiver. Any failure of City to enforce rights or to seek remedies upon any default of COTC hereunder, or the delay of said enforcement or the seeking of remedies shall not prejudice or affect the rights or remedies of City in the event of any subsequent default or attempted enforcement at a later date. No waiver of any condition or legal right or remedy shall be implied by the failure of City to declare forfeiture or for any other reason. Acceptance by City of less than all Periodic Use Compensation due hereunder shall not be construed as a waiver or release of COTC with respect to the

balance of such Periodic Use Compensation due and any notation on such payment or in any accompanying correspondence to the effect that acceptance of such amount waives or releases COTC from payment of the balance shall be ineffective.

9.11. Estoppel Certificates. COTC agrees to execute, acknowledge and deliver to City, upon the request of City, a statement in writing certifying that this Use Agreement is unmodified and in full force and effect (or if there have been modifications that the Use Agreement is in full force and effect as modified and stating the modifications) and the dates to which any Periodic Use Compensation or consideration due hereunder have been paid. In addition, COTC agrees to furnish City, upon request, and after COTC has taken possession of the Premises, a letter or certificate addressed to City's mortgage or financial institution, any prospective purchaser of the Premises or any other person or entity requested by City, giving the following information or any part thereof requested by City:

(A) That the Premises have been completed on or before the date of such letter, and that all conditions precedent to the Use Agreement taking effect have been carried out (or stating specifically what items are not completed or what items have not been carried out);

(B) That COTC has accepted possession, that the Use Agreement term has commenced, that COTC is occupying the Premises, and that COTC knows of no default under the Use Agreement by City (or stating specifically the defaults which COTC knows exist);

(C) The actual Commencement Date of the Use Agreement and the actual Expiration Date of the Use Agreement, and any renewal options; and

(D) That COTC's occupancy under this Use Agreement has commenced and the current annual and monthly Base Periodic Use Compensation being paid by COTC.

If COTC fails to deliver such Estoppel Certificate(s) to City within ten (10) days after it/they is/are requested, such failure shall constitute default under this Use Agreement by COTC and, in addition to all other remedies available to City, COTC shall pay to City the sum of \$1,000.00 per day for each day after the said ten (10) days until the Estoppel Certificate is delivered to City.

9.12. Brokerage. COTC covenants and represents that it has negotiated this Use Agreement directly with **Timothy Hickin, City Administrator**, as agent for City, and **Dr. John M. Berry**, as agent for COTC, and has not acted by implication to authorize or authorized any other real estate broker or salesman to act for it in these negotiations. COTC will indemnify, defend and hold City harmless against the claims of any party alleging that commissions are owed to it as agent for COTC.

9.13. Mortgage Subordination. This Use Agreement is subject to the lien or liens of any mortgages that have been or are hereafter placed upon any lands, buildings or improvements of which the Premises are a part and any and all renewals, replacements and extensions thereof. COTC also agrees that any mortgagee may elect to have this Use Agreement be considered prior in right to its mortgage and, in the event of such election

and upon notification by such mortgagee to COTC to that effect, this Use Agreement shall be deemed prior in right to the said mortgage, whether this Use Agreement is dated prior or subsequent to the date of said mortgage. COTC agrees that, upon the requests of City or any mortgagee named in such mortgages, it shall execute and deliver whatever instruments may be required for such purposes and to carry out the intent of this paragraph and will provide Estoppel Certificates as otherwise requested by City or such mortgagee. Failure to provide such other instruments or Estoppel Certificates will cause substantial injury to City and there will be a charge of \$1,000.00 per day after ten (10) days during which the other instruments or Estoppel Certificates are not delivered which charge shall be due and payable as and for Additional Periodic Use Compensation.

9.14. Surrender of Premises. Upon termination of this Use Agreement, whether by lapse of time or otherwise, or upon the exercise by City of the power to re-enter and repossess the Premises, without terminating this Use Agreement, as hereinbefore provided, COTC shall at once surrender the possession of the same to City in good order and repair, ordinary wear and tear and damage resulting from insured casualty excepted, and at once remove all of COTC's property therefrom. Any damage done to the Premises as a result of COTC's removal of its equipment, trade fixtures and/or other personal property, shall be promptly and properly repaired by COTC. If COTC fails to promptly and properly repair the Premises, City may do so, and the cost of such repair shall be paid by COTC to City promptly after billing as Additional Periodic Use Compensation hereunder and such obligation shall survive termination of this Use Agreement.

9.15. Quiet Enjoyment. City hereby covenants and agrees that if COTC shall perform all the covenants and agreements hereinbefore stipulated to be performed on COTC's part, COTC shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from City or any person or persons lawfully claiming the Premises.

9.16. Invalidity of Any Provision. The invalidity or unenforceability of any particular provision of this Use Agreement shall not affect the other provisions hereof, and this Use Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

9.17. Force Majeure. In the event a party hereto shall be delayed or hindered or prevented in the performance of any obligations required under this Agreement by reasons of strike, lockouts, inability to procure labor or materials, failure of power, fire or other acts of God, restrictive governmental laws or regulations, riots, civil unrest, insurrection, war, disease, epidemic, pandemic or any other reason not within the reasonable control of such party (such events hereafter referred to as a "force majeure"), then the performance of such obligations shall be excused for a period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of any such delay. Notwithstanding the foregoing, the occurrence of a force majeure shall not extend the time period for the payment of money.

ARTICLE X -- PARKING

10.01 Parking. Subject to the provisions which follow in this Section 10.01, during the term of this Use Agreement, parking shall be available to COTC, on a first come, first

served basis. The foregoing shall not be construed as an agreement to provide reserved parking spaces or to guarantee that the parking lot at all times will have adequate parking for all Users of the Building and their employees and invitees.

ARTICLE XI – OTHER

11.01 Other. It is understood that the Lessee is funded in whole or in part by State funds, and therefore Lessee’s payment obligations under this Agreement are subject to the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue the funding of the payments due to Lessor hereunder, then this Agreement shall terminate and neither party shall have any further obligation to the other.

IN WITNESS WHEREOF, City and COTC have signed duplicate counterparts hereof on the day and year first above written.

CITY:
CITY OF PATASKALA

By: _____
Timothy Hickin,
City Administrator

Approved as to form:

City Law Director: Isaac Wiles &
Burkholder, LLC

By: _____
Brian M. Zets

COTC:
Central Ohio Technical College

By: _____
Dr. John M. Berry
President

By: _____
David H. Brillhart
Chief Financial Officer

STATE OF OHIO, SS
COUNTY OF LICKING

On this ____ day _____, 2021, before me personally appeared **Timothy Hickin, the City Administrator** of the City of Pataskala, an Ohio municipal corporation, the duly authorized contracting authority, who acknowledged that he did sign the

foregoing Use Agreement, and that the same is his free and voluntary act and deed for the uses and purposes mentioned herein on behalf of such City as the duly authorized contracting authority of such municipal corporation.

This is an acknowledgement; no oath or affirmation was administered in relation to this notarial act.

Notary Public
My commission expires: _____

STATE OF OHIO, SS
COUNTY OF LICKING

On this ____ day of _____, 2021, before me personally appeared **Dr. John M. Berry, President of Central Ohio Technical College**, a technical college organized under Chapter 3357 of the Ohio Revised Code, who acknowledged that he did sign the foregoing Use Agreement, and that the same is his free and voluntary act and deed for the uses and purposes mentioned herein on behalf of **Central Ohio Technical College**.

This is an acknowledgement; no oath or affirmation was administered in relation to this notarial act.

Notary Public
My commission expires: _____

STATE OF OHIO, SS
COUNTY OF LICKING

On this ____ day of _____, 2021 before me personally appeared **David H. Brillhart, Chief Financial Officer of Central Ohio Technical College**, a technical college organized under Chapter 3357 of the Ohio Revised Code, who acknowledges that he did sign the foregoing Use Agreement, and that the same is his free and voluntary act and deed for the uses and purposes mentioned herein on behalf of **Central Ohio Technical College**.

This is an acknowledgement; no oath or affirmation was administered in relation to this notarial act.

Notary Public
My commission expires: _____

EXHIBIT SCHEDULE

EXHIBIT A – Premises

EXHIBIT B – Commencement Date Agreement

EXHIBIT C – Base Periodic Use Compensation Schedule

EXHIBIT D – Rules and Regulations

EXHIBIT E – Janitorial Services

EXHIBIT A

Premises

NOTE: Floor Plan not to scale.

EXHIBIT B

COMMENCEMENT DATE AGREEMENT

Agreement made this ___ *day of* _____ **20**___ between the City of Pataskala, a municipal corporation (hereinafter referred to as "City"), and **Central Ohio Technical College** (hereinafter referred to as "COTC").

WHEREAS, City and COTC entered into that certain Use Agreement dated _____, **20**___ (hereinafter referred to as the "Use Agreement"), for certain Premises more particularly described therein (Capitalized terms used herein which are not defined herein have the same meaning as described to such terms in the Use Agreement);

NOW, THEREFORE, pursuant to the provisions of Section 1.02 of the Use Agreement, City and COTC mutually agree as follows:

1. The Commencement Date of the term of the Use Agreement is _____, **20**___, and the Expiration Date of the term of the Use Agreement is _____, **20**___.

IN WITNESS WHEREOF, *Timothy Hickin, City Administrator for the City of Pataskala*, hereto has signed this Agreement this _____ day of _____, 2021.

IN WITNESS WHEREOF, *Dr. John M. Berry, President of COTC, COTC*, hereto has signed this Agreement this _____ day of _____, 2021.

CITY:
CITY OF PATASKALA

COTC:
COTC

By: _____
Timothy Hickin, City Administrator
City Administrator

By: _____
Dr. John M. Berry, President

EXHIBIT C

Base Periodic Use Compensation Schedule

<u>Use Year</u>	<u>Square Footage</u>	<u>Rate per Useable Square Foot</u>	<u>Total Monthly Base Periodic Use Compensation</u>	<u>Total Annual Base Periodic Use Compensation</u>
Yrs 1-3	1,772	\$1.1170	\$1,979.32	\$23,751.84
Yrs 1-3	731	\$0.5585	\$408.26	\$4,899.12
Totals/Avg:	2,503	\$0.9539	\$2,387.58	\$28,650.96

EXHIBIT D

RULES AND REGULATIONS

COTC agrees that it, its employees, agents, patrons and invitees, except with the written consent of City, will not:

1. Obstruct sidewalks, entrances, passages, elevators, vestibules, stairways, corridors or halls or use them for any purpose other than ingress and egress to and from Building and the Premises.
2. Attach awnings or other projections to the outside of Building or attach blinds, shades, or screens in connection with any window, unless authorized by City in writing in its sole discretion.
3. Cover or obstruct windows or doors that admit light, or place bottles, parcels, plants or other articles on window sills or convectors. Any blinds, shades or screens authorized by City in connection with any windows shall be maintained and used as authorized by City.
4. Inscribe, exhibit, paint or affix any advertisement, sign, notice or lettering on any part of the inside or outside of Building, unless authorized by City in writing.
5. Use water closets, toilet rooms and fixtures or other water and plumbing apparatus for any purpose other than that for which they were constructed, or throw sweepings, rubbish, rags or other substances therein or waste water.
6. Strip, overload, mark, drill or cut into or in any way deface any part of Premises or Building, or lay linoleum or other floor covering other than carpet, unless approved by City, in writing.
7. Bring into or keep in the Premises or building, bicycles, vehicles, animals or birds of any kind, or permit the use of any part of Premises for manufacturing, storage of merchandise for sale or resale, or for the possession, storage, manufacturing or sale of liquor, narcotics or other illegal substances.
8. Bring into or keep in the Premises any flammable combustible or explosive material; do anything which will increase the danger of fire, make void or voidable any insurance on the Building, or result in an increased or extra premium for such insurance; or permit any objectionable odors from cooking or otherwise to emanate from the Premises.
9. Make unseemly or disturbing noises or disturb or interfere with the other occupants of Building by any means or in any way or throw anything out of doors or windows or down passageways, stairways or shafts.
10. Place additional locks or bolts on doors or windows or change existing locks or bolts or the mechanism thereof. The doors to the Premises shall be kept closed at all times except as they are used for ingress and egress.

11. Move furniture or equipment into or out of Premises, except at such times as City may from time to time designate or place and maintain business machines and mechanical equipment in settings insufficient, in City's judgment, to absorb or prevent vibration, noise and annoyance.
12. City reserves the right to inspect any supplies or freight being brought into the Building and to exclude any thing from the Building which violates the Use Agreement or these Rules and Regulations or which City finds to be reasonably objectionable.
13. Advertise in any way which, in City's opinion, tends to impair the reputation of Building or its desirability as an office building.
14. Use hand trucks, except those equipped with rubber tires and side guards.
15. Smoke tobacco or other substances in the Building or in or on any Common Area which is not designated by City as a smoking area.
16. Use the Premises or any portion of the Building or the Common Areas for the manufacture or sale in the ordinary course of business, or for the sale at auction, of merchandise, goods or property of any kind.
17. Use any portion of the Premises or any portion of the Building or the Common Areas for lodging or sleeping or for any immoral or illegal purposes.

COTC agrees that:

1. Any signs requested by COTC after the effective date of the Use Agreement shall be handled as follows: signs near interior doors shall be of such order, size and color as approved by City, and shall be installed by City or persons approved by it, at such places as shall be designated by City and at the expense of COTC.
2. All additional names, which COTC may desire to be posted on the directory of the Building, in excess of one name per COTC must first be approved by City, and if so approved, will be installed by City at the expense of the COTC.
3. Upon the termination of tenancy, all access cards and keys are to be returned to City. In the event of the loss of any building access cards or keys furnished by City, COTC shall pay City the replacement cost thereof.
4. All replacement lamps, bulbs and tubes used in lighting fixtures in the Premises will be made at the expense of City.
5. Requirements of COTC shall be attended to only upon application to the Building Manager, and employees of City shall not perform any work or do anything outside of their regular duties, unless under special instructions from the Building Manager.
6. COTC will assist in the prevention of canvassing, soliciting and peddling in Building.

7. City may require all persons, including users, their employees, agents, patrons and invitees, entering or leaving building outside of the normal hours of the Building or at other times when City deems it to be appropriate to sign the register of the security personnel.
8. COTC assumes full responsibility for protecting the Premises from theft.
9. City may from time to time rescind any of the Rules and Regulations and may make such other and further rules and regulations as in City's judgment may be necessary or desirable for the safety and care of the Premises and the Building and for the preservation of good order therein, but COTC will be bound thereby only after written notice thereof.

EXHIBIT E

Cleaning and Janitorial Services

4823-6615-1148.2

