

EXHIBIT – LEASE

(This document is a lease of less than 99 years and not a conveyance subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

This lease (the “Lease”), entered into this _____ day of _____, 2021 (the “Effective Date”), by and between the **City of Madison**, a municipal corporation, located in Dane County, Wisconsin (the “City”), and **Lutz, Inc.**, a Wisconsin corporation (the “Lessee”; and together, the City and Lessee shall be called the “Parties”).

WITNESSETH:

WHEREAS, the City is the owner of the 8,200 sq. ft. commercial warehouse building located at 814 North Avenue, Madison, Dane County, Wisconsin (the “Building”), which Building is located on real property owned by the City, as described and depicted on attached Exhibit A (the “City’s Property”); and

WHEREAS, the City acquired the City’s Property from the Lessee, and the Lessee desires to lease back the City’s Property while the Lessee relocates to its new location.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Leased Premises. The City hereby leases to the Lessee a portion of the City’s Property located at 814 North Avenue, Madison, Wisconsin, including the Building and asphalt parking/driveway areas, all as depicted on attached Exhibit A (the "Leased Premises"). The Lessee has inspected and accepts the Leased Premises in its "as-is" condition as of the Effective Date.
2. Term. The term of the Lease shall commence on the Effective Date and expire on March 31, 2022 (the “Lease Term”).
3. Security Deposit. Lessee shall pay to the City Five Thousand Dollars (\$5,000) (the "Security Deposit") to be held by the City. The Security Deposit will be held during the Lease Term, and shall be used to cure any damages to the Leased Premises caused by Lessee and/or default by Lessee under this Lease.
4. Rent. No rent shall be due or payable during the Lease Term.
5. Operating Expenses, Repairs and Maintenance by Lessee. The Lessee shall, at its own expense, keep and maintain the Building and entire Leased Premises in good condition and repair and in a presentable condition consistent with good business practices and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the

Return to: City of Madison
Economic Development Division
Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.: 251-0709-352-1102-2

immediate vicinity. Additionally, the Lessee shall be responsible for the cost and expenses of damage to the Building and Leased Premises, or repairs/replacements required by reason of acts or omissions of the Lessee, the Lessee's employees, customers, agents, invitees, vendors, licensees or contractors.

The Lessee shall pay for all operating and maintenance expenses relating to the entire Leased Premises during the Lease Term including, but not limited to: special assessments and property taxes assessed or levied upon the Leased Premises and accruing during the Lease Term, personal property taxes, lighting, electrical, heating, air conditioning, water and sewer service, storm water and urban forestry utility charges, security, appropriate storage and removal of garbage and recycling, window washing, parking/driveway area and sidewalk maintenance, snow removal, mowing, landscaping, pest control, personal property insurance, janitorial, signage and administration. In addition, Lessee shall pay for the installation, use and maintenance of all data, computer and telephone services and any other specialized equipment (e.g., card reader access system) furnished to the Leased Premises.

Upon execution of this Lease, the Lessee shall pay 2021 property taxes to the City, prorated to the day, beginning the Effective Date through December 31, 2021. In the event the Lessee terminates the Lease early, per Section 17, and is not in default on any terms or conditions of this Lease, the City shall refund the balance of the property taxes to the Lessee, prorated beginning the date the Lease termination goes into effect through December 31, 2021. If this Lease is terminated early by the City due to any default of this Lease by the Lessee, or by the Lessee after December 31, 2021, a portion or the full balance of property taxes paid by the Lessee may be retained by the City to cure any such default.

6. Use. The Lessee will occupy and use the Leased Premises solely for the purpose of operating a construction business and activities related thereto, and for no other purposes whatsoever without the City's prior written consent, which consent the City may withhold in its sole discretion.
7. Assignment and Subletting. The Lessee shall not assign this Lease nor sublet the Leased Premises, or any portion thereof, without the prior written consent of the City, which consent the City may withhold at its sole discretion.
8. Alterations and Construction. Except as required to carry out the responsibilities of Section 5, no construction, modification, improvement, alteration, redecoration, or remodeling of the Leased Premises shall be undertaken without prior written approval from the Director of the City Economic Development Division. Any such construction, modification, improvement, alteration, redecoration, or remodeling shall be at the expense of the Lessee and remain for the benefit of the City, unless otherwise provided in such written approval. In all cases, the Lessee is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction activity.
9. Liens and Title.
 - a. The Lessee shall not suffer or permit any construction or mechanics' lien to be filed, or if filed, to remain uncontested, against the fee of the Leased Premises, nor against the Lessee's leasehold interest in the Leased Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone holding the Leased Premises or any part thereof through or under the Lessee; and nothing contained

herein shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Leased Premises or any part thereof, nor as giving the Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any construction or mechanics' lien against the fee of the Leased Premises. If any such lien is filed, the Lessee shall immediately cause the same to be discharged or released or shall upon request provide adequate and acceptable security or bond to protect the City's interest.

- b. If any such construction or mechanics' lien shall at any time be filed against the Leased Premises, the Lessee covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise, and that it will hold the City free and harmless of and from any and all liability to any contractor, subcontractor, materialman, laborer or any other person relating to or arising because of any improvements or alterations on or to the Leased Premises, and that it will also defend on behalf of the City, at the Lessee's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of any such lien, and that it will pay any damages and discharge any judgments entered therein. Upon the Lessee's failure to do any of the foregoing things, the City may take such action as may be reasonably necessary to protect the City's interest, in addition to any other right or remedy which it may have; and any amount paid by the City in connection with such action shall be repaid by the Lessee to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.
 - c. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises or any portion thereof.
10. Rules and Regulations. Lessee, its vendors and contractors are to abide by the rules & regulations listed below (collectively, the "Rules and Regulations"):
- a. Lessee shall not use or keep in the Leased Premises any kerosene, gasoline, or inflammable or combustible fluid or material other than those limited quantities necessary for the operation of a construction business and activities related thereto.
 - b. Lessee shall not use or permit to be used in the Leased Premises any foul or noxious gas or substance, do or permit anything to be done in the Leased Premises which materially obstructs, materially interferes, or materially injures City or other lessees in the Building, nor shall Lessee bring into or keep in or about the Leased Premises any birds or animals, except seeing eye dogs or certified service animals when accompanied by their masters.
 - c. Lessee shall not use any method of heating or air conditioning, including space heaters and window air conditioners, except as supplied or approved by the City.
 - d. City reserves the right to prevent access to the Leased Premises in case of invasion, riot, earthquake or other emergency by closing the doors or by other appropriate action.

- e. The toilet rooms, toilets, urinals, washbowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind shall be discarded therein.
 - f. Lessee shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by City and that are consistent with the Lease or any governmental agency.
 - g. City shall enforce the Rules and Regulations in a non-discriminatory manner, but shall, in addition to any remedies provided herein, have the right to expel persons violating law or these Rules and Regulations. If City agrees to less burdensome or more favorable rules and regulations for the benefit of any other lessee, these Rules and Regulations shall be automatically amended to include any such less burdensome or more favorable Rules and Regulations.
 - h. The Rules and Regulations of this Section 10 are in addition to the terms, covenants and conditions of this Lease for use of Leased Premises. In the event these Rules and Regulations conflict with any other provision(s) of the Lease, said other provision(s) shall control.
 - i. Smoking, including the use of e-cigarettes, is prohibited throughout the Building. Violators will be ticketed and/or removed from the Building.
 - j. Alcoholic Beverages. The Lessee shall not sell or keep on the Leased Premises alcoholic beverages of any kind whatsoever, in accordance with Madison General Ordinances.
 - k. The City reserves the right to make reasonable additions and modification to the Rules and Regulations, with cooperation with the Lessee.
11. Indemnification. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Lessee or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of this Lease.
12. Insurance.
- a. Commercial General Liability. During the life of this Lease, the Lessee shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 minimum per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide

the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Lease.

- b. Environmental Liability. The Lessee shall purchase and maintain environmental liability insurance coverage for any and all losses arising from or in any way related to pollution conditions, both sudden and accidental and gradual, which arise from Lessee's operations, whether directly or indirectly, or that are in any other way related to Lessee's use and operations during performance of this Lease, whether such operations be by the Lessee, its subcontractors or anyone directly or indirectly employed by any of them (the "Losses"). The environmental liability insurance policy shall contain minimum liability limits of \$1,000,000 per Loss, \$2,000,000 total all Losses. Liability limits shall be dedicated to the Losses described herein and said limits shall not be eroded by the addition of any other party or entity not in conformance with this Lease. Lessee's environmental liability coverage shall be primary and non-contributory, list the City of Madison, its officers, officials, agents and employees as additional insureds, and remain in effect for term of this Lease and for three (3) years beyond.
 - c. Property Insurance. Lessee shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Leased Premises. The City shall not be liable for any damage to or loss of property of Lessee or others located on the Leased Premises and Lessee shall obtain a waiver of subrogation in favor of the City.
 - d. As evidence of the above coverages, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, the Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.
 - e. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Lease, Lessee shall immediately cease use of the Leased Premises and the provision of the services under this Lease until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section 12.
13. Hazardous Substances; Indemnification. The Lessee represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to

cause sickness, death or disease or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of this Lease.

14. Compliance. The Lessee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises. The Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.
15. Right of Entry. The City and its authorized representatives shall have the right to enter the Leased Premises at any time without notice to Lessee at any time during or after an emergency or to inspect the exterior grounds of the Leased Premises, and at all reasonable times, upon not less than twenty-four (24) hours' prior written notice to Lessee, to inspect any area of the Leased Premises, to abate nuisances, to cure dangerous conditions or repair waste, and to make repairs, alterations, improvements or additions to the Leased Premises or to the Building as City may reasonably deem necessary. City shall use commercially reasonable efforts in making any repairs, alterations, improvements or additions to the Leased Premises or the Building to keep the disruption of Lessee's business to a minimum. Nothing herein shall impose any duty upon City to do any work or perform any other act which Lessee may be required to perform under this Lease, and the performance thereof by City shall not constitute a waiver of Lessee's default in failing to perform it. If Lessee is not present to permit entry into the Building, the City may, in case of emergency, enter by master key, or may forcibly enter, without rendering City liable therefor.
16. City's Remedies. If any default by Lessee shall continue uncured after the time periods stated in this Section, City has the following remedies, in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.
 - a. Termination of Lease. The City may, at the City's election, after thirty (30) day's written notice of default, terminate this Lease. Upon such termination, all further obligations of City under this Lease shall terminate, Lessee shall surrender and vacate the Leased Premises in a broom clean condition, in accordance with Sections 19 and 20, and City may reenter and take possession of the Leased Premises and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due to City or from any claim for damages previously accrued or then accruing against Lessee.
 - b. City May Perform. The City shall have the right at any time, after ten (10) days notice to Lessee (or in case of emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment or perform any act required of Lessee under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall obligate City to make any payment or perform any act required of the Lessee, and this exercise of the right to so do shall not constitute a release of any obligation or a

waiver of any default. All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed to City by Lessee as additional rent.

c. Storage. The City may, at City's election, store Lessee's personal property and trade fixtures at the cost of Lessee.

17. Lessee's Remedies. If any default by the City shall continue uncured after thirty (30) days written notice of default from Lessee to City, Lessee has the following remedies, in addition to all other rights and remedies provided by law or equity, to which Lessee may resort cumulatively or in the alternative:

Termination of Lease. The Lessee may terminate this Lease by giving City notice of termination. On the giving of the notice, all further obligations of under this Lease shall terminate, Lessee shall surrender and vacate the Leased Premises in a broom clean condition, in accordance with Sections 19 and 20.

18. Diligent Efforts. Notwithstanding anything to the contrary in this Section, in the event of Lessee's default is not a health or safety violation and cannot, because of the nature of the default, be cured within the thirty (30) days after City's notice thereof, then Lessee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, Lessee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

19. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the Lessee's rights in the Leased Premises shall cease, and the Lessee shall immediately surrender the Leased Premises, subject to the provisions of Sections 16 and 20.

20. Removal and Disposal of Personal Property. Upon the expiration or termination of this Lease, the Lessee shall remove all personal property from the Leased Premises. If the Lessee leaves any personal property on the Leased Premises, the City shall have the right to dispose of said property, without liability, thirty (30) days after the Lessee vacates or abandons the Leased Premises.

21. Hold Over. In the event the Lessee shall continue to occupy or use the Leased Premises after the expiration of this Lease or any extension thereof, such holding over shall be deemed to constitute a tenancy from month to month, upon the same terms and conditions as herein provided, and in no event shall the tenancy be deemed to be year to year.

22. Definition of City and Lessee. The terms "City" and "Lessee" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Lease shall bind the Parties mutually, their heirs, personal representatives, successors and assigns.

23. Authorized Agent. The City's Economic Development Division Director or the Director's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Lease, with authority to administer this Lease lawfully on behalf of the City.

24. Notices. All notices to be given under the terms of this Lease shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the Parties specified below. If electing to use electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Lease.

For the City: Office of Real Estate Services
Economic Development Division - City of Madison
P. O. Box 2983
215 Martin Luther King, Jr. Blvd., 3rd Floor
Madison, WI 53701-2983
Email: acmiller@cityofmadison.com and
ores@cityofmadison.com

For the Lessee: Lutz, Inc.
Attn: Jim Lutz
520 Business Park Circle
Stoughton, WI 53589
Email: jiml@abhomespecialists.com

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

25. Non-Discrimination. In the performance of its obligations under this Lease, the Lessee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
26. Accessibility. The Leased Premises shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Lessee.
27. Signs. Any signs on the Leased Premises shall be in conformity with the provisions of City of Madison Sign Control Ordinance 31. Lessee shall pay the cost to create, install and maintain any signage.
28. As Is, Where Is. The City leases the Leased Premises to the Lessee in “as is”, “where is” condition with all faults and City makes no representations or warranties, either express or implied, as to the condition of the property or any improvements thereon, as to the suitability or fitness of the property or any improvements thereon, as to any law, or any other matter affecting the use, value, occupancy, or enjoyment of the property, or, except as set forth elsewhere herein, as to any other matter whatsoever.

29. Severability. If any term or provision of this Lease or the application thereof to the City or the Lessee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to the City or the Lessee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.
30. Entire Agreement. All terms and conditions with respect to this Lease are expressly contained herein, and the Parties agree that neither the City nor the Lessee has made any representations or promises with respect to this Lease not expressly contained herein. No alteration, amendment, change, or addition to this Lease shall be binding upon the Parties unless in writing and signed by them.
31. Damage and Destruction. In the event the Building is damaged by any peril covered by standard policies of fire and extended coverage insurance to an extent which is less than twenty-five percent (25%) of the cost of replacement of the Building, the damage shall, except as hereinafter provided, promptly be repaired by City, at the City's expense, but in no event shall City be required to repair or replace Lessee's furniture, furnishings, equipment or personal property. In the event the Building is damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Building, the City may elect either to repair or rebuild the Building, as the case may be, or to terminate this Lease upon giving notice of such election in writing to Lessee within sixty (60) days after the event causing the damage. If the casualty, repairing or rebuilding shall render the Building or Leased Premises untenable, in whole or in part, Lessee may elect to terminate the Lease upon giving notice of such election in writing to City within thirty (30) days after the event causing the damage.
32. Leased Premises Acquired by Eminent Domain. In the event the Leased Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of the leasehold, reversion and fee, shall belong to the City without any deduction therefrom for any present or future estate of the Lessee, and the Lessee hereby assigns to the City all of its right, title and interest to any such award. However, the Lessee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Lessee for moving and relocation expenses.

In the event of a taking of any portion of the Leased Premises not resulting in a termination of this Lease, the City shall use so much of the proceeds of the City's award for the Leased Premises as is required therefor to restore the Leased Premises to a complete architectural unit, and this Lease shall continue in effect with respect to the balance of the Leased Premises, with a reduction of Base Rent in proportion to the portion of the Leased Premises taken.

33. Brokerage Costs. The City is not responsible for any brokerage costs in connection with the Lease.
34. Public Record. This Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the Parties.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the date first set forth above.

LUTZ, INC., a Wisconsin corporation

By: _____

James Lutz, _____ (Title)

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this ____ day of _____, 2021, the above named James Lutz, _____ of the above named Lutz, Inc., a Wisconsin corporation, known to me to be the person who executed the above foregoing instrument, and acknowledged that they executed the foregoing instrument as such _____ as the deed of said corporation, by its authority.

Notary Public, State of Wisconsin

Print or Type Name
My Commission expires: _____

Signatures continue of following page.

CITY OF MADISON

By: _____ By: _____
Satya Rhodes-Conway, Mayor Maribeth L. Witzel-Behl, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, on behalf of the City of Madison, are authenticated on this ____ day of _____, 2021.

Kevin Ramakrishna, Assistant City Attorney
Member of the Wisconsin Bar

Approved	Date	Approved	Date
_____	_____	_____	_____
David Schmiedicke, Finance Director		Eric Veum, Risk Manager	

Approved as to Form

Michael Haas, City Attorney

Execution of this Lease by the City of Madison is authorized by Resolution Enactment No. RES-21-00_____, File ID No. _____, adopted by the Common Council of the City of Madison on _____, 2021.

Drafted by the City of Madison Office of Real Estate Services Real Estate Project No. 12373

EXHIBIT A

Legal Description of the City's Property

Lot 1 of Certified Survey Map No. 10244, as recorded in the Dane County Register of Deeds in Volume 60, Page 95, of Certified Surveys, in Madison, Wisconsin.

Depiction of City's Property, Leased Premises, and Building

