

RESOLUTION NO. 24-34

LEASE

THIS LEASE, is entered into this _____ day of _____, 2024 (“Effective Date”), by and between **the City of Calamus, Iowa** (“Landlord”) whose address for the purpose of this Lease is 301 2nd St., PO Box 248, Calamus, IA 52729 and **Austin Forret Trucking, LLC** (“Tenant”) whose address for the purpose of this Lease is 2351 190th Ave., Calamus, IA 52729.

1. **Premises and Term.** The Landlord, in consideration of the rents, agreements and conditions herein contained, leases to the Tenant and Tenant leases from Landlord, according to the terms of this Lease, the following described “premises”, situated in Clinton County, Iowa: 1380 square feet, more or less, in the property locally known as 193 2nd St., Calamus, IA 52729.

With the improvements thereon, and all rights, easements and appurtenances for a term of 60 months, commencing at midnight of the day previous to the first day of the Lease Term, which shall be on the 1st day of September, 2024 and ending at midnight on the last day of the Lease term, which shall be on the 31st day of August, 2029 upon condition that the Tenant pays rent therefore, and otherwise performs as in this Lease provided. In the event the Calamus City Council approves this Lease at the August 5, 2024 meeting, Tenant may be able to receive early possession prior to September 1, 2024 to allow Tenant to begin construction projects.

2. **Rent and Security Deposit.** The base rents due pursuant to this Lease shall be due and payable on the 1st day of each month during the Lease Term, at the address of Landlord, as above designated, or at such other place in Iowa, or elsewhere, as the Landlord may, from time to time, designate in writing. The monthly rental amount shall be **\$600.00 per month** during the Lease Term, subject to the provisions of Paragraph 27(A) of this Lease. If Tenant shall fail to pay rent within ten (10) days after the same is due, such amounts shall draw interest at 9% per annum from the due date, until paid.

In addition to the rents due and payable as provided hereinabove, Tenant shall also pay to the Landlord the sum of **\$600** as a security deposit which said sum to be payable upon execution of this Lease. The security deposit shall be returned to Tenant at the expiration/termination of this lease.

3. **Possession.** Tenant shall be entitled to possession upon execution by the parties of all lease documents by Tenant and Landlord and payment of security deposit (\$600), first month’s rent (\$600) and all utilities being transferred into Tenant’s name.
4. **Use of Premises.** Tenant covenants and agrees during the term of this Lease to use and to occupy the leased premises only for a business office. Any variation of

use contemplated by the Tenant must be approved in writing by the Landlord. Tenant shall use, or permit the Premises to be used, for any unlawful purpose.

5. Quiet Enjoyment. Landlord covenants that its estate in said premises is in fee simple and that the Tenant, if not in default, shall peaceably have, hold and enjoy the premises for the term of this Lease. Landlord shall have the right to mortgage all of its right, title, and interest in said premises at any time without notice, subject to this Lease.
6. Care and Maintenance.
 - a. Tenant takes the premises as is, except as herein provided.
 - b. All capital improvements will be the responsibility of the Landlord and, in addition thereto, Landlord shall keep the following in good repair: roof and structural components including side walls and foundation, windows, doors, parking areas, driveways and sidewalks. Landlord shall not be liable for failure to make any repairs or replacements unless Landlord fails to do so within a reasonable time after written notice from Tenant; however, if the improvements negatively impact the business of Tenant, such repairs must be made within thirty (30) days of notice. During such time, Tenant shall be entitled to abate a proportional share of the rent, or make the repair itself and deduct or offset the cost thereof from the rent. In the event a structural repair or replacement is due to the negligent or willful acts of the Tenant or the Tenant's agents, customers, or business invitees, then the Tenant shall be responsible for the structural repair or replacement.
 - c. Tenant shall be responsible for all other repairs and periodic maintenance needed on the property, other than replacement costs, which shall be the responsibility of the Landlord.
 - d. Landlord shall deliver the HVAC system in good working order and will warrant its condition for one (1) year. Following the end of the one-year period, Tenant will be responsible for ongoing maintenance and repairs of the HVAC system, capped at \$1,000.00 per year. Landlord shall be responsible for any additional HVAC maintenance above the cap in a calendar year, and shall also be responsible for HVAC replacement if necessary.
 - e. Tenant shall maintain the premises in a reasonably safe, serviceable, clean and presentable condition, and except for the repairs and replacements. Tenant shall make no structural changes or alterations without the prior written consent of Landlord. Unless otherwise provided, and if the premises include the ground floor, Tenant agrees to remove all snow and ice and other obstructions from the sidewalk on or abutting the premises.

- f. Tenant shall provide lawn care/landscaping and snow removal for the area around the demised premises.
 - g. All leasehold improvements shall be as shown in Paragraph 27(A).
7. Utilities and Services. Tenant shall pay for all utilities and services which may be used on the premises, except the following to be furnished by Landlord: NONE. Landlord shall not be liable for damages for failure to perform as herein provided, or for any stoppage for needed repairs or for improvements or arising from causes beyond the control of Landlord, provided Landlord uses reasonable diligence to resume such service. Landlord shall insure that the premises has access to all necessary utilities.
8. Termination, Surrender of Premises, Removal of Fixtures, Renewals and Right of First Refusal.
- a. **Termination.** This Lease shall terminate upon expiration of the original term; or if this lease expressly provides for any option to renew and if any such option is exercised by the Tenant, then this Lease will terminate at the expiration of the option term or terms.
 - b. **Surrender.** Tenant agrees that upon termination of this Lease it will surrender and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Tenant. Tenant shall clean and vacuum the demised premises upon surrender, and any labor, repair or replacement that is necessary for the acts or omissions of the Tenant shall be charged by the Landlord from the security deposit.
 - c. **Holding Over.** Continued possession by Tenant, beyond the expiration of its tenancy, coupled with the receipt of the specified rental by the Landlord (and absent a written agreement by both parties for an extension of this Lease, or for a new Lease) shall constitute a month to month extension of the Lease.
 - d. **Removal of Fixtures.** Tenant may, at the expiration of its tenancy, remove any fixtures or equipment which Tenant has installed in the premises, providing Tenant repairs any and all damages caused by removal.
 - e. **Options to Renew.** Tenant shall have the first option to renew the lease at a rate of 2.5% increase per year. The next lease would therefore begin on September 1st, 2029 at a rate of \$679 per month gross rent plus utilities as stated herein. Other than changes to rent and term, all other terms and conditions of this lease agreement shall remain in effect during subsequent

option periods. An option to renew the Lease shall be automatically exercised by the Tenant without notice, unless the Tenant provides written notice at least 60 days preceding the end of the term to end the lease. All following years have an annual increase of 2.5% (i.e. the next year's lease beginning September 1st, 2029 will equal \$679/month gross rent. The September 1st, 2030 lease will equal \$696/month).

9. Assignment and Subletting. Any assignment of this Lease or subletting of the premises, or any part thereof, requires the Landlord's written permission in its sole and absolute discretion.
10. Real Estate Taxes. The Landlord shall be responsible for payment of real estate taxes, if any.
11. Insurance.
 - a. **Property Insurance**. Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the special form causes of loss (formerly all risks coverage). To the extent permitted by their policies the Landlord and Tenant waive all rights of recovery against each other.
 - b. **Liability Insurance**. Tenant shall obtain commercial general liability insurance in the amounts of \$500,000.00 each occurrence and \$1,000,000.00 annual aggregate per location. Such policy shall include liability arising from premises operations, independent contractors, personal injury, products and completed operations and liability assumed under an insured contract. This policy shall be endorsed to include the Landlord as an additional insured.
 - c. **Certificates of Insurance**. Prior to the time the Lease takes effect the Tenant will provide the Landlord with a certificate of insurance with these property and liability insurance requirements. A renewal certificate shall be provided prior to expiration of the current policies. In the event Tenant's insurance policy is cancelled for any reason during the lease terms and renewals, Tenant's insurance company must provide Landlord with a "Notice of Cancellation" within 7 days of cancellation.
 - d. **Acts by Tenant**. Tenant will not do or omit doing of any act which would invalidate any insurance, or increase the insurance rates in force on the premises. In the event Tenant's actions or business conducted on the premises increases the Landlord's insurance rates on the building, Tenant shall pay the increased premiums.
 - e. **Increased Risks or Hazards**. Tenant further agrees to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said

premises and on the building of which said premises are a part, due to increased risks or hazards resulting from Tenant's use of the premises otherwise than as herein contemplated and agreed.

- f. Landlord and Tenant shall each provide a copy of this Lease to their respective insurers.
12. Liability for Damage. Tenant shall be liable to the Landlord for all damage to the Landlord's real or personal property caused by an act or omission of Tenant (or its agents, employees, or invitees). Landlord shall not be liable to Tenant for damage to Tenant's equipment or personal property stored on the Premises. Under no circumstances shall either party be entitled to recover special, punitive or consequential damages from the other party.
13. Indemnity. Tenant shall indemnify, defend, and hold Landlord harmless against all liabilities arising out of: (i) Tenant's (or its invitees') use of the Premises, (ii) Tenant's breach of this agreement, (iii) Tenant's (or its invitees') act or omission, or (iv) Tenant's failure to strictly comply with any applicable law. Landlord shall not be liable to Tenant or Tenant's employees, agents, or invitees entering upon the Premises for any loss, claim, damage, or injury, except as caused by the negligence or willful misconduct of Landlord or Landlord's employees or agents. This Section 13 shall survive any termination of this agreement.
14. Fire and Casualty.
- a. **Partial Destruction of Premises.** In the event of a partial destruction or damage of the premises, which is a business interference which prevents the conducting of a normal business operation and which damage is repairable within 3 days after its occurrence, this Lease shall not terminate but the rent of the premises shall abate during the time of such business interference. In the event of a partial destruction, Landlord shall repair such damages within 60 days of its occurrence unless prevented from doing so by acts of God, government regulations, or other causes beyond Landlord's reasonable control. During such time, Tenant shall be entitled to abate a proportional share of the rent.
- b. **Zoning.** Should the zoning ordinance of the municipality in which this property is located make it impossible for Landlord to repair or rebuild so that Tenant is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as provided in the next paragraph.
- c. **Total Destruction of Business Use.** In the event of a destruction or damage of the leased premises including the parking area (if parking area is a part of this Lease) so that Tenant is not able to conduct its business on the premises or the then current legal use for which the premises are being

used an which damages cannot be repaired within 60 days this Lease may be terminated at the option of either the Landlord or Tenant. Such termination in such event shall be affected by written notice of one party to the other. Tenant shall surrender possession within 10 days after such notice issues and each party shall be released from all future obligations, and Tenant shall pay rent pro rata only to the date of such destruction. In the event of such termination of this Lease, Landlord at its option may rebuild or not, at is discretion.

15. Default, Notice of Default and Remedies.

- a. **Events of Default.** Each of the following shall constitute an event of default by Tenant:
- 1) Failure to pay rent within five (5) of when due.
 - 2) Failure to observe or perform any duties, obligations, agreements or conditions imposed on Tenant pursuant to terms of the Lease.
 - 3) Abandonment of the premises, “Abandonment” means the Tenant has filed to engage in its usual and customary business activities on the premises for more than 15 consecutive business days.
 - 4) Institution of voluntary bankruptcy proceeds in which the Court orders relief against the Tenant as a debtor; assignment for the benefit of creditors of the interest of Tenant under this Lease Agreement; appoint of a receiver for the property or affairs of Tenant, where the receivership is not vacated within ten (10) days after the appointment of the receiver.
- b. **Notice of Default.** Landlord shall give Tenant a written notice specifying the default and giving the Tenant ten (10) days in which to correct the default. If there is a default (other than for nonpayment of a monetary obligation of tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant shall propose an additional period of time in which to remedy the default. Consent to additional time shall not be unreasonably withheld by the Landlord. Landlord shall not be required to give Tenant any more than three (3) notices for the same default within any 365-day period.
- c. **Remedies.** In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including but not limited to the following:

- 1) *Termination.* Landlord may declare this Lease to be terminated and shall give Tenant a written notice of such termination. In the event of a termination of this Lease, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of Landlord in regaining possession of the premises and the reletting thereof, including attorney's fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting.
 - 2) *Forfeiture.* If a default is not remedied in a timely manner, Landlord may then declare this Lease to be forfeited and shall give the Tenant a written notice of such forfeiture, and may, at the time, give Tenant the notice to quit provided for in chapter 648 of the Code of Iowa.
16. Right of Either Party to Make Good Any Default of the Other. If default shall be made by either party in the performance of, or compliance with, any of the terms or conditions of this Lease, and such default shall have continued for 30 days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 9% per annum, from date of advance.
17. Mechanic's Liens. Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and subcontractors who may furnish or agree to furnish any such material, service or labor.
18. Landlord's Lien and Security Interest. Landlord may exercise lien and security interest rights that may arise under State law or the Uniform Commercial Code of Iowa, Landlord may proceed at law or in equity with any remedy provided by law or by this Lease for the recovery of rent, or for termination of this Lease because of Tenant's default in its performance.
19. Signs. Tenant shall not place any signage on the Premises without the prior written approval of the Landlord, which shall not be unreasonably withheld. Such signage, once approved by the Landlord in writing, shall remain in that location

until both the Landlord and Tenant mutually agree that it should be removed or until the end of the Term.

20. Environmental.

a. **Landlord.** To the best of Landlord's knowledge to date:

- 1) Neither Landlord nor Landlord's former or present tenants are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state or local codes, rules and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.
- 2) Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state and local codes, rules and regulations.
- 3) No leak, spill release, discharge, emission or disposal of toxic or hazardous substances has occurred on the premises.
- 4) The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances.
- 5) Landlord shall assume liability and shall indemnify and hold Tenant harmless against all liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the Lease which condition is not a result of actions of the Tenant or which condition arises after date of execution but which is not a result of actions of the Tenant.

b. **Tenant.** Tenant expressly represents and agrees:

- 1) During the Lease term, Tenant's use of the property will not include the use of any hazardous substance without Tenant first obtaining the written consent of Landlord. Tenant understands and agrees that Landlord's consent is at Landlord's sole option with any conditions or requirements that Landlord deems appropriate.
- 2) During the Lease term, tenant shall be fully liable for all costs and expenses related to the use, storage, removal, and disposal of hazardous substances used or kept on the property by Tenant, and Tenant shall give immediate notice to Landlord of any violation or any potential violation of any environmental regulation, rule,

statute, or ordinance relating to the use, storage, or disposal of any hazardous substance.

- 3) Tenant, at its sole cost and expense, agrees to remediate, correct, or remove from the premises any contamination of the property caused by any hazardous substances which have been used or permitted by Tenant on the premises during any term of this Lease. Remediation, correction, or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules, and regulation. Tenant reserves all rights allowed by law to seek indemnity or contribution from any person, other than Landlord, who is or may be liable for any such cost and expense.
 - 4) Tenant agrees to indemnify and hold harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by Tenant on or after the date of this Lease and during any term of this Lease, including, but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any leased premises which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment, or expiration of this Lease.
21. Rights Cumulative. The various rights, powers, options, elections and remedies of either party, provided in this Lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
22. Notices and Demands. Notices as provided for in this Lease shall be given to the respective parties hereto at the respective addresses designated on page 1 of this Lease unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this Lease when sent, addressed as above designated, postage prepaid, by certified mail deposited in a United States mail box.
23. Provisions to Bind and Benefit Successors, Assigns, etc. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties; except that if any part of this Lease is held in joint tenancy, the successor in interest shall be the surviving joint Tenant.

24. Changes to be in Writing. None of the covenants, provisions, terms, or conditions of this Lease shall be modified, waived or abandoned, except by a written instrument duly signed by the parties. This Lease contains the whole agreement of the parties.
25. Construction. Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.
26. Certification. Tenant certifies that it is not acting, directly or indirectly, or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist. “Specially Designated National and Blocked Person” or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney’s fees and costs) arising from or related to any breach of the foregoing certification.
27. Additional Terms.
- A. Landlord and Tenant further agree that the premises needs substantial additional interior construction work to get the property into form suitable for operating a business office. To that end, Tenant has agreed to complete the required improvements to the premises at its own cost, and in return Landlord shall credit Tenant up to \$36,000.00 in rent payments under this Lease. Only construction costs approved in writing by the Landlord as a qualified construction cost shall be credited off the rent payments owed. Tenant shall submit all receipts for work completed to Landlord for approval of a rent credit. Landlord shall only give rent credits equal to the amount of receipts for qualified construction costs actually incurred by Tenant, up to the \$36,000.00 limit. Once Tenant has received all \$36,000.00 in rent credits, it shall resume paying the Landlord the prescribed rent amounts as stated in Paragraph 2 of this Lease, and under any Lease renewals pursuant to Paragraph 8(e). Any additional improvements Tenant desires to make to the premises shall be at its sole cost and expense.
- B. Attorney Approval. Both Landlord and Tenant hereby state that they have had this Agreement reviewed by their separate legal counsel, or have been given an opportunity to do so, and with said legal counsel consent and agree to the terms of this Agreement.

LANDLORD:

TENANT:

CITY OF CALAMUS, IOWA

AUSTIN FORRET TRUCKING, LLC

By: _____
Lance Goettsch, Mayor

By: _____
Austin Forret, Manager