

CITY OF MIDDLETOWN
BOARD OF ESTIMATE AND APPORTIONMENT AGENDA
SEPTEMBER 3, 2024 - 3:00 PM
COMMON COUNCIL CHAMBERS

1. ROLL CALL
2. NEW BUSINESS
 - 2.1. Authorization to Enter into an Agreement with Binghamton Health Campaign, Inc.

Maria Bruni is seeking authorization to enter into a lease agreement with Binghamton Health Campaign, Inc.

Further requesting the Mayor be authorized to sign the agreement.
3. WATER/SEWER/LAWN MAINTENANCE ADJUSTMENT
4. ADJOURNMENT

LEASE AGREEMENT

AGREEMENT OF LEASE, made this ____ day of September, 2024 by and between:

CITY OF MIDDLETOWN

a municipal corporation having a principal office at 16 James Street, Middletown, New York, 10940, hereinafter referred to as "Landlord", and

Binghamton Health Campaign, Inc. CONFLUENCE RUNNING

a New York State Corporation having a mailing address at 171 Matthews Street, Binghamton, New York 13905 hereinafter referred to as "Tenant":

W I T N E S S E T H: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. **Letting of Premises.** The Landlord hereby leases to the Tenant and the Tenant hereby hires from the Landlord the following described premises, viz.:

Ground Floor, Southeastern Side, as more particularly shown on sketch attached hereto, plus that space in the basement directly beneath the ground floor space and the adjacent common corridor space as shown on the sketch, which is attached.

45-53 North Street
Unit 3
Middletown, New York

to be used as a retail store by Tenant.

2. **Term.** The Tenant shall be entitled to have and to hold the demised premises with the appurtenances, rights and privileges for a **five (5) year term** beginning on the first day of the month.

3. **Rent.** The annual rent for the five-year Term shall be **\$9.00 per square foot** or **\$1,537.50 per month**, commencing on or before the first day of the month for which the premises is to be rented. The **first one (a) month** of the initial Term shall be **rent free**.

4. **Utility Charges and Assessments.** Tenant is responsible for heat and electricity in its rented space, which shall be separately metered from the rest of the building. Tenant shall be responsible for a proportionate share of the common corridor area (calculated by square footage) for heat and electricity, which shall be billed to Tenant. Tenant is responsible for all other utilities, including, but not limited to, telephone, cable and internet services.

5. **Security.** The Tenant shall pay to the Landlord a security deposit in the sum of **one (1) month's rent** or **\$1,537.50**. This sum shall secure the full and faithful performance by the Tenant of all of the terms, covenants and conditions of this Lease. This sum shall be returned to the Tenant upon the expiration of this Lease, provided the Tenant has fully and faithfully carried out all of its obligations under this Lease.

6. **Renewal.**

(a) This Lease may, at the option of the Tenant, be renewed for a **five (5) year** term beginning on the first day of the month following the expiration of the Term described in Paragraph 3, above, on the same terms and conditions as are specified herein, except that the rent shall be increased **in increments of \$1.00 per square foot for each year of the renewal Term**, and except as may be modified hereinafter, by giving to the Landlord a written notice in the manner hereinafter provided of its intention to renew not later than **ninety (90) days** prior to the end of the term stated herein.

(b) This Lease may, at the option of the Tenant, be renewed for a **second five (5) year** term beginning on the first day of the month following expiration of the Renewal Term described in subparagraph (a), above, on the same terms and conditions as are specified herein, except that the rent shall be increased **in increments of \$1.00 per square foot for each year of the renewal Term**, and except as may be modified hereinafter, by giving to the Landlord a written notice in the manner hereinafter provided of its intention to renew not later than **ninety (90) days** prior to the end of the first renewal term.

7. **Common corridor area.**

(a) The Tenant and other tenants are **jointly responsible** for maintenance and cleaning of the common area, with the understanding that any failure to do so will be remedied by the City and billed to the Tenants. The Tenant and other tenants are also jointly responsible for opening and closing the common area; the first tenant to arrive shall open the common area and the last tenant to leave shall close it.

(b) The Landlord shall provide pest control services for the common area and bill the Tenant and other tenants proportionately based upon square footage of the demised premises.

(c) Tenant shall have the use of the **adjacent three (3) foot space** in the common corridor area (extending outward from the rental space) for tables and chairs at no extra rent.

8. Basement. The Tenant shall have access and use of the basement area directly below its premises and the adjacent common corridor space as shown on the sketch, which is attached, at no extra rent. The Tenant is responsible for maintenance and cleaning of its basement area, with the understanding that any failure to do so will be remedied by the City and billed to the Tenant.

9. Maintenance.

(a) The Tenant must maintain the demised premises in a clean and orderly fashion at all times.

(b) The Tenant must provide for preventive pest control services in its demised premises.

10. Repairs and Improvements.

(a) The Landlord shall, prior to the commencement of the Term, install heating, lighting and air conditioning systems in the demised premises.

(b) The Landlord shall take care of the demised premises, fixtures and appurtenances, and Landlord shall make all repairs necessary to put and keep the premises in good order and condition at its own cost and expense, except for those repairs incidental to the Tenant's day-to-day occupancy of the demised premises (including maintenance and upkeep of the operating systems). All damage or injury to the demised premises and to the fixtures, appurtenances and equipment thereof or to the building or to its fixtures, appurtenances and equipment which may be caused by the carelessness, omission, neglect, improper conduct or other act of the Tenant or its employees, agents or visitors (whether invited or uninvited) shall be repaired, restored or replaced by the Tenant. Reasonable wear and tear shall be excepted from the Tenant's obligation and responsibility to the condition of the demised premises.

(c) The Tenant shall at the end of the term quit and surrender the demised premises in as good order and condition as when received, normal wear and tear and damage by the elements excepted. It is understood and agreed by and between the parties hereto that during the lease period the Tenant reserves the right to make minor alterations or installations, including but not limited to, installation of telephone and/or electrical outlets, erection or relocation of movable partitions, etc.

(d) The Tenant may make major improvements or alterations, provided that such improvements/alterations are (1) made with Landlord's consent, and (2) acceptance of the work by the Commissioner of Public Works. The costs of any such major improvements/alterations shall be borne by the Tenant.

(e) Any fixtures or equipment installed by the Landlord shall not be removed by the Tenant at any time unless the Landlord consents in writing.

11. **Access.**

(a) The Landlord shall be responsible for snow-plowing requirements for the entire term and any renewed terms of this lease. If the Landlord fails to promptly remove snow from the premises, Tenant may do so and receive a dollar-for-dollar credit against its rent obligation for any expenses incurred as a result thereof.

(b) The Tenant and other tenants will be allocated a **combined total of twelve (12) parking spots** at the rear of the building.

12. **Garbage disposal.** The Landlord shall supply a garbage dumpster to the Tenant and pick-up services six (6) days a week at no charge. The dumpster area will be located at the rear of the building, and the Tenant and other tenants must maintain this area in a clean and orderly fashion; a failure to do so will result in corrective action by the Landlord and billing of the Tenant proportionately to its rented space. In this dumpster area, the City will provide oil disposal at a charge to any tenant who utilizes it.

13. **Compliance.** The Landlord shall ensure that the premises comply with all laws, rules, orders, ordinances and regulations of any entity having jurisdiction over the premises. The Tenant, in its use of the demised premises, agrees to comply with all applicable laws, rules, orders, ordinances and regulations.

14. **Landlord's Right of Entry.** The Tenant shall permit the Landlord at all usual proper times to enter the demised premises for the purposes of inspection or sale; and suffer the Landlord to make repairs and improvements to all parts of the building and to comply with all governmental orders and requirements applicable to the building. The Tenant shall permit the Landlord during the ninety (90) days prior to the expiration of this Lease to place the usual notices of advertisement for rental upon the exterior of the demised premises, and to show the demised premises to prospective lessees. The Landlord, in exercising its rights under this Paragraph, shall not unreasonably interfere with the Tenant's access, use and occupancy of the premises.

15. **Quiet Enjoyment.** The Landlord covenants with the Tenant that the Tenant, upon complying with the terms of this Lease, shall and may peacefully and quietly enjoy the demised premises.

16. **Early Termination.** The Tenant shall have the right of early termination of this Lease, provided that the Tenant provides Landlord with **one hundred twenty (120) days prior notice** of its intent to terminate.

17. **Notice.** Any notices or demands from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly served by regular mail, addressed to Tenant at the address set forth herein or such other address as Tenant shall have designated by notice in writing to the Landlord; if to the Landlord, at the address of the Landlord set forth herein, or such other address as Landlord shall have last designated by notice in writing to the Tenant. Notice shall be deemed served when mailed or when hand delivered.

18. **Personal Property.** Any and all articles of personal property including, but not limited to, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting and water coolers, radio, owned or installed by the Tenant at its sole expense are and shall remain the property of the Tenant and may be removed by Tenant at any time during the term of this Lease. Upon expiration of this lease, Landlord may require the Tenant to remove all such personal property. If such property is removed at any time, the cost of repairing any damage to the building arising from such removal shall be paid by the Tenant.

19. **Signs.** The Tenant may post and maintain such signs and notices as is reasonably required to inform the public as to its location in the demised premises. All signs must be pre-approved by Landlord and by the applicable municipal building department and/or architectural review board.

20. **Subletting.** It is understood and agreed by and between the parties hereto that the Tenant may **not** sublet or assign any portion of the demised premises without the prior approval of the Landlord.

21. **Indemnification by Tenant.** The Tenant shall hold harmless and indemnify the Landlord and its officers, employees, agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims and damages whatsoever, attributable to or caused by the negligence of Tenant or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Landlord are not incurred or do not result from the negligence or the intentional wrongdoing of the Landlord or any of its members, officers, agents or employees.

22. **Indemnification by Landlord.** The Landlord shall hold harmless and indemnify the Tenant and its officers, employees, agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims and damages whatsoever, attributable to or caused by the negligence of Landlord or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Tenant are not incurred or do not result from the negligence or the intentional wrongdoing of the Tenant or any of its members, officers, agents or employees.

23. **Insurance.** The Tenant shall maintain throughout the term of this lease, and any renewal thereof, at its own cost and expense, **liability insurance** naming the Landlord as **additional insured and waiver of subrogation** with a **combined limit of One Million (\$1,000,000.00/\$2,000,000.00) Dollars** for bodily injury and property, and the Landlord shall be provided with a certificate of memorandum thereof prior to Tenant's occupancy. The Tenant shall also maintain throughout the term of this lease, and any renewal thereof, at its own cost and expense, **casualty insurance** sufficient to insure the value of goods and equipment stored or utilized in the demised premises or common areas by the Tenant, including betterments and improvements made by the Tenant, it being the express agreement of the parties hereto that the Landlord is exempt from any and all liability for any damage to property possessed by Tenant caused by or resulting from steam, electricity, gas, water, rain, ice, snow, wind, or any leak or flow from or into any part of the demised premises, or from any natural catastrophe or act of God, or from any other cause or happening whatsoever unless said damage be caused by or be due to the negligence of the Landlord or its officers, employees or agents.

24. **Casualty.** Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. If the fire or other casualty is caused by an act of neglect of Tenant, Tenant's employees or visitors (whether invited or uninvited), then all repairs must be made at Tenant's expense. Landlord has the right to demolish or rebuild the building if there is substantial damage by fire or other casualty that endangers the structural integrity of the building. Landlord may cancel this lease within thirty (30) days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. This lease will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the demised premises to Landlord on or before the cancellation date in the notice. If the lease is cancelled, Landlord is not required to repair the premises or building. The cancellation does not release Tenant of liability in connection with the fire or casualty.

25. **Default.** If Tenant defaults with respect to any of the covenants herein contained, the Landlord may re-enter the premises by summary proceeding or otherwise, and the same to have again, re-possess and enjoy. The Tenant expressly waives the service of any notice in writing of intention to re-enter. Tenant shall not be deemed to be in default under this lease unless (A) in the case of a payment default, Tenant shall fail to cure such default within ten (10) days after Landlord shall have given Tenant written notice of such default, and (B) in the case of non-payment default, Tenant shall fail to cure such default within thirty (30) days after Landlord shall have given Tenant written notice of such default (or, if such non-payment default cannot reasonably be cured within such thirty (30) day period, Tenant shall have failed to commence such cure within such thirty (30) day period and, after such commencement, diligently pursued such cure to completion).

26. **Late Charge.** Notwithstanding the default provisions in Paragraph 25, above, in the event any payment of rent is not received **within fifteen (15) days** after it is due, a **late charge of 5% of the entire payment** shall be due to Landlord. Such late charge shall be paid with the next monthly rental payment.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in counterparts the day and year first written above.

LANDLORD

CITY OF MIDDLETOWN

TENANT

Binghamton Health Campaign, Inc.

BY: Joseph M. DeStefano, Mayor

BY: Matthew Francis Gawors, CEO