

**TOWN OF SUPERIOR  
RESOLUTION NO. R-23  
SERIES 2022**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE FIRST AMENDMENT TO LEASE AGREEMENT WITH EDWARD HEYMAN & CO., LLC FOR OFFICE SPACE IN SUPERIOR PLAZA BUILDING**

**WHEREAS**, the Town of Superior and Edward Heyman & Co., LLC entered into a Lease Agreement on April 1, 2021; and

**WHEREAS**, the Landlord and Tenant desire to expand the leased premises to include suite 200 of the building, located on the second floor of the building on the terms and provisions set forth on the lease amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:**

**Section 1.** The First Amendment to the Lease Agreement between the Town of Superior and Edward Heyman & Co., LLC for Office Space in Superior Plaza Building is hereby approved in substantially the same for as attached hereto, subject to final approval by Town Attorney.

**ADOPTED this 14<sup>th</sup> day of March, 2022.**



**ATTEST:**

*Patricia Leyva*  
Patricia Leyva, Town Clerk

*Clint Folsom*  
Clint Folsom, Mayor

## FIRST AMENDMENT TO LEASE AGREEMENT

This FIRST AMENDMENT TO LEASE AGREEMENT (this "**Amendment**") is made this March 14th, 2022 (the "**Effective Date**"), between EDWARD HEYMAN AND CO., LLC, a California limited liability company ("**Landlord**"), and the Town of Superior, a Colorado municipal corporation ("**Tenant**").

### RECITALS

A. Landlord and Tenant are parties to that certain Lease dated April 1, 2021 (the "**Lease**"), with respect to approximately 3,049 rentable square feet situated in Suite 220 of the Building, as more particularly described in the Lease (the "**Original Premises**").

B. Landlord and Tenant, desire to amend the Lease to expand the leased premises to include Suite 200 of the Building, which contains approximately 4,048 rentable square feet located on the second floor of the Building (the "**Expansion Premises**"), on the terms and provisions set forth in this Amendment.

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease on the following terms and conditions:

### AGREEMENT

1. Recitals and Definitions. The foregoing recitals are true and correct and incorporated herein by this reference. All capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Lease.

2. Expansion Premises Commencement Date. Landlord will deliver possession of the Expansion Premises to Tenant, and Tenant will accept possession of the Expansion Premises, on the later of: (i) April 1, 2022, and (ii) the first business day after the existing tenant currently leasing and occupying the Expansion Premises vacates the Expansion Premises (the "**Expansion Premises Commencement Date**").

3. Term. The term of the Lease shall expire on March 31, 2026.

4. Rentable Square Footage; Leased Premises. From and after the Expansion Premises Commencement Date, the Original Premises, as expanded to include the Expansion Premises, shall be referred to as the "**Leased Premises**" and the rentable square footage of the Leased Premises shall be 7,097 rentable square feet.

5. **Base Rent.** Tenant shall continue to pay Rent pursuant to the Lease until the Expansion Premises Commencement Date. Commencing on the Expansion Premises Commencement Date, Tenant shall commence paying Base Rent as follows:

<u>Period</u>	<u>\$ Per Sq. Foot</u>	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>
4/1/22* – 3/31/23	\$18.50	\$10,941.21	\$131,294.52
4/1/23 – 3/31/24	\$19.00	\$11,236.92	\$134,843.04
4/1/24 – 3/31/25	\$19.50	\$11,532.63	\$138,391.56
4/1/25 – 3/31/26	\$20.00	\$11,828.33	\$141,939.96

\*To be adjusted based on the actual Expansion Premises Commencement Date. If requested by Landlord, Landlord and Tenant shall execute a memorandum setting forth the actual Expansion Premises Commencement Date.

6. **Tenant's Proportionate Share.** From and after the Expansion Premises Commencement Date, Tenant's Proportionate Share for the Leased Premises shall be as follows:

Tenant's Proportionate Share of Common Operating Costs: 12.67%

Tenant's Proportionate Share of Second Floor Operating Costs: 25.00%

Tenant's Proportionate Share of Second Floor Utilities: 26.40%

7. **As-Is.** Tenant shall accept the Expansion Premises in its "as-is", "where-is" condition with all faults. Landlord has made no representation or warranty, either expressed or implied, as to the habitability, merchantability, suitability, quality, condition, or fitness for any particular purpose with regard to the Expansion Premises, nor does Landlord have any obligation to make any improvements to the Expansion Premises.

8. **Broker.** Tenant represents and warrants that no claims exist for payment of any brokerage commissions or finder's fees in connection with this Amendment by reason of Tenant having had any dealings with any broker in connection therewith.

9. **Tenant's Representations and Warranties.** Tenant hereby represents, warrants and agrees that: (a) there exists no breach, default or event of default by Landlord under the Lease, or any event or condition which, with notice or passage of time or both, would constitute a breach, default or event of default by Landlord under the Lease; (b) the Lease continues to be a legal, valid and binding agreement and obligation of Tenant; and (c) Tenant has no current offset or defense to its performance or obligations under the Lease. Tenant hereby waives and releases all demands, charges, claims, accounts or causes of action of any nature against Landlord or Landlord's employees or agents, including without limitation, both known and unknown demands, charges, claims, accounts, and causes of action that have previously arisen out of or in connection with the Lease.

10. Miscellaneous.

(a) The Lease, as modified herein, remains in full force and effect and is ratified by Landlord and Tenant. In the event of any conflict between the Lease and this Amendment, the terms and conditions of this Amendment shall control.

(b) This Amendment is binding upon and inures to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Except as expressly provided herein, Tenant has not assigned or transferred any interest in the Lease, as amended, and has full power and authority to execute this Amendment.

(c) Each party hereto acknowledges that with respect to its obligations herein time is of the essence, unless waived by the other party hereto.

(d) This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Amendment shall be in Boulder County, Colorado.

(e) This document may be executed in any number of counterparts, which together shall constitute one and the same instrument.

(f) Signatures and initials required in this document may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Amendment.

*[Remainder of page intentionally left blank; signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

LANDLORD:

**EDWARD HEYMAN AND CO., LLC,**  
a California limited liability company

By: *Daniel B. Heyman*  
Daniel B. Heyman, Manager

TENANT:

**Town of Superior, Colorado**



By: *Clint Folsom*  
Name: *CLINT FOLSOM*  
Title: *MAYOR*