

**Memorandum  
Community Economic Development Department**

**To:** Thomas Thomas, City Manager  
**Subject:** Hill & Valley Lease Termination  
**Date:** December 11, 2013



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In continuing the process of redevelopment Watchtower Plaza, the lease termination agreement with Hill & Valley Inc. calls for no termination fee to be paid. However, the agreement calls out that a lease for replacement premises be signed, improvements be made and the tenant shall have relocated, and an incentive package from the State of Illinois be entered into before the lease is terminated.

**RECOMMENDATION:**

The CED staff recommends Council approve the Lease Termination Agreement with Hill & Valley, allow minor attorney modifications and authorize the City Manager to execute the agreement.

**Submitted by:** Jeffery A. Eder, Assistant City Manager / Community & Economic Development Director

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**Approved by:** Thomas Thomas, City Manager

## LEASE TERMINATION AGREEMENT

**THIS LEASE TERMINATION AGREEMENT** (this “Agreement”) is entered into this \_\_\_ day of December, 2013, by and between the **CITY OF ROCK ISLAND, ILLINOIS**, an Illinois municipal corporation, as landlord (“Landlord”), and **HILL & VALLEY, INC.**, an Illinois corporation, as tenant (“Tenant”) (Tenant and Landlord are collectively hereinafter referred to as, the “Parties”, and individually as, a “Party”).

### RECITALS:

WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement dated August 10, 2005 (the “Original Lease”), as amended by the Amendment and Extension of Lease Agreement dated July 16, 2010 and the Second Amendment to Lease dated February 6, 2013 (referred to hereinafter collectively as the “Lease”), pursuant to which Landlord let unto Tenant land and improvements situated at 3915 9th Street, Rock Island, Illinois more specifically defined in the Lease (the “Premises”) for a term currently scheduled to expire on August 10, 2018; and

WHEREAS, Landlord and Tenant have agreed to terminate the Lease effective as of a date prior to August 10, 2018 on the terms and conditions set forth in this Agreement.

### AGREEMENT:

1. Definitions. All capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Lease.
2. Recitals. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true.
3. Surrender of Lease and Premises. The Lease shall terminate and Tenant shall surrender the Lease, and the Premises demised by the Lease, upon occurrence of the following events:
  - a. Tenant shall have entered into a lease agreement for land and improvements to replace the Premises (the “Replacement Property”), in form and substance satisfactory to Tenant in its sole discretion (the “Relocation Lease”);
  - b. The Replacement Property shall have been improved and made ready for occupancy by Tenant and the operation of Tenant’s business, in accordance with the terms and conditions of the Relocation Lease;
  - c. The Tenant shall have relocated its business from the Premises to the Replacement Property and shall be permitted to open and operate its business on the Replacement Property in accordance with all applicable laws and regulations; and

d. The Tenant shall have entered into an agreement with the State of Illinois, through its Department of Commerce and Economic Opportunity, pursuant to which the Tenant shall be granted a tax credit against the Tenant's Illinois corporate income tax liability, over a period of ten (10) years, through the State of Illinois Economic Development for a Growing Economy Program, in form and substance satisfactory to the Tenant in its sole discretion,

and the date on which all events described in subsections a. through d. above have occurred shall be the date of termination of the Lease (the "Early Termination Date"), as if the Lease had naturally expired on the Early Termination Date, on the terms and conditions set forth herein.

4. No Termination Fee. Tenant shall pay Landlord no termination fee with respect to this Agreement or the termination of the Lease.

5. Condition of the Premises; Surrendered Property. Landlord and Tenant agree that Tenant shall be permitted to remove from the Premises all of Tenant's personal property and equipment, but that otherwise Tenant shall have no repair, removal or restoration requirements in connection with the Premises, and Landlord shall accept the Premises in "**AS IS-WHERE IS CONDITION WITH ALL FAULTS**".

6. Release.

a. Effective as of the Early Termination Date, except for those liabilities which by the provisions of the Lease are expressly stated to survive the expiration or termination of the Lease and the terms and conditions related to the early termination of the Lease set forth in this Agreement, Tenant and Landlord remise and release each other, and their respective successors and assigns, from the Lease and all of the estate and rights of such Party in and to the Lease and the Premises, and each Party forever releases and discharges each other from any and all claims, demands or causes of action whatsoever against the other Party or their successors and assigns arising out of or in connection with the Premises or the Lease and forever releases and discharges the other Party from any obligations to be observed or performed by either Party under the Lease after the Early Termination Date.

b. Except for those liabilities and obligations which by the provisions of the Lease are expressly stated to survive the expiration or termination of the Term of the Lease, Landlord agrees to accept the surrender of the Lease and the Premises from and after the Early Termination Date and, effective as of the Early Termination Date, forever releases and discharges Tenant from any obligations to be observed and performed by Tenant under the Lease.

7. Notices. Notices desired or required to be given under this Agreement shall be sent in accordance with the provisions of Section 12.06 of the Original Lease as amended.

8. Governing Law and Jurisdiction. This Agreement shall be interpreted and governed by the laws of the State of Illinois.

9. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. This Agreement may not be modified, except in writing signed by both Parties.

10. Counterparts. This Agreement may be executed in multiple counterparts, and by use of counterpart signature pages, but all such counterparts shall constitute but one and the same instrument. The parties agree that an electronic transmission, including email (provided that the email contains this Agreement in PDF format) and facsimile, of any duly executed copy of this Agreement constitutes an original and binding document.

11. Parties Bound. This Agreement shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

12. Due Authority. Each Party represents that the individual executing this Agreement on behalf of such Party is duly authorized to execute this Agreement on behalf of such Party; that all corporate, partnership, limited liability company, trust or other action necessary for such Party to execute and perform the terms of this Agreement have been duly taken by such Party; and that no other signature and/or authorization is necessary for such Party to enter into and perform the terms of this Agreement.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

**LANDLORD:**

**CITY OF ROCK ISLAND, ILLINOIS**, an Illinois municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**HILL & VALLEY, INC.**, an Illinois corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_