

RESOLUTION NO. 22-2026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) AND RELATED LEASE AGREEMENT FOR SUCH PURPOSES WITH GROUNDED LLC, FOR THE DEVELOPMENT OF A RESTAURANT AND RETAIL BUSINESS IN A CITY-OWNED BUILDING LOCATED IN DOWNTOWN MESQUITE AT 211 WEST MAIN STREET, MESQUITE, TEXAS (THE “PREMISES”); PROVIDING FOR THE LEASE OF THE PREMISES WITH AN OPTION TO PURCHASE THE PREMISES FOR SUCH PRICE AND UPON SUCH TERMS AND CONDITIONS AS SET FORTH IN THE AGREEMENT AND LEASE; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT AND LEASE ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (“**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas (“**Zone**”), and established a Board of Directors for the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas by Ordinance No. 3257, approved by the City Council of the City (“**City Council**”) on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A., Tax Code, Chapter 311 (“**Act**”); and

WHEREAS, in accordance with the Act, the original boundaries of the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, were enlarged and the geographic area of the original zone was increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the City has a downtown area consisting in part of older buildings with historical significance (“**Downtown Mesquite**”); and

WHEREAS, Downtown Mesquite is in substantial need of redevelopment and revitalization; and

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WHEREAS, the City owns the land located at 211 West Main Street, Mesquite, Texas 75149 (“**Land**”), together with: (i) that certain building now located on the Land and containing approximately 2,000 square feet of leasable area (“**Building**”) (the Land and Building collectively referred to as the “**Premises**”) in Downtown Mesquite with the goal of utilizing the Premises for downtown development purposes; and

WHEREAS, the Premises are located within the Zone and have been vacant and underutilized for many years; and

WHEREAS, the City Council is presented with an opportunity to lease the Premises to Grounded LLC, a Texas limited liability company (“**Company**”) for use and occupation by the Company as a beverage, food and retail business (“**Lease**”), a true and correct copy of the Lease being attached hereto as EXHIBIT 1 and made a part hereof for all purposes; and

WHEREAS, the City Council is presented with a proposed agreement providing economic development incentives to the Company for the development of a beverage, food and retail business at the Premises, a copy of said agreement being attached hereto as EXHIBIT 2 and incorporated herein by reference (“**Agreement**”); and

WHEREAS, a beverage, food and retail business (“**Permitted Use**”) in Downtown Mesquite will be a catalyst to: (i) attract new customers and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; (iv) promote development, redevelopment and revitalization of Downtown Mesquite; and (v) stimulate business and commercial activity in Downtown Mesquite; and

WHEREAS, the Company has agreed to make an investment at the Premises by making certain improvements to the interior of the Building and by installing furniture, trade fixtures and equipment at the Building for the purpose of operating the Permitted Use at the Premises; and

WHEREAS, the operation of the Permitted Use by the Company at the Premises will create new employment opportunities in the City and will increase the personal property taxes, sales taxes, and alcoholic beverage taxes assessed and collected by or on behalf of the City; and

WHEREAS, in order for the Company to make the investment to lease the Premises and operate the Permitted Use at the Premises, it is necessary that: (i) the City make certain improvements to the Premises; (ii) the City lease the Premises to the Company at less than fair market rental rates; and (iii) the City grant the Company an option to purchase the Premises, all upon the terms and subject to the conditions more fully set forth in the Lease and in the Agreement; and

WHEREAS, the occupancy of the Premises by the Company and the operation by the Company of the Permitted Use at the Premises will benefit the Zone by promoting local economic development and stimulating business and commercial activity in the Zone and will further a purpose of the Zone, which is to promote development and redevelopment of property within the Zone; and

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WHEREAS, the construction of improvements to the Premises, the lease of the Premises by the City to the Company at less than the fair market rental rates, the granting by the City to the Company of an option to purchase the Premises, and the investment of public resources in Downtown Mesquite is for a public purpose and will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens; and

WHEREAS, funding for this project is available through the Zone fund; and

WHEREAS, the Premises are located within the Zone and are to be developed under a project plan adopted by the City Council for the Zone, the Lease and Agreement include provisions under which the City is granted sufficient control to ensure the public purpose is accomplished and the City receives the return benefit and, accordingly, the lease, sale and purchase of the Premises by the City to the Company shall be pursuant to V.T.C.A., Local Government Code §§ 253.0125, 272.001(b)(6) and 380.001; and

WHEREAS, after publishing the required notice, holding a public hearing and upon full review and consideration of the Agreement and the Lease and all matters attendant and related thereto, the City Council is of the opinion that the Agreement and the Lease will assist in implementing a program whereby local economic development will be promoted and business and commercial activity will be stimulated in the City and that the Agreement and the Lease are in the best interest of the City and will benefit the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts, recitations and findings contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement and the Lease.

SECTION 3. The City Council finds that the terms of the proposed Lease and related Agreement by and between the City and the Company, copies of which are attached hereto as EXHIBITS 1 and 2, respectively, and incorporated herein by reference, will benefit and are in the best interest of the City and its citizens and will, inter alia, accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with § 380.001 of the Texas Local Government Code.

SECTION 4. The City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement and the Lease related thereto, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement and the Lease in accordance with the terms and subject to the conditions outlined in the Agreement and the Lease.

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SECTION 5. The terms and conditions of the Agreement and the Lease, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 6. The City Manager is hereby authorized to finalize and execute the Agreement and the Lease and all other documents necessary to consummate the transactions contemplated by the Agreement and the Lease.

SECTION 7. The City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices and estoppels required or permitted by the Agreement; (ii) approve or deny any request(s) by the Company to amend the Agreement to extend the date for the Company to complete the Company Improvements, install the Company's Business Personal Property at the Premises, obtain a Certificate of Occupancy, and commence operations of the Permitted Use at the Premises provided, however, the approval or denial of such request(s) and the extended performance date(s), if approved by the City Manager, shall be in writing and shall be within the sole discretion of the City Manager; (iii) approve any other amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$100,000; (iv) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (v) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (vi) exercise any rights and remedies available to the City under the Agreement; and (vii) execute any notices, estoppels, amendments, approvals, consents, denials and waivers authorized by this Section 7 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 7 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative function.

SECTION 8. The City Manager is further hereby authorized to administer the Lease on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices and estoppels required or permitted by the Lease; (ii) approve or deny any request(s) by the Company to amend the Lease to extend the date for the Company to complete the Tenant Improvements, obtain a Certificate of Occupancy, and commence operations of the Permitted Use at the Premises provided, however, the approval or denial of such request(s) and the extended performance date(s), if approved by the City Manager, shall be in writing and shall be within the sole discretion of the City Manager; (iii) approve any other amendments to the Lease provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Lease in excess of \$100,000; (iv) approve or deny any matter in the Lease that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Lease that requires the consent of the City pursuant to the terms of the Lease shall require the approval of the City Council; (v) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Lease; (vi) exercise any rights and remedies available to the City under the Lease; and (vii) execute any notices, estoppels,

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amendments, approvals, consents, denials and waivers authorized by this Section 8 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 8 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative function.

SECTION 9. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 20th day of July 2026.

Signed by:

D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:

C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

Signed by:

666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1 TO THE RESOLUTION
LEASE AGREEMENT

Between

THE CITY OF MESQUITE,
a Texas home-rule municipality, as City

and

GROUNDED LLC,
a Texas limited liability company, as Tenant

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into effective as of the Lease Effective Date (as hereinafter defined), by and between THE CITY OF MESQUITE, a Texas home rule municipality ("**City**"), and GROUNDED LLC, a Texas limited liability company ("**Tenant**"). City leases to Tenant and Tenant leases from City the Premises (as hereinafter defined) upon the terms and subject to the covenants and conditions set forth in this Lease. Tenant and City shall hereinafter sometimes be referred to individually as "**Party**" and sometimes collectively as the "**Parties**".

ARTICLE I

Premises and Premises Improvements

A. **Premises.** In consideration of the obligation of Tenant to pay rent as more fully set forth in Article III of this Lease and in consideration of the other terms, provisions and covenants hereof, City hereby demises and leases to Tenant, and Tenant hereby leases from City, that certain tract or parcel of land commonly known as 211 W. Main, Mesquite, Texas and being more particularly described in **Exhibit 1** attached hereto and made a part hereof for all purposes (the "**Land**"), together with: (i) that certain building now located on the Land and containing approximately 2,000 square feet of leasable area (such building, as modified, renovated and remodeled pursuant to the terms of this Lease being hereinafter referred to as the "**Building**"); (the Land and Building are hereinafter sometimes collectively referred to as the "**Premises**").

B. **Premises Improvements.** All improvements on the Land including, without limitation, the Building, together with all fixtures attached thereto and all building equipment and other improvements situated therein or thereon, and all improvements hereafter constructed in or on the Land and Building including, without limitation, all improvements to the Land and Building constructed pursuant to the terms of that certain Economic Development Program Agreement (Chapter 380 Agreement) (the "**Agreement**"), incorporated herein by reference, dated of even date herewith between the City and the Tenant relating to economic development incentives for the development of the Premises are hereinafter individually referred to as a "**Premises Improvement**" and collectively referred to as the "**Premises Improvements**". City and Tenant acknowledge that all Premises Improvements are owned by City and will be the property of City regardless of which Party constructs the Premises Improvement.

ARTICLE II

Term

A. **Primary Term.** The primary term of this Lease shall commence on the Lease Effective Date (as defined below) and shall continue through and including December 31, 2031 (the "**Primary Term**") provided, however, that if Tenant purchases the Premises pursuant to the terms and conditions of a Purchase Option as provided in the Agreement, this Lease shall automatically terminate as of the Closing date of Company's purchase of the Premises.

B. Renewal Term(s). The Tenant shall have the right to renew the term of this Lease for two (2) additional periods of five (5) years each (each a “**Renewal Term**”) provided that: (i) at the end of the then existing term [i.e. at the end of the Primary Term with respect to the first Renewal Term, and, if applicable, at the end of the first Renewal Term with respect to the second Renewal Term] this Lease is in full force and effect; and (ii) no Tenant Default (as hereinafter defined) shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Tenant Default (as hereinafter defined) under the terms of this Lease. If Tenant desires to extend this Lease, as a condition precedent to the extension of this Lease, Tenant shall deliver written notice of Tenant’s intent to renew this Lease (each a “**Renewal Notice**”) to the City no later than three (3) months prior to the expiration of the then existing term [i.e. with respect to the first Renewal Term, no later than three (3) months prior to the expiration of the Primary Term and, if applicable, with respect to the second Renewal Term, no later than (3) months prior to the expiration of the first Renewal Term]. If the Tenant fails to renew this Lease at least three (3) months prior to the expiration of the Primary Term, this Lease will expire and terminate upon the last day of the Primary Term. If the Tenant timely exercises its option to renew the term of this Lease for the first Renewal Term, but fails to renew this Lease at least three (3) months prior to the expiration of the first Renewal Term, this Lease will expire and terminate upon the last day of the first Renewal Term.

C. Holding Over by Tenant. Should Tenant fail to vacate the Premises or any part thereof after the expiration of the Primary Term or any Renewal Term, unless otherwise agreed to in writing by City, such failure to vacate shall constitute and be construed as a tenancy from month-to-month upon the same terms and conditions as set forth in this Lease except the monthly rent shall be two hundred percent (200%) of the immediately preceding monthly rent per calendar month. In no event shall this tenancy last longer than sixteen (16) years.

ARTICLE III Rent and Security Deposit

A. Rent During Primary Term. Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the Primary Term:

Lease Period	Rent Amount
From the Lease Effective Date to the last day of the month that is one hundred eighty (180) days after the Lease Effective Date	\$0.00 per calendar month
From the first day of the month following one hundred eighty (180) days after the Lease Effective Date through and including 12/31/2031	\$2,500.00 per calendar month (i.e. \$30,000.00 per year)

B. Rent During first Renewal Term. If Tenant timely exercises its option to renew this Lease for the first Renewal Term, Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the first Renewal Term:

Lease Period	Rent Amount
From 1/1/2032 through and including 12/31/2032	\$2,625.00 per calendar month (i.e. \$31,500.00 per year)
From 1/1/2033 through and including 12/31/2033	\$2,756.00 per calendar month (i.e. \$33,072.00 per year)
From 1/1/2034 through and including 12/31/2034	\$2,894.00 per calendar month (i.e. \$34,728.00 per year)
From 1/1/2035 through and including 12/31/2035	\$3,039.00 per calendar month (i.e. \$36,468.00 per year)
From 1/1/2036 through and including 12/31/2036	\$3,191.00 per calendar month (i.e. \$38,292.00 per year)

C. Rent During Second Renewal Term. If Tenant timely exercises its option to renew this Lease for the second Renewal Term, Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the second Renewal Term:

Lease Period	Rent Amount
From 1/1/2037 through and including 12/31/2037	\$3,350.00 per calendar month (i.e. \$40,200.00 per year)
From 1/1/2038 through and including 12/31/2038	\$3,517.00 per calendar month (i.e. \$42,204.00 per year)
From 1/1/2039 through and including 12/31/2039	\$3,693.00 per calendar month (i.e. \$44,316.00 per year)
From 1/1/2040 through and including 12/31/2040	\$3,878.00 per calendar month (i.e. \$46,536.00 per year)
From 1/1/2041 through and including 12/31/2041	\$4,072.00 per calendar month (i.e. \$48,864.00 per year)

D. Payment of Rent. Rent shall be due and payable in advance on or before the first (1st) day of each calendar month during the term of this Lease. Rent shall be paid in legal and lawful money of the United States of America as of the date the payment is due and shall be payable to the City at, City of Mesquite, Downtown Development Division, Attention: Downtown Coordinator, P.O. Box 850137, Mesquite, Texas 75185-0137, or at such other address as City may hereafter notify Tenant in writing. Notwithstanding any other provision of this Lease, each payment of rent shall be deemed paid and received only when actually received by the City and in the event any payment of rent is by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of the check to clear the Tenant's account.

E. Security Deposit.

(i) Within ten (10) days after the Lease Effective Date, Tenant will pay City a security deposit in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) (the "**Security Deposit**"). The Security Deposit is security that the Tenant will comply with all terms

of this Lease. The Security Deposit may not be used to pay the last month's rent without the City's prior written consent. If the Tenant breaks or otherwise violates this Lease prior to the expiration date of this Lease, the City may keep all or part of the Security Deposit to cover unpaid rent or damage to the Premises; and

(ii) Upon Tenant vacating the Premises, the City will inspect and document the condition of the Premises. Within sixty (60) days after the expiration or termination of this Lease, if the Tenant has supplied the City with a forwarding address, the City will either (a) return the Security Deposit if the Tenant has complied with all terms of this Lease and returns the Premises to the City in the same condition as on the Lease Effective Date, normal wear and tear excepted, or (b) provide the Tenant with a written notice including an itemized list as to why the full Security Deposit amount is not being returned to the Tenant and a check for any remaining Security Deposit owed to the Tenant after the allowed deductions have been made. The City may use as much of the Security Deposit as necessary to pay for damages resulting from the Tenant's move-in, occupancy, or move-out.

F. Late Charge. If any installment of rent due under this Lease is not received by the City within five (5) days after the date due, Tenant shall pay to City a late payment charge equal to the lesser of: (i) the maximum allowed by law; or (ii) ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

ARTICLE IV Use of the Premises

A. Permitted Use. Tenant shall use and occupy the Premises only for a beverage, food and retail business (the “**Permitted Use**”) and shall obtain and maintain throughout the term of this Lease all required permits and licenses required or permitted for the Permitted Use. Tenant’s use of the Premises is restricted to the Permitted Use unless Tenant obtains the City’s prior written consent to any change in use.

B. Commencement of the Operation of the Tenant’s Business at the Premises. Tenant shall commence the operation of the Permitted Use at the Premises on or before one hundred eighty (180) days after the Lease Effective Date.

C. Hours of Operation. Tenant shall be open for business and operate the Permitted Use at the Premises six (6) days a week for a minimum of six (6) hours per day except: (i) during the following national holidays: New Year’s Day, Superbowl, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve (the “**National Holidays**”); (ii) during a “**Act of God Force Majeure**” (as hereinafter defined); and (iii) during a “**Government Force Majeure**” (as hereinafter defined).

D. Compliance with Laws. Tenant shall not use, occupy, or permit to be used or occupied the Premises for any purpose that is unlawful, that is dangerous to persons or property, or that would constitute a nuisance. Tenant, at its sole expense, will comply, and will cause all Tenant Related Parties (as hereinafter defined) to comply, with all laws, rules, regulations, and ordinances concerning the use, condition and occupancy of the Premises and the operation of the Tenant’s business at the Premises. Without limiting the foregoing, Tenant covenants and agrees to comply strictly and in all respects with the requirements of all applicable laws, statutes,

ordinances, permits, decrees, guidelines, rules, regulations and orders pertaining to the use, condition and occupancy of the Premises including, without limitation, all codes, ordinances and regulations of the City.

E. Permits and Licenses. Tenant, at Tenant's sole expense, shall obtain and maintain at all times during the term of this Lease any and all governmental licenses and permits necessary for the operation of the Tenant's business at the Premises including, without limitation, a final certificate of occupancy issued by the City to the Tenant authorizing the Tenant to operate the Permitted Use at the Premises (the "**Certificate of Occupancy**") and all licenses required by the TABC authorizing the Tenant to sell alcohol at the Premises.

F. Utilities. Tenant will timely pay all charges for gas, electricity, heat, air conditioning, water, sanitary sewer, storm sewer, drainage, television, internet, telephone, garbage removal and all other utilities used in and about the Premises prior to the date such charges become delinquent.

G. Event of Force Majeure.

(i) "**Act of God Force Majeure**" as used in this Lease shall mean a major unforeseeable act or event that: (a) prevents Tenant from performing its obligations under this Lease; (b) is beyond the reasonable control of the Tenant; (c) is not caused by any act or omission on the part of Tenant or any Tenant Related Party (as hereinafter defined); and (d) could not have been prevented or avoided by the exercise by Tenant of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Act of God Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism and civil disturbance.

(ii) "**Government Force Majeure**" as used in this Lease shall mean a federal, state or municipal governmental order preventing the operation of the Permitted Use at the Premises or limiting the occupancy for the Permitted Use at the Premises during a major unforeseeable act or event that (a) is beyond the reasonable control of the Tenant; (b) is not caused by any act or omission on the part of Tenant or any Tenant Related Party (as hereinafter defined); and (c) could not have been prevented or avoided by the exercise by Tenant of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. A Government Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to a pandemic such as COVID-19, provided, however, in no event shall a Government Force Majeure include a government order that prevents the Tenant from operating the Permitted Use at the Premises as a result of the Tenant's failure to comply with any law, statute, ordinance, permit, decree, guideline, rule, regulation, or order of any federal, state or municipal government.

(iii) Notwithstanding the foregoing, an Act of God Force Majeure and a Government Force Majeure do not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

(iv) Subject to Article IV, Sections I (vi) and I (vii) below, in the event of an Act of God Force Majeure that prevents the Tenant from being open for business to operate the Permitted Use at the Premises, the rent due by Tenant under the terms of this Lease shall be temporarily abated for the period commencing with the occurrence of the Act of God Force Majeure and

continuing until the earlier of: (a) the date the Tenant reopens the Permitted Use at the Premises; (b) the date a reasonably prudent tenant would reopen the Permitted Use at the Premises based on commercially reasonable standards as determined in the sole discretion of the City Manager; or (c) six (6) months after the occurrence of the Act of God Force Majeure provided, however, such date may be extended in writing by the City Manager, in the City Manager's sole discretion.

(v) Subject to Article IV, Sections I (vi) and I (vii) below, in the event of a Government Force Majeure that prevents the Tenant from being open for business to operate the Permitted Use at the Premises or that limits the occupancy of the Premises based on the Permitted Use (each a "**Governmental Order**"), the rent due by Tenant under the terms of this Lease shall be temporarily abated in whole or in part as more fully set forth below for the period commencing with one (1) month after the issuance of the Governmental Order and continuing until the earlier of: (a) the date the Tenant is permitted by subsequent governmental order to reopen the Permitted Use at the Premises; or (b) seven (7) months after the issuance of the initial Governmental Order provided, however, such date may be extended in writing by the City Manager, in the City Manager's sole discretion (the earlier of the dates in this Article IV, Section I (v)(a) and Article IV, Section I (v)(b), if and as extended in writing by the City Manager, is hereinafter referred to as the "**Rent Abatement Period**"). In the event the operation of the Permitted Use by the Tenant is wholly prevented as the result of a Government Order, the Tenant's responsibility to pay rent shall be abated in full during the Rent Abatement Period. In the event the Government Order limits the occupancy at the Premises for the Permitted Use, the rent payable by the Tenant during the Rent Abatement Period shall be reduced by the difference between one hundred (100%) and the occupancy rate percentage as limited by the Government Order provided, however, such percentage shall change during the Rent Abatement Period based on changes in the limitations on occupancy for the Permitted Use at the Premises by subsequent Government Order(s). By way of example only, if occupancy at the Premises for the Permitted Use is limited by an initial Government Order to fifty percent (50%) during the first (1st) month of the Rent Abatement Period but is increased by a subsequent Government Order to seventy-five percent (75%) during the second (2nd) month of the Rent Abatement Period, the Tenant's monthly rent shall be reduced by fifty percent (50%) during the first (1st) month and twenty-five percent (25%) during the second (2nd) month of the Rent Abatement Period.

(vi) Notwithstanding any provision in this Lease to the contrary, if the Tenant desires to claim that rent due under the terms of this Lease should be abated in whole or in part due to an Act of God Force Majeure or a Government Force Majeure, the Tenant shall deliver written notice of the occurrence of the Act of God Force Majeure or of the issuance of the Government Order to the City no later than fifteen (15) days after the Tenant becomes aware of the Act of God Force Majeure or the Government Order, and if the Tenant fails to timely notify the City of the occurrence of such Act of God Force Majeure or of the issuance of such Government Order, the Tenant shall not be entitled to avail itself of the provisions of this Article IV, Section I.

(vii) Further notwithstanding anything contained herein to the contrary, and as a condition precedent to each monthly full or partial abatement of rent as provided in this Article IV, Section I, the Tenant shall provide a written report to the City Manager with the notice referred to in Article IV, Section I (vi) above and on the first (1st) day of each calendar month thereafter that rent is being partially or wholly abated stating: (i) a detailed explanation of the Act of God Force Majeure or the Government Force Majeure; (ii) the current status of the Act of God Force Majeure or the Government Order; (iii) a detailed description of action(s) taken by the Tenant during the Rent Abatement Period to reopen the Permitted Use at the Premises; (iv) a detailed description of

future action(s) planned by Tenant to resume the operation of the Permitted Use at the Premises; and (v) the estimated date the Tenant will reopen the Permitted Use at the Premises.

ARTICLE V

Improvements to the Premises

A. **City Improvements.** The City, at its sole expense, shall construct the improvements to the Premises more fully set forth in **Exhibit 2** attached hereto and made a part hereof for all purposes (the “**City Improvements**”). All City Improvements shall be owned by City and shall remain the property of the City at the expiration or termination of this Lease for any reason except in the event of the termination of the Lease contemporaneously with the timely exercise by the Tenant of the Purchase Option (as hereinafter defined).

B. **Tenant Improvements.** The Tenant, at its sole expense, shall: (i) install all interior furnishings and décor for the Tenant’s business at the Premises; (ii) construct the improvements to the Premises as more fully set forth in **Exhibit 3** attached hereto and made a part hereof for all purposes; and (iii) install all furniture, trade fixtures and equipment necessary for the Tenant to operate the Permitted Use at the Premises including, without limitation, the furniture, trade fixtures and equipment more fully set forth in **Exhibit 4** (Article V, Sections B(i), B(ii) and B(iii) are hereinafter collectively referred to as the “**Tenant Improvements**”).

ARTICLE VI

Taxes

A. **Definition of Taxes.** The term “**Real Property Taxes**” shall mean all taxes, assessments, and other governmental impositions and charges of every kind and nature which arise or accrue from and after the Lease Effective Date (as hereinafter defined) and which shall or may during the term of this Lease be charged, levied, assessed, imposed, become due and payable, or liens upon or for or with respect to the Land and Building. The term “**Personal Property Taxes**” shall mean all taxes, assessments and other governmental impositions and charges of every kind and nature which arise or accrue from and after the Lease Effective Date (as hereinafter defined) and which shall or may during the term of this Lease be charged, levied, assessed, imposed, become due and payable, or liens upon or for or with respect to the personal property, trade fixtures and equipment owned by Tenant located at the Premises.

B. **Payment of Real Property Taxes.** City shall be responsible for and shall timely pay all Real Property Taxes, if any, on the Land, Building and any other improvements and fixtures owned by City located at or within the Premises prior to the date such Real Property Taxes become delinquent. The Parties acknowledge this provision shall no longer apply in the event the Tenant exercises the Purchase Option (as hereinafter defined).

C. **Payment of Business Personal Property Taxes.** The Tenant shall be responsible for and shall timely pay all Personal Property Taxes on all business personal property, trade fixtures, equipment and other property owned by Tenant located at or within the Premises prior to the date such Personal Property Taxes become delinquent.

D. **Other Taxes.** In no event shall either City or Tenant be liable hereunder for or required to pay any income, profit, excise, inheritance, estate, gift or franchise taxes of the other Party. Tenant shall be responsible for and shall timely pay all sales taxes, payroll taxes, Texas

Alcoholic Beverage Commission (“TABC”) taxes, and all other taxes accrued in conjunction with the operation of the Permitted Use on the Premises.

ARTICLE VII

Limitation of Liability and Indemnification

A. Limitation of Liability. CITY, ITS ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VOLUNTEERS, ATTORNEYS AND INSURERS (EACH INDIVIDUALLY A “CITY RELATED PARTY” AND COLLECTIVELY THE “CITY RELATED PARTIES”) SHALL NOT BE LIABLE TO TENANT, ITS OFFICERS, MEMBERS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, CUSTOMERS, PATRONS, AND ANY PERSON ENTERING THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF TENANT (EACH INDIVIDUALLY A “TENANT RELATED PARTY” AND COLLECTIVELY THE “TENANT RELATED PARTIES”), OR TO ANY OTHER PERSON WHOMSOEVER, FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR TO ANY PROPERTY CAUSED BY OR ARISING FROM: (i) THE USE OR OCCUPANCY OF THE PREMISES BY TENANT; (ii) THE OPERATION OF TENANT’S BUSINESS AT THE PREMISES; (iii) THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, MISCONDUCT, ACT, OR OMISSION OF TENANT OR ANY TENANT RELATED PARTY; OR (iv) ANY BREACH OR DEFAULT BY THE TENANT UNDER THE TERMS OF THIS LEASE. FURTHER, CITY SHALL NOT BE LIABLE TO TENANT OR ANY TENANT RELATED PARTY FOR ANY LOSS OR DAMAGE THAT MAY BE OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF ANY THIRD PARTY.

B. Indemnity. TENANT HEREBY AGREES AND COVENANTS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY RELATED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEMANDS, CAUSES OF ACTION, CLAIMS, JUDGMENTS, SUITS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES, COURT COSTS, COSTS OF INVESTIGATION, AND EXPERT WITNESS FEES) FOR INJURIES INCLUDING DEATH TO TENANT’S EMPLOYEES AND ALL OTHER PERSONS AND FOR DAMAGE TO PROPERTY DIRECTLY OR INDIRECTLY ARISING FROM OR ALLEGED TO ARISE OUT OF OR IN ANY WAY INCIDENTAL TO (i) THE USE OR OCCUPANCY OF THE PREMISES BY TENANT; (ii) THE OPERATION OF TENANT’S BUSINESS AT THE PREMISES; (iii) THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, MISCONDUCT, ACT, OR OMISSION OF TENANT OR ANY TENANT RELATED PARTY; OR (iv) ANY BREACH OR DEFAULT BY THE TENANT UNDER THE TERMS OF THIS LEASE (EACH AN “INDEMNIFIED CLAIM”). THE PARTIES AGREE THAT THE INDEMNITY CONTAINED IN THIS ARTICLE VII, SECTION B, INDEMNIFIES THE CITY AND THE CITY RELATED PARTIES EVEN WHEN THE CITY OR THE CITY RELATED PARTIES ARE JOINTLY, COMPARATIVELY, CONTRIBUTORILY, OR CONCURRENTLY NEGLIGENT WITH TENANT, AND EVEN THOUGH SUCH INDEMNIFIED CLAIM IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF CITY OR ANY CITY RELATED PARTY; HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO THE SOLE OR GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT OF CITY OR ANY CITY RELATED PARTY. THE INDEMNITIES SET FORTH IN THIS ARTICLE VII, SECTION B SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE. IF ANY PROCEEDING IS FILED FOR WHICH INDEMNITY IS REQUIRED HEREUNDER, THE TENANT AGREES, UPON REQUEST THEREFOR, TO DEFEND THE CITY OR CITY RELATED PARTY IN SUCH PROCEEDING AT ITS SOLE COST UTILIZING COUNSEL SATISFACTORY TO THE CITY.

C. Failure to Defend. It is understood and agreed by Tenant that if City or any City Related Party is made a defendant in any action, proceeding or claim for which it is indemnified pursuant to this Lease, and Tenant fails or refuses to assume the defense thereof within fifteen (15) days after having received written notice by City or any City Related Party of its obligation hereunder to do so, City or such City Related Party may compromise, settle, or defend such action, proceeding or claim, and Tenant shall be bound and obligated to reimburse City and any City Related Party for the amount expended by the City and City Related Party in settling and compromising any such action, proceeding or claim, or for the amount expended by City and any City Related Party in paying any judgment rendered therein, together with all reasonable attorneys' fees, court costs, investigation costs and expert witness fees, incurred by City and any City Related Party for defense or settlement of such action, proceeding or claim. Any judgment rendered against City and any City Related Party or amount expended by City and any City Related Party in compromising or settling such action, proceeding or claim shall be conclusive as determining the amount for which Tenant is liable to reimburse City and any City Related Party hereunder.

D. Independent Counsel. The City and any City Related Party shall have the right, at their expense, to employ independent legal counsel in connection with any Indemnified Claim and Tenant shall cooperate with such counsel in all reasonable respects at no cost to City or any City Related Party.

E. No Third-Party Beneficiary. The provisions of this Article VII are solely for the benefit of City, City Related Parties, Tenant, and Tenant Related Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person.

ARTICLE VIII

Insurance

A. City's Insurance Obligations. At all times during the term of this Lease, City shall, at its sole cost and expense obtain, keep and maintain insurance on the Building and other improvements owned by City and located on or at the Premises with such types of coverage, amounts of coverage, endorsements and deductibles as deemed advisable by the City in its sole discretion. All insurance carried by City against loss or damage to the Building and other improvements situated on or at the Premises shall be for the sole benefit of the City and under its sole control.

B. Tenant's Insurance Obligations. Commencing with the Lease Effective Date and at all times thereafter during the term of this Lease including any renewal and extension hereof, Tenant shall, at its sole cost and expense [subject to increase as more fully set forth in Article VIII, Section J below], obtain, keep and maintain the following insurance:

- (i) Commercial General Liability Policy. A commercial general liability insurance

policy (“**Tenant’s GL Policy**”), written on an occurrence basis and limited to the Premises, naming Tenant as the named insured (with the effect that Tenant and its employees are covered) and City as an additional insured and providing a waiver of subrogation in favor of the City and the City Related Parties, affording protection against liability arising out of personal injury, bodily injury including death, and property damage occurring, in, upon or about the Premises or resulting from, or in connection with, the use or occupancy of the Premises and the operation of the Tenant’s business at the Premises with coverage limits in the amount of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate, and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss. Tenant’s GL Policy shall also contain endorsements (or, at Tenant’s option, equivalent coverages under separate policies) providing: (a) host legal liquor liability and dram shop liability coverage with minimum limits of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate; and (ii) providing for protection from pollution liability at limits of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and providing for related clean-up of the Premises and any affected adjacent property at limits of no less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00);

- (ii) Workers’ Compensation Policy. A workers’ compensation insurance policy providing statutory coverage under the laws of the State of Texas for all persons employed by Tenant in connection with the Premises; or an Excess Employers’ Indemnity Policy (also known as a Non-Subscriber Policy) that provides effective coverage against claims of work- related injuries;
- (iii) Employer’s Liability Insurance. An Employer’s Liability Insurance Policy affording protection of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by accident (each accident), not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by disease (each employee) and not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the aggregate and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss. The policy shall also include a waiver of subrogation endorsement in favor of the City and the City Related Parties;
- (iv) Personal Property. A special form (formerly “**all risk**”) property insurance policy covering Tenant’s furniture, equipment, trade fixtures and other personal property located at the Premises, and all alterations, additions and improvements made by the Tenant to the Premises, against loss or damage due to insured perils covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time available in the City of Mesquite, Dallas County, Texas, naming Tenant as the first named insured for a sum at least equal to one hundred percent (100%) of the insurable replacement cost of Tenant’s furniture, equipment, trade fixtures and other personal property located at the Premises, and all alterations, additions and improvements made by the Tenant to the Premises, and with the deductible not exceeding TEN

THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss; and

- (v) Commercial Crime Policy. A commercial crime insurance policy insuring against employee dishonesty, forgery or alteration, robbery (inside and outside) and computer fraud, naming Tenant as the insured, with minimum limits of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) each occurrence and FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) in the aggregate, and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss.

C. Authorized Insurance Carriers. All insurance policies required to be carried by Tenant and City pursuant to the terms of this Lease shall be effected under valid policies issued by insurers authorized to do business in the State of Texas and which have an A.M. Best Company, Inc. rating of “A-” or better and a financial size category of not less than “VII”. If A.M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if A.M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. City and Tenant may utilize insurers with lower ratings with the prior written approval of the other Party.

D. Additional Insured. Each policy to be obtained, kept and maintained by Tenant under the terms of this Lease shall name the City and the City Related Parties as additional insureds (as the interest of each insured may appear) as to all applicable coverage.

E. Notices. Each and every insurance policy required to be carried by or on behalf of either Party pursuant to this Lease shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless the other Party shall have received notice of cancellation, non-renewal or material reduction in coverage (each a “Notice”), in each such case (except for Notice of cancellation due to non-payment of premiums) such Notice to be sent to the other Party not less than thirty (30) days (or the maximum period of days permitted under applicable law, if less than thirty (30) days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. If any insurance policy required to be carried by or on behalf of either Party pursuant to this Lease is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the Notice shall be sent to the other Party on the earliest possible date but in no event less than ten (10) days prior to the effective date of such cancellation.

F. Primary and Non-Contributing. Each and every insurance policy required to be carried by either Party pursuant to this Lease shall provide that the policy is primary and that any other insurance of any insured, loss payee, or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing.

G. Delivery of Evidence of Insurance. With respect to each and every insurance policy required to be obtained, kept or maintained by the Tenant under the terms of this Lease, on or before the date on which each such policy is required to be first obtained and at least five (5) days before the expiration of any policy required hereunder previously obtained, Tenant shall

deliver evidence reasonably acceptable to the City showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 25 form for Liability Coverages and ACORD 28 form for Property Coverage) issued by an authorized representative of the issuer of such policies, or in the alternative, an authorized representative of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, primary limits, primary deductibles, endorsements and term of such policies. With the exception of the Workers' Compensation coverage, the Certificate of Insurance must also state that "The City of Mesquite, Texas, its trustees, officers, agents and employees are Additional Insureds as their interests appear relating to the contractually stipulated service, project or product." A duplicate original of each policy of insurance required to be obtained, kept and maintained by Tenant shall be deposited with City by Tenant on or before the Lease Effective Date of this Lease, and a duplicate original of each subsequent policy shall be deposited with City at least thirty (30) days prior to the expiration of the preceding such policy.

H. Additional Terms of Tenant's Insurance Policies: Tenant agrees that the policies of insurance to be obtained, kept and maintained by Tenant under the terms of this Lease shall further:

- (i) provide that the inclusion of one or more persons, corporations, organizations, firms or entities as insureds under such policy shall not in any way affect the right of any such person, corporation, organization, firm or entity with respect to any claim, demand, suit, or judgment made, brought or recovered in favor of any other insured;
- (ii) provide that such policy shall protect each person, corporation, organization, firm or entity the same as though a separate policy had been issued to each, provided that its endorsement shall not operate to increase the insurance company's limits of liability as set forth elsewhere in the policy;
- (iii) provide for an endorsement that the other insurance clause shall not apply to the City where the City is an additional insured on the policy;
- (iv) Provide for notice to the City at the address set forth in Article XX of this Lease by registered mail; and
- (v) each applicable policy of insurance shall contain a waiver of subrogation and Tenant agrees to waive subrogation against City and all City Related Parties for injuries including death, property damage, and any other loss.

I. Additional Insurance Covenants. City and Tenant agree to timely pay all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained by such Party pursuant to this Lease and not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Lease to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part.

J. Adjustments in Insurance Coverage. Without limiting the other provisions of this Lease with respect to insurance policy limits, types of coverage and other insurance requirements, the Parties agree that during the term of this Lease City may increase or modify the types of insurance coverage, amounts of coverage, endorsements and deductibles required to be maintained by Tenant under the terms of this Lease provided such increase and/or modified types of insurance coverage, amounts of coverage, endorsements and deductibles are reasonable and

customary with respect to the Permitted Use and operation of the business of the Tenant at the Premises and, upon written notice by City to Tenant of any increase and/or modification of Tenant's insurance requirements, Tenant shall increase and/or modify the types of insurance coverage, amounts of coverage, endorsements and deductibles maintained by Tenant under the terms of this Lease consistent with the written notice by City to Tenant.

K. Waiver of Subrogation. To the extent permitted by law, and without affecting the insurance coverages required to be maintained hereunder, City and Tenant each severally waive all rights of recovery, claims, actions, and causes of action which arise or may arise in its favor and against the other Party during the term of this Lease for any and all loss of, or damage to, any persons or any of its property located within or upon, or constituting a part of, the Premises, and release each other for same, to the extent that such damage (i) is covered (and only to the extent of such coverage without regard to deductibles) by insurance actually carried by the Party holding or asserting such claim or (ii) would be insured against under the terms of any insurance required to be carried under this Lease by the Party holding or asserting such claim. This provision is intended to restrict each Party (if and to the extent permitted by law) to recovery against insurance carriers to the extent of such coverage and to waive (to the extent of such coverage), for the benefit of each Party, rights or claims which might give rise to a right of subrogation in any insurance carrier. Neither the issuance of any insurance policy required under, or the minimum limits specified herein shall be deemed to limit or restrict in any way City's or Tenant's liability arising under or out of this Lease pursuant to the terms hereof. Each Party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other Party. Notwithstanding any provision in the Lease to the contrary, City and each City Related Party shall not be liable to Tenant or any Tenant Related Party for, and Tenant hereby releases City and each City Related Party from any claim or responsibility for: (i) any personal injuries, including bodily injury and death; and (ii) any damage or destruction, loss, or loss of use, or theft, of any property of Tenant or any Tenant Related Party located in or about the Premises, caused by casualty, theft, fire, third parties, or any other matter or cause, regardless of whether the negligence of City or any City Related Party caused such loss in whole or in part. In the event of loss or damage to persons or property, the Tenant and each Tenant Related Party shall look solely to any insurance carried by Tenant covering such loss. Tenant hereby waives any right Tenant, or any person or party claiming through or under Tenant, by subrogation or otherwise, may have against City to recover for any insurable loss. To the extent permitted under applicable law, Tenant shall obtain, for each policy of such insurance, an endorsement waiving the insurer's rights against the City for any such loss or damage

ARTICLE IX

Maintenance, Repairs and Care of the Premises

A. City's Maintenance and Repair Obligations. City, at its sole cost and expense, shall be responsible for the maintenance, repair, and replacement of the foundation, roof, and exterior walls on the Land excluding, however, and notwithstanding the foregoing, Tenant shall be responsible for: (i) the first \$1,000.00 of each repair to the foundation, roof, and exterior walls on the Land; (ii) all maintenance and repairs relating to painting any exterior walls; and (iii) all repairs to the foundation, roof, or exterior walls on the Land necessitated by any act or omission of the Tenant or any Tenant Related Party including, but not limited to, the negligence or intentional acts or omissions of Tenant and each Tenant Related Party.

B. Tenant's Maintenance and Repair Obligations. Tenant, at its sole cost and expense, shall be responsible for: (i) the maintenance and repair of all plumbing, electrical, heating, ventilation and air conditioning systems ("HVAC") at the Premises; (ii) replacing all plumbing, electrical, heating and HVAC at the Premises damaged by the negligence of the Tenant or the

Tenant's agents, representatives and employees; and (iii) the maintenance, repair and replacement of (a) all furniture, trade fixtures, fittings, equipment, business personal property and all other property of Tenant located at the Premises; and (b) that part of the Building and other improvements and equipment on the Premises not required to be maintained by City pursuant to the express terms of this Lease. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, maintain and repair the entire interior of the Building including, but not limited to, interior paint, floor surfaces, windows, doors, the interior sprinkler system, unclogging toilets, sinks, and other bathroom fixtures, repairing leaking faucets, repairing/replacing light fixtures and changing light bulbs, and maintaining and repairing water/sewer pipes, electrical lines, gas pipes, conduits, mains and other utility transmission facilities on the Premises necessary for the operation of Tenant's business at the Premises.

C. Tenant's Responsibility for Damages Caused by Tenant's Use of the Premises. Tenant, at Tenant's sole cost and expense, shall be responsible for and shall pay for all repairs to the Premises as a result of any damage to the Premises caused by any acts or omissions of Tenant and any Tenant Related Party including, without limitation, any negligence and/or intentional act or omission of Tenant or any Tenant Related Party.

D. City's Right to Maintain and Repair the Premises. If Tenant fails to maintain or make any repairs to the Premises to be made by Tenant pursuant to the terms of this Lease within thirty (30) days after written notice by City to Tenant, City will have the right, but not the obligation, to maintain and repair the Premises and remedy any damage to the Premises as the result of Tenant's failure to maintain and repair the Premises at the sole cost and expense of Tenant. If City exercises its right to maintain and repair the Premises and/or to remedy Tenant's damages to the Premises, Tenant agrees to immediately pay to City all reasonable costs incurred by City upon demand.

E. HVAC. Tenant shall, at a minimum, contract for servicing of the HVAC on the Premises no less than two (2) times per calendar year during the term of this Lease including any renewal and extension hereof and shall change the HVAC filters at least once each calendar month during the term of this Lease, including any renewal and extension hereof.

F. Pest Control. Tenant shall, at a minimum, contract for pest control services on the Premises no less than one time per month for a minimum of twelve (12) times per calendar year.

G. Janitorial Services. Tenant, at its sole expense, shall keep the Premises clean at all times and shall be responsible for regular janitorial maintenance of the Premises including, without limitation, timely removal of refuse.

H. Grease Trap. Tenant, at its sole expense, shall be responsible to clean-out the grease trap that serves the Premises (the "**Grease Trap**") once every ninety (90) days during the term of this Lease including any renewals and extensions hereof provided, however, this shall not prevent the Tenant from entering into an agreement with a property owner or tenant that shares the Grease Trap to share the cost of cleaning out the Grease Trap.

I. Care of the Premises. Tenant will not commit waste or create or allow any nuisance on the Premises and will not damage the Premises. Tenant shall comply with all governmental orders, directives and citations for the correction, prevention, and abatement of nuisances in, at, or upon the Premises and for violations of City ordinances in, at, or upon the Premises upon the earlier

of: (i) ten (10) days after the date the governmental order, directive or citation is issued; or (ii) the date stated in the governmental order, directive or citation.

J. City's Right of Entry. City and its authorized agents including, without limitation, all City health, fire, building and other code inspectors, shall have the right (i) at any time during normal business hours; and (ii) during non-business hours provided the Tenant has been given at least twenty-four (24) hours advance notice, to enter the Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this Lease, (c) during the last ninety (90) days of the Lease, to show the Premises to any prospective tenant or purchaser, or (d) for any other reasonable purpose.

K. Surrender of Premises. Tenant agrees to maintain the Premises in good condition and repair and, at the expiration or other termination of this Lease, Tenant shall surrender possession of the Premises to the City in the same condition as the Premises existed as of the CO Date, normal wear and tear excepted. At the expiration or termination of this Lease, provided no Tenant Default (as hereinafter defined) exists and no event exists which, but for notice, the lapse of time or both, would constitute a Tenant Default (as hereinafter defined) by Tenant under the terms of this Lease, Tenant shall remove all furniture, trade fixtures, and personal property from the Premises [provided the same can be removed without material damages to the Premises], and shall repair any damage caused by such removal and shall thoroughly clean the Premises and remove all trash, debris, dirt and other materials and substances in, on or about the Premises arising out of or related to Tenant's use of the Premises. Any furniture, trade fixtures and personal property not removed by Tenant when this Lease expires or terminates shall be considered abandoned by Tenant and will automatically become City's property. If any furniture, trade fixtures and personal property of Tenant is abandoned when this Lease expires or terminates, City may remove and dispose of same and shall be under no obligation or responsibility to Tenant for the removal and/or disposal of such property. Tenant's obligations under this Article IX, Section K shall survive the expiration or termination of this Lease.

ARTICLE X

Alterations of the Premises

A. Alterations. Tenant shall not make any alterations, additions or improvements to the exterior of the Building without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant shall not: (i) create any openings in the roof or exterior walls of the Building; (ii) modify any window or door openings of the Building; or (iii) make any other changes or alterations to the exterior of the Building that could jeopardize the eligibility of the Property being designated in the National Register of Historic Places. Tenant shall not make any structural alterations, additions or improvements to the interior of the Building without the prior written consent of the City, which consent may be withheld in the City's sole discretion. Tenant shall not make any non-structural alterations, additions or improvements to the interior of the Building without the prior written consent of the City, which consent shall not be unreasonably withheld. Tenant shall bear the costs of all alterations, additions or improvements made by Tenant.

B. Mechanic's and Materialmen's Liens. Tenant will pay for all costs incurred or arising out of alterations, additions or improvements in or to the Premises and will not permit a mechanic's or material man's lien to be asserted against the Premises. Upon request by City, Tenant will deliver to City's representative proof of payment reasonably satisfactory to the City of all

costs incurred or arising out of any alterations, additions or improvements to the Premises made by or on behalf of the Tenant.

C. Ownership of Alterations, Additions or Improvements. Any alterations, additions or improvements in or to the Premises that cannot be removed without material damage to the Premises shall become the property of City at the expiration or termination of this Lease; however, City may direct the removal of alterations, additions or improvements made by Tenant by giving written notice to Tenant prior to the expiration or termination of this Lease. Tenant shall then promptly remove all alterations, additions and improvements and any other property placed in or on the Premises by Tenant, and Tenant shall repair in a good and workmanlike manner any damage caused by such removal.

ARTICLE XI

Signs

Tenant may place or affix a sign on the exterior of the Building provided such sign complies with: (i) the guidelines established by the United States Secretary of the Interior for rehabilitating properties with historical significance and commonly referred to as the “**Secretary of the Interior’s Standards for Rehabilitation**”, as amended; and (ii) all applicable laws, regulations, codes and ordinances including, without limitation, all applicable City codes and ordinances regulating the size, type, and number of signs at the Premises, as amended. Any sign installed by the Tenant shall be at Tenant’s sole cost and expense. Prior to the installation of any sign at the Premises, Tenant shall obtain all necessary governmental licenses, permits and approvals for the sign. Additionally, Tenant shall obtain City’s approval of any sign prior to installation and City’s approval shall be subject to its sole discretion. Tenant shall maintain any sign installed at the Premises in good condition and repair. Tenant shall remove any sign installed by or on behalf of Tenant at the Premises at the expiration or termination of this Lease and shall repair any damage and close any holes caused or revealed by such removal.

ARTICLE XII

Damage by Fire or Other Casualty

A. Notice of Damage. If the Building should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to City.

B. Substantial Damage. If the Building is substantially or totally destroyed by fire, tornado or other casualty such that rebuilding or repairs cannot reasonably be completed within one hundred twenty (120) days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall terminate at the option of City or Tenant and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of such written notification.

C. Partial Damage. If the Building is damaged by fire, tornado or other casualty but rebuilding or repairs can reasonably be completed within one hundred twenty (120) days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall not terminate, but City shall, at its sole cost, proceed to rebuild or repair the exterior walls, roof and foundation of the Premises (not the interior leasehold improvements made by Tenant) to substantially the condition in which they existed prior to such damage; provided, however, if the casualty occurs during the final 24 months of the Primary Term or any Renewal Term, City shall

not be required to rebuild or repair such damage unless Tenant exercises its renewal option to extend the Lease for the First Renewal Term or Second Renewal Term, as applicable, within fifteen (15) days after the date of receipt by City of the notification of the occurrence of the damage. If Tenant does not elect to exercise its renewal option or if no renewal option then exists, this Lease shall terminate at the option of City and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of the written notification of the damage. If the Building is to be rebuilt or repaired and is untenable in whole or in part following such damage, the rent payable hereunder during the period in which the Building is untenable shall be adjusted equitably based on the portion of the Building that is untenable.

D. Tenant's Repairs. If City rebuilds or repairs the damage to the Building, Tenant shall, at its sole cost and expense, repair and replace all interior leasehold improvements, trade fixtures and equipment necessary to operate the Permitted Use at the Premises within ninety (90) days from the date the City completes the City's restoration or repairs to the exterior walls, roof and foundation of the Premises.

ARTICLE XIII **Condemnation**

A. Total Taking. If, during the term of this Lease or any extension or renewal thereof, fifty percent (50%) or more of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Premises by the condemning authority.

B. Partial Taking. If less than fifty percent (50%) of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, City, at its option, may by written notice terminate this Lease or at its sole expense shall restore and reconstruct the Building and improvements (other than leasehold improvements made by Tenant) situated on the Premises in order to make the same reasonably tenantable and suitable for the Permitted Use. If the City at its option restores and reconstructs the Building and the Building is untenable in whole or in part during such restoration and reconstruction, the rent payable hereunder during the period in which the Building is being restored and reconstructed shall be adjusted equitably based on the portion of the Building that is untenable.

C. Condemnation Proceeds. City reserves all rights to the entire damage award or payment for any taking by eminent domain. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant, including, but not limited to, loss due to removing Tenant's furniture, trade fixtures, and equipment or for damage to Tenant's business, loss of business, and/or loss of leasehold interest; provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of City's damages.

ARTICLE XIV **Environmental Compliance**

A. Definitions of "Environmental Laws" and "Hazardous Substances." "Environmental Laws" as used herein shall mean (a) the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended (“CERCLA”); (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), as amended (“RCRA”); (c) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et. seq., as amended (“HMTA”); (d) the Clean Air Act of 1974, 42 U.S.C. § 7401, et. seq., as amended (“CAA”); (e) the Clean Water Act, 33 U.S.C. § 1251, et. seq.; (f) Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as amended (“TSCA”); (g) Chapter 361 of the Texas Health & Safety Code, as amended (“TSWDA”); (h) Chapter 26 of the Texas Water Code, as amended (“TWC”); (i) the Texas Asbestos Health Protection Act, Vernon’s Texas Civil Statutes, Title 71, Art. 4477-3a, as amended (“TAHPA”); and (j) all other federal, state, and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of “**Hazardous Substances**” (as hereinafter defined). “**Hazardous Substances**” as used herein shall mean: (i) gasoline, diesel fuel, or other petroleum hydrocarbons; (ii) asbestos and asbestos-containing materials in any form, whether friable or non-friable; (iii) polychlorinated biphenyls; (iv) radon gas; (v) flammables, explosives, radioactive substances; (vi) all substances and materials (whether solid, liquid, or gas) that are classified, defined, or listed as hazardous wastes, hazardous substances or hazardous materials in the Environmental Laws; (vii) pollutants; (viii) toxic materials, toxic substances, toxic waste; and (ix) all other substances, materials and waste that are now or hereafter regulated by the Environmental Laws.

B. Environmental Representations and Warranties. Tenant covenants and agrees to comply strictly and in all respects with the requirements of all Environmental Laws. Tenant represents and warrants to the City that neither Tenant or any Tenant Related Party will use, store, treat, generate, dispose of, transport or release any Hazardous Substances in, at, on, under, near or from the Premises during the term of this Lease provided, however, notwithstanding the foregoing Tenant and Tenant Related Parties may use, store and dispose of limited quantities of materials and supplies customarily used in the operation of the Permitted Use provided the Tenant and the Tenant Related Parties strictly comply with all Environmental Laws in connection with the use, storage and disposal of such materials and supplies. Tenant will comply, and will cause all Tenant Related Parties to comply, with all Environmental Laws at Tenant’s sole cost and expense. **TENANT HEREBY INDEMNIFIES AND AGREES TO HOLD THE CITY AND THE CITY RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, COSTS, INJURIES, DAMAGES, AND LIABILITIES INCURRED BY CITY AND ALL CITY RELATED PARTIES RELATED TO OR ARISING OUT OF ANY USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION OR RELEASE BY TENANT OR ANY TENANT RELATED PARTY DURING THE TERM OF THIS LEASE OF ANY HAZARDOUS SUBSTANCES IN, AT, ON, UNDER, NEAR OR FROM THE PREMISES OR THE AIR ABOVE THE PREMISES OR THE GROUNDWATER UNDERNEATH THE PREMISES.** The City and the City Related Parties shall be entitled to recover their reasonable attorneys’ fees, court costs, investigation and expert witness fees incurred in enforcing the indemnification provisions set forth in this Article XIV, Section B. The provisions of this Article XIV, Section B shall survive the expiration or termination of this Lease.

ARTICLE XV

Default and Remedies

A. Tenant Default. The Tenant shall be in default of this Lease upon the occurrence of any of the following: (each a “**Tenant Default**”):

- (i) The Tenant shall fail to timely pay any installment of rent, or any other payment required to be made by Tenant hereunder, as and when the same shall become due and payable under the terms of this Lease, and such failure continues for five (5) days after written notice from City to Tenant that such amount was not paid when due, provided, however, City shall not be obligated to give Tenant written notice of nonpayment of rent, or any other payment required to be made by Tenant hereunder, more than two (2) times in any calendar year, the third such failure to timely pay during any calendar year not requiring such notice by City;
- (ii) The Tenant shall fail to operate the Permitted Use at the Premises six (6) days a week for a minimum of six (6) hours per day except: (a) during the National Holidays; (b) during an Act of God Force Majeure; and (c) during a Government Force Majeure;
- (iii) The Tenant shall fail to timely keep, observe or perform any terms, provisions, agreements, covenants, conditions or obligations to be kept, performed or observed by Tenant under the terms of this Lease (other than those referred to in Article XV, Subsections A(i) and A(ii) above) and such failure continues for thirty (30) calendar days after written notice from City to Tenant of such failure;
- (iv) If Tenant becomes insolvent or unable to pay its debts as they become due, the transfer of all or substantially all of the assets of the Tenant in fraud of its creditors, or the assignment by Tenant of all or substantially all of Tenant's assets for the benefit of its creditors;
- (v) If Tenant's assets are levied upon by virtue of a writ issued by a court of competent jurisdiction;
- (vi) If Tenant files a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State; or a petition shall be filed against Tenant under any such statute which is not dismissed within ninety (90) days after the filing of it, or Tenant shall be adjudged bankrupt or insolvent in any proceeding filed by or against Tenant;
- (vii) If a receiver or trustee shall be appointed for Tenant's leasehold interest in the Premises or for all or a substantial part of the assets of Tenant and is not discharged within ninety (90) days after the appointment of a receiver or trustee;
- (viii) The termination, dissolution or liquidation of Tenant; or
- (ix) If Tenant shall desert, abandon or vacate the Premises or any substantial portion thereof.

B. City Default. The City shall be in default of this Lease upon the occurrence of any of the following (each a "**City Default**"):

- (i) The failure of City to timely pay any monetary obligation to Tenant under this

Lease, as and when the same shall become due and payable under the terms of this Lease, and such failure continues for five (5) days after written notice from Tenant to City that such amount was not paid when due; or

- (ii) The failure of City to timely keep, observe or perform any term, covenant, condition, obligation or agreement to be kept, performed or observed by City under this Lease (other than as referred to in Article XV, Section B(i) above) and such failure continues for thirty (30) days after written notice from Tenant of such failure.

C. City's Remedies: Upon the occurrence of a Tenant Default and during the continuance of any Tenant Default, City may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than as expressly stated in this Lease:

- (i) Terminate this Lease by written notice to Tenant, in which event the Tenant shall immediately surrender the Premises to the City and if Tenant fails to surrender the Premises, City may, without prejudice to any other remedy which it may have for possession of the Premises or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, and remove any and all property from the Premises, in any lawful manner without a breach of the peace and without being deemed guilty of trespass or becoming liable for any loss, claim, or damage therefore and City shall be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Premises, (ii) the cost of removing and storing Tenant's or any other occupant's property, (iii) the unpaid rent and any other sums accrued hereunder at the date of termination, (iv) a sum equal to the amount, if any, by which the present value of the total rent and other benefits which would have accrued to City under this Lease for the remainder of the term of the Lease if this Lease had been fully complied with by Tenant, exceeds the total fair market value of the Premises for the balance of the term of this Lease (it being the agreement of the Parties hereto that City shall receive the benefit of its bargain), (v) the cost of restoring the Premises to the condition necessary to rent the Premises at the prevailing market rental rate, normal wear and tear excepted, (vi) any increase in insurance premiums caused by the vacancy of the Premises and (vii) any other sum of money or damages owed by Tenant to City. The fair market value of the Premises shall be the prevailing market rental rate for similar space of similar size in a similar building in the City for a lease term equal to the remaining term of this Lease (without regard to any renewal option);
- (ii) Terminate Tenant's right of occupancy of the Premises and reenter and repossess the Premises, without breach of the peace and in any lawful manner, by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, without acceptance of surrender of possession of the Premises, and without becoming liable for damages or guilty of trespass, and City may expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, and may remove any and all property from the Premises. City may re-let the Premises and receive the rent therefor. Tenant agrees to pay to City monthly or on demand from time to time any

deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, the brokerage commission, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting;

- (iii) City may (but under no circumstance shall be obligated to) enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse City on demand for any reasonable expenses that City may incur in effecting compliance with Tenant's obligations under this Lease and Tenant further agrees that City shall not be liable for any damages resulting to Tenant from such action. No action taken by City under this Article XV, Section C(iii) shall relieve Tenant from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations;
- (iv) Without waiving such default, apply all or any part of the Security Deposit to cure the Tenant Default or to any damages suffered as a result of the Tenant Default to the extent of the amount of damages suffered;
- (v) Exercise any rights pursuant to V.T.C.A., Property Code, § 93.002, as amended or replaced including, without limitation, the right to change all door locks and other security devices of Tenant at the Premises;
- (vi) Exercise enforcement of City's statutory lien and contractual lien provided in this Lease; and/or
- (vii) Exercise all other rights and remedies available to the City under the terms of this Lease and/or provided by law or in equity, by statute or otherwise.

D. City's Remedies Cumulative. Each right and remedy of City provided for in this Lease shall be cumulative of and shall be in addition to every other right or remedy of City provided for in this Lease and any other remedies provided by law or in equity, and the exercise by the City of any one or more of the rights or remedies provided herein or now or hereafter existing a law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative and non-exclusive.

E. Attorney's Fees. If Tenant fails to timely surrender possession of the Premises at the end of the term of this Lease, the City shall be entitled to recover court costs and reasonable attorney's fees in relation to the work reasonably expended in any eviction proceeding or other suit to recover possession of the Premises.

F. No Waiver of Termination Notice. The receipt by City of any rent paid by Tenant after the termination of this Lease, or after the giving by City of any notice hereunder to effect such termination, shall not reinstate, continue or extend the term of this Lease, or in any manner impair the effect of any such notice of termination given hereunder by City to Tenant prior to the receipt of any such rent or other consideration, unless so agreed to in writing and executed by City. Neither acceptance of the keys nor any other act or thing done by City or by its agents or employees during the term of this Lease shall be deemed to be an acceptance of a surrender of

the Premises, excepting only an agreement in writing executed by City accepting or agreeing to accept such a surrender.

G. Effect of Termination. If City or Tenant elects to terminate this Lease pursuant to a right to terminate provided herein, this Lease shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Lease shall not alter the then existing claims, if any, of either Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

H. Tenant's Remedies. Upon the occurrence of a City Default and during the continuance of any City Default, Tenant may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than as expressly provided in this Lease:

- (i) Tenant may terminate this Lease by written notice to City; or
- (ii) Tenant may (but under no circumstance shall be obligated to) enter upon the Premises and do whatever City is obligated to do under the terms of this Lease and City agrees to reimburse Tenant on demand for any reasonable expenses that Tenant may incur in effecting compliance with City's obligations under this Lease and City further agrees that Tenant shall not be liable for any damages resulting to City from such action. No action taken by Tenant under this Article XV, Section H(ii) shall relieve City from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

I. Immunity Retained. The Parties acknowledge and agree that the City is entering into this Lease for the public purpose of the development or redevelopment of property within the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, a tax increment reinvestment zone established by the City in accordance with the Tax Increment Financing Act, V.T.C.A., Tax Code, Chapter 311 (the "**Zone**") pursuant to its governmental function and that nothing contained in this Lease shall be construed as constituting a waiver of the City's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.

J. Limited Waiver of Immunity. Notwithstanding anything to the contrary herein, the Parties agree that to the extent this Lease is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City and Tenant hereby acknowledge and agree that in a suit against the City for breach of this Lease:

- (i) the total amount of money awarded is limited to actual damages in an amount not to exceed SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00);
- (ii) the recovery of damages against City may not include speculative, consequential,

- exemplary or punitive damages;
- (iii) Tenant may not recover attorney's fees; and
- (iv) Tenant is not entitled to specific performance or injunctive relief against the City.

K. Waiver of Consequential, Punitive or Speculative Damages. THE CITY AND TENANT AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS LEASE, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

L. Survival. All terms, provisions, rights and remedies of City and Tenant provided in Article XV of this Lease shall survive the expiration or termination of this Lease.

ARTICLE XVI

Liens

A. Security Interest. Tenant hereby grants to landlord a lien and security interest on and in all property of Tenant now or hereafter placed in or upon the Premises, including without limitation all goods, wares, trade fixtures, machinery, inventory, equipment, furniture, furnishings and other personal property now or hereafter placed in or upon the Premises (collectively, the “Personal Property**”), and such Personal Property shall be and remain subject to such lien and security interest of City for payment of all rent and other sums agreed to be paid by Tenant under this Lease. Said lien and security interest shall be in addition to and cumulative of the statutory landlord's liens provided by law. This Lease shall constitute a security agreement under V.T.C.A., Business and Commerce Code, Chapter 9, as amended (the “**UCC**”) so that City shall have and may enforce a security interest in all such Personal Property. Such Personal Property shall not be removed from the Premises unless such removal is in the ordinary course of Tenant's business and no Tenant Default then exists under the terms of this Lease or no event exists which, but for notice, the lapse of time, or both, would constitute a Tenant Default under the terms of this Lease. Tenant agrees to execute as debtor such financing statement or statements as City may now or hereafter reasonably request in order that such security interest or interests may be protected pursuant to said UCC. City may at its election at any time file a copy of this Lease as a financing statement. City, as secured party, shall be entitled to all of the rights and remedies afforded a secured party under said UCC, which rights and remedies shall be in addition to and cumulative of City's liens and rights provided by law or by the other terms and provisions of this Lease.**

ARTICLE XVII

Limitation of Warranties

As a material part of the consideration for this Lease, Tenant accepts possession of the Premises “AS IS” AND “WITH ALL FAULTS” AND WITHOUT ANY WARRANTIES BY THE CITY, EITHER EXPRESS OR IMPLIED. Without limiting the foregoing, the Parties agree that the CITY HAS NOT MADE AND IS HEREBY EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PREMISES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, SUITABILITY OF THE PREMISES FOR THE

PERMITTED USE, FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE OR USE, OR ANY OTHER WARRANTY OF ANY KIND ARISING OUT OF THE PREMISES OR THIS LEASE. TENANT EXPRESSLY WAIVES (TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW) ANY REPRESENTATIONS OR WARRANTIES RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PREMISES OR THIS LEASE. The provisions of this Article XVII shall expressly survive the expiration or termination of this Lease.

ARTICLE XVIII

Option to Purchase the Premises and Repurchase Option

This Lease is subject to the terms and conditions of the Purchase Options granted to Tenant and the Repurchase Option granted to City in Article IX of the Agreement, incorporated herein by reference.

ARTICLE XIX

Assignment and Subletting

Tenant shall not assign this Lease or sublet the Premises, or any portion thereof, without the prior written consent of the City which may be withheld in the City's sole discretion. The sale, transfer or assignment of a controlling interest in the membership interests of the Tenant shall constitute an assignment of this Lease and the failure of the Tenant to obtain the prior written consent of the City prior to such sale, transfer or assignment of such membership interests shall be an attempted assignment of this Lease in violation of this Lease and shall constitute a breach of this Lease by the Tenant. Furthermore, neither the Tenant, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease or any part hereof, or the interest of the Tenant or any approved assignee under this Lease, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Lease shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Lease including, without limitation, the provision in Article IV, Section A restricting the use of the Premises to the Permitted Use and any assignee shall further be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Lease shall be void and shall constitute a material breach of this Lease by the Tenant and in the event the Tenant attempts to assign this Lease in violation of this Article XIX, the City shall have the right to terminate this Lease by written notice to the Tenant. In the event of any assignment or subletting, Tenant shall remain fully liable for the full performance of all of Tenant's obligations under this Lease. Tenant shall not assign its rights hereunder or sublet the Premises without first obtaining a written agreement from assignee or subtenant whereby assignee or subtenant agrees to be bound by the terms of this Lease. No such assignment or subletting shall constitute a novation.

ARTICLE XX

Notices

All notices and communications required or permitted hereunder shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the

With a copy to: City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

C. Commission. Tenant warrants and represents that it has not dealt with any real estate broker or salesman in connection with this Lease and Tenant hereby agrees to defend, hold harmless, and indemnify the City from any claims or liability arising from any real estate broker or salesman claiming a commission in connection with this Lease.

D. Lease Effective Date. “**Lease Effective Date**” as used herein shall mean the date designated in a written notice from the City to Tenant delivered to Tenant after the City completes the City Improvements required by the Agreement.

E. Captions. The descriptive captions of this Lease are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Lease.

F. Modification. This Lease may only be revised, modified or amended by a written document signed by the City and Tenant. Oral revisions, modifications or amendments of this Lease are not permitted.

G. Interpretation. Regardless of the actual drafter of this Lease, this Lease shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either City or Tenant.

H. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Lease shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a default of this Lease shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring. No waiver by any Party hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. Without limiting the generality of the foregoing, the receipt by City of any installment of rent with knowledge of a breach by Tenant of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to the rent received). The payment by Tenant of the rent with knowledge of a breach by City of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

I. Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

J. Severability. If any provision of this Lease is declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining provisions of this Lease and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Lease.

K. No Partnership or Joint Venture. Nothing contained in this Lease shall be deemed

or construed by the Parties hereto, nor by any third Party, as creating the relationship of partnership or joint venture between the Parties.

L. No Third-Party Beneficiaries. The Parties to this Lease do not intend to create any third-Party beneficiaries of the contract rights contained herein. This Lease shall not create any rights in any individual or entity that is not a signatory hereto.

M. Binding Effect. This Lease shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

N. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

O. Memorandum of Lease. Neither Tenant or City shall record this Lease or a memorandum of this Lease in the real property or other records of Dallas County, Texas.

P. Authority. Tenant represents and warrants that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Tenant represents that it has the full power and authority to enter into and fulfill its obligations under this Lease and that the person signing this Lease on behalf of the Tenant has the authority to sign this Lease and bind the Tenant to the terms and provisions of this Lease.

Q. Counterparts. This Lease may be executed in any number of original or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

R. Entire Agreement. This Lease contains the entire agreement between the Parties with respect to the subject matter hereof including all negotiations between the Parties regarding the terms of this Lease, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Lease. There are no oral agreements between the Parties.

S. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Lease, a duly executed completed Form 1295 Certificate.

T. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS LEASE AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the dates set forth next to their signatures below.

CITY:
CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

Attest:

By: _____
Sonja Land, City Secretary

APPROVED AS TO LEGAL FORM:

City Attorney or his Designee

TENANT:
Grounded LLC,
a Texas limited liability company

By: _____
Name: Meagan D'Von Funk
Title: Manager

Date: _____

EXHIBIT 1 to Lease Agreement

Legal Description of Premises

Being 211 W. Main Street, Mesquite, TX 75149 and being Lot 6 in Block 3 of the Original Town of Mesquite, Texas, according to the map recorded in Volume U, page 70, and Volume 3, page 519 Map Records, Dallas County, Texas.

EXHIBIT 2 to Lease Agreement

Improvements to the Premises to be Constructed by City

1. Demolition of interior pony walls
2. Upgrade/replace existing restrooms
3. Bring all plumbing to Code
4. Bring all electric to Code
5. Replace electrical outlets
6. Ensure restrooms are accessible and in good operating order
7. Install electrical outlets
8. Provide that roof is in good order with no leaks
9. Remediate all brickwork
10. Connect property to grease trap
11. Install new exterior doors on south-facing façade
12. Repair or, if necessary, replace display windows according to Code
13. Install new HVAC system
14. Install finishes and flooring necessary for food service
15. Remediate exterior stucco
16. Repair and repaint north-facing exterior
17. Maintain public art on east-facing wall
18. Remediate any existing insect/pest issues
19. Provide that water heater is in good working order

EXHIBIT 3 to Lease Agreement

Improvements to the Premises to be Constructed by Tenant

1. Security system
2. Lounge area multi-purpose seating
3. Signage; **the Parties agree all external signage on the Premises is subject to approval by City in its sole discretion**
4. Three-compartment sink

EXHIBIT 4 to Lease Agreement

Furniture, Trade Fixtures and Equipment to be Installed by Tenant at the Premises

1. Retail display equipment
2. Storage equipment
3. Tables
4. Chairs
5. Cabinetry
6. Refrigerator
7. Wine storage equipment
8. Prep tables
9. Dishwasher
10. Freezer
11. Ice maker
12. Sound system
13. Three-compartment sink
14. Shelving
15. General décor
16. Final paint finishes

Start-up Retail Inventory and Ancillary Equipment to be Provided by Tenant

17. Minerals
18. Plants
19. Wine
20. Food
21. General beverages
22. Cutlery
23. Menus
24. Glassware
25. Plates, boards
26. Paper goods
27. Trash receptacles
28. Employee uniforms
29. Paper goods
30. Potting bench
31. Hoses

Other Tenant Expenses and Investments

1. All permits and licensures
2. Internet
3. Website domain
4. POP System

EXHIBIT 2 TO THE RESOLUTION
ECONOMIC DEVELOPMENT PROGRAM
AGREEMENT
(CHAPTER 380 AGREEMENT)

Between

THE CITY OF MESQUITE,
a Texas home-rule municipality, as City

and

GROUNDED LLC,
a Texas limited liability company, as Company

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”) and Grounded LLC, a Texas limited liability company (“**Company**”), for the purposes and considerations stated below. City and the Company shall hereinafter sometimes be referred to individually as “**Party**” and collectively as the “**Parties**”.

RECITALS:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the City has a downtown area consisting primarily of older buildings with historical significance (“**Downtown Mesquite**”); and

WHEREAS, Downtown Mesquite is in substantial need of redevelopment and revitalization; and

WHEREAS, the City owns the land commonly known as 211 W. Main Street, Mesquite, Texas 75149 and being more particularly described in **Exhibit A** attached hereto and made a part hereof for all purposes (“**Land**”), together with: (i) that certain building now located on the Land and containing approximately 2,000 square feet of leasable area (such building, as modified, renovated and remodeled pursuant to the terms of this Agreement being hereinafter referred to as the “**Building**”) (the Land and Building being hereinafter sometimes collectively referred to as the “**Premises**”); and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas (“**Zone**”) by Ordinance No. 3257 approved by the City Council of the City (“**City Council**”) on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 (“**Act**”); and

WHEREAS, in accordance with the Act, the original boundaries of the TIRZ were enlarged and the geographic area of the original zone was increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Premises is located within Downtown Mesquite which is within the Zone; and

WHEREAS, the City Council was presented with the opportunity to lease the Premises to the Company to be used and occupied by the Company as a beverage, food and retail business (the “**Permitted Use**”); and

WHEREAS, a beverage, food and retail business in Downtown Mesquite will be a catalyst to: (i) attract new customers, patrons and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; (iv) promote development, redevelopment and

revitalization of Downtown Mesquite; and (v) stimulate business and commercial activity in Downtown Mesquite; and

WHEREAS, the Company agreed to make an investment at the Premises by making certain improvements to the interior of the Building and by installing furniture, trade fixtures and equipment at the Building for the purpose of operating the Permitted Use at the Premises; and

WHEREAS, the operation of the Permitted Use by the Company at the Premises will create new employment opportunities in the City and will increase the personal property taxes, and sales taxes assessed and collected by or on behalf of the City; and

WHEREAS, in order for the Company to make the investment to lease the Premises and operate the Permitted Use at the Premises, it was necessary that: (i) the City make certain improvements to the Premises; (ii) the City lease the Premises to the Company at less than fair market rental rates; and (iii) the City grant the Company an option to purchase the Premises, all as more fully set forth herein; and

WHEREAS, the occupancy of the Premises by the Company and the operation by the Company of the Permitted Use at the Premises will benefit the Zone by promoting local economic development and stimulating business and commercial activity in the Zone and will further a purpose of the Zone, which is to promote development and redevelopment of property within the Zone; and

WHEREAS, the construction of improvements to the Premises, the lease of the Premises by the City to the Company at less than the fair market rental rates, the granting by the City to the Company of an option to purchase the Property, and the investment of public resources in Downtown Mesquite is for a public purpose and will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens; and

WHEREAS, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the “**Program**”) and authorizes this Agreement as part of the Program; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals (“**Recitals**”) are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

In addition to the terms otherwise defined herein, the following terms shall have the following meanings:

“Act of God Force Majeure” as used in this Agreement shall mean a major unforeseeable act or event that: (a) prevents Company from performing its obligations under this Agreement or the Lease; (b) is beyond the reasonable control of the Company; (c) is not caused by any act or omission on the part of Company or any “Company Related Party” (as hereinafter defined); and (d) could not have been prevented or avoided by the exercise by Company of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Act of God Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism and civil disturbance. Notwithstanding the foregoing, an Act of God Force Majeure does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Permitted Use at the Premises.

“Company Related Party” shall mean the Company, its officers, members, employees, agents, servants, contractors, subcontractors, customers, patrons, and any person entering the Premises under the express or implied invitation of Company.

“Agreement Effective Date” shall mean _____, 2026.

“Government Force Majeure” as used in this Agreement shall mean a federal, state or municipal governmental order preventing the operation of the Permitted Use at the Premises or limiting the occupancy for the Permitted Use at the Premises during a major unforeseeable act or event that (a) is beyond the reasonable control of the Company; (b) is not caused by any act or omission on the part of Company or any Company Related Party; and (c) could not have been prevented or avoided by the exercise by Company of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. A Government Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to a pandemic such as COVID-19, provided, however, in no event shall a Government Force Majeure include a government order that prevents the Company from operating the Permitted Use at the Premises as a result of the Company’s failure to comply with any law, statute, ordinance, permit, decree, guideline, rule, regulation, or order of any federal, state or municipal government. Notwithstanding the foregoing, a Government Force Majeure does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Lease” as used herein shall mean that certain Amended and Restated Lease Agreement entered into between the City and the Company dated effective of even date with this Agreement relating to the use and occupancy of the Premises by the Company for the Permitted Use, a true and correct copy of which is attached hereto as **Exhibit B** and made a part hereof for all purposes.

“**National Holidays**” as used herein shall mean New Year’s Day, Superbowl, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve.

“**Person**” or “**Persons**” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“**Undocumented Workers**” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. § 1324a (f) or any other applicable law or regulation.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the performance by the Company of the obligations herein will: (i) increase the amount of personal property taxes, local sales taxes and alcoholic beverage taxes paid to and collected by or on behalf of the City; (ii) provide new employment opportunities in the City; (iii) be a catalyst to revitalize and redevelop Downtown Mesquite within the Zone; and (iv) promote local economic development and stimulate business and commercial activity in the City and benefit the City and its citizens.

ARTICLE IV

Term

The term of this Agreement shall commence on the Agreement Effective Date and shall continue until the earlier of: (i) the date the Lease expires or is terminated by the City or the Company pursuant to a right to terminate the Lease expressly set forth in the Lease; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate this Agreement as expressly provided herein (the “**Term**”). Notwithstanding the foregoing, in the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either Party. This Agreement and the Lease may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable (the “**Term**”).

ARTICLE V

Company’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. § 1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any economic development incentives under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the difference between the current fair market rental value of the Premises which is based on \$12.00 per square foot per year, and the actual rents paid by the Company under the terms of the Lease as of the date of such conviction (each discounted monthly installment of rent being hereinafter referred to as a “**Rental Discount**”), plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each Rental Discount being recaptured from the date each monthly installment of reduced rent was paid by the Company to the City under the terms of the Lease until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Remedies. In the event of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. § 1324a (f), the City shall have the right to: (i) terminate the Lease and this Agreement by written notice to Company; and (ii) exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

5. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

6. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Lease of the Premises

The City agrees to lease the Premises to the Company and the Company agrees to lease the Premises from the City upon the terms and subject to the covenants and conditions set forth in the Lease, a true and correct copy of which is attached hereto and made a part hereof for all purposes as **Exhibit B** (the “**Lease**”). To incentivize the Company to lease the Premises, maintain the Company Improvements (as hereinafter defined), maintain the Company’s Business Personal Property (as hereinafter defined) at the Premises and to operate the Permitted Use at the Premises, the City has agreed to accept as rent the amounts set forth in the Lease.

ARTICLE VII

Improvements

1. City Improvements. To further incentivize the Company to lease the Premises and operate the Permitted Use at the Premises, the City, at its sole expense, shall construct the improvements to the Premises more fully set forth in **Exhibit C** attached hereto and made a part hereof for all purposes (the “**City Improvements**”). All City Improvements are and shall be owned by City and shall remain the property of the City at the expiration or termination of the Lease for any reason except in the event of the termination of the Lease contemporaneously with the timely exercise by the Company of the Purchase Option (as hereinafter defined).

2. Company Improvements. The Company, at its sole expense, shall: (i) install all interior furnishings and décor for the Company’s business at the Premises; (ii) construct the improvements to the Premises more fully set forth in **Exhibit D** attached hereto and made a part hereof for all purposes (the “**Company Improvements**”); and (iii) install all furniture, trade fixtures and equipment necessary for the Company to operate the Permitted Use at the Premises including, without limitation, the furniture, trade fixtures and equipment more fully set forth in **Exhibit E** attached hereto and made a part hereof for all purposes (the “**Company’s Business Personal Property**”), upon the later of: (a) one hundred, twenty (120) days after completion by the City of the City Improvements; or (b) December 1, 2026. The total cost for the improvements required by this subsection as detailed in the referenced Exhibits shall meet or exceed \$60,000.00 (the “**Improvements Cost Requirement**”).

ARTICLE VIII

Company Covenants

In consideration of the City entering into this Agreement and performing its obligations hereunder, Company covenants and agrees to timely comply with the following:

1. The Company shall timely pay all rent and other sums to be paid by Company under the terms of the Lease as and when the same shall become due and payable under the terms of the Lease;
2. The Company shall (a) complete the Company Improvements and install the Company’s Business Personal Property at the Premises, (b) expend the Improvements Cost Requirement and provide evidence of such expenditures to the City, and (c) obtain a Certificate of Occupancy to operate the Permitted Use at the Premises on or before one hundred eighty (180) days after City completes the City Improvements and notifies Company in writing of such completion and that the City is delivering the Premises to Company under the Lease, the date of such notice being the “**Lease Effective Date**”;
3. The Company shall commence the operation of the Permitted Use at the Premises on or before one hundred eighty (180) days after the Lease Effective Date;
4. The Company shall deliver to the City within thirty (30) days after written request, copies of such records and documentation as the City may reasonably request to confirm compliance by the Company with the terms, provisions, covenants,

conditions and agreements of the Company set forth in the Lease and this Agreement;

5. The Company shall provide the City, its agents and employees with access to the Premises at such times and under such terms and conditions as set forth in the Lease or this Agreement in order for the City to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the terms, provisions and covenants of the Company set forth in the Lease and this Agreement;
6. The Company shall provide a representative of the Company to accompany the City during all inspections of the Premises conducted by the City;
7. The Company shall timely pay all applicable governmental taxes relating to Company's business at the Premises prior to the date such taxes become delinquent;
8. The Company shall comply with all applicable federal, state and local laws, ordinances and regulations during the Term of this Agreement;
9. The Company shall have timely paid to the City all permit, development, review, inspection fees and such other fees due and payable to the City in connection with the operation of Company's business at the Premises;
10. The Company shall timely keep, observe and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept, performed or observed by the Company under the terms of this Agreement; and
11. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City including, without limitation, the Lease.

ARTICLE IX

Purchase Options and Repurchase Option

To incentivize the Company to enter into the Lease, to make the Company Improvements and to install Company's Business Personal Property at the Premises, and to operate the Permitted Use at the Premises for at least the Term of this Agreement, the City agrees that this Agreement includes two options for Company to purchase the Premises upon the following terms and subject to the following conditions (each a "**Purchase Option**" and collectively the "**Purchase Options**"). To incentivize the City to enter into the Lease and this Agreement, Company agrees for Company to comply with the conditions subsequent to Company's exercise of a Purchase Option provided below and that this Agreement includes an option for the City to repurchase the Premises upon the following terms and subject to the following conditions (the "**Repurchase Option**" as further defined below).

1. **Purchase Option Periods.** The term of the first Purchase Option shall commence on July 1, 2031, and shall continue thereafter until the earlier of: (i) November 30, 2031; or (ii) the expiration or termination of the Lease. The term of the second Purchase Option shall

commence on July 1, 2036, and shall continue thereafter until the earlier of: (i) November 30, 2036; or (ii) the expiration or termination of the Lease (each the “**Purchase Option Period**”).

2. **Purchase Price.** If the Company timely exercises a Purchase Option, the purchase price of the Premises shall be the fair market value of the Premises on the date the Company exercises the Purchase Option as determined by an appraisal obtained by the City (the “**Option Purchase Price**”).

3. **Application to Purchase Price.** Rents and all other sums paid by Company to City under the terms of the Lease do not apply to the Option Purchase Price.

4. **Notice of Exercise of Purchase Option.** To exercise a Purchase Option, Company must give the City at least ninety (90) days prior written notice of Company’s intent to exercise the Purchase Option (the “**Notice of Exercise of Purchase Option**”) within the applicable Purchase Option Period. The Notice of Exercise of the Purchase Option shall not be given any earlier than the first (1st) day of the first or second Purchase Option Period, nor later than ninety (90) days prior to the end of the first or second Purchase Option Period, respectively. Notwithstanding any other provision herein, this Section is not subject to any notice and cure provisions.

5. **Conditions Precedent to Exercise of Purchase Option.** Each and all of the following are conditions precedent to the exercise by the Company of a Purchase Option:

- (i) The Lease shall have been in full force and effect from the Lease Effective Date to and through the closing, as defined below;
- (ii) The Lease shall not have expired or been terminated by either City or Company;
- (iii) At the time the Company gives its Notice of Exercise of Purchase Option and at all times thereafter until and including the date of closing on the purchase of the Premises, no “**Tenant Default**” (as defined in the Lease) shall exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Tenant Default under the terms of the Lease.
- (iv) Tenant’s food and beverage sales from the Permitted Use at the Premises shall meet or exceeded \$33,000.00 per month in gross sales from opening through December 31, 2027, \$480,000 for calendar year 2028, and that there be a ten percent (10%) increase of the preceding year’s gross sales for each year thereafter during the term of this Agreement and, if a Purchase Option is exercised, for the duration of the Repurchase Option Period as defined below;
- (v) The Company shall operate the Permitted Use at the Premises six (6) days a week for a minimum of six (6) hours per day except: (a) during the National Holidays; (b) during an Act of God Force Majeure; or (c) during a Government Force Majeure;
- (vi) The Company shall participate in and have a presence at the City-sponsored Farmers Market at Front Street Station or other City-sponsored event upon which the Parties agree a minimum of two (2) times each year, such participation to be coordinated with and to the satisfaction of the City’s Downtown Development Manager;
- (vii) The Company shall maintain and update its internet Google Business Profile for the Permitted Use at the Premises at least one (1) time per month;
- (viii) The Company shall post a minimum of four (4) social media updates for the

Permitted Use at the Premises each month, to be coordinated with and to the satisfaction of the City's Downtown Development Manager;

- (ix) Prior to Company's exercise of a Purchase Option, Company shall have provided the City with evidence to the sole satisfaction of the City that Company satisfied each and every obligation and covenant of Company under Article VIII of this Agreement.

6. Survey and Title Policy. Company, at its option and at its sole expense, may obtain a survey and title policy in connection with the closing of the purchase of the Premises.

7. Sale and Purchase of the Premises. The City and Company acknowledge: (i) that the Premises is located within the Zone; and (ii) the Premises is being developed under a project plan adopted by the City Council for the Zone; and (iii) the sale and purchase of the Premises by City to Company shall be pursuant to V.T.C.A., Local Government Code § 272.001(b)(6) and/or § 380.001.

8. Transfer of the Premises. In the event the Company timely exercises a Purchase Option in accordance with the conditions provided herein, the Premises will be transferred to the Company by a Deed Without Warranty subject to: (i) mineral reservations, severances and leases, if any, that affect the Premises; (ii) validly existing easements, rights-of-way and prescriptive rights that affect the Premises, whether of record or not; (iii) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect the Premises; (iv) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting the Premises; (v) taxes and assessments against the Premises from the date of closing and for all subsequent years, the payment of which the Company assumes; and (vi) zoning regulations and ordinances of municipal and/or other governmental authorities affecting the Premises (collectively the "**Permitted Exceptions**"). The Company agrees to accept title to the Premises subject to the Permitted Exceptions. Additionally and as a condition precedent to closing the transfer of the Premises and on the closing date of the transfer, Company shall provide to City a repurchase option in a separate written instrument substantially similar to the Repurchase Option Memorandum attached as **Exhibit F** to this Agreement (the "**Repurchase Option**") granting the City an option to repurchase the Premises upon the terms and conditions contained in the Repurchase Option, which shall be filed in the land records of Dallas County upon the closing of the transfer of the Premises to the Tenant.

9. AS IS CONVEYANCE. In the event the Company timely exercises a Purchase Option, the conveyance of the Premises by City to Company shall be "**AS IS**" and "**WITH ALL FAULTS**" and "**WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED**" and the deed to be delivered by City to Company shall be in such form and contain such terms as are acceptable to City at its sole discretion including, without limitation, such disclaimers of representations and warranties as are acceptable to City. The Company agrees that prior to exercising a Purchase Option, Company will have had the opportunity to examine and investigate the Premises and that Company's decision to exercise a Purchase Option and purchase the Premises shall be based solely upon its own independent examination, study, inspection, and knowledge of the Premises and the Company's determination of the value of the Premises and uses for which the Premises may be occupied, and in purchasing the Premises the Company shall not rely on any representations, disclosures, information or warranties, either express or implied, of any kind by the City. **THE COMPANY ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND IS**

EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PROPERTY. The provisions of this Article IX, Section 9 shall survive the closing of the transfer of the Property by the City to the Company.

10. Taxes. If Company exercises a Purchase Option, Company shall be responsible for and shall pay all taxes assessed against the Premises from and after the date of closing on the purchase of the Premises. This provision shall expressly survive the closing of the purchase of the Premises.

11. Closing and Closing Costs. Provided all conditions precedent to the exercise of the Purchase Option have been satisfied and are then continuing and further provided that the Company shall timely exercise the Purchase Option, the closing of the purchase of the Premises: (i) shall take place at the offices of the City or at a title company mutually acceptable to City and Company; and (ii) shall take place at 10:00 a.m., Central Standard Time, on the date that is ninety (90) days after the date of the Notice of Exercise of Purchase Option, or if such date is on a Saturday, Sunday or legal holiday, on the next business day, or at such earlier time and date as may be mutually agreed to between Company and City (the “**Closing**”). At the Closing, Company shall deliver the Option Purchase Price to City in immediately available funds; and (ii) City shall deliver a Deed without Warranty to Company transferring the Premises to Company subject to the Permitted Exceptions. City and Company shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and purchase of the Premises, including such Party’s attorney’s fees. City and Company represent and warrant to each other that they have not and will not work with any broker relative to the sale and purchase of the Premises and that no brokerage commission is or will be due and payable in connection with the sale and purchase of the Premises by the City to the Company.

12. Conditions Subsequent to Exercise of Purchase Option. Company covenants and agrees that from the date of closing for the transfer of the Premises to Company and for a continuous ten (10) year period thereafter, subject to extension during an Act of God Force Majeure or during a Government Force Majeure, Company shall operate the Permitted Use at the Premises in compliance with Article IX, Section 5 of this Agreement.

13. Failure to Exercise Purchase Option. If Company does not exercise a Purchase Option in accordance with the terms and conditions set forth herein and in the Lease within the applicable Purchase Option Period, that particular Purchase Option and right of Company to purchase the Premises will automatically and immediately terminate without notice.

14. Effect of Termination of Lease. Notwithstanding anything contained herein to the contrary, in the event the Lease is terminated for any reason by City or Company, all rights and options of Company to purchase the Premises including, without limitation the Purchase Options set forth herein, shall automatically terminate and be of no further force or effect.

15. Grant of Repurchase Option. In consideration of the execution of this Lease and other good and valuable consideration, including but not limited to Company’s obligations to perform its covenants contained in Article IX, Section 5 for the Repurchase Option Period (as defined below), the receipt and sufficiency of which is hereby acknowledged and confessed, Company grants to City the option to repurchase the Premises subject to the terms and conditions

set forth herein during the Repurchase Option Period (as hereinafter defined) (the “**Repurchase Option**”)

16. Repurchase Option Period. The term of the Repurchase Option shall commence on the date of the Closing for the transfer of the Premises to Company and shall continue thereafter for a period of ten (10) years subject to extension for certain Act of God Force Majeure or Government Force Majeure conditions (the “**Repurchase Option Period**”).

17. Purchase Price. If the City timely exercises the Repurchase Option, the purchase price of the Premises shall be the lesser of the following: (a) the fair market value of the Premises on the date the Company exercised the Purchase Option as determined by an appraisal obtained by the City in accordance with Article IX, Section 2 of this Agreement; or (b) the fair market value of the Premises on the date the City exercises the Repurchase Option as determined by an appraisal obtained by the City (the “**Repurchase Option Purchase Price**”).

18. Notice of Exercise of Repurchase Option. To exercise the Repurchase Option, the City must give Company at least ninety (90) days prior written notice of City’s intent to exercise the Repurchase Option (the “**Notice of Exercise of Repurchase Option**”). The Notice of Exercise of Repurchase Option shall be given no earlier than the commencement of Repurchase Option Period and no later than ninety (90) days after the end of the Repurchase Option Period. Notwithstanding anything else provided herein, this Section is not subject to any notice and cure provisions.

19. Condition Precedent to Exercise of Repurchase Option. The condition precedent to the City’s exercise of the Repurchase Option is the Company’s failure to operate the Permitted Use at the Premises in compliance with Article IX, Section 5, which is incorporated herein by reference, for a continuous period of thirty (30) days or more during the Repurchase Option Period, subject to extension during an Act of God Force Majeure or during a Government Force Majeure.

20. Survey and Title Policy. City, at its option and at its sole expense, may obtain a survey and title policy in connection with the closing of the repurchase of the Premises.

21. Transfer of the Premises. In the event the City exercises the Repurchase Option, the Premises will be transferred to the City free and clear of all liens and in substantially the same condition as when it was conveyed to Company, customary wear and tear excepted, by a Special Warranty Deed subject to: (i) mineral reservations, severances and leases, if any, that affect the Premises; (ii) validly existing easements, rights-of-way and prescriptive rights that affect the Premises, whether of record or not; (iii) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect the Premises; (iv) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting the Premises; (v) taxes and assessments against the Premises from the date of closing and for all subsequent years, if any, the payment of which the City assumes; and (vi) zoning regulations and ordinances of municipal and/or other governmental authorities affecting the Premises (collectively the “**Permitted Exceptions**”). The City agrees to accept title to the Premises subject to the Permitted Exceptions.

22. Taxes. If City exercises the Repurchase Option, City shall be responsible for and shall pay all taxes assessed against the Premises, if any, from and after the date of closing on the

repurchase of the Premises and Company shall be responsible for and shall pay all taxes assessed against the Premises from and before the date of closing. This provision shall expressly survive the closing of the repurchase of the Premises.

23. Closing and Closing Costs. Provided the condition precedent to the exercise of the Repurchase Option was satisfied and further provided that the City shall timely exercise the Repurchase Option, the closing of the repurchase of the Premises: (i) shall take place at the offices of the City or at a title company mutually acceptable to City and Company; and (ii) shall take place at 10:00 a.m., Central Standard Time, on the date that is ninety (90) days after the date of the Notice of Exercise of Repurchase Option, or if such date is on a Saturday, Sunday or legal holiday, on the next business day, or at such earlier time and date as may be mutually agreed to between Company and City (the “**Closing**”). At the Closing, City shall deliver the Repurchase Option Purchase Price to Company in immediately available funds; and (ii) Company shall deliver a Special Warranty Deed to City transferring the Premises to City subject to the Permitted Exceptions. City and Company shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and repurchase of the Premises, including such Party’s attorney’s fees. City and Company represent and warrant to each other that they have not and will not work with any broker relative to the sale and repurchase of the Premises and that no brokerage commission is or will be due and payable in connection with the sale and repurchase of the Premises by the Company to the City.

24. Failure to Exercise Repurchase Option. If City does not exercise the Repurchase Option in accordance with the terms and conditions set forth herein and in the Lease within ninety (90) days after the Repurchase Option Period, the option and right of City to repurchase the Premises will automatically and immediately terminate without notice.

25. Time of the Essence. Time is of the essence with respect to the Purchase Option and Repurchase Option, including, without limitation, the timely exercise of the Purchase Option and Repurchase Option.

ARTICLE X

Defaults

Recapture of Incentives

Remedies

1. Default by Company. The Company shall be in default of this Agreement: (i) if the Company fails to timely pay any installment of rent under the terms of the Lease, or any other payment required to be made by Company under the terms of this Agreement, as and when the same shall become due and payable, and such failure continues for five (5) days after written notice by the City, provided, however, City shall not be obligated to give Company written notice of nonpayment of rent more than two (2) times in any calendar year, the third such failure to timely pay during any calendar year not requiring such notice by City; or (ii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the City; or (iii) upon the occurrence of a “**Tenant Default**” (as defined in the Lease) (each a “**Company Default**”).

2. Default by City. The City shall be in default of this Agreement: (i) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be

kept or performed by the City under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the Company; or (ii) upon the occurrence of a “**City Default**” (as defined in the Lease) (each a “**City Default**”).

3. City Remedies. Upon the occurrence of a Company Default, the City shall have the right to: (i) terminate this Agreement by written notice to the Company; (ii) terminate the Lease by written notice to the Company; (iii) terminate all Purchase Options by written notice to the Company; (iv) recapture economic development incentives as more fully set forth in this Article below; and (iv) exercise all remedies available to the City pursuant to the Lease.

4. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to: (i) terminate this Agreement by written notice to the City; (ii) terminate the Lease by written notice to the City; (iii) terminate the Repurchase Option by written notice to the City; and (iv) exercise all remedies available to the Company pursuant to the Lease.

5. Recapture of Economic Development Incentives. In the event of a Company Default, the Company shall immediately pay to the City, at the City’s address set forth in Article XI, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to the difference between the rental value of the Premises based on \$23.00 per square foot per year, and the actual rents paid by the Company under the terms of the Lease as of the date of the Company Default.

6. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article X shall expressly survive the expiration or termination of this Agreement.

ARTICLE XI

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person without the prior written consent of the City which may be withheld in the City’s sole discretion. The sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City’s prior written consent, which may be given or withheld in the City’s sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and any assignee shall further be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this

Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article XI, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company. In the event of any assignment, Company shall remain fully liable for the full performance of all of Company's obligations under this Agreement. Company shall not assign its rights hereunder without first obtaining a written agreement from the assignee whereby the assignee agrees to be bound by the terms of this Agreement. No such assignment shall constitute a novation.

2. Notices. All notices and communications required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Grounded LLC.
 1913 Fall Creek Cove
 Mesquite, Texas 75181
 Attention: Meagan D'Von Funk

CITY: City of Mesquite
 1515 N. Galloway Avenue
 Mesquite, TX 75149
 Attention: City Manager

With a copy to: City Attorney
 City of Mesquite
 1515 N. Galloway Ave.
 Mesquite, Texas 75149

3. Availability of Funds. All economic development incentives hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. The Parties agree that the performance of City's obligations under this Agreement shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such expenditure is to be made. The provisions of this Article XI, Section 3 expressly survive the expiration or termination of this Agreement.

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of

partnership or joint venture between the Parties.

13. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to create any third-party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company represents that it has the full power and authority to enter into, and fulfill its obligations under this Agreement, and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

18. City Council Authorization. This Agreement is authorized by resolution of the City Council approved at a City Council meeting.

19. Non-Collusion. The Company represents and warrants that neither the Company, nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement

20. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before October 16, 2020, this Agreement will be null and void and of no force or effect.

21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

22. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

23. Execution of Agreement by Parties. If this Agreement is not executed by the Company and City within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, this Agreement will be null and void and of no force or effect.

22. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

23. Non-Boycott of Israel Provision. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2271.001-002 TEX. GOV'T. CODE, Company and its parent company, wholly or majority- owned subsidiaries, and other affiliates, if any, verifies that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas Government Code does not apply to a (1) a business that is a sole proprietorship; (2) a business that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). The foregoing verification is made solely to comply with Chapter 2271, TEX. GOV'T. CODE, to the extent the applicable provision in Chapter 2271.001, TEX. GOV'T. CODE does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott Israel" shall have the meaning assigned to such term in § 808.001(1), TEX. GOV'T. CODE. Company understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

24. Prohibition on Contracts with Certain Companies Provision. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2252.151-.154 TEX. GOV'T. CODE, Company hereby certifies that Company is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to § 2252.153 of the Texas Government Code.

25. Firearm Entity or Trade Association. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under § 2274.002 (b) TEX. GOV'T. CODE, (i) the Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Company will not discriminate during the term of the contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Chapter 2274, TEX. GOV'T. CODE, to the extent the applicable provision in Chapter 2274.002, TEX. GOV'T. CODE does not contravene applicable Texas or federal law. As used in the foregoing verification, "firearm entity or firearm trace association" shall have the meaning assigned to the terms in § 2274.001 (6), (7), TEX. GOV'T. CODE. Company understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit

26. Energy Boycott. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2276.002(b)(1),(2) TEX. GOV'T. CODE, Company hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott

energy companies during the term of this Agreement. The foregoing verification is made solely to comply with § 2274.002, TEX. GOV'T. CODE, as amended, to the extent § 2274.002, TEX. GOV'T. CODE does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in § 809.001, TEX.GOV'T.CODE. Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

27. Report Agreement to Comptroller's Office. City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Agreement Effective Date of this Agreement, in accordance with § 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

28. Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council of the City of Mesquite.

29. City Council Authorization. This Agreement must be authorized and approved by resolution of the City Council at a City Council meeting.

30. Dispute Resolution. Any controversy or claim ("**Claim**") arising from or relating to this Agreement or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by non-binding mediation for a period not to exceed sixty days from the date of the Claim. The mediation shall be held in Dallas County, Texas and the Parties shall share the costs of mediation equally.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

**CITY OF MESQUITE,
a Texas home rule municipality**

By: _____
Sonja Land
City Secretary

By:

Name: Cliff Keheley
Title: City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney or his Designee

COMPANY:

Grounded LLC,
a Texas limited liability company

By _____

Name: Meagan D’Von Funk

Title: Manager

Date: _____

**EXHIBIT A
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Legal Description of Premises

Being 211 W. Main Street, Mesquite, TX 75149 and being Lot 6 in Block 3 of the Original Town of Mesquite, Texas, according to the map recorded in Volume U, page 70, and Volume 3, page 519 Map Records, Dallas County, Texas.

EXHIBIT B
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
Lease Agreement

LEASE AGREEMENT

Between

THE CITY OF MESQUITE,
a Texas home-rule municipality, as City

and

GROUNDED LLC,
a Texas limited liability company, as Tenant

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into effective as of the Lease Effective Date (as hereinafter defined), by and between THE CITY OF MESQUITE, a Texas home rule municipality ("**City**"), and GROUNDED LLC, a Texas limited liability company ("**Tenant**"). City leases to Tenant and Tenant leases from City the Premises (as hereinafter defined) upon the terms and subject to the covenants and conditions set forth in this Lease. Tenant and City shall hereinafter sometimes be referred to individually as "**Party**" and sometimes collectively as the "**Parties**".

ARTICLE I

Premises and Premises Improvements

A. **Premises.** In consideration of the obligation of Tenant to pay rent as more fully set forth in Article III of this Lease and in consideration of the other terms, provisions and covenants hereof, City hereby demises and leases to Tenant, and Tenant hereby leases from City, that certain tract or parcel of land commonly known as 211 W. Main, Mesquite, Texas and being more particularly described in **Exhibit 1** attached hereto and made a part hereof for all purposes (the "**Land**"), together with: (i) that certain building now located on the Land and containing approximately 2,000 square feet of leasable area (such building, as modified, renovated and remodeled pursuant to the terms of this Lease being hereinafter referred to as the "**Building**"); (the Land and Building are hereinafter sometimes collectively referred to as the "**Premises**").

B. **Premises Improvements.** All improvements on the Land including, without limitation, the Building, together with all fixtures attached thereto and all building equipment and other improvements situated therein or thereon, and all improvements hereafter constructed in or on the Land and Building including, without limitation, all improvements to the Land and Building constructed pursuant to the terms of that certain Economic Development Program Agreement (Chapter 380 Agreement) (the "**Agreement**"), incorporated herein by reference, dated of even date herewith between the City and the Tenant relating to economic development incentives for the development of the Premises are hereinafter individually referred to as a "**Premises Improvement**" and collectively referred to as the "**Premises Improvements**". City and Tenant acknowledge that all Premises Improvements are owned by City and will be the property of City regardless of which Party constructs the Premises Improvement.

ARTICLE II

Term

A. **Primary Term.** The primary term of this Lease shall commence on the Lease Effective Date (as defined below) and shall continue through and including December 31, 2031 (the "**Primary Term**") provided, however, that if Tenant purchases the Premises pursuant to the terms and conditions of a Purchase Option as provided in the Agreement, this Lease shall automatically terminate as of the Closing date of Company's purchase of the Premises.

B. **Renewal Term(s).** The Tenant shall have the right to renew the term of this

Lease for two (2) additional periods of five (5) years each (each a “**Renewal Term**”) provided that: (i) at the end of the then existing term [i.e. at the end of the Primary Term with respect to the first Renewal Term, and, if applicable, at the end of the first Renewal Term with respect to the second Renewal Term] this Lease is in full force and effect; and (ii) no Tenant Default (as hereinafter defined) shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Tenant Default (as hereinafter defined) under the terms of this Lease. If Tenant desires to extend this Lease, as a condition precedent to the extension of this Lease, Tenant shall deliver written notice of Tenant’s intent to renew this Lease (each a “**Renewal Notice**”) to the City no later than three (3) months prior to the expiration of the then existing term [i.e. with respect to the first Renewal Term, no later than three (3) months prior to the expiration of the Primary Term and, if applicable, with respect to the second Renewal Term, no later than (3) months prior to the expiration of the first Renewal Term]. If the Tenant fails to renew this Lease at least three (3) months prior to the expiration of the Primary Term, this Lease will expire and terminate upon the last day of the Primary Term. If the Tenant timely exercises its option to renew the term of this Lease for the first Renewal Term, but fails to renew this Lease at least three (3) months prior to the expiration of the first Renewal Term, this Lease will expire and terminate upon the last day of the first Renewal Term.

C. Holding Over by Tenant. Should Tenant fail to vacate the Premises or any part thereof after the expiration of the Primary Term or any Renewal Term, unless otherwise agreed to in writing by City, such failure to vacate shall constitute and be construed as a tenancy from month-to-month upon the same terms and conditions as set forth in this Lease except the monthly rent shall be two hundred percent (200%) of the immediately preceding monthly rent per calendar month. In no event shall this tenancy last longer than sixteen (16) years.

ARTICLE III Rent and Security Deposit

A. Rent During Primary Term. Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the Primary Term:

Lease Period	Rent Amount
From the Lease Effective Date to the last day of the month that is one hundred eighty (180) days after the Lease Effective Date	\$0.00 per calendar month
From the first day of the month following one hundred eighty (180) days after the Lease Effective Date through and including 12/31/2031	\$2,500.00 per calendar month (i.e. \$30,000.00 per year)

B. Rent During first Renewal Term. If Tenant timely exercises its option to renew this Lease for the first Renewal Term, Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the first Renewal Term:

Lease Period	Rent Amount
From 1/1/2032 through and including 12/31/2032	\$2,625.00 per calendar month (i.e. \$31,500.00 per year)
From 1/1/2033 through and including 12/31/2033	\$2,756.00 per calendar month (i.e. \$33,072.00 per year)
From 1/1/2034 through and including 12/31/2034	\$2,894.00 per calendar month (i.e. \$34,728.00 per year)
From 1/1/2035 through and including 12/31/2035	\$3,039.00 per calendar month (i.e. \$36,468.00 per year)
From 1/1/2036 through and including 12/31/2036	\$3,191.00 per calendar month (i.e. \$38,292.00 per year)

C. Rent During Second Renewal Term. If Tenant timely exercises its option to renew this Lease for the second Renewal Term, Tenant shall pay to City, without abatement, demand, set-off or counterclaim, the following sums as rent for the Leased Premises during the second Renewal Term:

Lease Period	Rent Amount
From 1/1/2037 through and including 12/31/2037	\$3,350.00 per calendar month (i.e. \$40,200.00 per year)
From 1/1/2038 through and including 12/31/2038	\$3,517.00 per calendar month (i.e. \$42,204.00 per year)
From 1/1/2039 through and including 12/31/2039	\$3,693.00 per calendar month (i.e. \$44,316.00 per year)
From 1/1/2040 through and including 12/31/2040	\$3,878.00 per calendar month (i.e. \$46,536.00 per year)
From 1/1/2041 through and including 12/31/2041	\$4,072.00 per calendar month (i.e. \$48,864.00 per year)

D. Payment of Rent. Rent shall be due and payable in advance on or before the first (1st) day of each calendar month during the term of this Lease. Rent shall be paid in legal and lawful money of the United States of America as of the date the payment is due and shall be payable to the City at, City of Mesquite, Downtown Development Division, Attention: Downtown Coordinator, P.O. Box 850137, Mesquite, Texas 75185-0137, or at such other address as City may hereafter notify Tenant in writing. Notwithstanding any other provision of this Lease, each payment of rent shall be deemed paid and received only when actually received by the City and in the event any payment of rent is by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of the check to clear the Tenant's account.

E. Security Deposit.

(i) Within ten (10) days after the Lease Effective Date, Tenant will pay City a security deposit in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) (the "**Security Deposit**"). The Security Deposit is security that the Tenant will comply with all terms of this Lease. The Security Deposit may not be used to pay the last month's rent without the City's

prior written consent. If the Tenant breaks or otherwise violates this Lease prior to the expiration date of this Lease, the City may keep all or part of the Security Deposit to cover unpaid rent or damage to the Premises; and

(ii) Upon Tenant vacating the Premises, the City will inspect and document the condition of the Premises. Within sixty (60) days after the expiration or termination of this Lease, if the Tenant has supplied the City with a forwarding address, the City will either (a) return the Security Deposit if the Tenant has complied with all terms of this Lease and returns the Premises to the City in the same condition as on the Lease Effective Date, normal wear and tear excepted, or (b) provide the Tenant with a written notice including an itemized list as to why the full Security Deposit amount is not being returned to the Tenant and a check for any remaining Security Deposit owed to the Tenant after the allowed deductions have been made. The City may use as much of the Security Deposit as necessary to pay for damages resulting from the Tenant's move-in, occupancy, or move-out.

F. Late Charge. If any installment of rent due under this Lease is not received by the City within five (5) days after the date due, Tenant shall pay to City a late payment charge equal to the lesser of: (i) the maximum allowed by law; or (ii) ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

ARTICLE IV Use of the Premises

A. Permitted Use. Tenant shall use and occupy the Premises only for a beverage, food and retail business (the “**Permitted Use**”) and shall obtain and maintain throughout the term of this Lease all required permits and licenses required or permitted for the Permitted Use. Tenant’s use of the Premises is restricted to the Permitted Use unless Tenant obtains the City’s prior written consent to any change in use.

B. Commencement of the Operation of the Tenant’s Business at the Premises. Tenant shall commence the operation of the Permitted Use at the Premises on or before one hundred eighty (180) days after the Lease Effective Date.

C. Hours of Operation. Tenant shall be open for business and operate the Permitted Use at the Premises six (6) days a week for a minimum of six (6) hours per day except: (i) during the following national holidays: New Year’s Day, Superbowl, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve (the “**National Holidays**”); (ii) during a “**Act of God Force Majeure**” (as hereinafter defined); and (iii) during a “**Government Force Majeure**” (as hereinafter defined).

D. Compliance with Laws. Tenant shall not use, occupy, or permit to be used or occupied the Premises for any purpose that is unlawful, that is dangerous to persons or property, or that would constitute a nuisance. Tenant, at its sole expense, will comply, and will cause all Tenant Related Parties (as hereinafter defined) to comply, with all laws, rules, regulations, and ordinances concerning the use, condition and occupancy of the Premises and the operation of the Tenant’s business at the Premises. Without limiting the foregoing, Tenant covenants and agrees to comply strictly and in all respects with the requirements of all applicable laws, statutes, ordinances, permits, decrees, guidelines, rules, regulations and orders pertaining to the use,

condition and occupancy of the Premises including, without limitation, all codes, ordinances and regulations of the City.

E. Permits and Licenses. Tenant, at Tenant's sole expense, shall obtain and maintain at all times during the term of this Lease any and all governmental licenses and permits necessary for the operation of the Tenant's business at the Premises including, without limitation, a final certificate of occupancy issued by the City to the Tenant authorizing the Tenant to operate the Permitted Use at the Premises (the "**Certificate of Occupancy**") and all licenses required by the TABC authorizing the Tenant to sell alcohol at the Premises.

F. Utilities. Tenant will timely pay all charges for gas, electricity, heat, air conditioning, water, sanitary sewer, storm sewer, drainage, television, internet, telephone, garbage removal and all other utilities used in and about the Premises prior to the date such charges become delinquent.

G. Event of Force Majeure.

(i) "**Act of God Force Majeure**" as used in this Lease shall mean a major unforeseeable act or event that: (a) prevents Tenant from performing its obligations under this Lease; (b) is beyond the reasonable control of the Tenant; (c) is not caused by any act or omission on the part of Tenant or any Tenant Related Party (as hereinafter defined); and (d) could not have been prevented or avoided by the exercise by Tenant of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Act of God Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism and civil disturbance.

(ii) "**Government Force Majeure**" as used in this Lease shall mean a federal, state or municipal governmental order preventing the operation of the Permitted Use at the Premises or limiting the occupancy for the Permitted Use at the Premises during a major unforeseeable act or event that (a) is beyond the reasonable control of the Tenant; (b) is not caused by any act or omission on the part of Tenant or any Tenant Related Party (as hereinafter defined); and (c) could not have been prevented or avoided by the exercise by Tenant of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. A Government Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to a pandemic such as COVID-19, provided, however, in no event shall a Government Force Majeure include a government order that prevents the Tenant from operating the Permitted Use at the Premises as a result of the Tenant's failure to comply with any law, statute, ordinance, permit, decree, guideline, rule, regulation, or order of any federal, state or municipal government.

(iii) Notwithstanding the foregoing, an Act of God Force Majeure and a Government Force Majeure do not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

(iv) Subject to Article IV, Sections I (vi) and I (vii) below, in the event of an Act of God Force Majeure that prevents the Tenant from being open for business to operate the Permitted Use at the Premises, the rent due by Tenant under the terms of this Lease shall be temporarily abated for the period commencing with the occurrence of the Act of God Force Majeure and continuing until the earlier of: (a) the date the Tenant reopens the Permitted Use at the Premises;

(b) the date a reasonably prudent tenant would reopen the Permitted Use at the Premises based on commercially reasonable standards as determined in the sole discretion of the City Manager; or
(c) six (6) months after the occurrence of the Act of God Force Majeure provided, however, such date may be extended in writing by the City Manager, in the City Manager's sole discretion.

(v) Subject to Article IV, Sections I (vi) and I (vii) below, in the event of a Government Force Majeure that prevents the Tenant from being open for business to operate the Permitted Use at the Premises or that limits the occupancy of the Premises based on the Permitted Use (each a "**Governmental Order**"), the rent due by Tenant under the terms of this Lease shall be temporarily abated in whole or in part as more fully set forth below for the period commencing with one (1) month after the issuance of the Governmental Order and continuing until the earlier of: (a) the date the Tenant is permitted by subsequent governmental order to reopen the Permitted Use at the Premises; or (b) seven (7) months after the issuance of the initial Governmental Order provided, however, such date may be extended in writing by the City Manager, in the City Manager's sole discretion (the earlier of the dates in this Article IV, Section I (v)(a) and Article IV, Section I (v)(b), if and as extended in writing by the City Manager, is hereinafter referred to as the "**Rent Abatement Period**"). In the event the operation of the Permitted Use by the Tenant is wholly prevented as the result of a Government Order, the Tenant's responsibility to pay rent shall be abated in full during the Rent Abatement Period. In the event the Government Order limits the occupancy at the Premises for the Permitted Use, the rent payable by the Tenant during the Rent Abatement Period shall be reduced by the difference between one hundred (100%) and the occupancy rate percentage as limited by the Government Order provided, however, such percentage shall change during the Rent Abatement Period based on changes in the limitations on occupancy for the Permitted Use at the Premises by subsequent Government Order(s). By way of example only, if occupancy at the Premises for the Permitted Use is limited by an initial Government Order to fifty percent (50%) during the first (1st) month of the Rent Abatement Period but is increased by a subsequent Government Order to seventy-five percent (75%) during the second (2nd) month of the Rent Abatement Period, the Tenant's monthly rent shall be reduced by fifty percent (50%) during the first (1st) month and twenty-five percent (25%) during the second (2nd) month of the Rent Abatement Period.

(vi) Notwithstanding any provision in this Lease to the contrary, if the Tenant desires to claim that rent due under the terms of this Lease should be abated in whole or in part due to an Act of God Force Majeure or a Government Force Majeure, the Tenant shall deliver written notice of the occurrence of the Act of God Force Majeure or of the issuance of the Government Order to the City no later than fifteen (15) days after the Tenant becomes aware of the Act of God Force Majeure or the Government Order, and if the Tenant fails to timely notify the City of the occurrence of such Act of God Force Majeure or of the issuance of such Government Order, the Tenant shall not be entitled to avail itself of the provisions of this Article IV, Section I.

(vii) Further notwithstanding anything contained herein to the contrary, and as a condition precedent to each monthly full or partial abatement of rent as provided in this Article IV, Section I, the Tenant shall provide a written report to the City Manager with the notice referred to in Article IV, Section I (vi) above and on the first (1st) day of each calendar month thereafter that rent is being partially or wholly abated stating: (i) a detailed explanation of the Act of God Force Majeure or the Government Force Majeure; (ii) the current status of the Act of God Force Majeure or the Government Order; (iii) a detailed description of action(s) taken by the Tenant during the Rent Abatement Period to reopen the Permitted Use at the Premises; (iv) a detailed description of

future action(s) planned by Tenant to resume the operation of the Permitted Use at the Premises; and (v) the estimated date the Tenant will reopen the Permitted Use at the Premises.

ARTICLE V

Improvements to the Premises

A. **City Improvements.** The City, at its sole expense, shall construct the improvements to the Premises more fully set forth in **Exhibit 2** attached hereto and made a part hereof for all purposes (the “**City Improvements**”). All City Improvements shall be owned by City and shall remain the property of the City at the expiration or termination of this Lease for any reason except in the event of the termination of the Lease contemporaneously with the timely exercise by the Tenant of the Purchase Option (as hereinafter defined).

B. **Tenant Improvements.** The Tenant, at its sole expense, shall: (i) install all interior furnishings and décor for the Tenant’s business at the Premises; (ii) construct the improvements to the Premises as more fully set forth in **Exhibit 3** attached hereto and made a part hereof for all purposes; and (iii) install all furniture, trade fixtures and equipment necessary for the Tenant to operate the Permitted Use at the Premises including, without limitation, the furniture, trade fixtures and equipment more fully set forth in **Exhibit 4** (Article V, Sections B(i), B(ii) and B(iii) are hereinafter collectively referred to as the “**Tenant Improvements**”).

ARTICLE VI

Taxes

A. **Definition of Taxes.** The term “**Real Property Taxes**” shall mean all taxes, assessments, and other governmental impositions and charges of every kind and nature which arise or accrue from and after the Lease Effective Date (as hereinafter defined) and which shall or may during the term of this Lease be charged, levied, assessed, imposed, become due and payable, or liens upon or for or with respect to the Land and Building. The term “**Personal Property Taxes**” shall mean all taxes, assessments and other governmental impositions and charges of every kind and nature which arise or accrue from and after the Lease Effective Date (as hereinafter defined) and which shall or may during the term of this Lease be charged, levied, assessed, imposed, become due and payable, or liens upon or for or with respect to the personal property, trade fixtures and equipment owned by Tenant located at the Premises.

B. **Payment of Real Property Taxes.** City shall be responsible for and shall timely pay all Real Property Taxes, if any, on the Land, Building and any other improvements and fixtures owned by City located at or within the Premises prior to the date such Real Property Taxes become delinquent. The Parties acknowledge this provision shall no longer apply in the event the Tenant exercises the Purchase Option (as hereinafter defined).

C. **Payment of Business Personal Property Taxes.** The Tenant shall be responsible for and shall timely pay all Personal Property Taxes on all business personal property, trade fixtures, equipment and other property owned by Tenant located at or within the Premises prior to the date such Personal Property Taxes become delinquent.

D. **Other Taxes.** In no event shall either City or Tenant be liable hereunder for or required to pay any income, profit, excise, inheritance, estate, gift or franchise taxes of the other Party. Tenant shall be responsible for and shall timely pay all sales taxes, payroll taxes, Texas

Alcoholic Beverage Commission (“TABC”) taxes, and all other taxes accrued in conjunction with the operation of the Permitted Use on the Premises.

ARTICLE VII

Limitation of Liability and Indemnification

A. Limitation of Liability. CITY, ITS ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VOLUNTEERS, ATTORNEYS AND INSURERS (EACH INDIVIDUALLY A “CITY RELATED PARTY” AND COLLECTIVELY THE “CITY RELATED PARTIES”) SHALL NOT BE LIABLE TO TENANT, ITS OFFICERS, MEMBERS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, CUSTOMERS, PATRONS, AND ANY PERSON ENTERING THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF TENANT (EACH INDIVIDUALLY A “TENANT RELATED PARTY” AND COLLECTIVELY THE “TENANT RELATED PARTIES”), OR TO ANY OTHER PERSON WHOMSOEVER, FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR TO ANY PROPERTY CAUSED BY OR ARISING FROM: (i) THE USE OR OCCUPANCY OF THE PREMISES BY TENANT; (ii) THE OPERATION OF TENANT’S BUSINESS AT THE PREMISES; (iii) THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, MISCONDUCT, ACT, OR OMISSION OF TENANT OR ANY TENANT RELATED PARTY; OR (iv) ANY BREACH OR DEFAULT BY THE TENANT UNDER THE TERMS OF THIS LEASE. FURTHER, CITY SHALL NOT BE LIABLE TO TENANT OR ANY TENANT RELATED PARTY FOR ANY LOSS OR DAMAGE THAT MAY BE OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF ANY THIRD PARTY.

B. Indemnity. TENANT HEREBY AGREES AND COVENANTS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY RELATED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEMANDS, CAUSES OF ACTION, CLAIMS, JUDGMENTS, SUITS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES, COURT COSTS, COSTS OF INVESTIGATION, AND EXPERT WITNESS FEES) FOR INJURIES INCLUDING DEATH TO TENANT’S EMPLOYEES AND ALL OTHER PERSONS AND FOR DAMAGE TO PROPERTY DIRECTLY OR INDIRECTLY ARISING FROM OR ALLEGED TO ARISE OUT OF OR IN ANY WAY INCIDENTAL TO (i) THE USE OR OCCUPANCY OF THE PREMISES BY TENANT; (ii) THE OPERATION OF TENANT’S BUSINESS AT THE PREMISES; (iii) THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, MISCONDUCT, ACT, OR OMISSION OF TENANT OR ANY TENANT RELATED PARTY; OR (iv) ANY BREACH OR DEFAULT BY THE TENANT UNDER THE TERMS OF THIS LEASE (EACH AN “INDEMNIFIED CLAIM”). THE PARTIES AGREE THAT THE INDEMNITY CONTAINED IN THIS ARTICLE VII, SECTION B, INDEMNIFIES THE CITY AND THE CITY RELATED PARTIES EVEN WHEN THE CITY OR THE CITY RELATED PARTIES ARE JOINTLY, COMPARATIVELY, CONTRIBUTORILY, OR CONCURRENTLY NEGLIGENT WITH TENANT, AND EVEN THOUGH SUCH INDEMNIFIED CLAIM IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF CITY OR ANY CITY RELATED PARTY; HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO THE SOLE OR GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT OF CITY OR ANY CITY RELATED PARTY. THE INDEMNITIES SET FORTH IN THIS ARTICLE VII, SECTION B SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE. IF ANY PROCEEDING IS FILED FOR WHICH INDEMNITY IS REQUIRED HEREUNDER, THE TENANT AGREES, UPON REQUEST THEREFOR, TO DEFEND THE CITY OR CITY RELATED PARTY IN SUCH PROCEEDING AT ITS SOLE COST UTILIZING COUNSEL SATISFACTORY TO THE CITY.

C. Failure to Defend. It is understood and agreed by Tenant that if City or any City Related Party is made a defendant in any action, proceeding or claim for which it is indemnified pursuant to this Lease, and Tenant fails or refuses to assume the defense thereof within fifteen (15) days after having received written notice by City or any City Related Party of its obligation hereunder to do so, City or such City Related Party may compromise, settle, or defend such action, proceeding or claim, and Tenant shall be bound and obligated to reimburse City and any City Related Party for the amount expended by the City and City Related Party in settling and compromising any such action, proceeding or claim, or for the amount expended by City and any City Related Party in paying any judgment rendered therein, together with all reasonable attorneys' fees, court costs, investigation costs and expert witness fees, incurred by City and any City Related Party for defense or settlement of such action, proceeding or claim. Any judgment rendered against City and any City Related Party or amount expended by City and any City Related Party in compromising or settling such action, proceeding or claim shall be conclusive as determining the amount for which Tenant is liable to reimburse City and any City Related Party hereunder.

D. Independent Counsel. The City and any City Related Party shall have the right, at their expense, to employ independent legal counsel in connection with any Indemnified Claim and Tenant shall cooperate with such counsel in all reasonable respects at no cost to City or any City Related Party.

E. No Third-Party Beneficiary. The provisions of this Article VII are solely for the benefit of City, City Related Parties, Tenant, and Tenant Related Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person.

ARTICLE VIII

Insurance

A. City's Insurance Obligations. At all times during the term of this Lease, City shall, at its sole cost and expense obtain, keep and maintain insurance on the Building and other improvements owned by City and located on or at the Premises with such types of coverage, amounts of coverage, endorsements and deductibles as deemed advisable by the City in its sole discretion. All insurance carried by City against loss or damage to the Building and other improvements situated on or at the Premises shall be for the sole benefit of the City and under its sole control.

B. Tenant's Insurance Obligations. Commencing with the Lease Effective Date and at all times thereafter during the term of this Lease including any renewal and extension hereof, Tenant shall, at its sole cost and expense [subject to increase as more fully set forth in Article VIII, Section J below], obtain, keep and maintain the following insurance:

- (i) Commercial General Liability Policy. A commercial general liability insurance

policy (“**Tenant’s GL Policy**”), written on an occurrence basis and limited to the Premises, naming Tenant as the named insured (with the effect that Tenant and its employees are covered) and City as an additional insured and providing a waiver of subrogation in favor of the City and the City Related Parties, affording protection against liability arising out of personal injury, bodily injury including death, and property damage occurring, in, upon or about the Premises or resulting from, or in connection with, the use or occupancy of the Premises and the operation of the Tenant’s business at the Premises with coverage limits in the amount of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate, and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss. Tenant’s GL Policy shall also contain endorsements (or, at Tenant’s option, equivalent coverages under separate policies) providing: (a) host legal liquor liability and dram shop liability coverage with minimum limits of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate; and (ii) providing for protection from pollution liability at limits of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and providing for related clean-up of the Premises and any affected adjacent property at limits of no less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00);

- (ii) Workers’ Compensation Policy. A workers’ compensation insurance policy providing statutory coverage under the laws of the State of Texas for all persons employed by Tenant in connection with the Premises; or an Excess Employers’ Indemnity Policy (also known as a Non-Subscriber Policy) that provides effective coverage against claims of work- related injuries;
- (iii) Employer’s Liability Insurance. An Employer’s Liability Insurance Policy affording protection of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by accident (each accident), not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by disease (each employee) and not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the aggregate and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss. The policy shall also include a waiver of subrogation endorsement in favor of the City and the City Related Parties;
- (iv) Personal Property. A special form (formerly “**all risk**”) property insurance policy covering Tenant’s furniture, equipment, trade fixtures and other personal property located at the Premises, and all alterations, additions and improvements made by the Tenant to the Premises, against loss or damage due to insured perils covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time available in the City of Mesquite, Dallas County, Texas, naming Tenant as the first named insured for a sum at least equal to one hundred percent (100%) of the insurable replacement cost of Tenant’s furniture, equipment, trade fixtures and other personal property located at the Premises, and all alterations, additions and improvements made by the Tenant to the Premises, and with the deductible not exceeding TEN

THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss; and

- (v) Commercial Crime Policy. A commercial crime insurance policy insuring against employee dishonesty, forgery or alteration, robbery (inside and outside) and computer fraud, naming Tenant as the insured, with minimum limits of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) each occurrence and FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) in the aggregate, and with the deductible not exceeding TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per loss.

C. Authorized Insurance Carriers. All insurance policies required to be carried by Tenant and City pursuant to the terms of this Lease shall be effected under valid policies issued by insurers authorized to do business in the State of Texas and which have an A.M. Best Company, Inc. rating of “A-” or better and a financial size category of not less than “VII”. If A.M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if A.M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. City and Tenant may utilize insurers with lower ratings with the prior written approval of the other Party.

D. Additional Insured. Each policy to be obtained, kept and maintained by Tenant under the terms of this Lease shall name the City and the City Related Parties as additional insureds (as the interest of each insured may appear) as to all applicable coverage.

E. Notices. Each and every insurance policy required to be carried by or on behalf of either Party pursuant to this Lease shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless the other Party shall have received notice of cancellation, non-renewal or material reduction in coverage (each a “Notice”), in each such case (except for Notice of cancellation due to non-payment of premiums) such Notice to be sent to the other Party not less than thirty (30) days (or the maximum period of days permitted under applicable law, if less than thirty (30) days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. If any insurance policy required to be carried by or on behalf of either Party pursuant to this Lease is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the Notice shall be sent to the other Party on the earliest possible date but in no event less than ten (10) days prior to the effective date of such cancellation.

F. Primary and Non-Contributing. Each and every insurance policy required to be carried by either Party pursuant to this Lease shall provide that the policy is primary and that any other insurance of any insured, loss payee, or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing.

G. Delivery of Evidence of Insurance. With respect to each and every insurance policy required to be obtained, kept or maintained by the Tenant under the terms of this Lease, on or before the date on which each such policy is required to be first obtained and at least five (5) days before the expiration of any policy required hereunder previously obtained, Tenant shall

deliver evidence reasonably acceptable to the City showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 25 form for Liability Coverages and ACORD 28 form for Property Coverage) issued by an authorized representative of the issuer of such policies, or in the alternative, an authorized representative of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, primary limits, primary deductibles, endorsements and term of such policies. With the exception of the Workers' Compensation coverage, the Certificate of Insurance must also state that "The City of Mesquite, Texas, its trustees, officers, agents and employees are Additional Insureds as their interests appear relating to the contractually stipulated service, project or product." A duplicate original of each policy of insurance required to be obtained, kept and maintained by Tenant shall be deposited with City by Tenant on or before the Lease Effective Date of this Lease, and a duplicate original of each subsequent policy shall be deposited with City at least thirty (30) days prior to the expiration of the preceding such policy.

H. Additional Terms of Tenant's Insurance Policies: Tenant agrees that the policies of insurance to be obtained, kept and maintained by Tenant under the terms of this Lease shall further:

- (i) provide that the inclusion of one or more persons, corporations, organizations, firms or entities as insureds under such policy shall not in any way affect the right of any such person, corporation, organization, firm or entity with respect to any claim, demand, suit, or judgment made, brought or recovered in favor of any other insured;
- (ii) provide that such policy shall protect each person, corporation, organization, firm or entity the same as though a separate policy had been issued to each, provided that its endorsement shall not operate to increase the insurance company's limits of liability as set forth elsewhere in the policy;
- (iii) provide for an endorsement that the other insurance clause shall not apply to the City where the City is an additional insured on the policy;
- (iv) Provide for notice to the City at the address set forth in Article XX of this Lease by registered mail; and
- (v) each applicable policy of insurance shall contain a waiver of subrogation and Tenant agrees to waive subrogation against City and all City Related Parties for injuries including death, property damage, and any other loss.

I. Additional Insurance Covenants. City and Tenant agree to timely pay all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained by such Party pursuant to this Lease and not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Lease to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part.

J. Adjustments in Insurance Coverage. Without limiting the other provisions of this Lease with respect to insurance policy limits, types of coverage and other insurance requirements, the Parties agree that during the term of this Lease City may increase or modify the types of insurance coverage, amounts of coverage, endorsements and deductibles required to be maintained by Tenant under the terms of this Lease provided such increase and/or modified types of insurance coverage, amounts of coverage, endorsements and deductibles are reasonable and

customary with respect to the Permitted Use and operation of the business of the Tenant at the Premises and, upon written notice by City to Tenant of any increase and/or modification of Tenant's insurance requirements, Tenant shall increase and/or modify the types of insurance coverage, amounts of coverage, endorsements and deductibles maintained by Tenant under the terms of this Lease consistent with the written notice by City to Tenant.

K. Waiver of Subrogation. To the extent permitted by law, and without affecting the insurance coverages required to be maintained hereunder, City and Tenant each severally waive all rights of recovery, claims, actions, and causes of action which arise or may arise in its favor and against the other Party during the term of this Lease for any and all loss of, or damage to, any persons or any of its property located within or upon, or constituting a part of, the Premises, and release each other for same, to the extent that such damage (i) is covered (and only to the extent of such coverage without regard to deductibles) by insurance actually carried by the Party holding or asserting such claim or (ii) would be insured against under the terms of any insurance required to be carried under this Lease by the Party holding or asserting such claim. This provision is intended to restrict each Party (if and to the extent permitted by law) to recovery against insurance carriers to the extent of such coverage and to waive (to the extent of such coverage), for the benefit of each Party, rights or claims which might give rise to a right of subrogation in any insurance carrier. Neither the issuance of any insurance policy required under, or the minimum limits specified herein shall be deemed to limit or restrict in any way City's or Tenant's liability arising under or out of this Lease pursuant to the terms hereof. Each Party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other Party. Notwithstanding any provision in the Lease to the contrary, City and each City Related Party shall not be liable to Tenant or any Tenant Related Party for, and Tenant hereby releases City and each City Related Party from any claim or responsibility for: (i) any personal injuries, including bodily injury and death; and (ii) any damage or destruction, loss, or loss of use, or theft, of any property of Tenant or any Tenant Related Party located in or about the Premises, caused by casualty, theft, fire, third parties, or any other matter or cause, regardless of whether the negligence of City or any City Related Party caused such loss in whole or in part. In the event of loss or damage to persons or property, the Tenant and each Tenant Related Party shall look solely to any insurance carried by Tenant covering such loss. Tenant hereby waives any right Tenant, or any person or party claiming through or under Tenant, by subrogation or otherwise, may have against City to recover for any insurable loss. To the extent permitted under applicable law, Tenant shall obtain, for each policy of such insurance, an endorsement waiving the insurer's rights against the City for any such loss or damage

ARTICLE IX

Maintenance, Repairs and Care of the Premises

A. City's Maintenance and Repair Obligations. City, at its sole cost and expense, shall be responsible for the maintenance, repair, and replacement of the foundation, roof, and exterior walls on the Land excluding, however, and notwithstanding the foregoing, Tenant shall be responsible for: (i) the first \$1,000.00 of each repair to the foundation, roof, and exterior walls on the Land; (ii) all maintenance and repairs relating to painting any exterior walls; and (iii) all repairs to the foundation, roof, or exterior walls on the Land necessitated by any act or omission of the Tenant or any Tenant Related Party including, but not limited to, the negligence or intentional acts or omissions of Tenant and each Tenant Related Party.

B. Tenant's Maintenance and Repair Obligations. Tenant, at its sole cost and expense, shall be responsible for: (i) the maintenance and repair of all plumbing, electrical, heating, ventilation and air conditioning systems ("HVAC") at the Premises; (ii) replacing all plumbing, electrical, heating and HVAC at the Premises damaged by the negligence of the Tenant or the

Tenant's agents, representatives and employees; and (iii) the maintenance, repair and replacement of (a) all furniture, trade fixtures, fittings, equipment, business personal property and all other property of Tenant located at the Premises; and (b) that part of the Building and other improvements and equipment on the Premises not required to be maintained by City pursuant to the express terms of this Lease. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, maintain and repair the entire interior of the Building including, but not limited to, interior paint, floor surfaces, windows, doors, the interior sprinkler system, unclogging toilets, sinks, and other bathroom fixtures, repairing leaking faucets, repairing/replacing light fixtures and changing light bulbs, and maintaining and repairing water/sewer pipes, electrical lines, gas pipes, conduits, mains and other utility transmission facilities on the Premises necessary for the operation of Tenant's business at the Premises.

C. Tenant's Responsibility for Damages Caused by Tenant's Use of the Premises. Tenant, at Tenant's sole cost and expense, shall be responsible for and shall pay for all repairs to the Premises as a result of any damage to the Premises caused by any acts or omissions of Tenant and any Tenant Related Party including, without limitation, any negligence and/or intentional act or omission of Tenant or any Tenant Related Party.

D. City's Right to Maintain and Repair the Premises. If Tenant fails to maintain or make any repairs to the Premises to be made by Tenant pursuant to the terms of this Lease within thirty (30) days after written notice by City to Tenant, City will have the right, but not the obligation, to maintain and repair the Premises and remedy any damage to the Premises as the result of Tenant's failure to maintain and repair the Premises at the sole cost and expense of Tenant. If City exercises its right to maintain and repair the Premises and/or to remedy Tenant's damages to the Premises, Tenant agrees to immediately pay to City all reasonable costs incurred by City upon demand.

E. HVAC. Tenant shall, at a minimum, contract for servicing of the HVAC on the Premises no less than two (2) times per calendar year during the term of this Lease including any renewal and extension hereof and shall change the HVAC filters at least once each calendar month during the term of this Lease, including any renewal and extension hereof.

F. Pest Control. Tenant shall, at a minimum, contract for pest control services on the Premises no less than one time per month for a minimum of twelve (12) times per calendar year.

G. Janitorial Services. Tenant, at its sole expense, shall keep the Premises clean at all times and shall be responsible for regular janitorial maintenance of the Premises including, without limitation, timely removal of refuse.

H. Grease Trap. Tenant, at its sole expense, shall be responsible to clean-out the grease trap that serves the Premises (the "**Grease Trap**") once every ninety (90) days during the term of this Lease including any renewals and extensions hereof provided, however, this shall not prevent the Tenant from entering into an agreement with a property owner or tenant that shares the Grease Trap to share the cost of cleaning out the Grease Trap.

I. Care of the Premises. Tenant will not commit waste or create or allow any nuisance on the Premises and will not damage the Premises. Tenant shall comply with all governmental orders, directives and citations for the correction, prevention, and abatement of nuisances in, at, or upon the Premises and for violations of City ordinances in, at, or upon the Premises upon the earlier

of: (i) ten (10) days after the date the governmental order, directive or citation is issued; or (ii) the date stated in the governmental order, directive or citation.

J. City's Right of Entry. City and its authorized agents including, without limitation, all City health, fire, building and other code inspectors, shall have the right (i) at any time during normal business hours; and (ii) during non-business hours provided the Tenant has been given at least twenty-four (24) hours advance notice, to enter the Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this Lease, (c) during the last ninety (90) days of the Lease, to show the Premises to any prospective tenant or purchaser, or (d) for any other reasonable purpose.

K. Surrender of Premises. Tenant agrees to maintain the Premises in good condition and repair and, at the expiration or other termination of this Lease, Tenant shall surrender possession of the Premises to the City in the same condition as the Premises existed as of the CO Date, normal wear and tear excepted. At the expiration or termination of this Lease, provided no Tenant Default (as hereinafter defined) exists and no event exists which, but for notice, the lapse of time or both, would constitute a Tenant Default (as hereinafter defined) by Tenant under the terms of this Lease, Tenant shall remove all furniture, trade fixtures, and personal property from the Premises [provided the same can be removed without material damages to the Premises], and shall repair any damage caused by such removal and shall thoroughly clean the Premises and remove all trash, debris, dirt and other materials and substances in, on or about the Premises arising out of or related to Tenant's use of the Premises. Any furniture, trade fixtures and personal property not removed by Tenant when this Lease expires or terminates shall be considered abandoned by Tenant and will automatically become City's property. If any furniture, trade fixtures and personal property of Tenant is abandoned when this Lease expires or terminates, City may remove and dispose of same and shall be under no obligation or responsibility to Tenant for the removal and/or disposal of such property. Tenant's obligations under this Article IX, Section K shall survive the expiration or termination of this Lease.

ARTICLE X

Alterations of the Premises

A. Alterations. Tenant shall not make any alterations, additions or improvements to the exterior of the Building without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant shall not: (i) create any openings in the roof or exterior walls of the Building; (ii) modify any window or door openings of the Building; or (iii) make any other changes or alterations to the exterior of the Building that could jeopardize the eligibility of the Property being designated in the National Register of Historic Places. Tenant shall not make any structural alterations, additions or improvements to the interior of the Building without the prior written consent of the City, which consent may be withheld in the City's sole discretion. Tenant shall not make any non-structural alterations, additions or improvements to the interior of the Building without the prior written consent of the City, which consent shall not be unreasonably withheld. Tenant shall bear the costs of all alterations, additions or improvements made by Tenant.

B. Mechanic's and Materialmen's Liens. Tenant will pay for all costs incurred or arising out of alterations, additions or improvements in or to the Premises and will not permit a mechanic's or material man's lien to be asserted against the Premises. Upon request by City, Tenant will deliver to City's representative proof of payment reasonably satisfactory to the City of all

costs incurred or arising out of any alterations, additions or improvements to the Premises made by or on behalf of the Tenant.

C. Ownership of Alterations, Additions or Improvements. Any alterations, additions or improvements in or to the Premises that cannot be removed without material damage to the Premises shall become the property of City at the expiration or termination of this Lease; however, City may direct the removal of alterations, additions or improvements made by Tenant by giving written notice to Tenant prior to the expiration or termination of this Lease. Tenant shall then promptly remove all alterations, additions and improvements and any other property placed in or on the Premises by Tenant, and Tenant shall repair in a good and workmanlike manner any damage caused by such removal.

ARTICLE XI

Signs

Tenant may place or affix a sign on the exterior of the Building provided such sign complies with: (i) the guidelines established by the United States Secretary of the Interior for rehabilitating properties with historical significance and commonly referred to as the “**Secretary of the Interior’s Standards for Rehabilitation**”, as amended; and (ii) all applicable laws, regulations, codes and ordinances including, without limitation, all applicable City codes and ordinances regulating the size, type, and number of signs at the Premises, as amended. Any sign installed by the Tenant shall be at Tenant’s sole cost and expense. Prior to the installation of any sign at the Premises, Tenant shall obtain all necessary governmental licenses, permits and approvals for the sign. Additionally, Tenant shall obtain City’s approval of any sign prior to installation and City’s approval shall be subject to its sole discretion. Tenant shall maintain any sign installed at the Premises in good condition and repair. Tenant shall remove any sign installed by or on behalf of Tenant at the Premises at the expiration or termination of this Lease and shall repair any damage and close any holes caused or revealed by such removal.

ARTICLE XII

Damage by Fire or Other Casualty

A. Notice of Damage. If the Building should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to City.

B. Substantial Damage. If the Building is substantially or totally destroyed by fire, tornado or other casualty such that rebuilding or repairs cannot reasonably be completed within one hundred twenty (120) days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall terminate at the option of City or Tenant and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of such written notification.

C. Partial Damage. If the Building is damaged by fire, tornado or other casualty but rebuilding or repairs can reasonably be completed within one hundred twenty (120) days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall not terminate, but City shall, at its sole cost, proceed to rebuild or repair the exterior walls, roof and foundation of the Premises (not the interior leasehold improvements made by Tenant) to substantially the condition in which they existed prior to such damage; provided, however, if the casualty occurs during the final 24 months of the Primary Term or any Renewal Term, City shall

not be required to rebuild or repair such damage unless Tenant exercises its renewal option to extend the Lease for the First Renewal Term or Second Renewal Term, as applicable, within fifteen (15) days after the date of receipt by City of the notification of the occurrence of the damage. If Tenant does not elect to exercise its renewal option or if no renewal option then exists, this Lease shall terminate at the option of City and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of the written notification of the damage. If the Building is to be rebuilt or repaired and is untenable in whole or in part following such damage, the rent payable hereunder during the period in which the Building is untenable shall be adjusted equitably based on the portion of the Building that is untenable.

D. Tenant's Repairs. If City rebuilds or repairs the damage to the Building, Tenant shall, at its sole cost and expense, repair and replace all interior leasehold improvements, trade fixtures and equipment necessary to operate the Permitted Use at the Premises within ninety (90) days from the date the City completes the City's restoration or repairs to the exterior walls, roof and foundation of the Premises.

ARTICLE XIII **Condemnation**

A. Total Taking. If, during the term of this Lease or any extension or renewal thereof, fifty percent (50%) or more of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Premises by the condemning authority.

B. Partial Taking. If less than fifty percent (50%) of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, City, at its option, may by written notice terminate this Lease or at its sole expense shall restore and reconstruct the Building and improvements (other than leasehold improvements made by Tenant) situated on the Premises in order to make the same reasonably tenantable and suitable for the Permitted Use. If the City at its option restores and reconstructs the Building and the Building is untenable in whole or in part during such restoration and reconstruction, the rent payable hereunder during the period in which the Building is being restored and reconstructed shall be adjusted equitably based on the portion of the Building that is untenable.

C. Condemnation Proceeds. City reserves all rights to the entire damage award or payment for any taking by eminent domain. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant, including, but not limited to, loss due to removing Tenant's furniture, trade fixtures, and equipment or for damage to Tenant's business, loss of business, and/or loss of leasehold interest; provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of City's damages.

ARTICLE XIV **Environmental Compliance**

A. Definitions of "Environmental Laws" and "Hazardous Substances." "Environmental Laws" as used herein shall mean (a) the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended (“CERCLA”); (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), as amended (“RCRA”); (c) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et. seq., as amended (“HMTA”); (d) the Clean Air Act of 1974, 42 U.S.C. § 7401, et. seq., as amended (“CAA”); (e) the Clean Water Act, 33 U.S.C. § 1251, et. seq.; (f) Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as amended (“TSCA”); (g) Chapter 361 of the Texas Health & Safety Code, as amended (“TSWDA”); (h) Chapter 26 of the Texas Water Code, as amended (“TWC”); (i) the Texas Asbestos Health Protection Act, Vernon’s Texas Civil Statutes, Title 71, Art. 4477-3a, as amended (“TAHPA”); and (j) all other federal, state, and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of “**Hazardous Substances**” (as hereinafter defined). “**Hazardous Substances**” as used herein shall mean: (i) gasoline, diesel fuel, or other petroleum hydrocarbons; (ii) asbestos and asbestos-containing materials in any form, whether friable or non-friable; (iii) polychlorinated biphenyls; (iv) radon gas; (v) flammables, explosives, radioactive substances; (vi) all substances and materials (whether solid, liquid, or gas) that are classified, defined, or listed as hazardous wastes, hazardous substances or hazardous materials in the Environmental Laws; (vii) pollutants; (viii) toxic materials, toxic substances, toxic waste; and (ix) all other substances, materials and waste that are now or hereafter regulated by the Environmental Laws.

B. Environmental Representations and Warranties. Tenant covenants and agrees to comply strictly and in all respects with the requirements of all Environmental Laws. Tenant represents and warrants to the City that neither Tenant or any Tenant Related Party will use, store, treat, generate, dispose of, transport or release any Hazardous Substances in, at, on, under, near or from the Premises during the term of this Lease provided, however, notwithstanding the foregoing Tenant and Tenant Related Parties may use, store and dispose of limited quantities of materials and supplies customarily used in the operation of the Permitted Use provided the Tenant and the Tenant Related Parties strictly comply with all Environmental Laws in connection with the use, storage and disposal of such materials and supplies. Tenant will comply, and will cause all Tenant Related Parties to comply, with all Environmental Laws at Tenant’s sole cost and expense. **TENANT HEREBY INDEMNIFIES AND AGREES TO HOLD THE CITY AND THE CITY RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, COSTS, INJURIES, DAMAGES, AND LIABILITIES INCURRED BY CITY AND ALL CITY RELATED PARTIES RELATED TO OR ARISING OUT OF ANY USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION OR RELEASE BY TENANT OR ANY TENANT RELATED PARTY DURING THE TERM OF THIS LEASE OF ANY HAZARDOUS SUBSTANCES IN, AT, ON, UNDER, NEAR OR FROM THE PREMISES OR THE AIR ABOVE THE PREMISES OR THE GROUNDWATER UNDERNEATH THE PREMISES.** The City and the City Related Parties shall be entitled to recover their reasonable attorneys’ fees, court costs, investigation and expert witness fees incurred in enforcing the indemnification provisions set forth in this Article XIV, Section B. The provisions of this Article XIV, Section B shall survive the expiration or termination of this Lease.

ARTICLE XV

Default and Remedies

A. Tenant Default. The Tenant shall be in default of this Lease upon the occurrence of any of the following: (each a “**Tenant Default**”):

- (i) The Tenant shall fail to timely pay any installment of rent, or any other payment required to be made by Tenant hereunder, as and when the same shall become due and payable under the terms of this Lease, and such failure continues for five (5) days after written notice from City to Tenant that such amount was not paid when due, provided, however, City shall not be obligated to give Tenant written notice of nonpayment of rent, or any other payment required to be made by Tenant hereunder, more than two (2) times in any calendar year, the third such failure to timely pay during any calendar year not requiring such notice by City;
- (ii) The Tenant shall fail to operate the Permitted Use at the Premises six (6) days a week for a minimum of six (6) hours per day except: (a) during the National Holidays; (b) during an Act of God Force Majeure; and (c) during a Government Force Majeure;
- (iii) The Tenant shall fail to timely keep, observe or perform any terms, provisions, agreements, covenants, conditions or obligations to be kept, performed or observed by Tenant under the terms of this Lease (other than those referred to in Article XV, Subsections A(i) and A(ii) above) and such failure continues for thirty (30) calendar days after written notice from City to Tenant of such failure;
- (iv) If Tenant becomes insolvent or unable to pay its debts as they become due, the transfer of all or substantially all of the assets of the Tenant in fraud of its creditors, or the assignment by Tenant of all or substantially all of Tenant's assets for the benefit of its creditors;
- (v) If Tenant's assets are levied upon by virtue of a writ issued by a court of competent jurisdiction;
- (vi) If Tenant files a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State; or a petition shall be filed against Tenant under any such statute which is not dismissed within ninety (90) days after the filing of it, or Tenant shall be adjudged bankrupt or insolvent in any proceeding filed by or against Tenant;
- (vii) If a receiver or trustee shall be appointed for Tenant's leasehold interest in the Premises or for all or a substantial part of the assets of Tenant and is not discharged within ninety (90) days after the appointment of a receiver or trustee;
- (viii) The termination, dissolution or liquidation of Tenant; or
- (ix) If Tenant shall desert, abandon or vacate the Premises or any substantial portion thereof.

B. City Default. The City shall be in default of this Lease upon the occurrence of any of the following (each a "**City Default**"):

- (i) The failure of City to timely pay any monetary obligation to Tenant under this

Lease, as and when the same shall become due and payable under the terms of this Lease, and such failure continues for five (5) days after written notice from Tenant to City that such amount was not paid when due; or

- (ii) The failure of City to timely keep, observe or perform any term, covenant, condition, obligation or agreement to be kept, performed or observed by City under this Lease (other than as referred to in Article XV, Section B(i) above) and such failure continues for thirty (30) days after written notice from Tenant of such failure.

C. City's Remedies: Upon the occurrence of a Tenant Default and during the continuance of any Tenant Default, City may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than as expressly stated in this Lease:

- (i) Terminate this Lease by written notice to Tenant, in which event the Tenant shall immediately surrender the Premises to the City and if Tenant fails to surrender the Premises, City may, without prejudice to any other remedy which it may have for possession of the Premises or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, and remove any and all property from the Premises, in any lawful manner without a breach of the peace and without being deemed guilty of trespass or becoming liable for any loss, claim, or damage therefore and City shall be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Premises, (ii) the cost of removing and storing Tenant's or any other occupant's property, (iii) the unpaid rent and any other sums accrued hereunder at the date of termination, (iv) a sum equal to the amount, if any, by which the present value of the total rent and other benefits which would have accrued to City under this Lease for the remainder of the term of the Lease if this Lease had been fully complied with by Tenant, exceeds the total fair market value of the Premises for the balance of the term of this Lease (it being the agreement of the Parties hereto that City shall receive the benefit of its bargain), (v) the cost of restoring the Premises to the condition necessary to rent the Premises at the prevailing market rental rate, normal wear and tear excepted, (vi) any increase in insurance premiums caused by the vacancy of the Premises and (vii) any other sum of money or damages owed by Tenant to City. The fair market value of the Premises shall be the prevailing market rental rate for similar space of similar size in a similar building in the City for a lease term equal to the remaining term of this Lease (without regard to any renewal option);
- (ii) Terminate Tenant's right of occupancy of the Premises and reenter and repossess the Premises, without breach of the peace and in any lawful manner, by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, without acceptance of surrender of possession of the Premises, and without becoming liable for damages or guilty of trespass, and City may expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, and may remove any and all property from the Premises. City may re-let the Premises and receive the rent therefor. Tenant agrees to pay to City monthly or on demand from time to time any

deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, the brokerage commission, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting;

- (iii) City may (but under no circumstance shall be obligated to) enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse City on demand for any reasonable expenses that City may incur in effecting compliance with Tenant's obligations under this Lease and Tenant further agrees that City shall not be liable for any damages resulting to Tenant from such action. No action taken by City under this Article XV, Section C(iii) shall relieve Tenant from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations;
- (iv) Without waiving such default, apply all or any part of the Security Deposit to cure the Tenant Default or to any damages suffered as a result of the Tenant Default to the extent of the amount of damages suffered;
- (v) Exercise any rights pursuant to V.T.C.A., Property Code, § 93.002, as amended or replaced including, without limitation, the right to change all door locks and other security devices of Tenant at the Premises;
- (vi) Exercise enforcement of City's statutory lien and contractual lien provided in this Lease; and/or
- (vii) Exercise all other rights and remedies available to the City under the terms of this Lease and/or provided by law or in equity, by statute or otherwise.

D. City's Remedies Cumulative. Each right and remedy of City provided for in this Lease shall be cumulative of and shall be in addition to every other right or remedy of City provided for in this Lease and any other remedies provided by law or in equity, and the exercise by the City of any one or more of the rights or remedies provided herein or now or hereafter existing a law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative and non-exclusive.

E. Attorney's Fees. If Tenant fails to timely surrender possession of the Premises at the end of the term of this Lease, the City shall be entitled to recover court costs and reasonable attorney's fees in relation to the work reasonably expended in any eviction proceeding or other suit to recover possession of the Premises.

F. No Waiver of Termination Notice. The receipt by City of any rent paid by Tenant after the termination of this Lease, or after the giving by City of any notice hereunder to effect such termination, shall not reinstate, continue or extend the term of this Lease, or in any manner impair the effect of any such notice of termination given hereunder by City to Tenant prior to the receipt of any such rent or other consideration, unless so agreed to in writing and executed by City. Neither acceptance of the keys nor any other act or thing done by City or by its agents or employees during the term of this Lease shall be deemed to be an acceptance of a surrender of

the Premises, excepting only an agreement in writing executed by City accepting or agreeing to accept such a surrender.

G. Effect of Termination. If City or Tenant elects to terminate this Lease pursuant to a right to terminate provided herein, this Lease shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Lease shall not alter the then existing claims, if any, of either Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

H. Tenant's Remedies. Upon the occurrence of a City Default and during the continuance of any City Default, Tenant may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than as expressly provided in this Lease:

- (i) Tenant may terminate this Lease by written notice to City; or
- (ii) Tenant may (but under no circumstance shall be obligated to) enter upon the Premises and do whatever City is obligated to do under the terms of this Lease and City agrees to reimburse Tenant on demand for any reasonable expenses that Tenant may incur in effecting compliance with City's obligations under this Lease and City further agrees that Tenant shall not be liable for any damages resulting to City from such action. No action taken by Tenant under this Article XV, Section H(ii) shall relieve City from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

I. Immunity Retained. The Parties acknowledge and agree that the City is entering into this Lease for the public purpose of the development or redevelopment of property within the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, a tax increment reinvestment zone established by the City in accordance with the Tax Increment Financing Act, V.T.C.A., Tax Code, Chapter 311 (the "**Zone**") pursuant to its governmental function and that nothing contained in this Lease shall be construed as constituting a waiver of the City's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.

J. Limited Waiver of Immunity. Notwithstanding anything to the contrary herein, the Parties agree that to the extent this Lease is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City and Tenant hereby acknowledge and agree that in a suit against the City for breach of this Lease:

- (i) the total amount of money awarded is limited to actual damages in an amount not to exceed SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00);
- (ii) the recovery of damages against City may not include speculative, consequential,

- exemplary or punitive damages;
- (iii) Tenant may not recover attorney's fees; and
- (iv) Tenant is not entitled to specific performance or injunctive relief against the City.

K. Waiver of Consequential, Punitive or Speculative Damages. THE CITY AND TENANT AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS LEASE, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

L. Survival. All terms, provisions, rights and remedies of City and Tenant provided in Article XV of this Lease shall survive the expiration or termination of this Lease.

ARTICLE XVI

Liens

A. Security Interest. Tenant hereby grants to landlord a lien and security interest on and in all property of Tenant now or hereafter placed in or upon the Premises, including without limitation all goods, wares, trade fixtures, machinery, inventory, equipment, furniture, furnishings and other personal property now or hereafter placed in or upon the Premises (collectively, the “Personal Property**”), and such Personal Property shall be and remain subject to such lien and security interest of City for payment of all rent and other sums agreed to be paid by Tenant under this Lease. Said lien and security interest shall be in addition to and cumulative of the statutory landlord's liens provided by law. This Lease shall constitute a security agreement under V.T.C.A., Business and Commerce Code, Chapter 9, as amended (the “**UCC**”) so that City shall have and may enforce a security interest in all such Personal Property. Such Personal Property shall not be removed from the Premises unless such removal is in the ordinary course of Tenant's business and no Tenant Default then exists under the terms of this Lease or no event exists which, but for notice, the lapse of time, or both, would constitute a Tenant Default under the terms of this Lease. Tenant agrees to execute as debtor such financing statement or statements as City may now or hereafter reasonably request in order that such security interest or interests may be protected pursuant to said UCC. City may at its election at any time file a copy of this Lease as a financing statement. City, as secured party, shall be entitled to all of the rights and remedies afforded a secured party under said UCC, which rights and remedies shall be in addition to and cumulative of City's liens and rights provided by law or by the other terms and provisions of this Lease.**

ARTICLE XVII

Limitation of Warranties

As a material part of the consideration for this Lease, Tenant accepts possession of the Premises “AS IS” AND “WITH ALL FAULTS” AND WITHOUT ANY WARRANTIES BY THE CITY, EITHER EXPRESS OR IMPLIED. Without limiting the foregoing, the Parties agree that the CITY HAS NOT MADE AND IS HEREBY EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PREMISES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, SUITABILITY OF THE PREMISES FOR THE

PERMITTED USE, FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE OR USE, OR ANY OTHER WARRANTY OF ANY KIND ARISING OUT OF THE PREMISES OR THIS LEASE. TENANT EXPRESSLY WAIVES (TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW) ANY REPRESENTATIONS OR WARRANTIES RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PREMISES OR THIS LEASE. The provisions of this Article XVII shall expressly survive the expiration or termination of this Lease.

ARTICLE XVIII

Option to Purchase the Premises and Repurchase Option

This Lease is subject to the terms and conditions of the Purchase Options granted to Tenant and the Repurchase Option granted to City in Article IX of the Agreement, incorporated herein by reference.

ARTICLE XIX

Assignment and Subletting

Tenant shall not assign this Lease or sublet the Premises, or any portion thereof, without the prior written consent of the City which may be withheld in the City's sole discretion. The sale, transfer or assignment of a controlling interest in the membership interests of the Tenant shall constitute an assignment of this Lease and the failure of the Tenant to obtain the prior written consent of the City prior to such sale, transfer or assignment of such membership interests shall be an attempted assignment of this Lease in violation of this Lease and shall constitute a breach of this Lease by the Tenant. Furthermore, neither the Tenant, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease or any part hereof, or the interest of the Tenant or any approved assignee under this Lease, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Lease shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Lease including, without limitation, the provision in Article IV, Section A restricting the use of the Premises to the Permitted Use and any assignee shall further be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Lease shall be void and shall constitute a material breach of this Lease by the Tenant and in the event the Tenant attempts to assign this Lease in violation of this Article XIX, the City shall have the right to terminate this Lease by written notice to the Tenant. In the event of any assignment or subletting, Tenant shall remain fully liable for the full performance of all of Tenant's obligations under this Lease. Tenant shall not assign its rights hereunder or sublet the Premises without first obtaining a written agreement from assignee or subtenant whereby assignee or subtenant agrees to be bound by the terms of this Lease. No such assignment or subletting shall constitute a novation.

ARTICLE XX

Notices

All notices and communications required or permitted hereunder shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the

With a copy to: City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

C. Commission. Tenant warrants and represents that it has not dealt with any real estate broker or salesman in connection with this Lease and Tenant hereby agrees to defend, hold harmless, and indemnify the City from any claims or liability arising from any real estate broker or salesman claiming a commission in connection with this Lease.

D. Lease Effective Date. “**Lease Effective Date**” as used herein shall mean the date designated in a written notice from the City to Tenant delivered to Tenant after the City completes the City Improvements required by the Agreement.

E. Captions. The descriptive captions of this Lease are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Lease.

F. Modification. This Lease may only be revised, modified or amended by a written document signed by the City and Tenant. Oral revisions, modifications or amendments of this Lease are not permitted.

G. Interpretation. Regardless of the actual drafter of this Lease, this Lease shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either City or Tenant.

H. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Lease shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a default of this Lease shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring. No waiver by any Party hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. Without limiting the generality of the foregoing, the receipt by City of any installment of rent with knowledge of a breach by Tenant of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to the rent received). The payment by Tenant of the rent with knowledge of a breach by City of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

I. Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

J. Severability. If any provision of this Lease is declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining provisions of this Lease and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Lease.

K. No Partnership or Joint Venture. Nothing contained in this Lease shall be deemed

or construed by the Parties hereto, nor by any third Party, as creating the relationship of partnership or joint venture between the Parties.

L. No Third-Party Beneficiaries. The Parties to this Lease do not intend to create any third-Party beneficiaries of the contract rights contained herein. This Lease shall not create any rights in any individual or entity that is not a signatory hereto.

M. Binding Effect. This Lease shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

N. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

O. Memorandum of Lease. Neither Tenant or City shall record this Lease or a memorandum of this Lease in the real property or other records of Dallas County, Texas.

P. Authority. Tenant represents and warrants that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Tenant represents that it has the full power and authority to enter into and fulfill its obligations under this Lease and that the person signing this Lease on behalf of the Tenant has the authority to sign this Lease and bind the Tenant to the terms and provisions of this Lease.

Q. Counterparts. This Lease may be executed in any number of original or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

R. Entire Agreement. This Lease contains the entire agreement between the Parties with respect to the subject matter hereof including all negotiations between the Parties regarding the terms of this Lease, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Lease. There are no oral agreements between the Parties.

S. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Lease, a duly executed completed Form 1295 Certificate.

T. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS LEASE AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the dates set forth next to their signatures below.

CITY:
CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

Attest:

By: _____
Sonja Land, City Secretary

APPROVED AS TO LEGAL FORM:

City Attorney or his Designee

TENANT:
Grounded LLC,
a Texas limited liability company

By: _____
Name: Meagan D’Von Funk
Title: Manager

Date: _____

EXHIBIT 1 to Lease Agreement

Legal Description of Premises

Being 211 W. Main Street, Mesquite, TX 75149 and being Lot 6 in Block 3 of the Original Town of Mesquite, Texas, according to the map recorded in Volume U, page 70, and Volume 3, page 519 Map Records, Dallas County, Texas.

EXHIBIT 2 to Lease Agreement

Improvements to the Premises to be Constructed by City

1. Demolition of interior pony walls
2. Upgrade/replace existing restrooms
3. Bring all plumbing to Code
4. Bring all electric to Code
5. Replace electrical outlets
6. Ensure restrooms are accessible and in good operating order
7. Install electrical outlets
8. Provide that roof is in good order with no leaks
9. Remediate all brickwork
10. Connect property to grease trap
11. Install new exterior doors on south-facing façade
12. Repair or, if necessary, replace display windows according to Code
13. Install new HVAC system
14. Install finishes and flooring necessary for food service
15. Remediate exterior stucco
16. Repair and repaint north-facing exterior
17. Maintain public art on east-facing wall
18. Remediate any existing insect/pest issues
19. Provide that water heater is in good working order

EXHIBIT 3 to Lease Agreement

Improvements to the Premises to be Constructed by Tenant

1. Security system
2. Lounge area multi-purpose seating
3. Signage; **the Parties agree all external signage on the Premises is subject to approval by City in its sole discretion**
4. Three-compartment sink

EXHIBIT 4 to Lease Agreement

Furniture, Trade Fixtures and Equipment to be Installed by Tenant at the Premises

1. Retail display equipment
2. Storage equipment
3. Tables
4. Chairs
5. Cabinetry
6. Refrigerator
7. Wine storage equipment
8. Prep tables
9. Dishwasher
10. Freezer
11. Ice maker
12. Sound system
13. Three-compartment sink
14. Shelving
15. General décor
16. Final paint finishes

Start-up Retail Inventory and Ancillary Equipment to be Provided by Tenant

17. Minerals
18. Plants
19. Wine
20. Food
21. General beverages
22. Cutlery
23. Menus
24. Glassware
25. Plates, boards
26. Paper goods
27. Trash receptacles
28. Employee uniforms
29. Paper goods
30. Potting bench
31. Hoses

Other Tenant Expenses and Investments

1. All permits and licensures
2. Internet
3. Website domain
4. POP System

EXHIBIT C
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Improvements to the Premises to be Constructed by City

1. Demolition of interior pony walls
2. Upgrade/replace existing restrooms
3. Bring all plumbing to Code
4. Bring all electric to Code
5. Replace electrical outlets
6. Ensure restrooms are accessible and in good operating order
7. Install electrical outlets
8. Provide that roof is in good order with no leaks
9. Remediate all brickwork
10. Connect property to grease trap
11. Install new exterior doors on south-facing façade
12. Repair or, if necessary, replace display windows according to Code
13. Install new HVAC system
14. Install finishes and flooring necessary for food service
15. Remediate exterior stucco
16. Repair and repaint north-facing exterior
17. Maintain public art on east-facing wall
18. Remediate any existing insect/pest issues
19. Provide that water heater is in good working order

**EXHIBIT D
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Improvements to the Premises to be Constructed by Tenant

1. Security system
2. Lounge area multi-purpose seating
3. Signage; **the Parties agree all external signage on the Premises is subject to approval by City in its sole discretion**
4. Three-compartment sink

EXHIBIT E
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Furniture, Trade Fixtures and Equipment to be Installed by Tenant at the Premises

- 32. Retail display equipment
- 33. Storage equipment
- 34. Tables
- 35. Chairs
- 36. Cabinetry
- 37. Refrigerator
- 38. Wine storage equipment
- 39. Prep tables
- 40. Dishwasher
- 41. Freezer
- 42. Ice maker
- 43. Sound system
- 44. Three-compartment sink
- 45. Shelving
- 46. General décor
- 47. Final paint finishes

Start-up Retail Inventory and Ancillary Equipment to be Provided by Tenant

- 48. Minerals
- 49. Plants
- 50. Wine
- 51. Food
- 52. General beverages
- 53. Cutlery
- 54. Menus
- 55. Glassware
- 56. Plates, boards
- 57. Paper goods
- 58. Trash receptacles
- 59. Employee uniforms
- 60. Paper goods
- 61. Potting bench
- 62. Hoses

Other Tenant Expenses and Investments

- 5. All permits and licensures
- 6. Internet
- 7. Website domain
- 8. Marketing
- 9. POP System
- 1. Soda dispenser
- 2. Stainless beverage table with glass rack storage

3. Co2 tank
4. Minimum of three televisions
5. Indoor/outdoor sound system

**EXHIBIT F
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

REPURCHASE OPTION MEMORANDUM

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF DALLAS §

This **REPURCHASE OPTION MEMORANDUM** ("**Memorandum**") is executed this ____ day of _____, 203__ by **Grounded LLC**, a Texas limited liability company and/or its permitted successors and assigns and/or its successors and assigns ("**Optionor**"), and by **THE CITY OF MESQUITE, TEXAS** ("**Optionee**").

This Memorandum is placed of record solely to provide notice that Optionor has granted to Optionee an option (the "**Option**") to become the owner of the property described on **Exhibit A** hereto (the "**Property**") in accordance with the terms and subject to the conditions of an unrecorded Economic Development Program Agreement (Chapter 380 Agreement) having an effective date of _____, 202__ executed by Optionor and Optionee (the "**Agreement**").

The term of the Option (the "**Term**") expires ten (10) years following the conveyance of the Property by the Optionee to the Optionor, subject to extension for certain "Act of God Force Majeure" or "Government Force Majeure" conditions as defined and provided in the Agreement, unless sooner terminated as provided in the Agreement.

Upon Optionor's satisfaction of obligations provided in the Agreement and request, Optionee will execute, cause to be acknowledged, and deliver to Optionor within ten (10) days of request therefor, a recordable release of this Memorandum; provided, however, if Optionee fails to execute, cause to be acknowledged, and deliver to Optionor such recordable release within such ten (10) day period, then Optionor may execute, record and provide Optionee with a copy of a sworn written statement affirming that the Option, has terminated. Such sworn statement of Optionee may be relied on by third parties unless Optionee executes, records and sends Optionor a copy of a contradictory sworn statement within ten (10) days after receiving a copy of Optionor's sworn written statement.

This Memorandum does not alter, amend, or modify the Agreement in any way. If there is an inconsistency between the provisions of this Memorandum and the Agreement, the provisions of the Agreement will control. This Memorandum is governed by the laws of the State of Texas. This Memorandum may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute

but one and the same agreement.

OPTIONEE:

CITY OF MESQUITE, TEXAS

ATTEST:

_____	By: _____
Name: _____	Name: _____
Title: City Secretary	Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

 This instrument was acknowledged before me on _____, 203__, by _____, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

My Commission Expires:	_____ NOTARY PUBLIC, State of Texas

Notary Seal

OPTIONOR:

Grounded LLC, a Texas limited liability company

By:

Name: Meagan D’Von Funk
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 202__, by Meagan D’Von Funk, a Manager of Grounded LLC, on behalf of said entity.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

EXHIBIT A to Purchase Option Memorandum

Legal Description of the Property

Lots 8, 9 and 10, Block 2, Original Town of Mesquite, an Addition to the City of Mesquite, Dallas County, Texas, according to the Map thereof recorded in Volume U, Page 70, Map Records of Dallas County, Texas,

SAVE AND EXCEPT that portion conveyed by Right of Way Deed filed 07/14/1950, recorded in Volume 3341, Page 491, corrected by Volume 3885, Page 24, Real Property Records, Dallas County, Texas.