

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the “**Sublease**”) is made and entered into as of the ____ day of August, 2020, by and between the MCKINNEY CONVENTION AND VISITOR’S BUREAU, INC., a Texas non-profit corporation (hereinafter “**MCVB**” or “**Sublandlord**”), and JAMES VINCENT LATINO, an individual, doing business as TEXAS MONKEY BUSINESS (hereinafter “**Subtenant**”).

WITNESSETH

WHEREAS, the Sublandlord and TMJ Properties, Inc., a Texas corporation, as landlord (“**Master Landlord**”), entered into that certain Commercial Lease Agreement, dated November 2012, a copy of which is attached hereto as **Exhibit “A”** (“**Master Lease**”). Sublandlord leased from Master Landlord certain premises located at 200 W. Virginia, McKinney, Texas, as more particularly described in the Master Lease (the “**Master Premises**”); and

WHEREAS, the Master Lease contains provisions whereby Sublandlord may sublet portions of the leased premises; and

WHEREAS, Sublandlord and Subtenant previously entered into a certain sublease agreement dated January 29, 2020, and which shall terminate September 30, 2020; and

WHEREAS, Sublandlord and Subtenant desire to enter into a new sublease agreement to account for certain circumstances that have changed; and

WHEREAS, all proper approvals have been obtained and Sublandlord desires to sublease a portion of the Master Premises, as described on **Exhibit “B”** attached hereto (“**Premises**”), from Sublandlord on the terms and conditions set forth below;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS, UNDERSTANDINGS AND CONSIDERATION HEREINAFTER SET FORTH, THE PARTIES HAVE ENTERED INTO THE FOLLOWING AGREEMENT.

1. Property Subleased; Use. Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Premises upon the terms and conditions set forth herein. The Premises shall be used as a Retail Space only.

2. Master Lease. Except as herein modified or excluded, all of the terms, provisions, covenants and conditions of the Master Lease are incorporated herein by reference and made part of this Sublease with, where applicable, Sublandlord being substituted for “Landlord” therein and Subtenant being substituted for “Tenant” therein. In case of any conflict or inconsistency between the provisions of the Master Lease and

those of this Sublease, the provisions of this Sublease shall, as between Sublandlord and Subtenant, control.

3. Term. The term of this Sublease ("**Term**") shall be effective as of October 1, 2020 (the "**Commencement Date**") and shall terminate on September 30, 2021, unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. At the end of the Initial Term, the parties by mutual agreement shall have the option to renew and extend the Initial Term of this Agreement for additional twelve (12) month terms ("**Renewal Term**"), such renewals being acceptable to the parties. In addition, this Sublease shall earlier terminate if the Master Lease terminates, for any reason, in which event the parties shall be released from all liabilities and obligations hereunder which have not previously accrued.

4. Rent.

- (a) Subtenant shall pay directly to Sublandlord, at the address stated herein, monthly rent ("**Rent**") on the eighth (8th) day of each month, without deduction or offset and without prior notice or demand, in the amount of Three Hundred Dollars (\$300.00).

Rent shall be paid to Sublandlord at the following address:

McKinney Convention and Visitor's Bureau
c/o Dee-Dee Guerra, Executive Director
200 West Virginia Street
McKinney, Texas 75069

- (b) Subtenant shall remit to Sublandlord a payment of ten percent (10%) of both retail and internet sales over \$1,000.01 per month on the 8th business day of the following month.
- (c) All sums due to Sublandlord from Subtenant shall constitute Rent under this Sublease and will be subject to all of the terms and conditions for payment as set forth herein and for penalties for failure to make timely payment as set forth in the Master Lease.
- (d) All Rent, including earning incentives, due and payable to Sublandlord that is not received by Sublandlord by the due date shall incur a late charge in the amount of five percent (5%) of the outstanding balance until entire amount, together with late charges is paid in full.

5. Condition of the Premises. Subtenant has inspected the Premises prior to executing this Sublease. Subtenant acknowledges and agrees that, as of the Commencement Date:

- (a) The Premises are in good condition.
- (b) Sublandlord has no obligation to make any improvements to the Premises.
- (c) Any improvements, additions, alterations or changes to the Premises shall be subject to prior written approval by the Sublandlord, and compliance with such terms and conditions as may be imposed thereon by the Sublandlord.

6. Subtenant's Responsibilities. Subtenant shall have the right, license, privilege, and duty to sell Retail Products within the Premises, during hours in which the Storefront Office is open, as determined by Sublandlord, and Online, 24 hours/day. The obligations required of Subtenant under terms of this Agreement include:

- (a) Negotiate, execute in its own name and administer any and all licenses, supplier agreements, service contracts and all other contracts and agreements in connection with the sale of Retail Products in the Consignment Area and Online.
- (b) Establish and adjust prices for the Retail Products.
- (c) Engage in such creative design, marketing, advertising, solicitation, and promotional activities as Subtenant deems necessary or appropriate to sell the Retail Products in the Premises and Online. Subtenant and Sublandlord shall have weekly meetings to coordinate input on products and marketing. The types of Retail Products sold shall be determined by mutual agreement of the parties.
- (d) Deliver and stock Retail Products at the Premises. Maintain Retail Product inventory for shipping to Online customers at a location Subtenant determines suitable.
- (e) Collect and account for all revenues from sales of Retail Products at the Premises and Online.
- (f) Make all necessary bank deposits and credit card transactions for retail sales of the Retail Products.
- (g) Prepare monthly and annual financial statements.
- (h) Subtenant shall conduct no other operations or activities within the Premises or Online than as are set forth herein.

- (i) Subtenant shall supply, insure and maintain its own displays, inventory, point of sale software system, fixtures, and any other item they need for the sale of Retail Products.
- (j) Subtenant shall submit a complete, written price list, and a list of the inventory of merchandise to be sold, to the MCVB Executive Director ("Executive Director") within ten (10) days after the start of Subtenant's Operations. Thereafter and throughout the term of this Agreement, Subtenant shall submit written notification to the Executive Director prior to changes to prices.
- (k) Any purchases needed by Sublandlord will be extended at cost plus 10%.

7. Sublandlord's Responsibilities. Sublandlord shall perform the following:

- (a) Administer all terms and conditions of this Agreement, including the determination of Retail Products to be sold by mutual agreement by and with Subtenant.
- (b) Provide the Premises, subject to any local, state, or federal order, law or regulation.
- (c) Provide staff for transacting sales in the Premises during normal business hours, as determined by the Executive Director, which may change from time to time upon 30-day notice to Subtenant.

If the Subtenant chooses to open for any event outside of the hours set by the Executive Director, then Subtenant must provide its own staff. Subtenant's officers and employees, if any, at the Storefront Office shall not be, for any purpose, considered to be employees of Sublandlord, and Subtenant shall be solely responsible for their supervision, daily direction and control, and for setting and paying their compensation and any employee benefits.

- (d) Assist with advertising.

8. COVID-19 Acknowledgment. Subtenant acknowledges that this Sublease is being executed during the COVID-19 pandemic, which has caused significant interruptions to the daily operations of most businesses. Subtenant acknowledges that during the Term, there may be times in which the physical Premises is unavailable for use by Subtenant due to local, state, and/or federal order, law or regulation. In case of such interruption, Subtenant explicitly agrees that Sublandlord is not responsible for any such interruption and shall continue to pay the Rent, as defined above, contractually owed to Sublandlord under this Sublease. Sublandlord, in its sole discretion, may provide certain rent concessions to Sublandlord as it deems fit; however, Sublandlord makes no

guarantee that it will provide any concession during the Term of this Sublease. Any such concession shall be mutually agreed upon and executed by both parties in a separate agreement. Additionally, Subtenant explicitly agrees that the COVID-19 pandemic or any related closure or business interruption is not grounds for unilateral termination of this Sublease by Subtenant.

9. Audit and Access to Subtenant's Records. Upon written notification by Sublandlord, Subtenant shall make all of its financial records available to Sublandlord at the business office of Subtenant including, but not limited to, general ledger, original entry journals, cancelled checks, invoices, bank statements, federal and state payroll and income tax filings and financial statements of Subtenant's Operations. Subtenant shall provide such access to its records for Sublandlord's purposes in verifying information submitted by Subtenant in any report or financial statement required or requested of Subtenant pursuant to this Agreement, and for Sublandlord's purposes in verifying Subtenant's compliance with the terms of this Agreement, but for no other purpose.

Further, at any time within two (2) calendar years following the last day of the term hereof, upon written notification to Subtenant, Sublandlord may, at its sole cost and expense, inspect, audit, and copy Subtenant's books, records of account, and supporting documentation relating to Subtenant's Operations. Sublandlord, its agents, or the Chief Financial Officer may inspect, audit, and copy such books, records of account, and supporting documentation of Subtenant's Operations for Sublandlord's purposes.

10. Permits and Licenses. Subtenant shall obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of Subtenant's operations hereunder.

11. Insurance Requirements.

Subtenant shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the Sublandlord. Within ten (10) calendar days following award of this Agreement, the Subtenant shall furnish to the Executive Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, deductibles, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Consignment Agreement and be addressed as follows:

McKinney Convention and Visitor's Bureau
c/o Dee-Dee Guerra, Executive Director
200 West Virginia Street, McKinney, TX 75069
Or email to: dguerra@visitmckinney.com

Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal and Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits

of \$500,000 per occurrence, \$500,000 Products/Completed Operations Aggregate and \$500,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per location basis.

Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$500,000 per occurrence.

With reference to the foregoing required insurance, the Subtenant shall have applicable insurance policies endorsed as follows:

The Sublandlord, its officials, employees, officers, agents and volunteers shall be named as additional insureds on the Commercial General Liability policy by using endorsement CG2026 or broader. All insurance policies shall be endorsed to the effect that Sublandlord will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or material change of the policies. However, ten (10) days' advance written notice of cancellation is permitted for non-payment of premium. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

12. Early Termination of Agreement.

- (a) Except as otherwise provided, if Subtenant defaults in the performance of any promise, term, condition, or covenant required of it herein, and fails to cure such default within ten (10) calendar days following notice thereof from the Executive Director, unless a longer cure period is approved in writing by Executive Director, this Agreement shall terminate: provided, however, the Sublandlord shall be authorized to immediately terminate this Agreement, without serving such notice of default to Subtenant, upon the happening of any of the following events:
 - (1) The failure of Subtenant to maintain in full force and effect all forms of insurance required hereunder.
 - (2) Any sale, transfer, or assignment by Subtenant of any right, license, privilege, or duty granted to or imposed upon it hereunder.
 - (3) A major breach of service including, but not limited to, health or safety violations which cause or may cause closure of all or any part thereof of the Storefront Office.
 - (4) Knowing falsification of any written documents or records.

- (5) Carrying anything within the Storefront Office that can be considered a dangerous weapon, without a lawful permit.
- (6) Refusal to follow instructions of the Executive Director with regard to building access, location of Retail Products, delivery of products or security procedures.
- (7) Theft, willful destruction of the Storefront Office, or intentional misuse of equipment or causing personal injury while committing an unsafe act.
- (8) Knowingly entering an unauthorized area of the Storefront Office.
 - i. If, in the event Subtenant cannot or does not operate in accordance with the terms and conditions stated herein, and Sublandlord terminates this Agreement, the Executive Director may take immediate possession of the Consignment Area in any manner deemed appropriate by the Executive Director for Sublandlord's benefit without any liability therefore to Subtenant. All sales of Retail Products through the date of termination shall be calculated, and a Consignment Payment therefor shall be made immediately to Sublandlord.

13. Sublandlord's Right to Terminate Agreement. Notwithstanding any provision herein to the contrary, if Sublandlord determines it to be in its best interest to terminate this Agreement, or any renewal term thereof, Sublandlord may, acting through its Board of Directors, terminate this Agreement and the term thereof, without penalty or cause, in its sole discretion upon sixty (60) days' written notice of intent to terminate given to Subtenant. Notwithstanding any provision of this Agreement to the contrary, in the event operating and maintenance funds for the Storefront Office are not appropriated by the McKinney City Council to the MCVB for the next fiscal year, the MCVB retains the right to terminate this Agreement at the expiration of each MCVB budget period (September 30) during the term of this Agreement, without prior notice.

14. Indemnity. Subtenant shall defend, indemnify, and hold harmless Sublandlord, Master Landlord, their affiliates, subsidiaries, officers, directors, employees, agents, representatives, successors and assigns from and against any and all liability, loss, claim, expense, damage, cost, reasonable attorneys' and experts' fees, or obligation arising by reason of Subtenant's use or occupancy of the Premises, from the conduct of Subtenant's business, from any activity, work or things done, permitted or suffered by Subtenant upon the Premises, Subtenant's failure to comply with any term, condition, or covenant of this Sublease, or Subtenant's negligence or willful misconduct. The provisions of this paragraph shall survive the expiration or earlier termination of this Sublease.

15. Notices. Any notice given under this Sublease shall be in writing and shall be hand-delivered, mailed (by certified or registered mail, return receipt requested, postage prepaid), or by reputable overnight delivery service (such as Federal Express) addressed as follows:

To Subtenant: James Vincent Latino
d/b/a Texas Monkey Business
2717 Soda Springs Drive
McKinney, TX 75071

To Sublandlord: McKinney Convention and Visitor's Bureau
200 West Virginia Street
McKinney, TX 75069
Attention: Executive Director

With Copy to: Mark S. Houser
MCVB Attorney
Brown & Hofmeister, LLP
740 E. Campbell Road, Suite 800
Richardson, Texas 75081

Any notice shall be deemed to have been given on the date the same is delivered, if personally delivered, or on the day after it is deposited with a courier service guaranteeing overnight delivery, or two (2) days after deposit in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner above provided. Each such delivered notice or communication shall be deemed to have been given to or served upon the party to whom delivered upon the delivery thereof in the manner above provided. Any party hereto may change its address for the service of notice hereunder by delivering written notice of said change to the other parties hereunder, in the manner above specified, ten (10) days prior to the effective date of said change.

16. Independent Contractor.

- (a) It is understood and agreed that Subtenant (including Subtenant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Subtenant's personnel shall not be entitled to any benefits payable to employees of Sublandlord. As an independent contractor, Subtenant hereby indemnifies and holds Sublandlord harmless from any and all claims that may be made against Sublandlord based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- (b) If in the performance of this agreement, any third persons are employed by Subtenant, such persons shall be entirely and exclusively under the employment, direction, supervision, and

control of Subtenant. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Subtenant.

- (c) It is further understood and agreed that as an independent contractor and not an employee of MCVB, neither Subtenant nor any of its assigned personnel shall have any entitlement as an MCVB employee, right to act on behalf of MCVB in any capacity whatsoever as agent, nor to bind MCVB to any obligation whatsoever.

17. Remedies of Sublandlord Upon Default. In the event Subtenant defaults any provision of this Sublease and/or the Master Lease, Sublandlord shall be entitled to the same remedies as those granted to the Master Landlord for a default under the Master Lease, in addition to any remedies at law or in equity which apply to subleases. If Subtenant fails to perform any term, condition, covenant or obligation of Subtenant hereunder other than the payment of Rent when due, such failure shall not constitute a default unless Subtenant fails to cure such failure within thirty (30) days after written notice thereof from Sublandlord.

18. Option to Renew, Extend or Terminate. Notwithstanding any provision of the Master Lease to the contrary, Subtenant shall not have any option or right to renew this Sublease, to extend the Term of this Sublease beyond the termination or expiration date of the Master Lease.

19. Surrender of the Premises. Upon the expiration of the Term or earlier termination of this Sublease, Subtenant shall surrender the Premises in the same condition as received, ordinary wear and tear excepted, subject to any alterations by Subtenant which comply with the terms of the Master Lease and this Sublease.

20. Binding Effect. This Sublease is binding upon and shall inure to the benefit of the parties hereto and their permitted respective successors and assigns.

21. Amendment. This Sublease may not be amended or altered in any provision unless such amendment or alteration is reduced to writing and signed by the parties hereto and approved by the Master Landlord in writing.

22. Subleasing; Assignment. Except with the prior written consent of Sublandlord and the Master Landlord, which may be withheld, conditioned or delayed in either Sublandlord or Master Landlord's sole discretion, Subtenant shall not transfer or assign this Sublease or any of its rights hereunder, nor sublet the Premises or any part thereof or any property thereon nor grant any interest, privilege or license whatsoever in connection with this Sublease.

23. Non-Waiver. The failure of Sublandlord or Subtenant to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this

Sublease shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition.

24. Entire Agreement. This Sublease contains the entire agreement of the parties. No representations, inducements, promises of agreements, oral or otherwise, not embodied herein shall be of any force or effect.

25. Governing Law. This Sublease shall be governed in all respects by the laws of the State of Texas. Venue shall be exclusive to Collin County.

26. Consent. This Sublease is subject to the consent of the Master Landlord and notwithstanding anything to the contrary herein, this Sublease shall not become effective until such consent is obtained and until Sublandlord and Subtenant execute this Sublease.

27. Partial Invalidity. If any provision of this Sublease or the Master Lease is invalid or unenforceable to any extent, then except for that provision, the remainder of this Sublease and the Master Lease shall be enforceable to the fullest extent permitted by law.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**McKINNEY CONVENTION AND
VISITOR'S BUREAU**

a Texas non-profit corporation

By: _____

DEE-DEE GUERRA

Executive Director

Date: _____

James Vincent Latino

d/b/a Texas Monkey Business

an individual

By: _____

Date: _____

APPROVED AS TO FORM:

MARK S. HOUSER

MCVB Attorney

EXHIBIT "A"

**COPY OF MASTER LEASE
(TO BE ATTACHED)**

EXHIBIT "B"

DESCRIPTION OF PREMISES