

default of this License. The rental rate and balance of the terms of this License shall remain the same for the extension term(s), except as provided herein or to reflect changes in the law.

Section 1.04 CONDITION OF LICENSED PREMISES. Except as otherwise provided in this License, LICENSOR has not made and does not make and specifically disclaims any representations, guarantees, promises, covenants, agreements or warranties of any kind or character whatsoever unless otherwise provided for herein, whether express or implied, concerning or with respect to the nature, quality or condition of the Licensed Premises, the suitability of the Licensed Premises for uses allowed under this License, or merchantability or fitness for a particular purpose. LICENSEE acknowledges it shall examine the Licensed Premises when constructed and accepts such premises in the “AS IS” condition upon issuance of a certificate of occupancy. LICENSOR shall not be required to maintain or to make any improvements, repairs or restorations to the Improvements (as defined in Section 3.01). LICENSOR’s sole obligation to repair, maintain and restore shall be limited to the hike/bike trails which connect, if at all, to the Licensed Premises; but, LICENSOR shall never have any obligation for security, safety or to repair, maintain or restore, during the term(s) of this License, the Improvements and the Licensed Premises, except when LICENSOR, its departments or designees are using the Improvements. LICENSEE shall repair and maintain the paved parking spots as provided in Section 5.01.

Section 1.05 EARLY TERMINATION. Either party shall have the right to terminate this License in the event that LICENSEE has not commenced construction of the Improvements (defined in Section 3.01) on or prior to February 1, 2026. At such time as LICENSEE commences construction of the Improvements it shall thereafter proceed with uninterrupted diligence and reasonable efforts to cause construction to be completed within a reasonable time thereafter, subject to a force majeure event as described in Article XV.

II. CONSIDERATION

Section 2.01 CONSIDERATION DURING THE TERM. Consideration for the term of this License shall be **TEN DOLLARS (\$10.00)** per year and other good and valuable consideration, including but not limited to services to McKinney citizens, and citizens of surrounding municipalities by LICENSEE, and the use of the facilities by the LICENSOR as set forth in Section 3.03 below. All monetary amounts due shall be payable to the City of McKinney, Attention: City Manager’s Office, 401 E. Virginia, McKinney, Collin County, Texas 75069 and shall be due on the Effective Date of this License and annually each year thereafter on the anniversary of the Effective Date.

III. USAGE OF THE LICENSED PREMISES

Section 3.01 USE OF LICENSED PREMISES. It is the intent of the parties that this License shall be to allow LICENSEE to construct, own, maintain and operate a non-profit, active farm and public park facility, including offices, and other multi-use indoor spaces (referred to herein as the “**Improvements**”). The Licensed Premises and the Improvements shall be used only for the following purposes:

(a) To provide year-round, supervised recreational, educational and instructional farming programs (both crops and livestock) for all interested children and adults who voluntarily elect to participate in the programs offered by LICENSEE, and

(b) To provide and promote charitable and educational activities and to promote community awareness of sustainable agriculture, gardening, food systems, and environmental sustainability for all participants regardless of race, age, color, religion, sex, disability, ancestry, national origin or place of birth by sponsorship of various programs adopted or offered by LICENSEE, and

(c) To provide programming for the organizations utilizing the facility to conduct related public activities.

In addition, because the Licensed Premises are located on designated park property, LICENSEE agrees to use the Licensed Premises solely for uses consistent with or in furtherance of public use and enjoyment of the park and in a manner which shall not interfere with the use of the park solely for park purposes. The Licensed Premises shall also be used in accordance with the City of McKinney Code of Ordinances, as amended.

LICENSOR and LICENSEE shall have an annual planning meeting (hereinafter referred to as the “Annual Planning Meeting”) to review programs and activities such as events, conducted in, or in the immediate vicinity of, the Licensed Premises. This shall include, but not be limited to, Gray Branch Park and the Improvements. The Annual Planning Meeting shall be an informal report to the PARKS board, identifying the prior and future programming of the Licensed Premises along with an annual financial report. LICENSOR and LICENSEE, through the respective offices of the City Manager or his designee and SPF’s General Manager (the “**General Manager**”), shall coordinate uses to minimize conflict in the area, however LICENSOR shall have sole discretion regarding the use, maintenance and control of Gray Branch Park outside of the Licensed Premises.

LICENSEE shall operate the Improvements within the hours of 6:00 am until 30 minutes after sunset). Hours of operation may be extended by permit by the City Manager or his designee.

Section 3.02 STATEMENT OF PUBLIC BENEFIT AND PARK PURPOSES. A primary purpose of this License is to provide park services to the McKinney community. LICENSEE agrees at LICENSOR’s request to provide to LICENSOR during the term of this License, and during any and all of its subsequent extensions, periodic documentary evidence of the public benefit and park purposes of its services or other activities. It is mutually agreed by both LICENSEE and LICENSOR that the required documentation of public benefit and park purposes shall be in the form of an annual written report prepared by LICENSEE, if requested by LICENSOR, and submitted to the City Manager’s Office to be made available for public record. LICENSEE agrees to submit said report, if requested by LICENSOR, annually to LICENSOR in person or by U.S. mail on or before the anniversary of the initial Effective Date of the License. LICENSEE’s annual reports shall contain qualitative and/or quantitative information about the programs, services, or other activities of the organization on the Licensed Premises; non-confidential information about the clients, customers, members or other users of the LICENSEE’S services (or other activities) on the Licensed Premises; and a statement of the revenues and support

generated and expenses incurred by the LICENSEE during its most recently completed fiscal year on the Licensed Premises, including LICENSEE's most recent non-profit IRS filing and tax return.

Section 3.03 LIMITED USE OF THE IMPROVEMENTS BY THE LICENSOR. LICENSEE shall provide meeting room space to all LICENSOR's boards or departments, appointed and ad hoc committees, commissions, departmental training programs (fire, police, etc.), and special events planning sessions. The Improvements shall be available for the foregoing purposes, subject to availability and prior approval from the General Manager of the LICENSEE, on a year-round basis (excluding major holidays) during LICENSEE's normal operating hours, or as otherwise scheduled by mutual agreement during non-operating hours, on a rent-free basis.

Subject to the other provisions of this Section 3.03, the "McKinney Parks and Recreation Department" ("**PARKS**") shall have first priority of any surplus space for storage in the Improvements on a rent free basis, subject to prior approval from the General Manager of the LICENSEE, or his designee.

All arrangements for LICENSOR's use of classroom space in the Improvements as contemplated above shall be coordinated through LICENSOR's appropriate City staff members and the General Manager of LICENSEE. Space for meeting purposes and any other public space within the Improvements or on the Licensed and may be reserved by LICENSOR or PARKS on a space available basis, with the LICENSEE's functions to take priority over all usage by PARKS, LICENSOR or its designees. To the extent that PARKS, LICENSOR or its designees desire to use classroom space in the Improvements as aforesaid, the parties shall agree to the usage. LICENSOR or PARKS shall notify LICENSEE in writing of its desired usage no later than thirty (30) days prior to the date of the intended usage.

All usage of LICENSEE's Improvements by LICENSOR or its departments shall be subject to reasonable restrictions and requirements dealing with adequate registration of the programs and its participants, including the execution of liability waivers or certificates of insurance, and the completion of required information forms.

In no event shall LICENSEE be obligated to provide any personnel or incur any additional material cost or expense with respect to usage of the Improvements by LICENSOR, LICENSOR's designee or departments. LICENSOR shall provide any additional personnel required for LICENSOR's use of the Improvements. LICENSOR, and its public invitees (park patrons), shall have unrestricted use of all existing trails within the Licensed Premises at all times permitted by PARKS, even if such trails are located within the improved areas containing cultivated crops. LICENSOR shall adopt rules for park use that will assist in LICENSEE's uninterrupted use of the Licensed Premises for the permitted uses in Section 3.01.

Section 3.04 CONDUCT OF ACTIVITIES. LICENSEE shall conduct its services and activities in a substantial, business-like, and good faith manner for the benefit of the public, and shall not take any actions to unreasonably annoy, disturb, endanger or be offensive to others, including programs held on the Licensed Premises outside of the Improvements.

Section 3.05 INGRESS AND EGRESS. LICENSEE shall have the right to obtain ingress and egress by means of all existing public roadways, to be used in common with others

that have rights of passage thereon. LICENSEE shall construct the necessary driveways for access to the Licensed Premises and Improvements which are shown on Exhibit B.

Section 3.06 CONCESSION RIGHTS. LICENSEE shall have the right to provide or to contract with third parties for all concessions, goods and services, subject to approval by the City Manager's Office, which approval shall not be unreasonably withheld or delayed. Food and beverage concessions sold inside the facility shall not require City Manager approval; however, any such service shall meet all applicable laws and ordinances applicable to food and beverage sales, including the prohibition of alcohol sales in public parks. Any goods and services operated by third party vendors must be offered at prices, approved by LICENSOR, which are reasonable and comparable to prices being paid in the Dallas Metroplex and shall only be provided during LICENSEE sponsored activities and during normal business hours.

Section 3.07 SIGNAGE. LICENSEE shall comply with all requirements of the City of McKinney sign ordinance, as amended. The name of the improvement shall be "McKinney Roots at Gray Branch Park". Unless otherwise agreed in writing by the parties, any permanent improvement to be located on the exterior of the Licensed Premises may only bear the name "Gray Branch Park". The advertising of any sponsors located on the Licensed Premises, on the exterior of the Improvements, or within the Improvements is prohibited without the prior written approval of the LICENSOR.

IV. UTILITIES

Section 4.01 UTILITIES. Except as otherwise provided in this License, LICENSEE agrees to secure and maintain and timely pay for all utilities required for the operation of the Improvements, including but not limited to the telephone, gas, electricity, and water used in or on the Improvements and for the removal of trash or debris therefrom. Except as otherwise provided in this License, LICENSOR shall in no way be responsible for utilities or payment of utilities for the Improvements. LICENSEE agrees to provide and pay for the costs of the installation of all utilities to the Licensed Premises and to the Improvements, including electricity for lighting the parking lots on the Licensed Premises and for the costs of water to irrigate the landscaping on the Licensed Premises and parking lots.

V. INSPECTIONS, REPAIRS AND ALTERATIONS

Section 5.01 REPAIRS BY LICENSEE. LICENSEE agrees, at its own expense, to timely maintain the Improvements in a sanitary, safe and clean condition during the Initial Term of this License and any extension thereof. LICENSEE shall be solely responsible for, and shall provide at its own expense, janitorial services for the Improvements and maintain in a good operating condition and repair the Improvements, including, but not limited to, the roof, outer walls, all electrical, plumbing and mechanical systems, and the interior finish of any permanent improvements to the Improvements. LICENSEE agrees that it shall be responsible for cleaning and restriping all parking spaces on the Licensed Premises, and LICENSOR shall be responsible for purchasing and installing parking lot lighting posts, fixtures and bulbs. Resurfacing or repair of the parking spaces shall be a cost borne solely by LICENSEE. Upon the expiration of the Initial

Term of the License, or any extension thereof, the Licensed Premises and Improvements, and any other improvements on the Licensed Premises, shall be surrendered by LICENSEE to LICENSOR in good condition, normal wear and tear excepted and free and clear of any liens or encumbrances.

Section 5.02 LICENSOR'S RIGHT TO INSPECT AND OPTION TO MAKE REPAIRS. LICENSEE agrees that LICENSOR may enter upon the Licensed Premises and Improvements at any time during the Initial Term of this License including any extension thereof during business hours and upon reasonable prior notice for the purpose of inspection. LICENSOR shall have the right and privilege, through its representative, agents and officials, to make inspections of the Licensed Premises and Improvements and thereafter to make recommendations to LICENSEE of any repairs that must be made in accordance with the provisions of Section 5.01 above. However, LICENSOR has no duty or obligation to inspect the Improvements. LICENSEE shall report to LICENSOR on a semi-annual basis repairs to be made and when such repairs are scheduled to be made. LICENSEE agrees and covenants that, unless unreasonable due to ongoing use of the relevant portion of Improvements, it shall attempt to commence repairs within fifteen (15) days from the date that such recommendations are made and shall commence repairs no later than forty-five (45) days from the date that such recommendations are made, unless LICENSEE disputes, in good faith, whether or not repairs are required, or the repair work would require that the Improvements be shut down in its entirety, then such repairs shall be made as soon as reasonably possible. Any safety problems shall be neutralized and/or abated so as not to pose a health or safety issue for use of the Improvements until the repair can be made, subject to applicable code provisions as to occupancy during such periods. Such repairs shall be made in an expeditious and conscientious manner. Upon LICENSOR'S recommendation of repair, LICENSEE shall notify LICENSOR within fifteen (15) days providing when repairs shall be commenced. In the event that LICENSEE shall fail to commence such recommended and undisputed repairs within the time provided, it is understood and agreed that LICENSOR may, within its discretion, make such repairs as it deems necessary for and on behalf of LICENSEE; and in such event, the cost of such repairs shall be paid by LICENSEE to LICENSOR within thirty (30) days following its receipt of the billing for said repairs. LICENSOR has no duty or obligation to make repairs to the Improvements or the Licensed Premises.

Section 5.03 DAMAGES. Should LICENSOR undertake any repairs described in Section 5.02, LICENSEE hereby waives any claim for damages, consequential or otherwise, as a result therefrom. The foregoing shall in no way affect or alter the primary obligations of the LICENSEE as set forth in this License, and shall not impose or be construed to impose upon LICENSOR any additional obligations to maintain the Licensed Premises, unless specifically stated otherwise herein.

Section 5.04 ALTERATION AND REMODELING. LICENSEE shall have the right to make such decorating and non-structural changes as it desires on the interior of any Improvements to the Licensed Premises, including changes to walls, floors, or ceilings without the prior written consent of LICENSOR, so long as the design of such changes to any Improvements is compatible with the allowed uses described in this Agreement. Any exterior or structural changes shall require the prior written consent of LICENSOR. LICENSEE may remove, at its own expense, any non-permanent fixtures or furniture placed in the Licensed Premises by LICENSEE, but LICENSEE agrees that it shall, at its own expense, promptly repair any and all damage done by the removal of any non-permanent fixtures or furniture from the Licensed

Premises. If any alterations and/or additions to the Improvements are mandated by legal requirements related to accessibility by persons with disabilities, LICENSEE is responsible for making them at its sole cost and expense.

Section 5.05 COMPLIANCE WITH GOVERNMENTAL REGULATIONS. LICENSEE shall fully comply with all of the ordinances of the City of McKinney applicable to the Licensed Premises and any Improvements on the Licensed Premises, and in connection therewith promptly fulfill all orders and requirements applicable to LICENSEE's occupation of and operation upon the Licensed Premises and Improvements as imposed by the Code Enforcement, Health, Police, Fire and other departments for the correction, prevention and abatement of health and safety code violations, nuisances or hazards which may exist by reason of the condition of the Licensed Premises and Improvements. LICENSEE covenants also that it shall fully comply with all local, state and federal laws and regulations in its use and occupation of the Licensed Premises and Improvements. LICENSEE shall to pay to LICENSOR any permit or similar fees for the Improvements.

Section 5.06 DISPUTE RESOLUTION. In the event of a dispute under Section 5.02 above, the LICENSOR and LICENSEE shall, within thirty (30) days of written request by either party, appoint a mutually agreeable licensed architect to make a non-binding determination as to the issue in dispute. In the event the LICENSOR and LICENSEE cannot mutually agree on a licensed architect, each shall select a licensed architect who shall together agree upon a third licensed architect. This panel of three architects shall, by at least two-thirds (2/3) vote, make a non-binding decision as to the dispute. None of the architects shall be agents, officers or employees of either the LICENSOR or LICENSEE. Any costs or fees incurred under this section shall be shared equally by both parties.

VI. IMPROVEMENTS AND INFRASTRUCTURE

Section 6.01 CONSTRUCTION OF IMPROVEMENTS AND INFRASTRUCTURE. LICENSEE shall commence construction of Phase I, as defined in Section 6.01(b) below, on the Licensed Premises, as described on **Exhibit "B"** within the two (2) months following the Effective Date of this License. Phase I construction shall be completed on or before April 1, 2026. LICENSEE shall commence construction of the Improvements (and locate/install any related Improvements) on the Licensed Premises and the Infrastructure, as generally described and shown on **Exhibit "B-1"** within six (6) months following the completion of Phase I, subject to early termination as provided in Section 1.05. Phase II shall be completed on or before January 31, 2027. The **"Infrastructure"** shall include those items described below which are required to support the Improvements, and which are fully listed and shown on **Exhibit B-1**. The Improvements and Infrastructure, shall be designed, constructed and completed at LICENSEE's sole expense, within the following parameters, subject to a force majeure event as described in Article XV:

(a) Plans and specifications for the Improvements and Infrastructure shall be prepared by James West Architect and Planning or such other architects or engineers approved by LICENSOR, such approval not to be unreasonably withheld or delayed, and shall comply with all

applicable federal, state and municipal laws, ordinances, rules, regulations and requirements, as amended (including the Americans with Disabilities Act).

(b) Plans and specifications for the Improvements and Infrastructure shall be submitted within 90 days of the Effective Date to the LICENSOR, through the City Manager's Office (hereinafter referred to as the "**City Manager**") or his designee, and no construction shall begin on the Improvements until said plans and specifications are approved by the appropriate City department, and such approval shall not be unreasonably withheld or delayed so long as the design and appearance of the Improvements are compatible with the park and surrounding environment in which the Licensed Premises are located and Exhibit B, and comply with all applicable federal, state and municipal laws, ordinances, rules, regulations and requirements, as amended, save and except the variances described in Section 6.01(e) and (i) below. The Licensed Premises shall be improved in two (2) phases: Phase I and Phase II. Phase I shall generally consist of the preparation and planting of the areas whereupon crops will be cultivated, including irrigation, prep the land for farming, and utility construction for irrigation in Phase I, and utility preparation for Phase II development, all as more specifically shown on **Exhibit B**. During Phase I the public shall have full access the remainder of the Leased Premises, and the staging area for Phase I construction shall be wholly within the perimeter of Phase I. Phase II shall consist of the construction of the remainder of the Improvements and Infrastructure on the Leased Premises. as described and shown on **Exhibit B-1**. **No construction, use or occupation of Phase II shall commence until the City has approved all plans and issued a permit for construction for the Improvements and Infrastructure described and shown on Exhibit B-1 and described in this Article VI.**

(c) LICENSEE agrees that its budget for the Improvements shall be approximately \$847,500.00 and that its budget for the Infrastructure shall be approximately \$552,500.00, and agrees to provide to LICENSOR a preliminary budget setting forth estimated construction costs for the Improvements, the Infrastructure and the Licensed Premises, no later than sixty (60) days after the Effective Date of this License, which shall be a supplement to, and attach hereto as Exhibit B-2 and **Exhibit "C"** and be made a part hereof for all purposes. Prior to commencement of construction, LICENSEE shall furnish to LICENSOR evidence that it has secured funding of the budgeted construction costs for the Improvements and Infrastructure. Alternatively, LICENSEE may provide LICENSOR an irrevocable letter of credit, in a form satisfactory to LICENSOR, in the amount of 120% of the budgeted amount of the Improvements and Infrastructure in this Section 6.01(c) in satisfaction of the preceding sentence. Notwithstanding the foregoing, LICENSOR shall have approved LICENSEE's construction contract(s) with its general contractor prior to commencement of construction.

(d) LICENSEE shall, prior to issuance of a certificate of occupancy of the Improvements, construct approximately fifty (50) parking spaces on the Licensed Premises. Attached hereto as **Exhibit "D"** and made a part hereof for all purposes is a site plan depicting the parking spaces. All parking surfaces on the Licensed Premises shall be constructed of reinforced concrete and shall be constructed in accordance with the McKinney Code of Ordinances.

(e) LICENSOR shall install parking lot lighting poles, fixtures and bulbs in all parking lots, and thereafter maintain the lighting poles, fixtures and bulbs.

(f) LICENSOR shall, install prior to issuance of a certificate of occupancy of the Improvements, and then irrigate and maintain, at its cost and expense, landscaping around the Improvements, parking lots and Licensed Premises.

(g) Any other related site Improvements shall be constructed by LICENSEE according to City of McKinney codes and standards.

(h) LICENSEE shall design and construct adequate area lighting for the Improvements and invitees on the Leased Premises so that the external lighting does not shine toward homes.

(i) LICENSEE shall, at its expense, make arrangements for the connection of whatever necessary Infrastructure and utilities it may desire or need in connection with the use of Improvements or additions made by the LICENSEE to the Improvements. LICENSEE acknowledges that LICENSOR is not responsible for paying for utility service to Improvements. Any construction performed by LICENSEE within any utility easement area must be with permission and in accordance with City of McKinney criteria for design and construction in such easement area. Any and all connections to electricity, telephone, gas, water and sewer lines, and the providing for storm drainage, must occur at the utility connection points. All costs incurred with any extension and/or relocation of existing utility lines or facilities or installation of additional utility lines or facilities as part of the Infrastructure shall be entirely at LICENSEE'S expense, whether on or off the Licensed Premises.

(j) Prior to commencement of construction of the Improvements and Infrastructure, LICENSEE shall require its general contractor to furnish a performance bond and a payment bond, each in a form acceptable to the LICENSOR, through corporate surety companies authorized to do business in the State of Texas and approved by the LICENSOR, which bonds shall be equal to one hundred percent (100%) of the costs to construct the Project, both Improvements and Infrastructure, as provided in the construction contract. LICENSEE shall require a rider for each bond so that LICENSOR shall be named as an additional obligee as LICENSOR'S interests may appear pursuant to the License. These bonds shall remain in effect until the Improvements have been fully completed and accepted in accordance with the terms of the construction contract. The purpose of such bonds is to insure that construction of the Improvements is completed and that all bills for material and labor are paid in full upon completion of construction with no cost to the LICENSOR and shall contain the form as is customarily required by LICENSOR. If the Improvements are not constructed in accordance with any construction plans or contract, LICENSOR may, with LICENSEE'S consent, in addition to other available remedies, at its option take such action to enforce any breach, warranty or representation, and LICENSEE shall provide any necessary conditional assignment of the construction contract incident thereto.

(k) Prior to commencement of construction of the Infrastructure, LICENSEE shall submit to LICENSOR a schedule of values for all components and line items listed on Exhibit B-1. Upon LICENSOR's approval of such schedule and its satisfaction of any additional requirements of any subsection of Section 6.01, LICENSEE's professional consultants and contractors may commence work and construction of the Infrastructure.

(l) LICENSEE shall require the following language in all construction contracts for any improvements:

“INDEMNIFICATION: CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELICENSE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF MCKINNEY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY “THE CITY OF MCKINNEY”), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT AND CONSTRUCTION OF THE IMPROVEMENTS, AND CONTRACTOR SHALL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF MCKINNEY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY OF MCKINNEY FROM THE CONSEQUENCES OF THE CITY OF MCKINNEY’S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKERS’ COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS. IT IS EXPRESSLY AGREED AND STIPULATED THAT THIS INDEMNIFICATION CLAUSE IS BINDING, FULLY ENFORCEABLE, AND MEETS ALL REQUIREMENTS OF TEXAS LAW INCLUDING EXPRESS NEGLIGENCE AND CONSPICUOUSNESS ISSUES.”

(m) LICENSEE shall require the contractors who are to construct the Improvements and Infrastructure to furnish insurance in such amounts as specified below and include in all construction contracts for the Improvements and Infrastructure the following language:

(1) Prior to commencement of any activity permitted on City of McKinney’s property, each contractor shall purchase and maintain during the term of this License, at its own expense, hereinafter stipulated minimum insurance satisfactory to the City of McKinney. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this License shall be written on an “occurrence” basis.

Workers’ Compensation, statutory, as required by law and Employer’s Liability Insurance.

(2) Commercial General Liability Insurance, including Independent Contractor's Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this License, fully insuring contractor's liability for injury to or death of employees of the City of McKinney and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of **ONE MILLION DOLLARS (\$1,000,000.00)**.

(3) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of **ONE MILLION DOLLARS (\$1,000,000.00)**.

(4) "Umbrella" Excess Liability Insurance, insuring the contractor for an amount not less than **ONE MILLION DOLLARS (\$1,000,000.00)** combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein above.

(5) Builder's Risk. The LICENSEE shall purchase a completed value builder's risk policy for the duration of this project.

(6) It is agreed by all parties to this License that the LICENSEE shall require the contractors who obtain and provide insurance required under this License to endorse each policy as follows:

(a) Be written with the City of McKinney as an additional insured on all applicable policies.

(b) Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of McKinney, its officials, officers, agents and employees, in both their public and private capacities, and provide that each policy is primary and non-contributory with the LICENSORS' insurance, it being the intention that the required insurance policies shall protect all parties to the License and be the primary coverage for all losses covered by the policies.

(c) Provide a Certificate of Insurance evidencing the required coverages to:

City of McKinney
Attention: City Manager
401 E. Virginia
McKinney, Texas 75069

The Certificate of Insurance required under this provision shall be provided to the LICENSOR before commencement of any construction by LICENSEE's contractors and subcontractors and proof of the required insurance under this section shall be a condition of any issuance of building

permits by the City of McKinney. Any permits erroneously issued without proof of insurance shall be immediately revoked.

Section 6.02 COST OF IMPROVEMENTS AND INFRASTRUCTURE. The complete cost of developing all necessary plans and specification and the cost of the construction and maintenance of the Improvements, Infrastructure, and the Licensed Premises shall be borne solely by LICENSEE and shall be at no expense to LICENSOR whatsoever.

Section 6.03 OWNERSHIP OF IMPROVEMENTS. It is expressly agreed and understood that the Improvements constructed upon the Licensed Premises during the Initial Term, or those identified Improvements, constructed by mutual agreement of the parties during any subsequent term, are owned by LICENSOR.

Section 6.04 LIENS and INDEMNIFICATION. LICENSEE shall timely discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of LICENSEE as such obligations mature. LICENSEE expressly agrees that it shall neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the Licensed Premises, Improvements, Infrastructure, LICENSOR's property or upon any improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the Licensed Premises, Improvements, LICENSOR's property or improvements thereon, and LICENSEE shall discharge any such lien within thirty (30) days after notice of filing thereof, LICENSEE SHALL RELICENSE, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY AND ALL SUITS, ACTIONS, LOSSES AND DAMAGES ARISING FROM ANY LIEN FILED AGAINST THE LICENSED PREMISES, OR ANY IMPROVEMENTS THEREON AS A RESULT OF LICENSEE'S ACTIONS AND/OR INACTIONS. IT IS EXPRESSLY AGREED AND STIPULATED THAT THIS INDEMNIFICATION CLAUSE IS BINDING, FULLY ENFORCEABLE, AND MEETS ALL REQUIREMENTS OF TEXAS LAW INCLUDING CONSPICUOUSNESS ISSUES.

Section 6.05 MISCELLANEOUS.

(a) LICENSEE agrees that all work to be performed by it or its contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, as amended, and such work shall be subject to LICENSOR'S inspection during the performance thereof and after it is completed. However, the LICENSOR has no duty to inspect.

(b) LICENSEE shall timely repair any damage to any offsite improvements and/or LICENSOR'S property caused by or resulting from any activities or construction by LICENSEE, or LICENSEE's agents, employees, contractors and subcontractors.

Section 6.06 ADDITIONAL IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS. LICENSEE shall have the right to construct additional or replacement improvements on the Licensed Premises only with the prior written consent of LICENSOR so long as the additional or replacement improvements are constructed in accordance

with the requirements of and the process described in this Article VI for the construction of the like kind and nature as the Improvements. Subject to Article V above, LICENSEE shall have the right to alter the Improvements in connection with the repair and maintenance thereof, without the prior written consent of LICENSOR, so long as such alterations do not involve structural modifications to the roof, foundation or exterior of the Improvements.

VII. INSURANCE AND INDEMNITY

Section 7.01 INDEMNITY.

(a) LICENSEE DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELICENSE, INDEMNIFY AND HOLD HARMLESS LICENSOR AND ALL OF ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEY'S FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE, THE LICENSED PREMISES OR IMPROVEMENTS EVEN IF ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY THE LICENSEE TO INDEMNIFY AND PROTECT THE CITY OF MCKINNEY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM THE CONSEQUENCES OF THE CITY OF MCKINNEY'S AND ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES SOLE NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE, IN ANY AND ALL CLAIMS.

(b) IN ADDITION, LICENSEE DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELICENSE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND ALL OF ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEY'S FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY LICENSEE EMPLOYEE OR VOLUNTEER OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OF ANY LICENSEE EMPLOYEE OR VOLUNTEER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS LICENSE. THIS INDEMNIFICATION BY LICENSEE SHALL INCLUDE, BUT NOT BE LIMITED TO, LIABILITY ARISING FROM WORKER'S COMPENSATION AND GENERAL LIABILITY CLAIMS.

(c) LICENSEE EXPRESSLY AGREES TO DEFEND LICENSOR AGAINST ANY AND ALL CLAIMS DESCRIBED IN SECTION 7.01(a) or (b) ARISING OUT OF THIS LICENSE, IMPROVEMENTS, OR LICENSED PREMISES. IN THE EVENT THE CITY, ITS

OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES ARE A NAMED PARTY TO A SUIT ARISING OUT OF THE SUBJECT MATTER OF THIS LICENSE, THE CITY SHALL HAVE THE RIGHT OF THE SELECTION OF DEFENSE COUNSEL TO BE RETAINED BY LICENSEE IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF LICENSEE'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF LICENSEE'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. LICENSEE SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF LICENSEE FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND LICENSEE SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. IT IS EXPRESSLY AGREED AND STIPULATED THAT THE INDEMNIFICATION CLAUSES IN THIS LICENSE ARE BINDING, FULLY ENFORCEABLE, AND MEET ALL REQUIREMENTS OF TEXAS LAW INCLUDING EXPRESS NEGLIGENCE AND CONSPICUOUSNESS ISSUES.

Section 7.02 LICENSEE'S INSURANCE. Prior to the commencement of any activity permitted on the Licensed Premises, LICENSEE shall purchase and maintain during the term of this License and any extensions thereof, at its own expense, the hereinafter stipulated additional minimum insurance satisfactory to the LICENSOR.

(a) Workers' Compensation: Statutory, as required by law, and Employer's Liability Insurance.

(b) General Liability: **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence for bodily injury, including death, personal injury and property damage, and fully insuring and covering the indemnification provisions of this License. The policy shall have no standard coverages removed by exclusion. The policy shall include coverage for premises operation, independent contractors, products/completed operations, personal and advertising injury, contractual liability, fire legal liability and medical payments expense. A **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** limit for fire legal liability is required.

(c) Property, Fire and Extended Coverage Insurance covering the Improvements presently existing on, or hereafter constructed on the Licensed Premises or off the Licensed Premises in accordance with this License, against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightening, rain, sleet, snow, sprinkler leakage, riots, civil commotion, vandalism, malicious mischief and aircraft/vehicle damage. This type of insurance shall be carried with a company or companies satisfactory to LICENSOR and in an amount of coverage not less than replacement cost of the Improvements and the policy or policies of insurance shall be issued to the LICENSEE and LICENSOR, as their interests may appear.

(d) The City of McKinney shall be named as an additional insured on all policies.

(e) The insurance policies shall be written on an "occurrence" basis.

(f) The insurance policies shall waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against LICENSOR, its officials, officers, agents and employees, in both their public and private capacities, and provide that each policy is primary and non-contributory with the LICENSOR'S insurance, except as to the LICENSOR's Responsibilities, it being the intention that the required insurance policies shall protect all parties to the License and be primary coverage for all losses covered by the policies.

(g) Certificates of Insurance and endorsements effecting coverage required by this clause shall be forwarded to:

City of McKinney
Attention: City Manager
401 E. Virginia
McKinney, Texas 75069

(h) LICENSEE shall be responsible for the contents of the Improvements (other than items stored by LICENSOR) and shall procure insurance for such in an amount of coverage not less than replacement cost of such contents.

(i) LICENSOR reserves the right to review the insurance requirements of this section during the Initial Term of the License, and any extensions thereof, and to adjust insurance coverages and their limits when deemed necessary by LICENSOR based upon changes in statutory law, court decisions or the claims history of the industry as well as of LICENSEE. LICENSOR agrees that in the event such adjustment is required, LICENSEE shall be given sixty (60) days to obtain such coverage.

VIII. DESTRUCTION OF LICENSED PREMISES

Section 8.01 DAMAGE TO BUILDING. In the event of damage to the Improvements, LICENSEE shall immediately notify LICENSOR of the nature and extent of such damage. In the event of damage or destruction to the Improvements, LICENSOR shall have no obligation or duty to repair, rebuild or reconstruct the Improvements or any fixtures, equipment or other personal property installed by LICENSEE.

Section 8.02 INSURANCE PROCEEDS. All proceeds of the insurance contemplated by the provisions of this License payable by reason of any loss or damage to the Licensed Premises, or any portion thereof shall be paid to LICENSEE and utilized by LICENSEE solely for reconstruction or repair, as the case may be, of any damage to or destruction of the Licensed Premises or any portion thereof. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Licensed Premises shall be paid to LICENSEE. If LICENSEE elects not to repair and restore, and the License is terminated as described in Section 8.03, all such insurance proceeds shall be allocated to LICENSOR.

Section 8.03 RECONSTRUCTION OF THE LICENSED PREMISES.

(a) If during the Initial Term of this License, or any extension thereof, the Licensed Premises is totally or partially destroyed by a risk covered by the insurance described in this License (herein called “**An Insured Risk**”) and the Licensed Premises thereby is rendered unsuitable in LICENSEE’S reasonable opinion for its intended use, this License shall terminate as of the date of the casualty and neither LICENSOR nor LICENSEE shall have any further liability hereunder except for any liabilities which have arisen prior to or which survive such termination, and all insurance proceeds shall be allocated to LICENSOR, except as described below. If LICENSEE elects to terminate this License because of partial or total destruction of the Licensed Premises, LICENSEE shall clean up and scrape Improvements, including removal of slab if required by LICENSOR. LICENSOR shall pay LICENSEE for any reasonable costs to clean up and scrape the improvements but only to the extent it receives insurance proceeds for the loss. Any excess insurance proceeds remaining after such cleanup costs shall remain the property of LICENSEE.

(b) If during the Term of this License, or any extension thereof, the Licensed Premises is partially destroyed by An Insured Risk, but the Licensed Premises is not thereby rendered unsuitable for LICENSEE’S use, or is totally destroyed by An Insured Risk, but LICENSEE desires to reconstruct the Licensed Premises, LICENSEE shall, to the extent of available insurance proceeds, restore the Licensed Premises to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the License, and this License shall not terminate as a result of such damage or destruction. LICENSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration shall be allocated to LICENSEE.

(c) If the Licensed Premises are to be restored in accordance with the provisions of Section 8.03(b) and if the cost of the repair or restoration exceeds the amount of proceeds received by LICENSEE from the insurance required under this License, or in the event the Licensed Premises is totally or materially damaged or destroyed by a risk not covered by the insurance described in this License, LICENSEE at its option shall either, (a) at LICENSEE’S sole cost and expense, restore the Licensed Premises to substantially the same condition it was in immediately before such damage or destruction and this License shall not terminate as a result of such damage or destruction, or (b) terminate the License and neither LICENSOR nor LICENSEE shall have any further liability hereunder except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this License. If the Licensed Premises are restored, LICENSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration or any available proceeds which are not used by LICENSEE shall be allocated to LICENSEE. If the License is terminated, the insurance proceeds shall be payable to the LICENSOR. If LICENSEE elects to terminate this License under this section, LICENSEE shall clean up and scrape Improvements, including removal of the slab if required by LICENSOR and return the Licensed Premises in a good and clean condition, normal wear and tear excepted, within a reasonable time after termination of the License. LICENSOR shall pay LICENSEE for any reasonable costs to clean up and scrape the improvements but only to the extent it receives insurance proceeds for the loss. Any excess insurance proceeds remaining after such cleanup costs shall remain the property of LICENSEE.

Section 8.04 RELEASE OF LICENSOR. LICENSEE covenants and agrees that it shall not hold LICENSOR or any of its officers, officials, agents or employees responsible for any loss occasioned by fire, theft, rain, windstorm, hail or any other cause whatsoever, whether said cause be the direct, indirect or merely a contributing factor in producing the loss, including to any personal property that may be stored on the Licensed Premises, whether caused in whole or in part by the negligence of LICENSOR or its officials, officers, agents or employees; and LICENSEE agrees all personal property is to be stored at LICENSEE'S risk.

IX. CONDEMNATION

Section 9.01 TOTAL TAKING. If, after the commencement date, the Licensed Premises shall be taken in its entirety by right of eminent domain for any public or quasipublic use, then, when possession shall be taken thereunder by the condemner, or LICENSEE is deprived of its practical use of the Licensed Premises and other improvements, whichever date is earlier, this License and all rights of LICENSOR and LICENSEE hereunder shall terminate and any obligations required of LICENSEE shall be immediately satisfied by LICENSEE to LICENSOR through the date of taking.

Section 9.02 PARTIAL TAKING. In the event of a partial taking of any part of the Licensed Premises as a result of which the remaining portion of the Licensed Premises cannot be restored to an economically operable facility of a comparable kind and quality to the facility existing prior to the taking, then this License, at LICENSEE's option, shall terminate as of the time when possession of the Licensed Premises shall be taken by the condemner or LICENSEE is deprived of its practical use thereof, whichever date is earlier. If the Licensed Premises can be restored to an economically operable facility of comparable kind and quality to the facility existing prior to the taking, then this License shall not be affected and LICENSEE shall retain the remaining portion thereof.

Section 9.03 EMINENT DOMAIN AWARD. If there is a taking by right of eminent domain, the rights and obligations of LICENSOR and LICENSEE with reference to the award and the distribution thereof shall be allocated between LICENSOR and LICENSEE on the following basis:

(a) All proceeds, whether attributable to the Licensed Premises or LICENSEE's interest shall be allocated first to the expenses incurred by LICENSOR or LICENSEE in connection with defending the proceedings, then to costs of repair, alteration, renovation or improvement to the Licensed Premises, with the balance to be allocated pursuant to subparagraph (b) below.

(b) The balance of any award for partial taking and the award for a taking of the Licensed Premises in its entirety shall be first allocated to LICENSEE in an amount equal to costs incurred in connection with the construction of the Improvements contemplated hereby, costs of the equipment and operating systems installed in the Improvements , and relocation costs.

(c) The balance of any award shall be paid to and retained by LICENSOR.

X.
DEFAULT

Section 10.01 EVENTS OF DEFAULT. The following events shall be deemed to be events of default by LICENSEE under this License:

(a) LICENSEE shall fail to pay any monetary consideration when due, and such failure shall continue for a period of fifteen (15) days after notice of such delinquency is delivered to LICENSEE.

(b) LICENSEE shall fail to maintain its non-profit status under applicable IRS rules and federal law.

(c) LICENSEE shall fail to comply with any term, provision, clause, sentence, covenant or any other item of this License, other than the payment of consideration as described above, and shall not cure such failure within thirty (30) days after written notice thereof to LICENSEE.

(d) LICENSEE shall cease using the Licensed Premises for the purposes intended by this License for a period of ninety (90) days or more,

(e) It is recognized that if LICENSEE is adjudged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate LICENSEE's performance of this License. Accordingly, it is agreed that upon the occurrence of any such event, LICENSOR shall be entitled to request of LICENSEE or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle LICENSOR to terminate this License and to the accompanying rights set forth below.

Section 10.02 REMEDIES. Upon the occurrence of any event of default specified above, and in addition to any other remedies LICENSOR may be entitled to at law or in equity, LICENSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

(a) Terminate this License in which event LICENSEE shall immediately surrender the Licensed Premises and Improvements to LICENSOR; and if LICENSEE fails to do so, LICENSOR may, without prejudice to any other remedy which it may have for possession, enter upon and take possession and expel or remove LICENSEE and any other person who may be occupying said Licensed Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and LICENSEE agrees to pay to LICENSOR on demand the amount of all loss and damages which LICENSOR may suffer by reason of such termination, whether through inability to relet the Licensed Premises on satisfactory terms or otherwise.

(b) Enter upon and take possession of the Licensed Premises and Improvements and expel or remove LICENSEE and any other person who may be occupying the Licensed Premises

or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore.

(c) Enter upon the Licensed Premises and Improvements without being liable for prosecution or any claim of damages therefore and do whatever LICENSEE is obligated to do under the terms of this License; and LICENSEE agrees to reimburse LICENSOR on demand for any expenses which LICENSOR may incur for performing, this effecting compliance with LICENSEE's obligations under this License; and LICENSEE further agrees that LICENSOR shall not be liable for any damages resulting to LICENSEE from such action.

Section 10.03 ELECTION TO TERMINATE. No reentry or taking possession of the Licensed Premises by LICENSOR shall be construed as an election on its part to terminate this License, unless a written notice of such intention shall be given to LICENSEE. Notwithstanding any re-entry or taking possession, LICENSOR may at any time thereafter elect to terminate this License for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligations due to LICENSOR hereunder or of any damages accruing to LICENSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LICENSOR's acceptance of payments following an event of default hereunder shall not be construed as LICENSOR's waiver of such event of default. No waiver by LICENSOR or any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LICENSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LICENSOR may suffer by reason of termination of this License shall include the expense of repossession and any repairs or remodeling undertaken following repossession. Should LICENSOR at any time terminate this License for any default, in addition to any other remedy LICENSOR may have, LICENSOR may recover from LICENSEE all damages LICENSOR may incur by reason of such default, including cost of recovering the Licensed Premises and reasonable attorney's fees expended by reason of default.

XI. SURRENDER

Section 11.01 SURRENDER. In the event that this License is terminated in accordance with its terms, upon such termination, LICENSEE shall vacate the property no later than the date of termination and shall leave the property in substantially the same condition it was in on the date this License became effective, normal wear and tear excepted.

XII. TAXES AND IMPOSITIONS

Section 12.01 PAYMENTS OF IMPOSITIONS. The parties recognize that the Licensed Premises and Improvements and LICENSEE's use right created pursuant to the provisions of this License are tax exempt, as of the date hereof. To the extent that the tax-exempt status for the Licensed Premises, improvements or use right created hereby are hereafter

withdrawn or changed, LICENSOR and LICENSEE shall be responsible for payment of applicable taxes as follows:

(a) LICENSOR shall be responsible for all taxes attributable to the Licensed Premises exclusive of the LICENSEE's Improvements; and

(b) LICENSEE shall be responsible for taxes attributable to the Improvements owned by LICENSEE and for LICENSEE's use right.

Section 12.02 INDEMNIFICATION. LICENSEE shall indemnify and defend LICENSOR and the Licensed Premises and any improvements now or hereafter located on the Licensed Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this Article XII to be paid by LICENSEE, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition.

XIII. HOLDING OVER

Section 13.01 HOLDING OVER WITH CONSENT. In the event that LICENSEE holds over and remains in possession of the Licensed Premises with the written consent of the LICENSOR, that holding over shall be deemed to be from month to month only, and upon all of the same terms, covenants and conditions as contained in this License; however LICENSEE shall pay LICENSOR market rent for the use of the Improvements during any such holdover period.

Section 13.02 HOLDING OVER WITHOUT CONSENT. In the event that this LICENSEE holds over and remains in possession of the Licensed Premises without written consent of the LICENSOR, that holding over shall constitute LICENSEE a trespasser.

XIV. NONDISCRIMINATION

Section 14.01 NONDISCRIMINATION. The LICENSOR and LICENSEE, for themselves and their representative do hereby agree that no persons on the grounds of race, age, color, religion, sex, disability, ancestry, national origin, or place of birth shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Improvements and the Licensed Premises.

XV. FORCE MAJEURE

Section 15.01 FORCE MAJEURE EVENT. Neither party shall be considered to be in default in performance of any obligation hereunder if failure of performance shall be due to a Force Majeure Event. For the purposes of this License, the term "Force Majeure Event" shall mean any cause beyond the control of the party affected, including, but not limited to, flood, earthquake, storm, fire, lightning, pandemic, war, riot, civil disturbance, labor disturbance (except as excluded herein), sabotage, other "Acts of God," and restraint by court order or public authority, which by exercise of due foresight such party could not reasonably have been expected to avoid, and which

by exercise of due diligence it is unable to overcome. Notwithstanding anything to the contrary, the term Force Majeure Event shall **not** be deemed to include (a) any labor disturbance affecting the LICENSEE to the extent that such labor disturbance involves direct employees of the LICENSEE who are performing work on the Improvements, except for a national strike in the United States, (b) the climate for the geographic area of the Licensed Premises, (c) the occurrence of any manpower or material shortages or (d) any delay, default or failure (direct or indirect) in obtaining materials, or any contractor, subcontractor or worker performing any work on the Improvements or any other delay, default or failure (financial or otherwise) of a contractor, subcontractor, vendor or supplier. LICENSEE shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own acts, omissions or negligence or to removable or remediable causes that it fails to remove or remedy with reasonable dispatch.

Section 15.02 Burden of Proof. In the event that the parties are unable in good faith to agree that a Force Majeure Event has occurred, the burden of proof as to whether a Force Majeure Event has occurred shall be upon the party claiming a Force Majeure Event.

Section 15.03 Excused Performance. If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, except for the obligation to pay money, that party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected; provided that:

(i) The nonperforming party gives the other party prompt notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such party's obligations hereunder, and continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(ii) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(iii) The nonperforming party shall exercise all reasonable efforts to mitigate or limit damages to the other party;

(iv) The nonperforming party shall exercise all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(v) When the nonperforming party is able to resume performance of its obligations under this Agreement, that party shall give the other party written notice to that effect and shall promptly resume performance hereunder.

Section 15.04 Termination for Force Majeure. Notwithstanding anything contained in this section to the contrary, if either party is rendered unable to perform its obligations hereunder, in whole or in substantial part, because of a Force Majeure Event lasting for a period of ninety (90) consecutive days or one hundred fifty (150) days in the aggregate, either party shall have the option of terminating this License, exercisable by giving thirty (30) days written notice to the other party, at any time after such Force Majeure Event has continued for a period of ninety (90) consecutive days or one hundred fifty (150) days in the aggregate and prior to the performance or resumption of performance by the party claiming a Force Majeure Event. In the event of any termination under this section by the LICENSOR or LICENSEE, LICENSEE shall, at the election of

LICENSOR, vacate the Licensed Premises and either (a) leave all Improvements in place or (b) raze all Improvements from the Property, or those designated to be razed by LICENSOR, and otherwise leave the Licensed Premises in substantially the same condition it was in on the date this License became effective, normal wear and tear excepted.

XVI.
MISCELLANEOUS

Section 16.01 NOTICES. Any notice provided for herein shall be given by written instrument, personally delivered or sent by U.S. mail, postage prepaid, to:

LICENSOR: City of McKinney
Attention: City Manager's Office
401 E. Virginia
McKinney, Texas 75069

With copy to: City Attorney
Mark S. Houser
Brown & Hofmeister, LLP
740 E. Campbell, Suite 800
Richardson, TX 75081

LICENSEE: Harvest Seed Project Foundation
Attention: Rick Wells
P.O. Box 2712
McKinney, Texas 75070

With copy to: or such address that LICENSOR or LICENSEE designates in writing to the other party.

Section 16.02 ENTIRE AGREEMENT. This License embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

Section 16.03 APPLICABLE LAWS. This License is entered into subject to the charter and ordinances of LICENSOR as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal, state and local laws. LICENSEE also agrees to obtain, from all governmental authorities having jurisdiction, all licenses, certificates and permits necessary for the conduct of its operations and to keep them current.

Section 16.04 SEVERABILITY. If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this License are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this License shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 16.05 SUCCESSORS AND ASSIGNS. LICENSOR and LICENSEE shall bind themselves, their successors, executors, administrators and assigns to the other party to this License. LICENSEE shall not assign, sublet, subcontract or transfer any interest in this License without the written consent of LICENSOR. No assignment, delegation of duties or subcontract under this License shall be effective without the written consent of LICENSOR, such consent to be in the complete discretion of LICENSOR.

Section 16.06 REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy by law of equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this License may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this License.

Section 16.07 INDEPENDENT CONTRACTOR. LICENSEE covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of LICENSOR and that LICENSEE shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between LICENSOR and LICENSEE, their officers, agent, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership between LICENSOR and LICENSEE.

Section 16.08 NON-WAIVER. It is further agreed that one (1) or more instances of forbearance by LICENSOR in the exercise of its rights herein shall in no way constitute a waiver thereof.

Section 16.09 VENUE. The parties to this License agree and covenant that this License shall be enforceable in McKinney, Texas; and that if legal action is necessary to enforce this License, exclusive venue shall lie only in Collin County, Texas.

Section 16.10 LICENSOR'S GOVERNMENTAL POWERS AND IMMUNITIES. It is understood and agreed that LICENSOR, through the execution of this License, does not waive or surrender any of its governmental powers or immunities.

Section 16.11 HEADINGS. The headings of this License are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section 16.12 AMENDMENTS IN WRITING. This License cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the parties.

Section 16.13 MUTUAL ASSISTANCE; GOOD FAITH. During the term of this License, to the extent practicable, the parties agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this License. In this connection, the parties shall, from time to time, meet upon the reasonable request of each other and shall confer in good faith, amicably and in a businesslike manner, with respect to the current and future operation of the Licensed Premises and Improvements and with a view toward resolving any problems which may arise. Except as otherwise provided herein or by law, a party shall not unreasonably withhold its approval of any act or request of the other as to which its approval is necessary or desirable.

Section 16.14 NO VOLUNTARY LIENS PERMITTED AGAINST LICENSED PROPERTY. LICENSEE shall have no right to encumber by mortgage, deed of trust or security agreement (herein referred to as the “**Mortgage**”) LICENSEE’s rights in the Licensed property created by this License, to secure any debt of LICENSEE.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the day and year written above:

[SIGNATURES ON FOLLOWING PAGE]

Date: _____

**HARVEST SEED PROJECT
FOUNDATION, a Texas nonprofit
corporation**

BY: _____
(Signature)

(Print Name)

(Title)

Date: _____

**THE CITY OF MCKINNEY, a Texas,
home-rule municipal corporation**

BY: _____
Paul G. Grimes, City Manager

APPROVED AS TO FORM:

CITY ATTORNEY

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2025 by _____, of **HARVEST SEED PROJECT FOUNDATION**, a Texas nonprofit corporation, on behalf of such corporation.

Notary Public, State of Texas

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2025 by Paul G. Grimes, City Manager of the **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public, State of Texas