

Taste Project

Taste Project is a non-profit, pay-what-you-can model restaurant to provide healthy nutritious food to anyone who needs or wants a nutritious meal. They plan to lease, redevelop, and occupy a 13,000 SF City-owned building, which was formerly the Water Utilities department (and then temporarily an express library during reconstruction of the City's main library), located at 200 North Cooper Street in downtown Arlington, which is located in a USDA food desert where a significant number of residents are low income and do not have adequate access to healthy nutritious food.

In Tarrant County, 13% of residents experience food insecurity. Of those, 40% live at or above the federal poverty line but do not qualify for traditional government programs like SNAP. 90% of hungry people are not homeless and have at least one working adult in the household.

Additionally, 41% of college students experience food insecurity. The University of Texas at Arlington is less than one mile from 200 North Cooper Street, with more than 10,000 students living on or adjacent to campus. While the university has taken steps to address some of the food insecurity issues on campus, the Coalition of Urban Serving Universities cites "more discrete and innovative food campaigns and initiatives are still needed to increase outreach".

Currently, Taste Project has its flagship community restaurant in Fort Worth which is a full-service restaurant, and the Arlington location would be its second.

The menu has no prices and guests can do one of the following:

- pay what you can afford, or
- pay what you would typically pay, or
- pay what you would typically pay, plus a little extra to help a neighbor in need

In addition to the pay-what-you-can meal program, Taste Project also provides a culinary training program with graduates receiving an average \$15/hour job placement. They also do a farm/garden program.

The lease of the City-owned building is for 10 years, with two 5-year renewal options, the cost of which will be paid by Taste Project. The lease agreement would provide for the renovation of a City facility, the creation of a 100+ seat full service restaurant, production kitchen, culinary classroom, headquarter office for Taste Project, and possible future hydroponic garden. Improvements would also include façade and landscaping improvements to align with the City of Arlington's revitalization plan and culture.

Taste Project

Improvements are estimated at \$1,000,000+ and are contingent on architectural design and construction costs.

The agreement was later amended on August 22, 2023, to allow for additional construction time, with a new deadline of August 31, 2024.

Additionally, the City agreed to fund \$350,000 towards the cost of necessary roof and HVAC repairs needed to accommodate the permitted improvements. Taste will provide the appropriate receipts for work done within 60 days of the work.

Staff Report



Lease Agreement with Taste Project – 200 North Cooper Street

City Council Meeting Date: 08-02-2022	Document Being Considered: Resolution
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RECOMMENDATION

Approve a resolution authorizing the City Manager or his designee to execute a ten-year lease agreement with Taste Project, a Texas nonprofit corporation, for a restaurant designed to provide food security for residents of Arlington and Tarrant County, including students at the University of Texas at Arlington, whose nutritional needs are not being fully met by traditional government programs, to be located at 200 North Cooper Street, Arlington, Texas, 76012.

PRIOR BOARD OR COUNCIL ACTION

None.

ANALYSIS

Taste Project desires to create a pay-what-you-can afford restaurant to provide healthy nutritious food through its nonprofit model. The building located at 200 North Cooper Street is located in a USDA food desert where a significant number of residents are low income and do not have adequate access to healthy nutritious food.

In Tarrant County, 13 percent of the residents are food insecure, of which 40 percent live above the federal poverty line and do not qualify for traditional government programs like SNAP. Ninety percent of the hungry are not homeless but have at least one working adult in the household. In addition, 41 percent of college students are food insecure. The University of Texas at Arlington is less than one mile from 200 North Cooper Street, with more than 10,000 students living on or adjacent to campus. While the university has taken steps to address some of the food insecurity issues on campus, the Coalition of Urban Serving Universities cites "more discrete and innovative food campaigns and initiatives are still needed to increase outreach".

Currently, Taste Project has a community restaurant in Fort Worth which is a full-service restaurant. The menu has no prices and guests can do one of the following: (1) pay what you can afford, (2) pay what you would typically pay, or (3) pay what you would typically pay, plus a little extra to help a neighbor in need. In addition to the pay-what-you-can meal program, Taste Project also provides a culinary training program with graduates receiving a \$15/hour average placement. They also do a farm/garden program.

Taste Project proposes to lease a portion of the City building at 200 North Cooper Street (approximately 13,000 square feet), which was originally a Water Department building and was most recently used as the Central Library Express during construction of the George Hawkes Downtown Library. The lease agreement is for 10 years, with two 5-year options to renew. All renovation costs will be paid by Taste Project.

The lease agreement would provide for the renovation of a City facility, the creation of a 100+ seat full service restaurant, production kitchen, culinary classroom, headquarter office for Taste Project, and possible future hydroponic garden. Improvements would also include façade and landscaping improvements to align with the City of Arlington's revitalization plan and culture. Improvements are estimated at \$1,000,000+ and are contingent on architectural design and construction costs.

FINANCIAL IMPACT

No financial impact is anticipated to the general fund.

ADDITIONAL INFORMATION

Attachments:

Resolution

Lease Agreement

Under separate cover:

None

Available in the City Secretary's Office

None

STAFF CONTACT(S)

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Resolution No.

A resolution authorizing the City Manager or his designee to execute a Lease Agreement with Taste Project, a Texas nonprofit corporation, relative to a pay-what-you-can restaurant to be located at 200 North Cooper Street, City of Arlington, Tarrant County, Texas

WHEREAS, Taste Project desires to create a pay-what-you-can restaurant through its nonprofit model in a USDA designated food desert where a significant number of residents are low income and do not have adequate access to healthy nutritious food; and

WHEREAS, goals of the project include creating a 100+ seat full service restaurant, production kitchen, culinary classroom, headquarter office for Taste Project, and possible future hydroponic garden; and

WHEREAS, Taste will invest \$1,000,000+ in renovation to the space which will belong to the City once lease expires or terminates; and

WHEREAS, the City desires to enter into a Lease Agreement with Taste Project, for the creation of a pay-what-you-can restaurant located at 200 North Cooper Street, City of Arlington, Tarrant County, Texas; and

WHEREAS, the City believes leasing the property to Taste Project will serve a public purpose; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is hereby authorized to execute a Lease Agreement with Taste Project, a Texas nonprofit corporation, relative to a pay-what-you-can restaurant use to be located at 200 North Cooper Street.

III.

A substantial copy of said Lease Agreement is attached hereto and made a part hereof for all purposes.

IV.

That this Resolution shall be effective from and after its passage by the City Council and approval by the Mayor in accordance with law and the provisions of the Charter of the City of Arlington, and it is accordingly so resolved.

PRESENTED AND PASSED on this the _____ day of _____, 2022, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

ATTEST:

JIM R. ROSS, Mayor

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY: _____

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

LEASE AGREEMENT

This LEASE AGREEMENT (hereafter referred to as the "LEASE"), is made and entered into on this 11th of August, 2022 (hereafter referred to as the "Execution Date") by and between the **CITY OF ARLINGTON**, a Texas municipal corporation (hereafter referred to as "LESSOR"), and **TASTE PROJECT**, a Texas nonprofit corporation (hereafter referred to as "LESSEE").

WITNESSETH:

- WHEREAS, the CITY is the owner of the real property which is the subject of this lease; and
- WHEREAS, the CITY and LESSEE are mutually desirous of entering into this LEASE for the benefit of the public; and
- WHEREAS, The CITY finds that execution and delivery of this LEASE promotes the state and local economy, alleviates unemployment and underemployment within the CITY, and provides food security for residents of Arlington and Tarrant County, including students at the University of Texas at Arlington, whose nutritional needs are not being fully met by traditional government programs, and
- WHEREAS, in consideration of the rents to be paid and other consideration, CITY hereby enters into this LEASE and leases, lets and demises to LESSEE the LEASED PREMISES (defined herein); and
- WHEREAS, LESSEE and LESSOR enter into this LEASE and contract, stipulate and agree during the term of this LEASE, and any extensions thereof, to follow and be subject to the following terms, covenants and conditions; NOW THEREFORE

1.
Term

- 1.1 The term of this LEASE shall be a period beginning on the Execution Date and ending on the **Tenth (10th)** anniversary of the date a certificate of occupancy is issued for the Leased Premises after completion of the Permitted Improvements.
- 1.2 Upon consent by LESSOR, LESSEE shall have two (2) options to extend the term of the Lease for an additional 5 years each option (Renewal Lease Term), upon the same terms and conditions as contained in the Original Lease, provided LESSEE gives LESSOR thirty (30) days' notice prior to the expiration date of the Initial Lease Term.

2.
LEASED PREMISES

- 2.1 The LEASED PREMISES shall be:
- Approximately 13,000 square feet of the building located at 200 N. Cooper Street, Arlington, Texas, further described in Exhibit "A" attached hereto and incorporated herein for all purposes. The LEASED PREMISES for purposes herein in shall include non-exclusive use of the sidewalks, parking lot, and driveways as shown on Exhibit "B" attached hereto and incorporated herein for all purposes.
- 2.2 The property and the improvements described in 2.1 are hereinafter referred to as the "LEASED PREMISES."

3.
Grant of LEASE

3.1 Pursuant to the terms and conditions of this LEASE, LESSOR hereby leases, lets and demises to LESSEE the LEASED PREMISES described in 2.1 above.

4.
Use of LEASED PREMISES

4.1 The LESSEE will occupy and use the LEASED PREMISES for the following Permitted Purpose:

Operation of a public non-profit restaurant with a no-prices menu and any uses incidental thereto.

4.2 LESSEE shall not use nor permit the use of the LEASED PREMISES for any other or additional purpose that is not a Permitted Purpose without first obtaining the written consent of the LESSOR, which consent may be granted, withheld, conditioned or delayed in LESSOR's sole and absolute discretion. LESSOR acknowledges that the use of the LEASED PREMISES is subject to all statutes, laws, rules, ordinances, regulations, permits, or orders of any governmental entity at any time applicable to the LEASED PREMISES.

4.3 LESSESE agrees it shall not:

- (a) use or allow the LEASED PREMISES to be use for the display of any lewd, offensive, or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive, or immoral activities;
- (b) use or allow the LEASED PREMISES to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;
- (c) use or permit the LEASED PREMISES to be used for the public display or public or private sale of guns or other weapons, ammunition, explosives, or fireworks;
- (d) engage in activities on or in the LEASED PREMISES that create material or unreasonable dust, noise, odors, traffic hazards or other effects that unreasonably disturb the use and enjoyment of the neighboring properties or the general public;
- (e) use, generate, manufacture, produce, store, treat or dispose of hazardous materials (other than those materials customarily used in the cleaning of the LEASED PREMISES provided such are stored and disposed of in compliance with all applicable laws);
- (f) cause or permit undue accumulation of garbage, trash, rubbish, or any other refuse in, on or about the LEASED PREMISES, and
- (g) create, cause, maintain, or permit any public or private nuisance in, on or about the LEASED PREMISES.

5.
Consideration

5.1 Consideration for the Term of this LEASE shall be One Dollar and other good and valuable consideration, including but not limited to services to Arlington Citizens by LESSEE as set out in the LEASE.

6.
Improvements

- 6.1** During the Term of this LEASE and any extensions thereof, LESSEE shall (subject to the other terms and conditions of this LEASE) have the ability with prior written approval by LESSOR to remodel, renovate and/or refurbish the LEASED PREMISES and any improvements and facilities thereon, or any part thereof, and to build and construct new additions and improvements as approved by LESSOR. LESSEE is responsible for all costs of the renovations and improvements thereon.
- (a) Prior to entering into any contract for any work, LESSEE shall first submit or cause to be submitted to LESSOR for written approval, a written request for approval of such work and complete architectural, engineering and/or geotechnical plans and specifications of the proposed work in such detail so as to allow a proper review for approval or disapproval, and the name of the contractor to whom LESSEE proposes to award the contract for any work. When constructing any improvement upon the LEASED PREMISES, the plans and specifications shall be prepared by state-licensed architects or engineers who are acceptable to LESSOR's Building Official. LESSEE will require any contractor to furnish a "Performance", "Payment" and minimum one (1) year "Maintenance" Bond in the full amount of the improvements, repairs, or other work in favor of the LESSOR. Each bond will be payable to the LESSOR and approved as to form, substance and surety by LESSOR. LESSEE will accomplish the work as approved in accordance with the plans and specifications, or as the same may thereafter be modified with the consent of LESSOR. LESSOR may not withhold or condition its consent to the making of an alternation or improvement unless the making or installation of the improvements or alterations would (a) adversely affect the Building Structure, (b) adversely affect the Building Systems, (c) not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) unreasonably interfere with the normal and customary business operations of the other Tenants in the Building (individually and collectively, a "DESIGN PROBLEM").
 - (b) Prior to commencing any work, LESSEE shall provide reasonable evidence to the LESSOR that it has obtained all funds, in the form of cash, grants, pledged commitments, or loans, necessary for construction of the improvements.
 - (c) LESSEE shall include in all LESSEE construction contracts the following provisions:
 - (1) **Contractor does hereby contract to waive all claims, release, indemnify, defend and hold harmless the CITY of Arlington and all of its officials, officers, agents and employees, 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, his officers, agents, employees, subcontractors, invitees or any other persons, arising out of or in connection with the performance of this contract, and contractor will at his or her own cost and expense defend and protect the City of Arlington from any and all such claims and demands.**
 - (2) **Contractor does hereby contract to waive all claims, release, indemnify, defend and hold harmless the City of Arlington and all of its officials, officers, agents and employees, from and against any and all claims, losses, damages, suits, demands or causes of action, and liability of every kind including all expenses of litigation and/or settlement, court costs and attorneys' fees for injury or death of any person or for loss of, damages to, or loss of use of any property, arising out of or in connection with the performance of this contract. 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 Arlington, its officers, officials, agents or employees. It is the express intention of the parties thereto that the indemnity provided for in this paragraph is indemnity by contractor to indemnify and protect the City of Arlington from the consequences of the City of Arlington's own negligence, whether that negligence is a sole or concurring cause of the injury, death or damage.

- (3) **In any and all claims against any party indemnified hereunder by any employee of the 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 for the contractor or any subcontractor under workers' compensation or other employee benefit acts.**
- (d) LESSEE shall require the contractor, in all LESSEE construction contracts, to furnish insurance in such amounts as specified in Section 11 of this LEASE.
- (e) LESSEE agrees that all work to be performed by it or its contractor, including all workmanship and materials, shall be of substantial compliance with industry standards for the type of business contemplated herein with the specifications approved by the LESSOR, and such work shall be subject to its inspection during the performance thereof and after it is completed. LESSEE shall assume the risk of loss or damage to all such work prior to the completion thereof. LESSEE shall repair or replace any such loss or damage in a timely manner for such repair or replacement and without cost to LESSOR.
- (f) LESSEE shall deliver within five (5) business days of a request from LESSOR, written progress reports of the work performed and shall at all times during the Term of this LEASE and any extensions thereof, keep construction reports and drawings current showing any changes or modifications made in or to the improvements constructed on the LEASED PREMISES.
- (g) LESSEE shall 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 LESSEE as such obligations mature. LESSEE shall provide LESSOR all bills paid affidavits from LESSEE and LESSEE's contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of LESSEE or arising out of or relating to this LEASE. LESSEE expressly agrees in the making of any repairs on the improvements that it will neither give nor grant, nor purport to give or grant any mechanic's or materialman's lien upon the LEASED PREMISES 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 would be entitled, as a matter of law, to a mechanic's or materialman's lien against said LEASED PREMISES and improvements thereon, and LESSEE will discharge any such lien as soon as reasonably possible after notice of filing thereof.
- (h) Nothing in this LEASE shall be construed as an agreement by the CITY to waive any lien the CITY may have, constitutional, statutory or contractual, upon any leasehold improvements on the property.
- (i) Unless otherwise mutually agreed upon by the parties the complete cost of developing all necessary plans and specifications as provided herein and the construction of improvements and facilities which support the LEASE whether off site or upon the LEASED PREMISES by LESSEE shall be borne solely by LESSEE and be at no expense to LESSOR whatsoever. LESSEE shall be responsible for the repair or replacement in equal or better condition of any offsite areas disturbed by the development of the LEASED PREMISES.

- 6.2 Except as otherwise indicated in this LEASE, all alterations and improvements on or in the LEASED PREMISES at the commencement of the Term, or those that may be erected or installed during the Term, shall immediately become part of the LEASED PREMISES and the property of the LESSOR. Any alterations or improvements erected or installed during any extension of this LEASE shall immediately become part of the LEASED PREMISES and the property of the LESSOR. LESSEE specifically agrees to keep and maintain all buildings and other improvements attached, erected or installed to or upon the real property throughout the Term of the LEASE or any extension thereof, subject to LESSEE'S right to remove certain property at the time of termination of the LEASE as provided in 23.1 below.
- 6.3 Unless otherwise mutually agreed upon by the parties any and all offsite improvements necessary to operate the LEASED PREMISES shall be constructed at LESSEE's sole cost (including the payment of impact fees and other fees). Upon completion, these improvements shall become property of the LESSOR, however LESSEE shall have the obligation to maintain said improvements for Term of the LEASE.
- 6.4 In the construction of any and all drainage improvements, LESSEE shall comply with CITY's subdivision rules and regulations as well as any other applicable statute, law, ordinance, rule or regulation, and LESSEE will obtain prior written approval from the CITY's Department of Engineering Services for all plans and specifications relating to drainage improvements including any off site letters of permission as determined by the accepted engineering plans.
- 6.5 Notwithstanding the foregoing, the LESSOR acknowledges that the LESSEE is permitted to make the improvements identified in **Exhibit "C"** to the LEASED PREMISES without any further consent from the LESSOR (hereafter "Permitted Improvements.") LESSEE shall commence construction on the Permitted Improvements by no later than December 31, 2022. LESSEE shall complete construction of the Permitted Improvements, evidenced by the issuance of a final certificate of occupancy for the LEASED PREMISES, by no later than December 31, 2023.
- 6.6 Nothing herein shall be construed to relieve LESSEE of the obligation to comply with all laws, ordinances, rules, and regulations as well as to secure any permits required.

7.

Acceptance, Care, Maintenance and Repair

- 7.1 LESSEE will inspect the LEASED PREMISES and accept possession of the LEASED PREMISES and any improvements thereon in their "as is" condition when accepted, and subject to all limitations imposed upon the use thereof by the rules and regulations of the federal, state, or local government, or other applicable rules and regulations, and will admit upon acceptance its suitability and sufficiency for the uses permitted hereunder. **LESSOR 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, oral or written, past, present or future of, as to, concerning or with respect to the nature, quality or condition of the LEASED PREMISES, the income to be derived, the suitability of the LEASED PREMISES for uses allowed under this LEASE, or merchantability or fitness for a particular purpose.** Except as may otherwise be provided for herein, the LESSOR shall not be required to maintain nor to make any improvements, repairs or restorations upon or to the LEASED PREMISES, including the HVAC system, located thereon during the Term of this LEASE and any extensions thereof.
- 7.2 LESSEE, unless otherwise mutually agreed upon by the parties, shall throughout the Term of this LEASE and any extensions thereof, assume the entire responsibility, cost and expense for all repair, reconstruction and maintenance whatsoever on the LEASED PREMISES and maintain improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, LESSEE, without limiting the generality hereof, shall:

- (a) Keep at all times, in a clean and orderly condition and appearance, the LEASED PREMISES, all improvements thereon and all of the LESSEE's fixtures, equipment and personal property which are located on any part of the LEASED PREMISES (including but not limited to cleaning, vacuuming, dusting, changing light bulbs, and minor repairs but not to include maintenance of non-leased portions of the building and the exterior lot).
 - (b) Provide and maintain on the LEASED PREMISES all safety equipment required by law, rule, order, ordinance, resolution or regulation.
 - (c) Repair any damage caused by LESSEE to the LEASED PREMISES or adjacent property caused by any agent, employee, representative or invitee of LESSEE.
- 7.3 LESSOR shall be responsible for maintaining all sidewalks, parking lots, and driveways around the building that comprises the LEASED PREMISES. Provided however, if damage to such areas is caused by LESSEE, its officers, agents, employees or invitees, LESSEE shall be responsible for such repairs.

8.

Right of Entry by CITY

- 8.1 The LESSOR, its authorized agents and authorized agents of other governmental agencies, shall have the right to enter the LEASED PREMISES after three (3) days written notice to LESSEE; provided that LESSOR may immediately enter the LEASED PREMISES in the event of an emergency, to conduct inspections of items or areas in order to determine compliance with all federal, state and municipal laws, ordinances, rules and regulations. LESSEE covenants to observe and comply with all applicable laws, rules and regulations pertaining to its activities. The LESSOR will be allowed to move items in and out of the PREMISES with appropriate notice prior to the movement of the items.

9.

Additional Obligations of LESSEE

- 9.1 LESSEE shall comply with all health and safety laws and requirements of any other federal, state or municipal laws, ordinances, rules, regulations and requirements applicable to the LEASED PREMISES.
- 9.2 LESSEE shall not do, nor permit to be done, anything which may interfere with the effectiveness of accessibility of the drainage system, sewage system, fire protection system, sprinkler system, alarm system, or fire hydrants and hoses, if any are located on or adjacent to the LEASED PREMISES.
- 9.3 LESSEE shall repair any damage to any offsite improvements caused by or resulting from any activities or operations of the LESSEE, or LESSEE's agents, employees and contractors.

10.

Subletting and Assignments

- 10.1 LESSEE may sublet or assign any part of the LEASED PREMISES only after receiving the prior written consent of LESSOR, which will not be unreasonably withheld or delayed. Any such subletting, if permitted, shall not release LESSEE from its obligations hereunder.

11.

Damage or Destruction and Insurance

- 11.1 Prior to the commencement of any activity permitted on the LEASED PREMISES as provided in this LEASE, LESSEE shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with companies duly authorized to do business in the State of Texas and satisfactory to the

LESSOR and the LESSOR's Risk Manager. Any contractors and/or subcontractors performing work on the LEASED PREMISES during the term of this agreement shall be required to maintain coverage with the same terms and conditions contained herein.

- (a) Commercial General Liability Insurance; including Premises/Operations, Independent Contractor's Liability and Contractual Liability insuring LESSEE's, LESSEE's officers, directors, agents, employees, invitees and LESSEE's Independent Contractors (or subcontractors), and any of LESSEE's Sublessees liability for property damage and injury to or death of City of Arlington employees and third parties, with combined single limits of liability for bodily injury and property damage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (b) Workers' Compensation Insurance with statutory limits for Workers' Compensation and Employers Liability limits of \$1,000,000 per occurrence, \$1,000,000 for disease each employee and \$1,000,000 for disease policy limit.
- (c) Commercial Property Insurance covering the LESSEE's personal property located at the LEASED PREMISES, against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightning, 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 LESSOR and in an amount sufficient to cover the replacement cost of the personal property dedicated to or necessary to performance of LESSEE's obligations under this LEASE, and the policy or policies of insurance shall be issued to the LESSEE, with LESSOR named as Loss Payee, as their interests may appear. In the event of damage to such personal property, LESSEE agrees to apply any and all insurance proceeds to the repair or repurchase of personal property necessary to continue to operate the LEASED PREMISES for the Permitted Purpose.

(d) Construction Insurance

- (1) For construction of any permanent improvement erected by or on behalf of the LESSEE, the LESSEE or his Contractor shall purchase and maintain, until final completion and acceptance of all work, Builder's Risk Insurance, All Risk Form in an amount equal to one hundred percent (100%) of the construction contract value, as amended, Completed Value Form. This policy shall be written jointly and in the names of the City of Arlington, the LESSEE, the Contractor, Subcontractors and Sub-subcontractors as their interests may appear. The policy shall have the endorsements as follows:
 - a. This insurance shall be specific as to coverage and shall not be contributing insurance with any permanent insurance maintained on the property;
- (2) Prior to the commencement of construction of any permanent improvement, LESSEE or his Contractor shall purchase and maintain until final completion and acceptance of all work:
 - a. General Liability Insurance, Including Premises Operations, Independent Contractors, Contractual Liability and Owners and Contractors Protective Liability coverage to include the indemnity provisions of the construction contract. Coverage shall apply as specified under Paragraph 13.4(b) with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The completed operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the permanent improvements, with evidence of same filed with the City's Risk Manager.

- b. Workers' Compensation Insurance with the same coverages and limits as specified under Paragraph 11.4 (b) above;

(e) Policy Endorsements and Special Conditions

- (1) In all general liability insurance policies previously described herein, the City of Arlington shall be included as an additional insured warranting no operational interest. Coverage as additional insured shall extend to premises/operations and products/completed operations.
- (2) The term "Owner" or "City of Arlington" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the City of Arlington and individual members, employees and agents thereof in their official capacities, or while acting on behalf of the City of Arlington.
- (3) Certificates of each insurance policy required herein shall be delivered to the City of Arlington, ATTN: Risk Manager, Post Office Box 231, MS 63-0790, Arlington, Texas 76004-0231, prior to either beneficial occupancy of the LEASED PREMISES or the commencement of any construction of permanent improvements, whichever occurs first.
- (4) The term "Permanent Improvements" is meant to include, but is not limited to, buildings, structures, wings, annexes to buildings, paved areas, utility lines, roads, fences, drainage improvements, irrigation improvements, landscaping, light apparatuses, walls or anything affixed to any building in such a manner as to become a fixture under Texas law.
- (5) It being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policy, insurers shall have no right of recovery or subrogation against the City of Arlington and all insurance policies required herein shall provide the City of Arlington with a Waiver of Subrogation.
- (6) The policy clause "Other Insurance" shall not apply to the City of Arlington where the City of Arlington is insured on the policy.
- (7) All insurance policies required herein shall provide Thirty (30) days notice of cancellation to the City of Arlington. Ten (10) days notice is required if cancellation is due to non-payment of premium.
- (8) Companies issuing the insurance policies shall have no recourse against the City of Arlington for payment of any premiums or assessments for any deductibles which all are at the sole risk of the LESSEE.
- (9) LESSEE shall require its general construction contractor to carry the required insurance until final completion and acceptance of all work. Certificates evidencing such coverage and satisfactory to the CITY shall be provided to the City Manager and the Risk Manager prior to commencement of construction.
- (10) LESSEE shall not do or permit to be done any act or thing in or upon the LEASED PREMISES which will invalidate or be in conflict with the certificate of occupancy or the Texas State Standard Form of fire, boiler, sprinkler, water damage or other insurance policies covering the buildings and the fixtures therein; and, the LESSEE shall, at its own expense, comply with applicable rules, orders, regulations or requirements of any local Board of Fire Underwriters or any other similar body having jurisdiction.

- (11) Approval, disapproval or failure to act by the City of Arlington regarding any insurance supplied by LESSEE (or any of LESSEE's subcontractors or sublessees) shall not relieve the LESSEE of full responsibility or liability for damages and accidents as set forth in the insurance documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the LESSEE from liability.
- (12) Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted; provided, however, that none of the specified limits stated herein may be lowered thereby.
- (13) In the event that any claim for loss or damage exceeds the limits of the insurance policies and/or is not insured under the terms of the policies, the LESSEE shall stand the risk at their sole expense.
- (14) It is understood and acknowledged by both parties that the minimum amounts for insurance, as provided for in this Section 11, may be adjusted to the then prevailing amounts for insurance required by the LESSOR at any time during the Term of the LEASE.

11.2 Throughout the Term of this LEASE, LESSOR shall, obtain, keep and maintain a property insurance policy insuring LESSOR'S interest in structures and fixtures at the location, as well as Permitted Improvements installed by LESSEE at the LEASED PREMISES against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightning, rain, sleet, snow, sprinkler leakage, riots, civil commotion, vandalism, malicious mischief, and aircraft/vehicle damage. LESSEE shall pay LESSOR annually an amount equal to the LESSOR's cost for insuring the Permitted Improvements. LESSEE shall be included as a loss payee on such policy to the extent of their interest in Permitted Improvements.

- (a) The amount of coverage shall be based upon the replacement cost of the LEASED PREMISES, including any Permitted Improvements once construction is complete. LESSEE shall report to LESSOR'S Risk Manager the construction cost of the Permitted Improvements at the time construction is complete so the insured value may be adjusted to add this coverage. The LEASED PREMISES shall be appraised within 12 months following completion of the Permitted Improvements to ensure the amount of coverage is sufficient.
- (b) In the event of damage or destruction to all or a portion of the LEASED PREMISES, LESSEE shall promptly secure or cause to be secured the area of damage or destruction to safeguard against injury to persons or property, and promptly thereafter, remediate any hazard and restore the LEASED PREMISES to as nearly as practicable a condition as existing immediately prior to such damage or destruction. LESSEE shall receive any and all insurance proceeds applicable to the repair or replacement of Permitted Improvements, and shall apply such to the repair and restoration of the LEASED PREMISES. LESSEE shall be responsible for payment of any and all deductibles.

12.

Liabilities and Indemnities

12.1 LESSEE DOES HEREBY CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF ARLINGTON AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES FOR (A) INJURY OR DEATH OF ANY PERSON, (B) ANY LOSS OR DAMAGE TO OR SUSTAINED BY ANY PERSON OR, (C) LOSS OF USE OF, OR

DAMAGE TO, ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT OR OCCURRING ON OR ABOUT THE LEASED PREMISES AS A RESULT OF ANY OPERATION, WORKS, ACTS OR OMISSIONS PERFORMED ON OR ABOUT THE LEASED PREMISES, OR OFF THE LEASED PREMISES IF RELATED TO THE LESSEE'S OPERATIONS OR ACTIONS. 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, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH REQUIRES LESSEE TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO THE SOLE OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OF ARLINGTON AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES.

- 12.2 LESSEE DOES HEREBY CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF ARLINGTON AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES FOR OR IN CONNECTION WITH (A) ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT ARISING FROM OR OUT OF THE OPERATIONS OF LESSEE, OR (B) ANY CLAIM FOR COMMISSION OR BROKERAGE MADE BY ANY SUCH BROKER WHEN SUCH CLAIM IS BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION OF THE LESSEE.
- 12.3 IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE LESSEE, ANY CONTRACTOR OR 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 FOR THE LESSEE OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

13.

Environmental Concerns
and Monitoring Requirements

- 13.1 LESSEE TO THE EXTENT ALLOWED BY LAW HEREBY RELEASES, DISCHARGES AND HOLDS LESSOR HARMLESS AND AGREES TO INDEMNIFY LESSOR FOR CLAIMS, LIABILITIES, SUITS, DAMAGES, EXPENSES AND FINES ARISING OUT OF OR RESULTING FROM ANY SUDDEN OR GRADUAL OR ANY OTHER RELEASE, DISCHARGE, SPILL, CONTAMINATION OR POLLUTION BY OR FROM HAZARDOUS WASTES OR SUBSTANCES CAUSED BY LESSEE, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, OFFICERS, INVITEES AND REPRESENTATIVES, EXISTING, CREATED OR OCCURRING ON OR UNDER THE LEASED PREMISES. LESSEE'S OBLIGATIONS AND LIABILITIES UNDER THIS SECTION SHALL CONTINUE SO LONG AS LESSOR REMAINS RESPONSIBLE FOR ANY RELEASE, SPILLS, DISCHARGES OR CONTAMINATION OF HAZARDOUS SUBSTANCES OR

WASTES EXISTING ON THE LEASED PREMISES OR RESULTING OR CAUSED BY OR ATTRIBUTABLE TO THE LESSEE.

- 13.2** LESSEE acknowledges that its uses of the LEASED PREMISES and the operations, maintenance and activities conducted thereon may be subject to federal, state and local laws, rules and regulations, collectively referred to as "Governmental Regulations". As a material covenant of the LEASE, LESSEE, at its sole expense, shall comply with all such present and future Governmental Regulations, applicable to LESSEE's construction, operations, maintenance, use and activities on the LEASED PREMISES. In no event shall government regulations, including the control of ingress or egress to protect public safety and/or to prevent the spread of communicable disease, virus, or pandemic constitute grounds for termination of this LEASE.
- 13.3** LESSEE's obligation under this section shall survive any assignment or subletting of the LEASED PREMISES. Furthermore, LESSEE's obligations under this section shall survive the termination of this LEASE as to any activity or omissions which occurred during the Term of the LEASE or any extensions thereof.
- 13.4** The term "hazardous wastes" is used herein as it is defined in 42 U.S.C. Section 69.01 *et seq.* The term "hazardous substances" is used herein as it is defined in CERCLA. These terms shall also include, for the purposes of the LEASE, any substance requiring special treatment, handling, manifesting and records according to a governmental authority.

14.

**Rules and Regulations,
Sign and Development Standards**

- 14.1** LESSEE agrees to observe and obey any and all rules and regulations and all other federal, state and municipal rules, regulations, ordinances and laws including, but not limited to the impact fees, subdivision rules and regulations, zoning, landscape standards and the construction sections of the Code of the City of Arlington and require its officers, agents, employees, contractors and suppliers to observe and obey the same.
- 14.2** LESSEE 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.
- 14.3** Any signs placed at or on the exterior of the LEASED PREMISES shall comply with CITY ordinances.

15.

Utilities

- 15.1** LESSEE will, at its expense, make arrangements for the installation or connection of whatever private utilities it may desire or need in connection with the use of LEASED PREMISES, including but not limited to electricity, water/sewer, telecommunications, internet. LESSEE shall be responsible for all costs of such utilities.

16.

Nondiscrimination

- 16.1** The LESSOR and LESSEE, for itself, its personal representative, successors in interest, assigns and heirs, as a part of the consideration hereof, do hereby covenant and agree that:

- (a) No persons on the grounds of race, color, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the LEASED PREMISES;
- (b) No persons on the grounds of ability to pay shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination as patrons of the proposed non-profit restaurant use of the LEASED PREMISES;
- (c) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

17.

Rights of Entry Reserved

- 17.1** In the event that any personal property of LESSEE shall obstruct the access of the LESSOR, its officers, employees, agents or contractors, or the utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, LESSEE shall move such property, as directed by the LESSOR or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If LESSEE shall fail to so move such property after direction from the LESSOR or said utility company to do so, the LESSOR or the utility company may move it, and the LESSEE hereby agrees to pay the costs of such moving upon demand, and further, LESSEE hereby waives any claim for damages as a result therefrom.

18.

Additional Rents and Charges

- 18.1** Except as provided elsewhere in this LEASE, in the event LESSEE, its lender, heir, assignees or successors fails within thirty (30) days after receipt of written notice from LESSOR to perform or commence to perform any obligation required herein to be performed by LESSEE, the LESSOR may enter the LEASED PREMISES (without such entering causing or constituting a cancellation of this LEASE or an interference with the possession in such LEASED PREMISES by LESSEE) and do all things reasonably necessary to perform such obligation, charging to LESSEE the cost and expense thereof, and LESSEE agrees to pay to the LESSOR upon demand such charge. LESSOR hereby agrees that placing orders for any structural components and/or requesting bids on repairs means to commence to maintain, clean, repair, replace, rebuild or repaint for purposes of this section.
- 18.2** If the LESSOR elects to pay any sum or sums or incur any obligation or expense by reason of the failure, neglect or refusal of LESSEE to perform or fulfill any one or more of the conditions, covenants or agreements contained in this LEASE, or as the result of any act or omission of LESSEE contrary to said conditions, covenants or agreements, LESSEE hereby agrees to pay the sum or sums so paid or expense so incurred by the LESSOR, including all interests, costs, damages and penalties, as the result of such failure, neglect or refusal of LESSEE. In such event, the total of such amounts may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by the LESSOR in the same manner and with like remedies as if it were originally a part of the rent provided for in this LEASE. The LESSEE has the right to contest any request as unreasonable and unnecessary.

19.

Default

- 19.1** The following events shall be deemed to be events of default by LESSEE under this LEASE:

- (a) LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) business days after notice of such delinquency is delivered to LESSEE.
 - (b) LESSEE shall fail to procure or maintain any insurance policy required under the LEASE, and such failure shall continue for a period of five (5) business days after notice of such failure is delivered to LESSEE.
 - (c) LESSEE shall fail to comply with any term, provision, clause, sentence, covenant or any other item of this LEASE, other than the payment of rent and procurement and maintenance of insurance, and shall not cure such failure within thirty (30) calendar days after written notice thereof to LESSEE.
 - (d) LESSEE shall desert or vacate the LEASED PREMISES for a period of five (5) calendar days or more.
 - (e) It is recognized that if LESSEE 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 LESSEE's performance of this LEASE. Accordingly, it is agreed that upon the occurrence of any such event, LESSOR shall be entitled to request of LESSEE 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) calendar days of delivery of the request shall entitle LESSOR to terminate this LEASE and to the accompanying rights set forth below.
- 19.2** Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:
- (a) Terminate this LEASE in which event LESSEE shall immediately surrender the LEASED PREMISES to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE and any other person who may be occupying the LEASED PREMISES or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damages which LESSOR may suffer by reason of such termination, whether through inability to relet the LEASED PREMISES on satisfactory terms or otherwise.
 - (b) Enter upon and take possession of the LEASED PREMISES and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, relet the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.
 - (c) Enter upon the LEASED PREMISES, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this LEASE; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur, thus effecting compliance with LESSEE's obligations under this LEASE; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.
- 19.3** No reentry or taking possession of the LEASED PREMISES by LESSOR shall be construed as an election on its part to terminate this LEASE, unless a written notice of such intention shall be given to

LESSEE. Notwithstanding any such reletting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this LEASE 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 payments due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of payments following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of 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 LESSOR 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 LESSOR may suffer by reason of termination of this LEASE or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this LEASE for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

20.

Termination By LESSEE

- 20.1** In addition to any other right of termination herein given to LESSEE, or any other right to which it may be entitled by law, equity or otherwise, as long as LESSEE is not in default of this LEASE, LESSEE may cancel this LEASE and thereby terminate all of its rights and unaccrued obligations to the CITY hereunder, by giving CITY at least ninety (90) days advance written notice. Should LESSEE terminate this LEASE in accordance with this Section 20, LESSEE shall not open another location for its public non-profit restaurant in Dallas County or Tarrant County for a period of time equal to the time that would have been remaining on the Term prior to termination. The proceeding sentence shall survive termination of this LEASE.

21.

Condemnation

- 21.1** If during the Term of this LEASE or any extensions thereof, all of the LEASED PREMISES should be taken for any public or quasi-public use under any governmental law or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this LEASE shall terminate and the LESSEE, its heirs, successors and assignees shall be fairly compensated for the fair market value of their improvements on and to the LEASED PREMISES, but shall have no claim for loss or damage to their leasehold interests. Rent shall be abated during the unexpired portion of this LEASE effective as of the date of the taking of the premises by the condemning authority.
- 21.2** If less than all, but more than fifty percent (50%), of the LEASED PREMISES is taken for any public or quasi-public use under any governmental law or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, LESSEE may terminate the LEASE by giving written notice to LESSOR within thirty (30) days after possession of the condemned portion is taken by the entity exercising the power of condemnation. If the LEASED PREMISES are partially condemned and LESSEE fails to exercise the option provided in the preceding paragraph to terminate the LEASE, or if less than fifty percent (50%) of the LEASED PREMISES are condemned, this LEASE shall not terminate but LESSOR shall immediately, at its sole expense, restore and reconstruct the building and other improvements situated on the LEASED PREMISES to make them reasonably tenantable and suitable for the uses for which the premises are leased.

22.
Surrender and Right of Re-entry

- 22.1** Upon the cancellation or termination of this LEASE, LESSEE agrees peaceably to surrender the LEASED PREMISES to the LESSOR. Upon any such cancellation or termination, the LESSOR may re-enter the LEASED PREMISES together with all improvements and additions thereto at CITY's election. Furthermore, upon such cancellation or termination, and for a reasonable time thereafter (not exceeding thirty [30] days after such cancellation or termination), LESSEE shall have the right to remove its personal property, fixtures and trade equipment which it may have on the LEASED PREMISES, provided the removal thereof does not impair, limit or destroy the utility of said LEASED PREMISES and LESSEE either repair or pay the costs for any repairs caused by such removal.
- 22.2** If LESSEE fails to remove its property within thirty (30) days after the termination of or expiration of this LEASE, LESSOR may remove such property to a public warehouse for deposit or retain the same in its own possession. If the LESSEE fails to take possession and remove such property, after paying any appropriate rental fees, within sixty (60) days after termination of the LEASE, the property shall be deemed to be abandoned and LESSOR may sell the same at public auction.

23.
Notices

- 23.1** All notices, consents and approvals required or desired to be given by the parties hereto shall be sent in writing, and shall be deemed sufficiently given when same is hand delivered or deposited in the United States mail, sufficient postage prepaid, registered or certified mail, return receipt requested, addressed to the recipient at the address set forth below:

To LESSOR:

City of Arlington
Office of Economic Development
Attn: Stuart Young, Real Estate Manager
101 West Abram Street, MS 01-0300
Arlington, Texas 76010

To LESSEE:

Taste Project
Attn: Jeff Williams, Executive Director
1200 S. Main Street
Fort Worth, Texas 76104

24.
Holding Over

- 24.1** A holding over by LESSEE after the termination of this LEASE and after written notice by LESSOR to vacate such premises, and continued occupancy thereof by LESSEE shall constitute LESSEE a trespasser.
- 24.2** Any holding over by LESSEE beyond the thirty (30) day period permitted for removal of fixtures without the written consent of the LESSOR shall make the LESSEE liable to the LESSOR for rent and damages.
- 24.3** All insurance coverage that LESSEE is required to maintain shall continue in effect for so long as LESSEE, or any of LESSEE's sublessees or tenants occupy the LEASED PREMISES or any part of the LEASED PREMISES.

25.
Invalid Provisions

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

26.
Miscellaneous Provisions

- 26.1** All remedies provided in this LEASE shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the LESSOR or LESSEE, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.
- 26.2** Notwithstanding any other provision of this LEASE, LESSEE shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

27.
General Provisions

- 27.1** This LEASE shall be performable and enforceable in the City of Arlington and County of Tarrant, Texas, and shall be construed in accordance with the laws of the State of Texas.
- 27.2** This LEASE is made for the sole and exclusive benefit of the LESSOR, LESSEE, their successors, assigns, heirs and the public.
- 27.3** Subject to the limitations upon assignment herein contained, this LEASE shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.
- 27.4** In the event of any ambiguity in any of the terms of this LEASE, it shall not be construed for or against any party hereto on the basis that such party did not author the same.
- 27.5** All covenants, stipulations and agreements in this LEASE shall extend to and bind each party hereto, its legal representatives, successors, assigns and heirs.
- 27.6** The titles of the sections of this LEASE are inserted herein for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- 27.7** For purposes of this LEASE, including its intended operation and effect, the parties (LESSOR and LESSEE) specifically agree that:
- (a) the LEASE only affects matters/disputes between the parties to this LEASE, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or LESSEE or both; and
 - (b) The terms of this LEASE are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the LESSOR or LESSEE.

28.
Local Businesses

- 28.1** In performing this Contract, LESSEE agrees to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to City of Arlington projects and procurements, the City of Arlington also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons in organizations proposed for work on this Contract, the LESSEE agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

29.
Independent Contractor

- 29.1** LESSEE covenants and agrees that it will perform the work hereunder as an independent contractor, and not as an officer, agent, servant or employee of LESSOR; that LESSEE shall have exclusive control of and exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between LESSOR and LESSEE, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating a partnership or joint enterprise between LESSOR and LESSEE.

30.
Entire Agreement

- 30.1** This LEASE embodies the entire agreement of the parties hereto superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein; and may not be changed, modified, discharged or extended except by written instrument duly executed by the LESSOR and the LESSEE or as otherwise provided herein.

[Signature Page to Immediately Follow]

IN WITNESS WHEREOF, I have executed this LEASE on the 11th day of August, 2022.

TASTE PROJECT

BY 

Printed Name: Jeff Williams


CITY OF ARLINGTON

BY 

Printed Name: Trey Yelverton

Title: City Manager

ATTEST:



ALEX BUSKEN

City Secretary

APPROVED AS TO FORM:

MOLLY SHORTALL, City Attorney

BY 

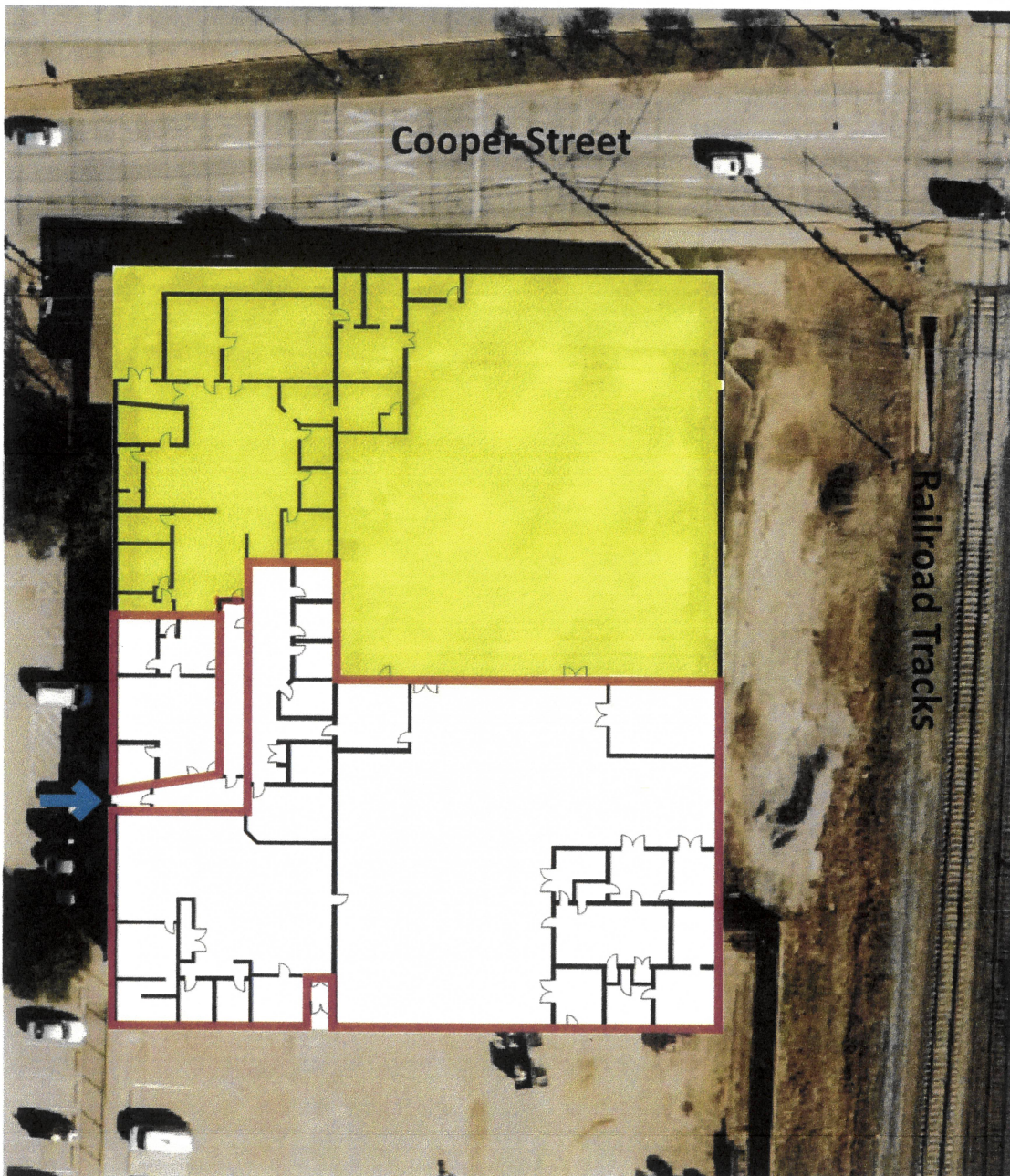
Exhibit A

LEASED PREMISES



Tenant Lease Space

200 N. Cooper Street



NON-EXCLUSIVE PARKING AREA

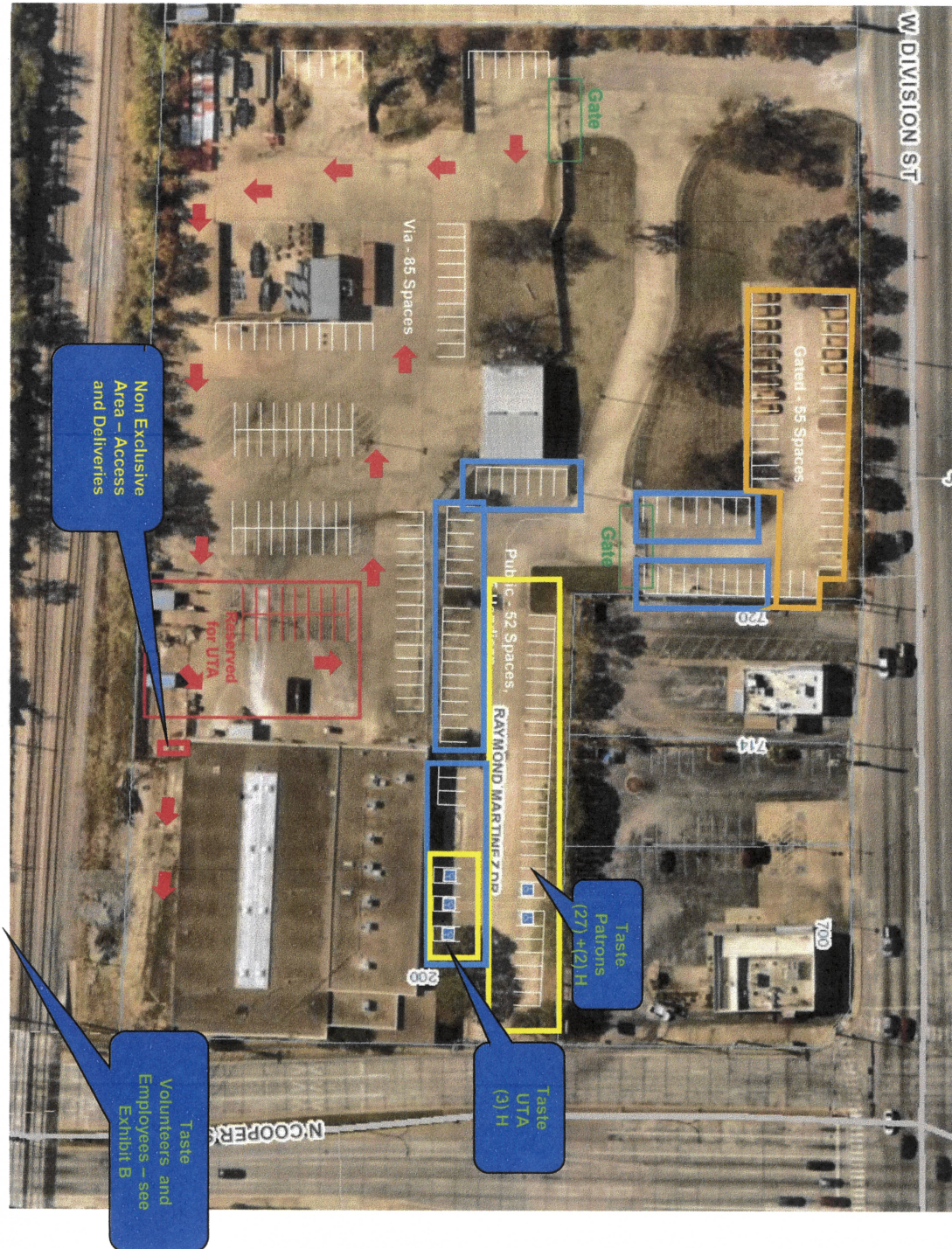


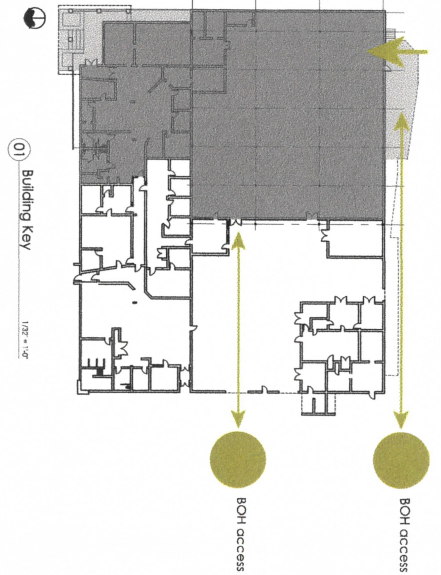
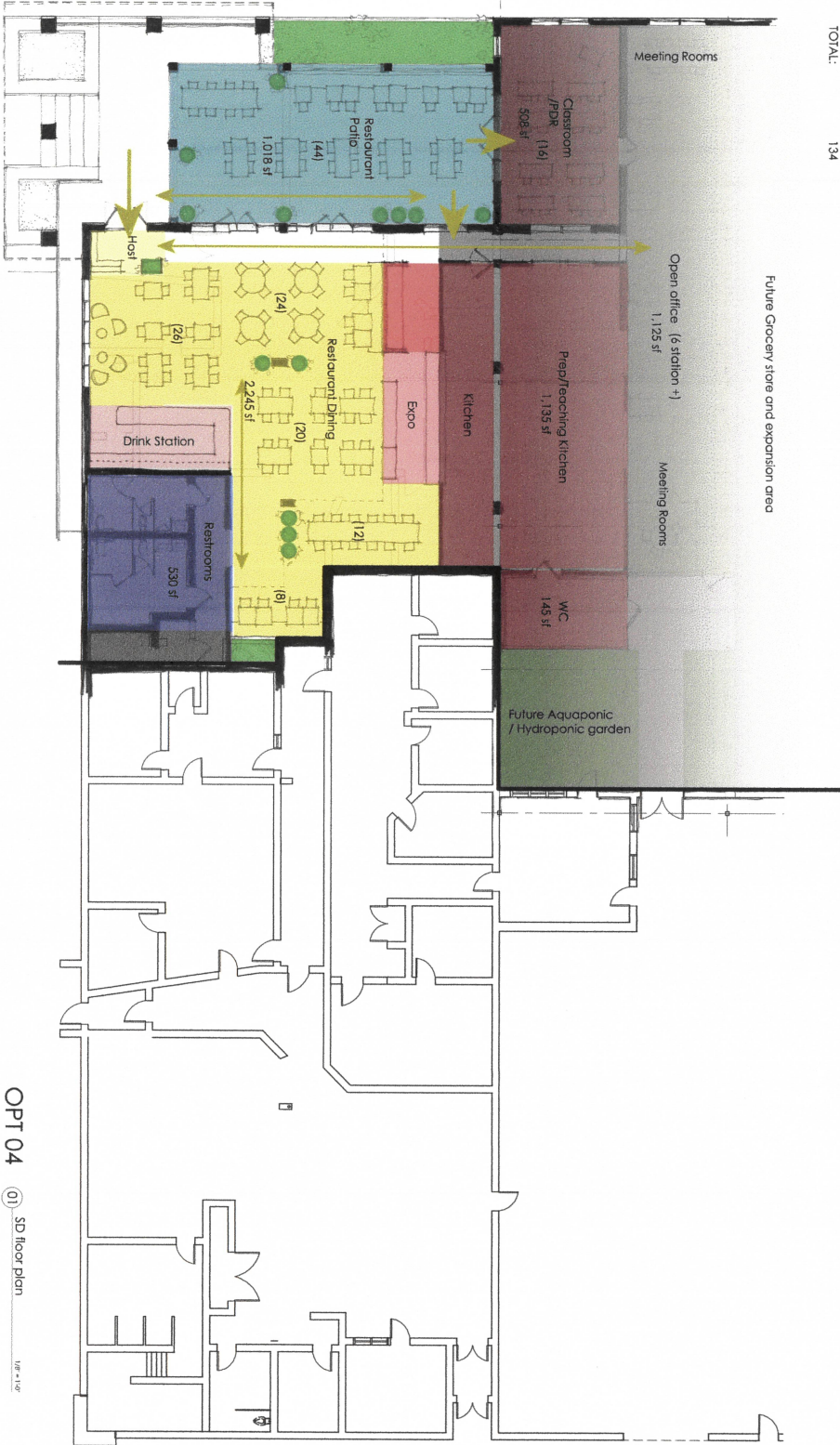
Exhibit B

NON-EXCLUSIVE PARKING AREA



Seal Court:
Classroom 20
Restaurant Dining 24
TOTAL: 44
134

Classroom 16+
Open Office 22+



OPT 04 01 SD floor plan 1/8" = 1'-0"

PROJECT TEAM

DESIGN TEAM ARCHITECTURE
Coral Gables
200 N. Cooper St.
Arlington, Texas 76010
314.671.6077 / COral

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COEVAL
www.coevalstudio.com
info@coevalstudio.com
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Taste Arlington
200 N. Cooper St.
Arlington, Texas 76010

PROJECT NUMBER
22012
REVISIONS

ISSUE DATE
02.10.2022



Staff Report

First Amendment to Lease Agreement – Taste Project – 200 North Cooper Street

City Council Meeting Date: 08-22-2023 | Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the City Manager or his designee to execute a First Amendment to Lease Agreement with Taste Project (Taste), a Texas nonprofit corporation, relative to a pay-what-you-can restaurant to be located at 200 North Cooper Street, Arlington, Texas, 76011.

PRIOR BOARD OR COUNCIL ACTION

On August 2, 2022, City Council passed Resolution No. 22-204 authorizing the City Manager or his designee to execute a lease agreement with Taste Project.

ANALYSIS

The current lease states that the necessary construction would be complete by December 30, 2023. Due to delays in materials and construction, Taste has requested to amend the lease extending the construction and certificate of occupancy deadline to August 31, 2024. In addition, the City has agreed to fund \$350,000 towards the cost of necessary roof and HVAC repairs needed to accommodate the permitted improvements. Taste will provide the appropriate receipts for work done within 60 days of the work.

FINANCIAL IMPACT

\$350,000 is available in the Asset Management Account No. CC370105 SC0583 for Fiscal Year 2024.

ADDITIONAL INFORMATION

Attachments:

Resolution

First Amendment to Lease Agreement

Under separate cover:

None

Available in the City Secretary's Office

None

STAFF CONTACT(S)

Stuart Young
Real Estate Manager
Office of Economic Development
817-459-6581
Stuart.Young@arlingtontx.gov

Bruce Payne, CECD, AICP
Economic Development Manager
Office of Economic Development
817-459-6114
Bruce.Payne@arlingtontx.gov

Resolution No. 23-215

A resolution authorizing the City Manager or his designee to execute a First Amendment to Lease Agreement with Taste Project, a Texas nonprofit corporation, relative to a pay-what-you-can restaurant to be located at 200 North Cooper Street, City of Arlington, Tarrant County, Texas

WHEREAS, on August 2, 2022, City Council passed Resolution No. 22-204, authorizing the City Manager or his designee to execute a lease agreement with Taste Project; and

WHEREAS, due to delays in materials and construction, Taste Project has requested to amend the lease agreement to extend the construction and certificate of occupancy deadline to August 31, 2024; and

WHEREAS, the City has agreed to fund \$350,000 towards the cost of necessary roof and HVAC repairs needed to accommodate the permitted improvements; and

WHEREAS, a grant of funds provided by the City to the Taste Project in exchange for Taste Project's investment in renovating the leased premises will promote local economic development and stimulate business and commercial activity and retain jobs within the City of Arlington; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is hereby authorized to execute a First Amendment to Lease Agreement with Taste Project, a Texas nonprofit corporation, relative to a pay-what-you-can restaurant use to be located at 200 North Cooper Street.

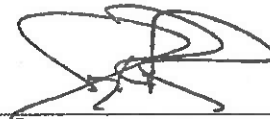
III.

A substantial copy of said First Amendment to Lease Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

IV.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

PRESENTED AND PASSED on this the 22nd day of August, 2023, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY:

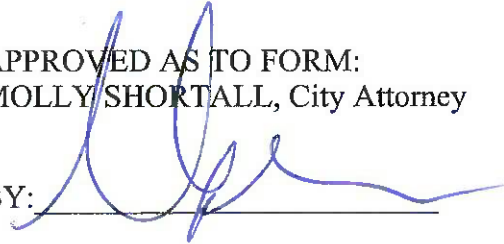


Exhibit “A”



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

FIRST AMENDMENT TO LEASE AGREEMENT

This FIRST AMENDMENT TO LEASE AGREEMENT (hereafter referred to as the "Amendment"), is made and entered into on this _____ of _____, 2023 by and between the **CITY OF ARLINGTON**, a Texas municipal corporation (hereinafter referred to as "LESSOR"), and **TASTE PROJECT**, a Texas nonprofit corporation (hereinafter referred to as "LESSEE").

WITNESSETH:

- WHEREAS, LESSOR and LESSEE entered into that certain Lease Agreement, dated August 11, 2022, (hereinafter referred to as "Lease") in which LESSOR leased to LESSEE certain real property, land and improvements located at 200 N. Cooper Street, Arlington, Texas; and
- WHEREAS, the LESSOR and LESSEE desire to modify the Lease to provide for a contribution by LESSOR to the costs of the improvements and to extend the commencement and completion dates for the improvements; and
- WHEREAS, a contribution of funds by the LESSOR towards the costs of the improvements will promote local economic development and stimulate business and commercial activity and create and retain jobs within the City of Arlington; NOW THEREFORE

In consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 6.4 (i) of the Lease shall be amended to read as follows:
 - (i) Unless otherwise mutually agreed upon by the parties the complete cost of developing all necessary plans and specifications as provided herein and the construction of improvements and facilities which support the LEASE whether off site or upon the LEASED PREMISES by LESSEE shall be borne solely by LESSEE and be at no expense to LESSOR whatsoever. LESSEE shall be responsible for the repair or replacement in equal or better condition of any offsite areas disturbed by the development of the LEASED PREMISES. Notwithstanding, under the authority provided in Chapter 380 of the Texas Local Government Code, LESSOR agrees to contribute Three Hundred and Fifty Thousand and 00/100 Dollars (\$350,000.00) towards the costs of necessary roof repairs and HVAC improvements and repairs, which are necessary to accommodate the Permitted Improvements. LESSOR shall pay such contribute to LESSEE on or before October 31, 2023. Within sixty (60) days of the date the roof repairs and HVAC improvements and repairs have been completed, LESSEE shall provide LESSOR with documentation substantiating that LESSOR's contribution was used to pay for costs associated with the roof repairs and HVAC improvements and repairs.
2. Section 6.5 of the Lease shall be amended to read as follows:
 - 6.5 Notwithstanding the foregoing, the LESSOR acknowledges that the LESSEE is permitted to make the improvements identified in **Exhibit "C"** to the LEASED PREMISES without any further consent from the LESSOR (hereafter "Permitted Improvements.") LESSEE shall commence construction on the Permitted Improvements by no later than May 15, 2023. LESSEE shall complete construction of the Permitted Improvements, evidenced by the issuance of a final certificate of occupancy for the LEASED PREMISES, by no later than August 31, 2024.

3. Binding Effect; Governing Law. Except as modified hereby, the Lease shall remain in full effect and this Amendment shall be binding upon LESSOR and LESSEE and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the State of Texas.
4. Entire Agreement. This Amendment, together with the Lease, embodies the entire agreement and understanding between LESSOR AND LESSEE regarding the LEASED PREMISES. Any and all prior or contemporaneous oral or written representations, agreements, understandings, or statements other than those set forth in the Lease and this Amendment are of no force and effect.
5. Headings; Capitalized Terms. The headings appearing in this Amendment are for the purpose of easy reference only and cannot be considered a part of this Amendment or in any way to modify, amend, or affect the provisions of this Amendment. Capitalized terms used but not defined herein shall have the same meanings ascribed to such terms in the Lease.
6. Severability. If any term or provision of this Amendment is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Amendment cannot be affected thereby, and each term and provision of this Amendment will be valid and enforceable to the fullest extent permitted by law.
7. Construction. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed this Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Amendment.
8. Ratification of the Lease. LESSOR and LESSEE hereby ratify and confirm the Lease, as amended by this Amendment.
9. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Signature page to follow]

EXECUTED THIS _____ day of _____, 2023.

LESSEE

TASTE PROJECT

By: _____

Name: Jeff Williams

Title: Executive Director

LESSOR

CITY OF ARLINGTON, TEXAS

By: _____

Name: _____

Title: _____

ATTEST:

Alex Busken, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY _____

STATE OF TEXAS §

§

TASTE PROJECT ACKNOWLEDGMENT

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Jeff Williams, the Executive Director of Taste Project, a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public in and for the State of Texas

My Commission Expires:

STATE OF TEXAS §

§

CITY OF ARLINGTON ACKNOWLEDGMENT

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Trey Yelverton, the City Manager of the City of Arlington, Texas, a duly incorporated home rule city of the State of Texas.

Notary Public in and for the State of Texas

My Commission Expires:

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

FIRST AMENDMENT TO LEASE AGREEMENT

This FIRST AMENDMENT TO LEASE AGREEMENT (hereafter referred to as the "Amendment"), is made and entered into on this 7th of NOVEMBER, 2023 by and between the **CITY OF ARLINGTON**, a Texas municipal corporation (hereinafter referred to as "LESSOR"), and **TASTE PROJECT**, a Texas nonprofit corporation (hereinafter referred to as "LESSEE").

W I T N E S S E T H:

- WHEREAS, LESSOR and LESSEE entered into that certain Lease Agreement, dated August 11, 2022, (hereinafter referred to as "Lease") in which LESSOR leased to LESSEE certain real property, land and improvements located at 200 N. Cooper Street, Arlington, Texas; and
- WHEREAS, the LESSOR and LESSEE desire to modify the Lease to provide for a contribution by LESSOR to the costs of the improvements and to extend the commencement and completion dates for the improvements; and
- WHEREAS, a contribution of funds by the LESSOR towards the costs of the improvements will promote local economic development and stimulate business and commercial activity and create and retain jobs within the City of Arlington; NOW THEREFORE

In consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. ^{by 6.3.23} Section 6.4(i) of the Lease shall be amended to read as follows:
 - (i) Unless otherwise mutually agreed upon by the parties the complete cost of developing all necessary plans and specifications as provided herein and the construction of improvements and facilities which support the LEASE whether off site or upon the LEASED PREMISES by LESSEE shall be borne solely by LESSEE and be at no expense to LESSOR whatsoever. LESSEE shall be responsible for the repair or replacement in equal or better condition of any offsite areas disturbed by the development of the LEASED PREMISES. Notwithstanding, under the authority provided in Chapter 380 of the Texas Local Government Code, LESSOR agrees to contribute Three Hundred and Fifty Thousand and 00/100 Dollars (\$350,000.00) towards the costs of necessary roof repairs and HVAC improvements and repairs, which are necessary to accommodate the Permitted Improvements. LESSOR shall pay such contribute to LESSEE on or before October 31, 2023. Within sixty (60) days of the date the roof repairs and HVAC improvements and repairs have been completed, LESSEE shall provide LESSOR with documentation substantiating that LESSOR's contribution was used to pay for costs associated with the roof repairs and HVAC improvements and repairs.
2. Section 6.5 of the Lease shall be amended to read as follows:
 - 6.5 Notwithstanding the foregoing, the LESSOR acknowledges that the LESSEE is permitted to make the improvements identified in **Exhibit "C"** to the LEASED PREMISES without any further consent from the LESSOR (hereafter "Permitted Improvements.") LESSEE shall commence construction on the Permitted Improvements by no later than May 15, 2023. LESSEE shall complete construction of the Permitted Improvements, evidenced by the issuance of a final certificate of occupancy for the LEASED PREMISES, by no later than August 31, 2024.

3. Binding Effect; Governing Law. Except as modified hereby, the Lease shall remain in full effect and this Amendment shall be binding upon LESSOR and LESSEE and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the State of Texas.
4. Entire Agreement. This Amendment, together with the Lease, embodies the entire agreement and understanding between LESSOR AND LESSEE regarding the LEASED PREMISES. Any and all prior or contemporaneous oral or written representations, agreements, understandings, or statements other than those set forth in the Lease and this Amendment are of no force and effect.
5. Headings; Capitalized Terms. The headings appearing in this Amendment are for the purpose of easy reference only and cannot be considered a part of this Amendment or in any way to modify, amend, or affect the provisions of this Amendment. Capitalized terms used but not defined herein shall have the same meanings ascribed to such terms in the Lease.
6. Severability. If any term or provision of this Amendment is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Amendment cannot be affected thereby, and each term and provision of this Amendment will be valid and enforceable to the fullest extent permitted by law.
7. Construction. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed this Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Amendment.
8. Ratification of the Lease. LESSOR and LESSEE hereby ratify and confirm the Lease, as amended by this Amendment.
9. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Signature page to follow]

EXECUTED THIS 7th day of NOVEMBER, 2023.

LESSEE

TASTE PROJECT

By: [Signature]
Name: Jeff Williams
Title: Executive Director

LESSOR

CITY OF ARLINGTON, TEXAS

By: [Signature]
Name: [Signature]
Title: City Manager

ATTEST:

[Signature]
Alex Busken, City Secretary

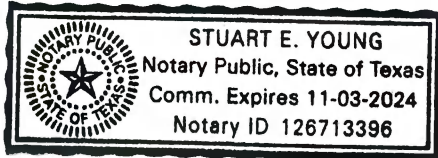
APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

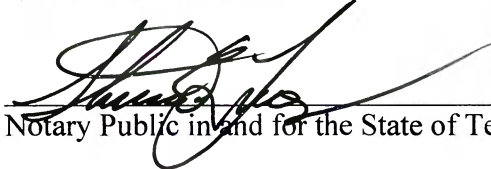
BY [Signature]

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

TASTE PROJECT ACKNOWLEDGMENT

This instrument was acknowledged before me on the 26th day of October, 2023, by Jeff Williams, the Executive Director of Taste Project, a Texas non-profit corporation, on behalf of said non-profit corporation.




Notary Public in and for the State of Texas

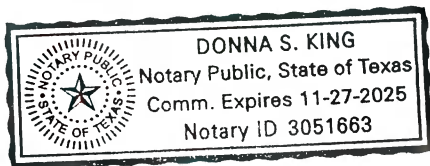
My Commission Expires:

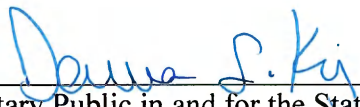
2024

STATE OF TEXAS §
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COUNTY OF TARRANT §

CITY OF ARLINGTON ACKNOWLEDGMENT

This instrument was acknowledged before me on the 7th day of November, 2023, by Trey Yelverton, the City Manager of the City of Arlington, Texas, a duly incorporated home rule city of the State of Texas.




Notary Public in and for the State of Texas

My Commission Expires:

11/27/25